ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 1998
First Extraordinary Session, 1998
Second Extraordinary Session, 1998

Volume I
Chapters 1 — 176
FOREWORD

These volumes contain the Acts of the Second Regular Session and the First Extraordinary Session of the 73rd Legislature, 1998.

Second Regular Session, 1998

The Second Regular Session of the 73rd Legislature convened on January 14, 1998. The Constitutional sixty-day limit on the duration of the session was midnight, March 14, 1998. The Governor issued a proclamation on March 11, 1998, extending the session for a period not to exceed seven days for the purpose of considering the Budget and supplementary appropriation bills, and the Legislature adjourned sine die on March 21, 1998.

Bills totaling 1881 were introduced in the two houses during the session (1095 House, 380 of which were carryover bills from the 1997 Regular Session, and 786 Senate). The Legislature passed 343 bills, 194 House and 149 Senate.

The Governor vetoed sixteen bills (H. B. 2252, Requiring executive agencies to report notices of disallowances or potential disallowances of federal funds within sixty days of receipt; H. B. 2650, Limiting the power of counties and municipalities from passing ordinances relating to weapons and ammunition; H. B. 4007, Relating to the West Virginia corporate headquarters relocation tax credit; H. B. 4472, Relating to the wildlife endowment fund and creating the Ohio River management fund advisory board; H. B. 4473, Allowing members of public bodies to participate in a meeting by video-teleconference when a medical condition prevents the member from attending; H. B. 4535, Permitting certain public offices to satisfy financial examination requirements by having a review rather than an audit; H. B. 4634, Requiring spousal consent for election of straight life annuity under any retirement system administered by the Consolidated Public Retirement Board; H. B. 4699, Creating a pilot program to evaluate the efficacy of requiring the hiring of workers from the local labor market in publicly funded construction projects; H. B. 4702, Providing for investing one hundred fifty million dollars from PERS in the state's regional jail and correctional facility system; S. B. 108, Including use of mace or pepper spray in definition of aggravated robbery; S. B.
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214, Creating misdemeanor offense for unauthorized use of cable television services; S. B. 232, Relating to public employees insurance agency; drug formulary change notice; S. B. 444, Authorizing municipalities to connect to sewer service outside corporate limits; S. B. 716, Requiring nonresidents severing state timber prepay severance tax or post bond; S. B. 774, Requiring information regarding federally mandated changes in state law; penalty; and S. B. 782, Making supplemental appropriation to department of agriculture). The Legislature amended and again passed H. B. 4007, H. B. 4472, H. B. 4702, S. B. 444 and S. B. 716. The Governor again vetoed S. B. 444, leaving a net total of 331 bills, 188 House and 143 Senate, which became law.

There were 113 Concurrent Resolutions introduced during the session, 76 House and 37 Senate, of which 30 House and 14 Senate were adopted. Thirty-two House Joint Resolutions (sixteen of which were carryover resolutions from the 1997 Regular Session) and fifteen Senate Joint Resolutions were introduced, proposing amendments to the State Constitution. Two House Joint Resolutions, H. J. R. 104, Local Option Economic Development Amendment, and H. J. R. 116, Judicial Reform Amendment, were adopted by the Legislature. The House introduced 38 House Resolutions and the Senate introduced 41 Senate Resolutions, of which 25 House and 40 Senate were adopted.

The Senate failed to pass 82 House bills passed by the House, and 75 Senate bills failed passage by the House. Three House bills and one Senate bill died in conference: H. B. 2165, Providing employer immunity from civil liability for information disclosed regarding former law-enforcement employees; H. B. 4177, Rulemaking, Department of Tax and Revenue; H. B. 4500, Making it unlawful to hunt while under the influence of alcohol, controlled substances or drugs; and S. B. 247, Eliminating certain requirements for issuance of marriage licenses.

First Extraordinary Session, 1998

The Proclamation calling the Legislature into Extraordinary Session immediately following the conclusion of business and adjournment sine die of the Regular Session, contained four items for consideration.
The Legislature passed 9 bills, 8 House and 1 Senate. The Senate adopted four Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on March 21, 1998.

**Second Extraordinary Session, 1998**

The Proclamation calling the Legislature into Extraordinary Session at 5:00 p.m., July 14, 1998, contained four items for consideration.

The Legislature passed four bills, three House Bills and one Senate Bill. The Legislature adopted one concurrent resolution, House Concurrent Resolution 1, providing for an adjournment of the Legislature until the 20th day of October, 1998, and for reconvening prior thereto by the Joint Committee on Rules. The House adopted one House Resolution and the Senate adopted one Senate Resolution.

The Legislature adjourned the Extraordinary Session pursuant to House Concurrent Resolution 1 on July 14, 1998.

* * * * * * * * * * *

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

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

**GREGORY M. GRAY**

_Clerk of the House and Keeper of the Rolls._
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<td>Eighteenth</td>
<td>Larry Jack Heck (D)</td>
<td>Huntington</td>
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<td>K. Steven Kominar (D)</td>
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<td>Appt. 9/11/92, 70th; 71st</td>
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<td>Greg A. Butcher (D)</td>
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<td>62nd-67th; 69th; (Senate 70th-71st)</td>
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<td>Tracy Dempsey (D)</td>
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<td>Tom Tomblin (D)</td>
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<td>Earnest H. Kuhn (D)</td>
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<td>Elizabeth Osborne (D)</td>
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<td>Robert S. Kiss (D)</td>
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<td>Virginia Mahan (D)</td>
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<td>Ron Thompson (D)</td>
<td>Beckley</td>
<td>72nd</td>
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[xxxiv]
| Thirtieth   | Jon Amores (D) ........................................... | Charleston .......................................... | 72nd |
| Thirty-first | Mark A. Hunt (D) ........................................... | Charleston .......................................... | 72nd |
| Thirty-second | Steve Harrison (R) ........................................... | Nitro .................................................. | 71st-72nd |
| Thirty-third | William Siemple (D) ....................................... | Amoldsburg ........................................... |
| Thirty-fourth | Brent Boggs (D) ............................................ | Gassaway ............................................. |
| Thirty-fifth | John W. Shelton (D) .................................... | Summersville ........................................ |
| Thirty-sixth  | C. Randy White (D) ........................................ | Webster Springs ...................................... |
| Thirty-seventh  | Joe Martin (D) ........................................... | Elkins ............................................... | Appt. 6/15/78, 63rd; 64th-72nd |
| Thirty-eighth  | Douglas K. Stalnaker (R) ................................ | Weston ............................................... | 72nd |
| Thirty-ninth | Dale F. Riggs (R) ......................................... | Buckhannon .......................................... | 69th-72nd |
| Forty-first | Samuel J. Cann (D) ....................................... | Bridgeport ........................................... | 72nd |
| Forty-second | Tom Coleman (D) ........................................... | Grafton ............................................... |
| Forty-third  | Michael Caputo (D) ....................................... | Fairmont ............................................. |
| Forty-fourth | Robert C. Beach (D) ..................................... | Core .................................................... | Appt. 7/27/90, 69th; 70th-72nd |
| Forty-fifth  | Larry A. Williams (D) ................................... | Tunnelton ............................................. | Appt. 10/08/93, 71st; 72nd |
| Forty-sixth | David Collins (D) ......................................... | Davis .................................................... | 70th-72nd |
| Forty-seventh | Harold K. Michael (D) .................................. | Moorefield ........................................... | 69th-72nd |
| Forty-eighth | Allen V. Evans (R) ....................................... | Dorcas ................................................. | 70th-72nd |
| Forty-ninth | Carl C. Thomas (R) ....................................... | Keyser ............................................... | 72nd |
| Fiftieth | Jerry L. Mezratesia (D) ................................ | Romney ............................................... | 68th-72nd |
| Fifty-first  | Charles S. Trump IV (R) ................................ | Berkeley Springs .................................... | 71st-72nd |
| Fifty-second | Vicki V. Douglas (D) .................................... | Martinsburg ......................................... | 70th-72nd |
| Fifty-third  | Larry V. Faircloth (R) .................................. | Inwood ............................................... | 65th-72nd |
| Fifty-fourth | John Overington (R) ..................................... | Martinsburg ......................................... | 67th-72nd |
| Fifty-fifth  | John Doyle (D) ............................................ | Shepherdstown ....................................... | 66th; 71st-72nd |
| Fifty-sixth  | Dale Manuel (D) ........................................... | Charles Town ......................................... | 69th-72nd |

(D) Democrats ........................................... 74
(R) Republicans ........................................... 26

TOTAL .................................................... 100

1Appointed Aug. 27, 1997, to fill the vacancy created by the death of Joe Farris.
# MEMBERS OF THE SENATE

## REGULAR SESSION, 1998

### OFFICERS

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

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Prior Legislative Service</th>
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<tbody>
<tr>
<td>First</td>
<td>Edwin J. Bowman (D)</td>
<td>Weirton</td>
<td>72nd</td>
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<td>Andy McKenzie (R)</td>
<td>Wheeling</td>
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<td>Second</td>
<td>Jeffrey Kessler (D)</td>
<td>Glen Dale</td>
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<td>Don Macaughan (D)</td>
<td>New Martinsville</td>
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<td>Third</td>
<td>Donna Jean Boley (R)</td>
<td>St. Marys</td>
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<td>J. Frank Deem (R)</td>
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<td>Oshel B. Craigo (D)</td>
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<td>Robert L. Dittmar (D)</td>
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<td>Robert H. Plymale (D)</td>
<td>Ceredo</td>
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<td>Thomas F. Scott (R)</td>
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<td>H. Truman Chafin (D)</td>
<td>Williamson</td>
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<td>John Pat Fanning (D)</td>
<td>Laeger</td>
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<td>Lloyd G. Jackson II (D)</td>
<td>Hamlin</td>
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<td>Earl Ray Tomblin (D)</td>
<td>Chapmanville</td>
<td>(House 62nd-64th); 65th-72nd</td>
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<td>Jack Buckalew (R)</td>
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<td>Vic Sprouse (R)</td>
<td>South Charleston</td>
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<td>Billy Wayne Bailey, Jr. (D)</td>
<td>Alpoca</td>
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<td>William R. Wooton (D)</td>
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<td>Homer Ball (D)</td>
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<td>Shirley D. Love (D)</td>
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<td>Rebecca J. White (D)</td>
<td>Jane Lew</td>
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<td>Michael A. Oliverio II (D)</td>
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<td>Roman W. Prezioso (D)</td>
<td>Fairmont</td>
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<td>Jon Blair Hunter (D)</td>
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<td>Sarah M. Minear (R)</td>
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<td>Walt Helmick (D)</td>
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<td>Larry Kimble (R)</td>
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<td>Martha Yeager Walker (D)</td>
<td>Charleston</td>
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| (D) Democrats | 25 |
| (R) Republicans | 9 |
| **TOTAL** | 34 |

1Appointed Nov. 10, 1997, to fill the vacancy created by the death of Larry Wiedebusch.
COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 1998

STANDING

AGRICULTURE AND NATURAL RESOURCES
Beach (Chair of Agriculture), Kelley (Vice Chair of Agriculture), Proudfoot (Chair of Natural Resources), Tillis (Vice Chair of Natural Resources), Boggs, Buchanan, Caputo, Claypole, Damron, Davis, Dempsey, Ennis, Flanigan, Heck, Prunty, Stemple, Tomblin, Williams, Willis, Anderson, Border, Evans, Riggs, Leggett and Overington.

BANKING AND INSURANCE
Thompson (Chair of Banking), Kominar (Vice Chair of Banking), Beane (Chair of Insurance), Johnson (Vice Chair of Insurance), Amores, Dempsey, Fantasia, Flanigan, Heck, Hunt, Hutchins, Jenkins, Laird, Seacrist, Smith, Tillis, Tomblin, H. White, Wright, Azinger, Clements, Faircloth, Gillespie, Walters and L. White.

CONSTITUTIONAL REVISION
Fleischauer (Chair), Osborne (Vice Chair), Collins, Dalton, Frederick, Givens, Kominar, Laird, Leach, Linch, Martin, McGraw, Pino, Rowe, Underwood, Varner, H. White, Wright, Capito, Given, Harrison, Leggett, Overington, Smirl and Webb.

EDUCATION
Mezzatesta (Chair), Manuel (Vice Chair), Beach, Boggs, Caputo, Damron, Dempsey, Ennis, Fragale, Hubbard, Martin, Osborne, Shelton, Sparks, Spencer, Stemple, C. White, Williams, Yeager, Anderson, Gillespie, Hall, Harrison, Henderson and Webb.

FINANCE
Michael (Chair), Doyle (Vice Chair), Beane, Campbell, Cann, Compton, Fantasia, Frederick, Jenkins, Kelley, Laird, Leach, Mezzatesta, Pettit, Proudfoot, Pulliam, Seacrist, Warner, Border, Clements, Evans, Facemyer, Leggett, Miller and Walters.

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GOVERNMENT ORGANIZATION
Douglas (Chair), Collins (Vice Chair), Butcher, Claypole, Davis, Everson, Flanigan, Heck, Kuhn, Louisos, McGraw, Prunty, Smith, Thompson, Tucker, Varner, H. White, Willis, Azinger, Capito, Given, Harrison, Overington, Stalnaker and Willison.

HEALTH AND HUMAN RESOURCES
Compton (Chair), Hutchins (Vice Chair), Amores, Beach, Caputo, Doyle, Fleischauer, Hubbard, Kelley, Leach, Louisos, Mahan, Manuel, Osborne, Pino, Rowe, Smith, Stemple, Capito, Facemyer, Gillespie, Given, Henderson, Miller and Thomas.

INDUSTRY AND LABOR
Pettit (Chair), Kuhn (Vice Chair), Butcher, Cann, Caputo, Claypole, Coleman, Dalton, Doyle, Frederick, Linch, Louisos, Mahan, Prunty, Smith, Sparks, Tillis, Tucker, Williams, Border, Evans, Harrison, Overington, Walters and Webb.

JUDICIARY
Staton (Chair), Amores (Vice Chair), Buchanan, Coleman, Dalton, Fleischauer, Givens, Hunt, Hutchins, Johnson, Kominar, Linch, Mahan, Pino, Rowe, Stemple, Tillis, Tomblin, Underwood, Faircloth, Riggs, Smirl, Thomas, Trump and L. White.

POLITICAL SUBDIVISIONS
Seacrist (Chair), Yeager (Vice Chair), Beane, Campbell, Damron, Everson, Fantasia, Flanigan, Givens, Johnson, Kuhn, Louisos, Pettit, Proudfoot, Pulliam, Underwood, C. White, Willis, Facemyer, Miller, Smirl, Stalnaker, Trump, L. White and Willison.

ROADS AND TRANSPORTATION
Warner (Chair), Everson (Vice Chair), Boggs, Butcher, Coleman, Damron, Davis, Ennis, Hubbard, Kominar, Manuel, McGraw, Pulliam, Shelton, Spencer, Thompson, Varner, C. White, Yeager, Border, Clements, Evans, Hall, Miller and Stalnaker.
RULES
Kiss (Chair), Douglas, Givens, Manuel, Martin, Mezzatesta, Michael, Pino, Staton, Varner, Ashley, Faircloth, Miller and Riggs.

VETERANS' AFFAIRS
Givens (Chair), Frederick, (Vice Chair), Buchanan, Campbell, Coleman, Collins, Doyle, Everson, Hutchins, Kelley, Kuhn, Linch, Seacrist, Sparks, Spencer, Thompson, Tucker, Yeager, Anderson, Azinger, Facemyer, Henderson, Stalnaker, Thomas and Willison.

JOINT

ENROLLED BILLS
Fantasia (Chair), Dempsey (Vice Chair), Fragale and Overington.

GOVERNMENT AND FINANCE
Kiss (Chair), Martin, Mezzatesta, Michael, Staton, Ashley and Trump.

GOVERNMENT OPERATIONS
Douglas (Chair), Collins, Varner, Stalnaker and Willison.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Hunt (Chair), Linch (Vice Chair), Compton, Jenkins, Faircloth and Riggs.

PENSIONS AND RETIREMENT
Jenkins (Chair), Hubbard (Vice Chair), Campbell, Smith, Williams, Clements and Hall.
RULES
Kiss (Chair), Martin and Ashley.

STATUTORY LEGISLATIVE COMMISSIONS

FOREST MANAGEMENT REVIEW
Williams (Chair), Heck (Vice Chair), Martin, Shelton, Proudfoot and Willison.

INTERSTATE COOPERATION
Beane (Chair), Amores, Doyle, Jenkins, Yeager, Ashley and Walters.

OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY
Mezzatesta (Chair), Beach, Doyle, Manuel, Williams and Anderson.

OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY
Compton (Chair), Douglas, Leach, Martin, Michael, Ashley and Facemyer.

OVERSIGHT COMMISSION ON REGIONAL JAIL AND CORRECTIONAL FACILITY
Manuel (Chair), Linch (Vice Chair), Compton, Jenkins, Faircloth and Riggs.

SPECIAL INVESTIGATIONS
Kiss (Chair), Martin, Staton, Faircloth and Trump.
COMMITTEES OF THE SENATE
Regular Session, 1998

STANDING

AGRICULTURE
Anderson *(Chair)*, White *(Vice Chair)*, Ball, Dittmar, Helmick, Love, Ross, Dugan, Minear and Sprouse.

BANKING AND INSURANCE
Helmick *(Chair)*, Snyder *(Vice Chair)*, Chafin, Craigo, Dittmar, Fanning, Kessler, Prezioso, Sharpe, Wooton, Deem, Kimble and Scott.

CONFIRMATIONS
Love *(Chair)*, Chafin *(Vice Chair)*, Bailey, Bowman, Jackson, White, Wooton, McKenzie and Scott.

EDUCATION
Jackson *(Chair)*, Plymale *(Vice Chair)*, Bailey, Ball, Fanning, Helmick, Hunter, Oliverio, Schoonover, White, Boley, Dugan, McKenzie and Minear.

ENERGY, INDUSTRY AND MINING
Sharpe *(Chair)*, Fanning *(Vice Chair)*, Anderson, Helmick, Hunter, Kessler, Macnaughtan, Oliverio, Ross, Snyder, Deem, Dugan, McKenzie and Minear.

FINANCE
Craigo *(Chair)*, Sharpe *(Vice Chair)*, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Walker, Boley, Dugan, McKenzie, Minear and Sprouse.

GOVERNMENT ORGANIZATION
Bowman *(Chair)*, Bailey *(Vice Chair)*, Ball, Jackson, Kessler, Macnaughtan, Plymale, Schoonover, Walker, White, Wooton, Boley, Buckalew, Minear and Scott.

HEALTH AND HUMAN RESOURCES
Walker *(Chair)*, Macnaughtan *(Vice Chair)*, Craigo, Hunter, Plymale, Prezioso, Ross, Sharpe, Snyder, Wooton, Boley, McKenzie, Scott and Sprouse.

[XLI]
INTERSTATE COOPERATION

White (Chair), Anderson (Vice Chair), Bowman, Prezioso, Schoonover, Deem and Scott.

JUDICIARY

Wooton (Chair), Snyder, (Vice Chair), Ball, Bowman Dittmar, Fanning, Hunter, Kessler, Oliverio, Ross, Schoonover, White, Buckalew, Deem, Kimble and Scott.

LABOR

Macnaughtan (Chair), Schoonover (Vice Chair), Bowman, Hunter, Kessler, Love, Prezioso, Deem, Dugan and Minear.

MILITARY

Prezioso (Chair), Hunter (Vice Chair), Bailey, Dittmar, Helmick, Oliverio, Wooton, Buckalew and Kimble.

NATURAL RESOURCES

Dittmar (Chair), Love (Vice Chair), Anderson, Bowman, Craigo, Macnaughtan, Plymale, Ross, Snyder, White, Boley, Deem, Minear and Sprouse.

PENSIONS

Plymale (Chair), Prezioso (Vice Chair), Fanning, Jackson, Walker, Kimble and Sprouse.

RULES

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

SMALL BUSINESS

Oliverio (Chair), Fanning (Vice Chair), Anderson, Ball, Bowman, Craigo, Plymale, Ross, Sharpe, Buckalew, Kimble and Sprouse.

TRANSPORTATION

Ross (Chair), Ball (Vice Chair), Dittmar, Kessler, Love, Oliverio, Schoonover, Buckalew and McKenzie.
JOINT

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

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

GOVERNMENT OPERATIONS
Bowman (Chair), Bailey, Craigo, Walker and Minear.

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

PENSIONS AND RETIREMENT
Plymale (Chair), Prezioso (Vice Chair), Fanning, Jackson, Walker, McKenzie and Sprouse.

RULES
Tomblin (Chair), Chafin and Buckalew.

STATUTORY LEGISLATIVE COMMISSIONS

FOREST MANAGEMENT REVIEW
Plymale (Chair), Bowman, Helmick, Love, Ross and Minear.
INTERSTATE COOPERATION
White (Chair), Anderson (Vice Chair), Bowman, Prezioso, Schoonover, Deem and Scott.

OVERSIGHT COMMISSION ON
EDUCATION ACCOUNTABILITY
Jackson (Chair), Bailey, Craigo, Plymale, Prezioso and Dugan.

OVERSIGHT COMMISSION ON HEALTH AND
HUMAN RESOURCES ACCOUNTABILITY
Walker (Chair), Craigo, Hunter, Prezioso, Sharpe, Snyder and Scott.

OVERSIGHT COMMISSION ON REGIONAL
JAIL AND CORRECTIONAL FACILITY
Love (Chair), Bailey, Craigo, Helmick, Hunter and Buckalew.

SPECIAL INVESTIGATIONS
Tomblin (Chair), Sharpe, Wooton, Buckalew and Sprouse.
LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND REGULAR SESSION, 1998

CHAPTER 1

(S. B. 774—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter, Kessler, Oliverio, Ross, Schoonover, Snyder, White, Buckalew, Deem, Kimble and Scott)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen, relating to limiting the liability of physicians who render voluntary services for certain athletic events.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-19. Liability of physicians who render services at school athletic events; limiting liability; exceptions.

(a) Any person licensed to practice medicine and
surgery pursuant to the provisions of article three, chapter thirty of this code or any person licensed to practice medicine and surgery as an osteopathic physician and surgeon pursuant to the provisions of article fourteen, chapter thirty of this code: (1) Who is acting in the capacity of a volunteer team physician in attendance at an athletic event sponsored by a public or private elementary or secondary school; and (2) who gratuitously and in good faith prior to the athletic event agrees to render emergency care or treatment to any participant during such event in connection with an emergency arising during or as the result of such event, without objection of such participant, shall not be held liable for any civil damages as a result of such care or treatment, or as a result of any act or failure to act in providing or arranging further medical treatment, to an extent greater than the applicable limits of his or her professional liability insurance policy or policies when such care or treatment was rendered in accordance with the acceptable standard of care established in section three, article seven-b of this chapter.

(b) The limitation of liability established by the provisions of this section shall not apply to acts or omissions constituting gross negligence. For purposes of this section, the term “athletic event” includes scheduled practices for any athletic event.

CHAPTER 2
(H. B. 4454—By Delegates Beach, Williams and Evans)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article ten-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating the West Virginia egg marketing law of 1998; providing a purpose; definitions; requiring permits and registration; exemptions; container
requirements; standards, grades and weight classes; acts which are prohibited; requiring certain labels and furnishing of invoices; advertising required for certain quality eggs; powers and duties of the commissioner of agriculture; requirements of egg handling facilities; authorizing entry of facilities by commissioner; providing civil and criminal penalties for violations; requiring commissioner to cooperate with other entities; and prohibiting commissioner from divulging trade secrets.

Be it enacted by the Legislature of West Virginia:

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


§19-10A-1. Purpose; and short title.
§19-10A-3. Permits and registration.
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§19-10A-1. Purpose; and short title.

(a) The intent of this article is to protect and promote the public health and general welfare and to prevent fraud and deception in the production, processing, sale and distribution of eggs. This article provides for the registration of business houses engaged in selling, trading
or traffic of eggs; establishes standards for the grading, classification and marketing of eggs; provides a penalty for the failure to comply with the provisions of this article; and provides for other purposes. This article shall be known as "The West Virginia Egg Marketing Law of 1998". All provisions of this code in conflict with this article are repealed.

(b) Except where otherwise indicated, it is the intent of the Legislature that this article substantially conform with the federal laws and regulations promulgated under the auspices of the United States secretary of agriculture and the United States secretary of health and human services in order to provide movement of eggs in intrastate and interstate commerce with a minimum of economic barriers.


(a) "Ambient temperature" means the atmospheric temperature surrounding or encircling shell eggs.

(b) "Candle" means to determine the interior quality based on the use of a candling light as defined in federal standards adopted in section ten of this article.

(c) "Case" means a container that is not a carton and that is used to pack eggs for distribution or sale to the consumer. A case may contain either loose or cartoned eggs.

(d) "Commissioner" means the commissioner of agriculture for the state of West Virginia or his or her duly authorized agent.

(e) "Container" means any carton, basket, case, cart, pallet or other receptacle.

(f) "Consumer" means any person using eggs for food and shall include restaurants, hotels, cafeterias, hospitals, state institutions and any other establishment serving food to be consumed or produced on the premises, but shall not include the armed forces or any other federal agency or institution.
(g) "Denatured" means rendering unfit for human food by treatment or the addition of a foreign substance as approved by the United States department of agriculture (USDA), agriculture marketing service (AMS), administrator.

(h) "Distributor" means a person or firm engaged in the business of buying eggs from producers or other persons on his or her own account and selling or transferring eggs to other distributors or retailers. A distributor further means a person or firm engaged in producing eggs from his or her own flock and marketing of any portion of this production on a graded basis.

(i) "Egg" means the product of the domesticated chicken hen or any other eggs offered for sale for human consumption.

(j) "Embargo" means a written stop sale order issued by the commissioner of agriculture prohibiting the sale, use of or transportation of eggs in any manner until the embargo is released by the commissioner.

(k) "General embargo" means a statewide written stop sale order issued by the commissioner of agriculture prohibiting the sale, use of or transportation of eggs in any manner until the embargo is released by the commissioner.

(l) "Graded egg" means an egg which is classified in accordance with the standards established by the United States department of agriculture.

(m) "Inedible" and "unfit for human food" means eggs described as black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, eggs containing embryo chicks (at or beyond the blood ring state), and any eggs that are adulterated as that term is defined in the federal food, drug and cosmetic act.

(n) "Packer" means any person who grades, sizes, candles or packs eggs for the purpose of resale.
(o) "Person" means any partnership, association, business trust, corporation or any organized group of persons, whether incorporated or not.

(p) "Possession" means the fact of possession by any person engaged in the sale of a commodity is prima facie evidence that the commodity is for sale.

(q) "Processor" means a person who operates a plant for the purpose of breaking eggs for freezing, drying or commercial food manufacturing.

(r) "Producer" means any person owning laying hens who markets eggs.

(s) "Repacker" means any person who packs previously graded and packed shell eggs for resale.

(t) "Retailer" means any person who sells eggs directly to the consumer.

(u) "Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

§19-10A-3. Permits and registration.

(a) The commissioner shall issue an "Egg Distributor Permit" to every person distributing eggs in West Virginia. Each egg distributor shall apply to the commissioner of agriculture for this permit on forms provided by the commissioner at least thirty days prior to distributing eggs in West Virginia and shall renew his or her permit annually at least thirty days prior to the expiration of his or her current permit.

(b) For the purposes of financing the administration and enforcement of this article, the state of West Virginia, through the West Virginia department of agriculture shall collect an inspection and permit fee from the distributor first introducing the eggs into West Virginia trade channels.

(c) The commissioner shall set an inspection fee and annual permit fee by legislative rule for the distribution of all shell eggs processed or sold in the state of West Virginia.
(d) All fees, interest, penalties or other moneys collected by the commissioner under the provisions of this article shall be paid into a special account and be expended upon the order of the commissioner for the purpose of the enforcement and administration of this article.

(e) An egg distributor shall conspicuously post his or her permit in the place of business to which it applies. The permit year is twelve months or any fraction thereof beginning the first day of July and ending the thirtieth day of June of each year.

(f) No permit is transferable. Each physical location where eggs are stored for distribution shall have a separate egg distributor permit.

(g) Producers exempted by the commissioner by legislative rule shall register with the West Virginia department of agriculture but are exempt from paying the permit or inspection fee pursuant to the provisions of section four of this article.

(h) The provisions of this article are applicable to all retailers, wholesalers, packers and distributors of eggs.

(i) The commissioner has the power to revoke or suspend the certificate for failure to comply with the provisions of this article and refuse to issue a certificate to willful violators.

§19-10A-4. Exemptions.

Any person marketing eggs which he or she has produced is exempt from the provisions of section seven of this article except that carton labeling shall be according to legislative rule, cartons shall be clean and free of debris and eggs shall be held under refrigeration according to legislative rule. The commissioner may exempt small producers from portions of this article by legislative rule.

§19-10A-5. Container requirements.
No distributor may market eggs unless there is clearly
designated on the container the consumer grade and size
or weight class established in accordance with the
provisions of this article and the eggs shall conform to the
designated grade and size or weight class, except when
sold on contract to an agency of the United States
government.


(a) If an authorized representative of the West Virginia
department of agriculture determines, after an inspection,
that any lot of eggs is in violation of this article, the
representative may issue an embargo under the provisions
of section ten of this article. An embargo shall specify the
reason for its issuance and prohibit the sale, use of or
transportation of eggs in any manner until the embargo is
released by the commissioner.

The commissioner shall determine and assess
violations of this article to the packer, repacker, distributor
or retailer.

(b) No person, firm or corporation may sell, traffic in
or deliver to the retail or consuming trade, any eggs that
are:

(1) Loss, inedible, denatured or leaker eggs;

(2) Not refrigerated; or

(3) Mislabeled or deceptively advertised.

(c) No person may sell eggs for resale to consumers
below "U.S. Consumer Grade B".

(d) No person may prepare, pack, place, deliver for
shipment, deliver for sale, load, ship, transport, offer for
sale in bulk containers or advertise by sign, placard or
otherwise any eggs for human consumption which are
mislabeled or deceptive.

(e) No person or retailer may repack eggs in cartons
which were previously used and labeled by a packer,
except as outlined in legislative rule.

(a) Any container or subcontainer in which eggs are marketed to consumers shall bear on the exterior of the container the following:

1. The identity of the packer by registry of USDA plant number or by state permit number or name and address of the packer, distributor, retailer or repacker;

2. The correct grade and size or weight classification;

3. The term "EGGS";

4. The quantity of eggs per retail unit (i.e. one dozen, eighteen count, etc.) or dozens per case when packing loose eggs for institutional use or an accurate statement of the quantity of the contents in terms of numerical count;

5. The words “keep refrigerated” in a plain and conspicuous manner on each container or consumer receptacle of shell eggs;

6. Use by or expiration date; and

7. Additional labeling according to legislative rule.

(b) Loose eggs shall be labeled according to legislative rule.

§19-10A-8. Invoice requirements.

(a) Every person, firm or corporation selling eggs to a retailer or manufacturer shall furnish an invoice showing the size and quality of the eggs according to the standards prescribed by this article together with the name and address of the person by whom the eggs were sold and

(a) All eggs offered for sale at retail shall be plainly marked as to grade and size with letters not less than three-eighths inch in height.

(b) All eggs advertised or displayed for sale for human food at a given price shall be advertised or displayed in the manner adopted by legislative rule.

(c) Restaurants, hotels, delicatessens and other eating places using eggs below "A" quality shall advertise this fact to the public according to legislative rule.


(a) The commissioner shall by legislative rule establish standards for the grading, classification and marketing of shell eggs bought and sold by any person, firm or corporation in the state of West Virginia. These standards shall conform to, on date of the sale to the consumer, the minimum standards promulgated by the U. S. department of agriculture as defined in the "United States Standards, Grades and Weight Classes for Shell Eggs", authorized under Section 205, 60 Stat. 1091, Public Law 135, 82nd Congress; 7 U.S.C. 1624, effective July 11, 1952, as amended.

(b) All duties and functions required to be performed by the West Virginia department of agriculture under the provisions of this article shall be performed by the commissioner of agriculture.

(c) The commissioner of agriculture shall enforce the provisions of this article and may make and propose those rules for promulgation as may be necessary for the enforcement of this article.
(d) The commissioner has the power to issue an embargo or general embargo for any product which is or is believed to be adulterated, mislabeled or is not in compliance with this article and to cause the distributing of that product to cease. Nothing in this article may be construed as to requiring the commissioner to issue embargoes for minor violations of this article when the commissioner believes that a written notice of violation will serve the public interest.

(e) Audits:

(1) The West Virginia department of agriculture may conduct annual audits of all permit holders, including out-of-state permit holders to ensure proper reporting of egg inspection fees.

(2) Out-of-state permit holders shall reimburse the department for travel expenses incurred in conducting out-of-state audits. The state of West Virginia's out-of-state daily allowance for meals and lodging is the maximum amount reimbursable, plus travel expenses to and from locations of permit holders.

§19-10A-11. Egg handling facilities, temperature and humidity, sanitation and cleaning.

(a) Any packer or distributor engaged in the assembling, marketing or the processing of eggs for marketing shall maintain egg handling facilities in a manner commensurate with laws governing food establishments.

(b) All eggs shall be stored or transported under refrigeration as required by legislative rule.

(c) The commissioner shall set standards for egg handling facilities, humidity, sanitation and the cleaning of eggs by legislative rule.


(a) The commissioner of agriculture may enter any store, vehicle, market or any other business or place where eggs are bought, stored, processed, packed or offered for
sale and to make inspections as needed to determine compliance with this article and rules adopted under the authority of this article. During an inspection the commissioner of agriculture may also candle and weigh eggs to determine if the grades and sizes of the eggs conform to grades and sizes labeled on the exterior of the container.

(b) All eggs are considered the property of the person in whose possession they are found except those in the custody of common carriers or public warehouses where the owner is identified by record.


(a) Criminal penalties. — Any person violating any provision of this article or any rule adopted under the authority of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for the first offense, and for the second or subsequent offense, shall be fined not less than five hundred dollars nor more than one thousand dollars, or imprisoned not more than six months, or both fined and imprisoned. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) Civil penalties. — Any person violating a provision of this article or any rules adopted under the authority of this article may be assessed a civil penalty by the commissioner of agriculture. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violations of any person, the seriousness of the violation, including any irreparable harm to the environment, any hazards to the health and safety of the public, any economic damages to the public and the demonstrated good faith of any person charged to achieve compliance with this article before and after written notification of the violation:

(1) The commissioner may assess a civil penalty of up to one thousand dollars for a violation;
(2) The civil penalty is payable to the state of West Virginia and is collectible in any manner now or hereafter provided for collection of debt. If any person liable to pay a civil penalty neglects or refuses to pay the civil penalty, the amount of the civil penalty, together with interest at ten percent, is a lien in favor of the state of West Virginia upon the property, both real and personal, of that person after the lien has been entered and docketed to record in the county where the property is situated. The clerk of the county, upon receipt of the certified copy of the lien, shall enter it to record without requiring the payment of costs as a condition precedent to recording.

(c) Notwithstanding any other provision of law to the contrary, the commissioner may propose for promulgation and adopt rules which permit consent agreement or negotiated settlements for the civil penalties assessed as a result of violation of the provision of this article.

(d) Upon application by the commissioner for an injunction, the circuit court of the county in which the violation is occurring, has occurred or is about to occur, as the case may be, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any provision of this article or any rule promulgated under this article, notwithstanding the existence of other remedies of law. Any such injunction shall be issued without bond.

(e) No state court may allow for the recovery of damages for any administrative action taken, if the court finds that there was a probable cause for that action.

(f) It is the duty of the prosecuting attorney of the county in which the violation occurred to represent the department of agriculture, to institute proceedings and to prosecute the person charged with that violation.

(g) Hearings and appeals. —

(1) Any person aggrieved by any action taken under this article shall be afforded the opportunity for a hearing before the commissioner under the rules promulgated by the commissioner;
(2) Hearings shall be conducted in accordance with procedures set forth by rule;

(3) All the testimony and evidence at a hearing shall be recorded by mechanical means, which may include the use of tape recordings. The mechanical record shall be maintained for ninety days from the date of the hearing and a transcript shall be made available to the aggrieved party;

(4) Any person who feels aggrieved of the suspension, revocation or denial order may appeal within sixty days to the circuit court of the county in which the person has located its principal place of business.


(a) Whoever commits any act prohibited by any section of this article, or aids, abets, induces or procures its commission, is punishable as a principal.

(b) Any person who causes an act to be done which if directly performed by him or her or another would be a violation of the provisions of this article is punishable as a principal.

§19-10A-15. Cooperation with other entities.

The commissioner may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, agencies of foreign governments and private associations in order to carry out the purpose and provisions of this article.


The commissioner may not make public information which contains or relates to trade secrets, commercial or financial information obtained from a person or privileged or confidential information: Provided, That when the information is needed to carry out the provisions of this article, this information may be revealed, subject to a protective order, to any federal, state or local agency consultant or may be revealed, subject to a protective order, at a closed hearing or in findings of fact issued by the commissioner.
AN ACT to amend and reenact article sixteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rewriting the agricultural and forest seed law and designating the article as the West Virginia seed law; providing definitions; labeling requirements for agricultural, vegetable, tree and shrub seeds and seed potatoes; certificates of registration requirements, seed fees and use of the fees by the commissioner of agriculture; prohibiting distributions or transportations of certain seeds and other acts; exemptions; power and authority of the commissioner of agriculture; right of embargo and seizure by commissioner; and providing civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA SEED LAW.

§19-16-1. Definitions.
§19-16-2. Label requirements for agricultural crops, lawn and turf, vegetable, tree and shrub seeds and seed potatoes.
§19-16-3. Certificate of registration; seed fees; payment of fees; disposition of funds.
§19-16-4. Prohibitions.
§19-16-5. Exemptions.
§19-16-6. Duties and authority of commissioner of agriculture.
§19-16-7. Stop sale orders or embargo; seizure.
§19-16-8. Penalties and prosecutions.

§19-16-1. Definitions.
(a) "Agricultural seed" includes forage seeds (grasses and legumes), tobacco, soybeans, cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this state as agricultural seeds, lawn and turf seeds and combinations of those seeds, and may include noxious weed seeds when the commissioner determines that the seed is being used as agricultural seed.

(b) "Blend" means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.

(c) "Brand" means a word, name, symbol, number, design or device, or any combination thereof, identifying the seed of one person and distinguishing it from all others.

(d) "Bulk" means seed when loose in vehicles of transportation or in storage, or in retail displays and not in seed bags or other containers.

(e) "Certifying agency" means: (1) An agency authorized under the laws of a state, territory or possession to officially certify seed and which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or (2) an agency of a foreign country determined by the United States secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under subdivision (1) of this subsection.

(f) "Coated" means a seed unit covered with any substance which changes the size, shape or weight of original seed. Seeds coated with ingredients, such as, but not limited to, rhizobia, dyes and pesticides, are not considered coated seeds.

(g) "Commissioner" refers to the commissioner of agriculture of the state of West Virginia or a duly authorized employee.

(h) "Complete record" means any and all information which relates to the origin, treatment, germination, purity,
kind and variety of each lot of agricultural seed sold in this state, or which relates to the treatment, germination, kind and variety of each lot of vegetable, or tree and shrub seed sold in this state. The information shall include seed samples and records of declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests and examinations.

(i) "Conditioning" means drying, cleaning, scarifying and other operations which may change the purity or germination of the seed and require the seed lot to be retested to determine the label information.

(j) "Dealer" means any person who exclusively sells, exposes for sale, offers for sale, exchanges or barters seed for sowing purposes within this state to the ultimate consumer.

(k) "Distribute" means to offer for sale, sell, expose for sale, exchange or barter seed for sowing purposes within the state.

(l) "Distributor" means any person who sells, exposes for sale, offers for sale, exchanges, barters, gives, parcels out, allots, shares or dispenses a seed for sowing purposes within the state.

(m) "Dormant" means viable seed, excluding hard seed, which fail to germinate when provided the specified germination conditions for the kind of seed in question.

(n) "Genuine growers declaration" means a statement signed by the grower which gives for each lot of seed the lot number, kind, variety (if known), origin, weight, year of production, date of shipment and to whom the shipment was made.

(o) "Germination" means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.
(p) "Hard seeds" means seeds which remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

(q) "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining: (1) Two or more inbred lines; (2) one inbred or a single cross with an open pollinated variety; or (3) two varieties or species, except open-pollinated varieties of corn (Zea mays). The second generation of subsequent generations from the crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

(r) "Inert matter" means all matter not seed, which includes, but is not limited to, broken seeds, sterile florets, chaff, fungus bodies and stones as determined by methods defined by rule.

(s) "Kind" means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, oats, alfalfa and timothy.

(t) "Label" means a display of written, printed or graphic matter affixed to the container or package in which seed is distributed; or affixed to the invoice, delivery slip or other shipping document which accompanies bulk lots of seed. All labels shall be legible and in English.

(u) "Labeling" means all written, printed, or graphic matter or advertisement referencing the seed.

(v) "Lot" means a definite quantity of seed identified by a lot number, code number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear on the label.

(w) "Mixture", "mix", or "mixed" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.

(x) "Mulch" means a protective covering of any suitable substance placed with seed which acts to retain
sufficient moisture to support seed germination and sustain early seedling growth and aid in the prevention of the evaporation of soil moisture, the control of weeds and the prevention of erosion.

(y) Noxious weed seeds are divided into two classes: "Prohibited noxious weed seeds" and "restricted noxious weed seeds" as defined in subdivisions (1) and (2) of this subsection:

(1) The term "prohibited noxious weed seeds" are those weed seeds which are prohibited from being present in agricultural, vegetable, tree or shrub seed. They are the seeds of weeds which are highly destructive and difficult to control by good cultural practices and the use of herbicides;

(2) The term "restricted noxious weed seeds or undesirable grass seed" are those weed seeds which are objectionable in agricultural crops, lawns and gardens of this state and which can be controlled by good cultural practices or the use of herbicides.

(z) "Off type" means any seed or plant not a part of the variety in that it deviates in one or more characteristics from the variety as described and may include: A seed or plant of another variety; a seed or plant not necessarily any variety; a seed or plant resulting from cross-pollination by another kind or variety; a seed or plant resulting from uncontrolled self-pollination during production of hybrid seed; or segregates from any of the off types set forth in this subsection.

(aa) "Official sample" means any sample of seed taken by the commissioner in accordance with the provisions of this article and rules promulgated under this article.

(bb) "Origin" for an indigenous stand of trees means the area on which the trees are growing; for a nonindigenous stand, it is the place from which the seeds or plants were originally introduced.

(cc) "Other crop seed" means seed of plants grown as crops (other than the kind or variety included in the pure seed) as determined by methods defined by rule.
(dd) "Person" means an individual, partnership, corporation, company, association, receiver, trustee, agent, fiduciary, firm or any group of organized persons whether incorporated or not.

(ee) "Pure seed" means seed exclusive of inert matter and all other seeds not of the seed being considered as determined by methods defined by rule.

(ff) "Registrant" means any person who registers as a seedsman in order to distribute seed for sowing purposes within the state.

(gg) "Seed potato" refers to the Irish potato (Solanum tuberosum) which must grade equal to or better than the minimum requirements of U.S. No. 1, from the standpoint of physical defects, size or disease, and must be certified by an official certifying agency.

(hh) "Seizure" means a legal process carried out by court order against a definite amount of seed.

(ii) "Stop sale or embargo" means an administrative order provided by this article, restraining the sale, use, disposition and movement of a definite amount of seed.

(jj) "Treated" means that the seed has received an application of a substance, or that it has been subjected to a process for which a claim is made.

(kk) "Tree and shrub seeds" includes seeds of woody plants commonly known and sold as tree and shrub seeds in this state.

(II) "Tree seed collector's declaration" means a statement signed by a grower or person having knowledge of the place of collection giving, for a lot of seed, the lot number, common or scientific name of the species (and subspecies, if appropriate), origin, elevation, and quantity of tree and shrub seed.

(mm) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.
 Variant" means any seed or plant which: (A) Is distinct within the variety but occurs naturally in the variety; (B) is stable and predictable with a degree of reliability comparable to other varieties of the same kind, within recognized tolerances, when the variety is reproduced or reconstituted; and (C) was originally a part of the variety as released. A variant is not an off-type.

"Variety" means a subdivision of a kind which is distinct, uniform and stable.

(1) "Distinct" means that the variety can be differentiated by one or more identifiable morphological, physiological or other characteristics from all other varieties of public knowledge.

(2) "Uniform" means that the variations in essential and distinctive characteristics are describable.

(3) "Stable" means that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

"Vegetable or herb seeds" includes the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

"Weed seed" means the seeds of all plants generally recognized as weeds within this state, as determined by methods defined by rule, and includes the categories of prohibited noxious weed seeds and restricted noxious weed seeds.

§19-16-2. Label requirements for agricultural crops, lawn and turf, vegetable, tree and shrub seeds and seed potatoes.

Each container of agricultural or vegetable seeds which is distributed or transported within this state for sowing purposes shall bear on the container or have attached to the container in a conspicuous place a plainly written or printed label or tag in the English language.
(a) For all treated agricultural and vegetable seeds (for
which a separate label may be used) the label shall include
the following:

(1) A word or statement indicating that the seed has
been treated;

(2) The commonly accepted coined, chemical or
abbreviated chemical (generic) name of the applied
substance or description of the process used;

(3) A caution statement, such as "do not use for food,
feed or oil purposes", if the substance in the amount
present with the seed is harmful to human or other
vertebrate animals. The caution for toxic substances shall
be a poison statement or symbol or both a poison
statement and symbol; and

(4) The date beyond which the inoculant is not to be
considered effective (date of expiration), if the seed is
treated with an inoculant.

(b) For agricultural seeds, except for grass seed
mixtures, seed sold on a pure live seed basis or for hybrids
which contain less than ninety-five percent hybrid seed the
label shall include the following:

(1) The commonly accepted name of the kind and
variety for each agricultural seed component present in
excess of five percent of the whole and the percentage by
weight of each in order of its predominance: Provided,
That if the variety of those kinds generally labeled as to
variety is not stated, the label shall show the name of the
kind and the words, "Variety Not Stated." Hybrids shall be
labeled as hybrids;

(2) The lot number or other lot identification;

(3) The origin (state or foreign country), if known, of
alfalfa, red clover and field corn (except hybrid corn). If
the origin is unknown, that fact shall be stated;

(4) The percentage by weight of all weed seeds;

(5) The name and rate of occurrence per pound or
ounce of each kind of restricted noxious weed seed or
undesirable grass seed present. The name and approximate number of each kind of noxious weed seed:

(A) Per ounce in Agrostis spp., Poa spp., Rhodes grass, Bermuda grass, timothy, orchard grass, fescues, alsike and white clover, reed canary grass, Dallas grass, ryegrass, foxtail millet, alfalfa, red clover, sweet clovers, lespedezas, smooth brome, crimson clover, Brassica spp., flax, Agropyron spp., and other agricultural seeds of similar size and weight, or mixtures within this group; and (B) per pound in sudan grass, wheat, oats, rye, barley, buckwheat, sorghums, vetches and other agricultural seeds of a size and weight similar to or greater than those within this group, or any mixtures within this group;

(6) The percentage by weight of agricultural seeds (which may be designated as "crop seeds") other than those required to be named on the label;

(7) The percentage by weight of inert matter;

(8) For each named agricultural seed:

(A) The percentage of germination, exclusive of hard seed;

(B) The percentage of hard seed, if present;

(C) The calendar month and year the test was completed to determine the percentages; and

(D) If the registrant chooses, the "total germination and hard seed";

(9) The name and address of the person who labeled the seed, or who distributes the seed within this state.

(c) For grass seed mixtures for lawn or turf purposes the label shall include the following:

(1) The word "mixed" or "mixture" with the name of the mixture;

(2) The heading "Pure Seed" and "Germination" or "Germ" in the proper places;

(3) The commonly accepted name of kind or kind and variety of each agricultural seed component in excess
of five percent of the whole, and the percentage by weight of pure seed in order of its predominance and in columnar form;

(4) The percentage by weight of agricultural seed other than those required to be named on the label (which shall be designated as "crop seed");

(5) The percentage by weight of inert matter not to exceed ten percent by weight. Except for coating material, fertilizer and mulch as provided by subdivision (3), subsection (d) of this section, foreign material not common to grass seed shall not be added;

(6) The percentage by weight of all weed seeds. Maximum weed seed content may not exceed one half of one percent by weight;

(7) Noxious weed seeds that are required to be labeled by rule and listed under the heading "Noxious Weed Seeds";

(8) For each agricultural seed named under subdivision (3) of this subsection:

(A) The percentage of germination, exclusive of hard seed;

(B) The percentage of hard seed, if present;

(C) The calendar month and year the test was completed to determine the percentages. The most recent available chronological test date shall be used;

(D) When only one test date is listed for the entire mixture, the listed test date shall be the oldest chronological test date of the components; and

(9) The name and address of the person who labeled the seed, or who distributes the seed within the state.

(d) For agricultural seeds that are coated the label shall include the following:

(1) The percentage by weight of pure seeds with coating material removed;
(2) The percentage by weight of coating material;

(3) The percentage by weight of inert material exclusive of coating material; and

(4) Percentage of germination, to be determined on 400 pellets with or without seeds.

(e) For vegetable seeds in packets as prepared for use in home gardens or household plantings; or in preplanted containers, mats, tapes or other planting devices the label shall include the following:

(1) The name of kind and variety of seed;

(2) The lot number or other lot identification;

(3) The year for which the seed was packed for sale as "Packed for ________________" or the percentage germination and the calendar month and year the test was completed to determine the percentage; and

(4) The name and address of the person who labeled the seed or who distributes the seed for sale within this state.

(f) For seeds which germinate less than the standard as established by rule promulgated under this article the label shall include the following:

(1) The percentage of germination, exclusive of hard seed;

(2) The percentage of hard seed, if present; and

(3) The words "Germination Below Standard" in not less than eight-point type.

(g) For seeds placed in a germination medium, mat, tape or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape or device, a statement to include the minimum number of seeds in the container.

(h) For vegetable seeds in containers other than packets prepared for use in home gardens or household plantings and other than preplanted containers, mats, tapes
or other planting devices the label shall include the following:

   (1) The name of each kind and variety present in excess of five percent and the percentage by weight of each in order of its predominance;

   (2) The lot number or other lot identification;

   (3) For each named vegetable seed:

       (A) The percentage germination exclusive of hard seed;

       (B) The percentage of hard seed, if present;

       (C) The calendar month and year the test was completed to determine the percentages; and

       (D) If the registrant chooses, the "total germination and hard seed";

   (4) The name and address of the person who labeled the seed, or who distributes the seed within this state.

   (i) For agricultural and vegetable hybrid seed which contain less than ninety-five percent hybrid seed the label shall include the following:

       (1) The kind or variety which must be labeled as "hybrid";

       (2) The percent which is hybrid, labeled parenthetically in direct association following named variety; such as, Comet (eighty-five percent Hybrid); and

       (3) Varieties in which the pure seed contain less than seventy-five percent hybrid seed which shall not be labeled as hybrids.

   (j) For agricultural and vegetable seeds, the label may show an expiration date in lieu of:

       (1) The calendar month and year of a germination test or pure live seed test; and

       (2) The year for which the seed was packaged;
(k) For combination mulch, seed and fertilizer products the label shall include the following:

(1) The word "combination" followed by the words "mulch - seed - fertilizer (if appropriate)" on the upper thirty percent of the principal display panel. The word "combination" must be the largest and most conspicuous type on the container, equal to or larger than the product name. The words "mulch - seed - fertilizer" shall be no smaller than one-half the size of the word "combination" and in close proximity to the word "combination." These products shall contain a minimum of seventy percent mulch; and

(2) For agricultural, lawn and turf seeds placed in a germination medium, mat, tape or other device or mixed with mulch:

(A) The product name;

(B) The lot number;

(C) The percentage by weight of pure seed of each kind and variety named which may be less than five percent of the whole;

(D) The percentage by weight of other crop seeds;

(E) The percentage by weight of inert matter which shall not be less than seventy percent;

(F) The percentage by weight of weed seeds;

(G) The name and number of noxious weed seeds per pound or ounce, if present;

(H) The percentage of germination (and hard seed if appropriate) of each kind or kind and variety named and date of test; and

(I) The name and address of the person who labeled the seed, or who distributes the seed within this state.

(I) The labeling requirements for agricultural, and vegetable seeds shall be considered to have been met if the seed is weighed from a properly labeled bulk container in the presence of the purchaser.
(m) Once a dealer has broken the seal on a container of seed for any reason, the dealer is fully responsible for its contents including the guarantees for purity, germination rate and anything else pertaining to the integrity of the opened seed container.

(n) Label requirements for tree and shrub seeds:

Each container of tree and shrub seed which is distributed or transported within this state for sowing purposes shall bear on the container or have attached on the container in a conspicuous place a plainly written or printed statement on the label or tag in the English language, giving the information required under this subsection. The statement may not be modified or denied in the labeling or on another label attached to the container — except that labeling of seed supplied under a contractual agreement may be by invoice accompanying the shipment or by an analysis tag attached to the invoice if each bag or other container is clearly identified by a lot number stenciled on the container, or if the seed is in bulk. Each bag or container that is not identified shall carry complete labeling.

(1) For all treated tree and shrub seeds as defined in this article (for which a separate label may be used):

(A) A word or statement indicating that the seed has been treated;

(B) The commonly accepted coined, chemical or abbreviated chemical (generic) name of the applied substance or description of the process used;

(C) A caution statement, such as "Do not use for food, feed or oil purposes", if the substance in the amount present with the seed may be harmful to human or other vertebrate animals. The caution for mercurials and similarly toxic substances shall be a poison statement and symbol; and

(D) The date beyond which the inoculant is not to be considered effective (date of expiration), if the seed has been treated with an inoculant;
(2) For all tree and shrub seeds subject to the article:

(A) The common name of the species of seed (and subspecies, if appropriate);

(B) The scientific name of the genus and species (and subspecies, if appropriate);

(C) The lot number or other lot identification; and

(D) Their origin:

(i) For seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude, or geographic description, or political subdivision such as state or county;

(ii) For seed collected from other than a predominantly indigenous stand, the area of collection and the origin of the stand or the statement "Origin not Indigenous."

(E) The elevation or the upper and lower limits of elevations within which the seed was collected;

(F) The purity as a percentage of pure seed by weight;

(G) For those species for which standard germination testing procedures are prescribed by the commissioner, the following:

(i) Percentage germination exclusive of hard seed;

(ii) Percentage of hard seed, if present;

(iii) The calendar month and year test was completed to determine such percentages; or

(iv) In lieu of paragraphs (i), (ii) and (iii) of this subparagraph, the seed may be labeled "Test is in process, results will be supplied upon request";

(H) For those species for which standard germination testing procedures have not been prescribed by the commissioner, the calendar year in which the seed was collected;
(I) The name and address of the person who labeled the seed or who distributes the seed within this state.

(o) Label requirements for seed potatoes:

The following information shall appear on each label attached to a bag or container of certified seed potato:

(A) The name of the person or agency certifying such seed potato;

(B) The name of the official state or governmental agency making the inspection upon which the certification is made; and

(C) The name and address or identification number of the grower of such seed potatoes.

§19-16-3. Certificate of registration; seed fees; payment of fees; disposition of funds.

(a) No person may distribute any agricultural, vegetable, tree and shrub seeds or seed potatoes without a valid certificate of registration issued by the commissioner. Application forms shall be provided by the commissioner and the application fee shall be set forth in a legislative rule. Each certificate of registration expires on the thirty-first day of December following the next date of issue. A dealer may not be required to register, if he or she can prove that the person he or she is obtaining the seed from has a valid certificate of registration.

(b) A person shall apply for a certificate of registration at least fifteen days prior to the expiration of the current registration; or at least fifteen days prior to the date that the person intends to engage in business in this state. Each application shall be accompanied by the required application fee. The commissioner shall add a penalty of two dollars to the fee for each registration that is not applied for or renewed within the time limit.

(c) Certificates of registration are not transferable with respect to persons or locations.

(d) The commissioner may refuse to grant, or may suspend or revoke a certificate of registration when it is
determined that the applicant or registrant has violated the
provisions of this article or any rule promulgated under
this article: Provided, That the applicant or registrant may
request a hearing prior to the denial of the application or
suspension or revocation of the registration.

(e) Each person who holds a valid certificate of
registration is required to pay a tonnage fee on seed sold
in this state and shall report to the commissioner the net
pounds or kilograms of seeds distributed and sold by kind
or variety, except for seed potatoes, on a semiannual basis.
Each report shall be filed under oath and is due before the
thirty-first day of January and July of each year for the
preceding six-month period. He or she shall pay the
tonnage fee according to the fee schedule for agriculture,
vegetable, tree and shrub seeds as set by legislative rules.

(f) Persons distributing vegetable seeds packaged in
containers of eight ounces or 226.8 grams or less and sold
from display units are exempt from reporting poundage
and paying a poundage fee: Provided, That a seed stamp
be purchased from the commissioner, at the rate set by
legislative rules, and placed in a conspicuous place on
each display unit.

(g) Persons first distributing seed potatoes into West
Virginia trade channels shall report to the commissioner
the net pounds or kilograms of seed potatoes distributed
during the first six months of the year. The report and
appropriate fee is due by the thirty-first day of July as set
by legislative rules.

(h) A person who holds a valid certificate of
registration shall keep accurate records, as may be
necessary or required by the commissioner, to indicate the
pounds of agricultural, vegetable, or tree and shrub seeds
or seed potatoes distributed in this state.

(i) All fees and penalties collected under the
provisions of this article shall be deposited with the state
treasurer in a special revenue account. These moneys
shall be expended by the commissioner of agriculture for
inspection, sampling, analysis and other expenses
necessary for the administration of this article.
§19-16-4. Prohibitions.

(a) It is unlawful for any person to distribute or transport for sale any agricultural, vegetable, tree and shrub seeds or seed potatoes within this state:

(1) Which have not been tested to determine germination rates as required under sections three and four of this article;

(2) Which is not labeled in accordance with the provisions of this article or has false or misleading labeling;

(3) Which has been the subject of false or misleading advertisement;

(4) Which consists of or contains prohibited noxious weed seeds, subject to tolerances and methods of determination as prescribed by rules promulgated under this article;

(5) Which consists of or contains restricted noxious weed seeds per pound or ounce in excess of the number prescribed by rules promulgated under this article, or in excess of the number declared on the label attached to the container of the seed or associated with seed;

(6) Which contains more than two and one-half percent by weight of all weed seeds;

(7) If any labeling, advertising or other representation subject to this article represents the seed to be certified seed or any class thereof unless:

(A) It has been determined by a seed certifying agency that the seed conformed to standards of purity and identity as to kind, species (and subspecies, if appropriate), or variety, and also that tree seed was found to be of the origin and elevation claimed, in compliance with the rules of that agency pertaining to the seed; and

(B) That the seed bears an official label issued for that seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species (and subspecies, if appropriate) or variety;
(8) Labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which a U. S. certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed: Provided, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

(b) It is unlawful for any person within this state:

(1) To detach, alter, deface or destroy any label provided for in this article or the rules promulgated under this article, or to alter or substitute seed in a manner that may defeat the purpose of this article;

(2) To disseminate any false or misleading advertisement concerning seeds subject to this article in any manner or by any means;

(3) To interfere with the commissioner's official duties;

(4) To fail to comply with a "stop sale or embargo" order or to move or otherwise handle or dispose of any lot of seed held under a "stop sale or embargo" order or tags attached to the lot of seed, unless released by the commissioner, and for the purpose specified by the commissioner;

(5) To use the word "trace" as a substitute for any statement which is required;

(6) To use the word "type" in any labeling in connection with the name of any agricultural seed variety;

(7) To distribute or knowingly use any agricultural, vegetable or tree and shrub seed that is misbranded;

(8) To misbrand any agricultural, vegetable, or tree and shrub seed or seed potato. An agricultural, vegetable, tree or shrub seed or seed potato is misbranded:

(A) If its label or labeling is false or misleading;

(B) If it is not labeled as required by this article;
(C) If any word, statement or other information required by this article to appear on the label is not prominently and conspicuously placed so that it can be read and understood by the ordinary individual under customary conditions of purchase and use; and

(D) If any damage or inferiority has been concealed;

(9) To distribute or knowingly use any agricultural, vegetable, or tree and shrub seed or seed potato that has not had an accurate statement of poundage reported to the commissioner in the previous reporting period;

(10) To use or imply the name West Virginia department of agriculture, or reference any inspection or sample findings made by the West Virginia department of agriculture on labels or labeling of agricultural, vegetable, or tree and shrub seed or seed potatoes; or

(11) To falsify any laboratory reports regarding seed distributed within this state.

§19-16-5. Exemptions.

(a) The provisions of sections two, three, four and eight of this article do not apply:

(1) To seed or grain not intended for sowing purposes;

(2) To seed in storage, or seed being transported or consigned to a cleaning or processing establishment for cleaning or processing: Provided, That the invoice, label or labeling accompanying any shipment of the seed bears the statement "seeds for processing"; and that any label or labeling or other representation which may be made with respect to the uncleaned or unprocessed seed is subject to this article; or

(3) To any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier: Provided, That the carrier is not engaged in producing, processing or marketing seeds subject to the provisions of this article.

(b) No person is subject to the penalties of this article for having sold or offered for sale seeds subject to
provisions of this article which were incorrectly labeled or represented as to kind, species (and subspecies, if appropriate), variety, type, or origin, elevation and year of collection (if required), which cannot be identified by examination, unless he or she has failed to obtain an invoice, genuine grower's or tree seed collector's declaration or other labeling information and to take such other precautions as may be reasonable to ensure the identity to be that which is stated. A genuine grower's declaration of variety shall affirm that the grower holds records of proof concerning parent seed, such as invoice and labels.

(c) The provisions of sections two and three of this article do not apply to tree seed produced by the consumer.

§19-16-6. Duties and authority of commissioner of agriculture.

The commissioner may:

(a) Establish by legislative rule germination standards for agricultural, forest, vegetable seeds;

(b) Enter and inspect, during reasonable hours, any location where agricultural, vegetable, tree and shrub seeds or seed potatoes for sowing purposes are manufactured, distributed, transported or used, and where records relating to the manufacture, distribution, shipment, labeling or sale of seed are kept. This inspection shall include, but is not limited to, examining, photographing, verifying, copying and auditing records as is necessary to determine compliance with this article, labels, consumer complaints, and papers relating to the manufacturing, distribution, sampling, testing and sale of agricultural, vegetable, tree and shrub seeds or seed potatoes;

(c) Open, examine, sample and test agricultural, vegetable, or tree and shrub seeds or seed potatoes, equipment, containers, transport containers and packages used or intended to be used in the manufacture and distribution of seeds used for sowing purposes;

(d) Issue certificates of registration pursuant to this article;
(e) Refuse applications for registration; or suspend or revoke registrations as provided in this article;

(f) Issue "stop sale or embargo" orders as provided in this article;

(g) Condemn and confiscate any agricultural, vegetable, or tree and shrub seed or seed potato that is not brought into compliance with this article;

(h) Collect fees and penalties and expend moneys under the terms of this article;

(i) Conduct sampling in accordance with the official methods as established by the association of analytical chemists, the association of American seed control officials, the United States department of agriculture or the association of official seed analysts;

(j) Conduct hearings as provided by this article;

(k) Assess civil penalties and refer violations to a court of competent jurisdiction;

(l) Obtain court orders directing any person refusing to submit to inspection, sampling and auditing to submit;

(m) Establish and maintain seed testing facilities; establish reasonable fees for the tests; incur expenses; and conduct tests in accordance with the association of official seed analysts;

(n) Be guided by the analytical results of the official sample when determining whether the agricultural, vegetable, or tree and shrub seed is deficient in any component;

(o) Report the analytical results on all official deficient samples to the registrant, dealer, purchaser if known and or the distributor;

(p) Upon request made within thirty days from the date the official sample results are reported, furnish a portion of the official sample to the registrant;

(q) Publish and distribute annually a composite report containing: (1) The sales of agricultural, vegetable, tree and shrub seeds and seed potatoes during the preceding
(r) Cooperate with and enter into agreements with governmental agencies of this state and other states, agencies of the federal government and foreign governments, and private associations in order to carry out the purpose and provisions of this article;

(s) Establish fees by legislative rule;

(t) Propose rules for promulgation, in accordance with article three, chapter twenty-nine-a of this code; and

(u) Promulgate emergency rules within ninety days of the passage of this bill into law.

§19-16-7. Stop sale orders or embargo; seizure.

(a) Stop sale orders or embargos: When the commissioner has reasonable cause to believe any lot of seed or seed potato is being distributed or used in this state in violation of the provisions of this article or any rule promulgated under this article, then he or she may issue and enforce a written stop sale order or embargo, warning the custodian of the seed not to distribute, use, remove or dispose of the seed in any manner until the stop sale order or embargo is released by the commissioner or by court order:

(1) When the stop sale or embargo order is issued, the commissioner shall affix a tag or other marking to the seed warning that the seed is under a stop sale order and notify the custodian that he or she has a right to request an immediate hearing.

(2) The commissioner shall release the stop sale or embargo order when the seed has been brought into compliance with this article and its rules.
(3) The commissioner has the authority to issue a stop sale or embargo order against a perishable product, even if the result is the involuntary disposal of the product.

(4) The commissioner may take action to seize any seed not brought into compliance with this article and the rules issued under this article, within ninety days of the notice to the custodian.

(b) Seizure: Any lot of seed or seed potato not in compliance with the provisions of this article is subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the locality in which the seed or seed potato is located. In the event the court finds the seed to be in violation of this article and orders the condemnation of the seed or seed potato, it shall be denatured, processed, destroyed, relabeled or otherwise disposed of in compliance with the laws of this state: Provided, That in no instance may the court order the disposition of the seed without first having given the registrant an opportunity to apply to the court for the release of the seed or seed potato or permission to process or relabel it into compliance with this article.

§19-16-8. Penalties and prosecutions.

(a) Criminal penalties. — Any person violating any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for the first offense, and for each subsequent offense, shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) Civil penalties. —

(1) Any person violating any of the provisions of this article or the rules adopted under this article may be assessed a civil penalty by the commissioner. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history
of previous violations of any person; the seriousness of the violation, including any irreparable harm to the environment, and the demonstrated good faith of any person charged in attempting to achieve compliance with this article after written notification of the violation.

(2) The commissioner may assess a penalty of not more than five hundred dollars for the first offense or nonserious violation, as determined by the commissioner in accordance with the rules promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code, and not more than one thousand dollars for a serious, repeat or intentional violation, as determined by the commissioner in accordance with the promulgated rules.

(3) The civil penalty is payable to the state of West Virginia and is collectible in any manner now or hereafter provided for collection of a debt. Any person liable to pay the civil penalty and neglecting or refusing to pay the civil penalty, shall be assessed interest at ten percent per annum from the date the penalty was assessed. The penalty and interest constitute a lien in favor of the state of West Virginia and shall attach on the person's property when the lien is properly recorded in the county where the property is located. There may be no cost as a condition precedent to recording.

(c) Notwithstanding any other provision of law to the contrary, the commissioner may propose for promulgation and adopt rules which permit consent agreements or negotiated settlements for the civil penalties assessed as a result of a violation of the provisions of this article.

(d) Nothing in this article may be construed as to require the commissioner to report minor violations of this article when the commissioner believes that the public interest will be best served by a written notice.

(e) No state court may allow the recovery of damages for administrative action taken if the court finds that there was probable cause for the action.
AN ACT to amend and reenact section fourteen, article twenty-nine, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to leasing property owned by regional airport authorities; and eliminating certain restrictions.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article twenty-nine, 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 29. INTERGOVERNMENTAL RELATIONS — REGIONAL AIRPORTS.

§8-29-14. Authorities may lease facilities.

1 Each authority may lease its airport and all or any part of the appurtenances and facilities therewith to any available lessee, subject to all constitutional and statutory limitations with respect thereto, at such rental and upon such terms and conditions as the authority deems proper.

6 The leases shall be subordinate to any mortgage or deed of trust executed by the authority. An authority may lease land, the original taking of which was necessary for airport purposes, for economic development purposes compatible with, but not necessarily associated with, airport activities.
CHAPTER 5

(Com. Sub. for H. B. 2394—By Delegates Leach, Beane, Hubbard, Pulliam and Facemyer)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-five, relating to requiring all persons licensed to sell alcoholic liquor, wine or nonintoxicating beer at retail, either for consumption on-premises or off-premises, or both, to display signs warning of the possible danger of birth defects that may be caused by the consumption of alcohol during pregnancy; placement of signs; duties of commissioner to make signs available; imposition of civil administrative penalty for violation; legislative rules; creation of “fetal alcohol syndrome fund”; and disposition of moneys.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-25. Mandatory signs to be posted warning of the possible dangers of consumption of alcohol during pregnancy.

(a) Beginning the first day of July, one thousand nine hundred ninety-eight, all persons licensed to sell alcoholic liquor, wine or nonintoxicating beer at retail, either for consumption on-premises or off-premises, or both, shall display signs provided by the alcohol beverage control commissioner warning of the possible danger of birth defects which may result from the consumption of alcohol during pregnancy. These signs shall be displayed upon the licensed premises in the following manner:

(1) If a licensee holds a license providing for the retail sale of alcoholic liquor, wine or nonintoxicating beer for
on-premises consumption, the sign shall be posted in an open and prominent place in the licensed portion of the establishment: Provided, That self-service "mini-bars" in hotel guest rooms are exempt: Provided, however, That airports, convention centers, sports facilities and other licensed premises with more than one authorized location of sales, service and consumption shall post signs in plain view to the majority of patrons entering or approaching the licensed portion of the premises.

(2) If the licensee holds a license providing for the retail sale of alcoholic liquor, wine or nonintoxicating beer for off-premises consumption, the sign shall be posted in plain view at the main entrance to the licensed premises.

(3) If the licensee is a liquor manufacturer, the notices shall be posted in plain view at the main entrance to areas where alcohol is sold for off-premises consumption. If a manufacturer's tasting rooms have separate buildings or separate entrances, the sign shall be posted in plain view at the main entrance to the tasting area.

(b) The alcohol beverage control commissioner shall make signs and replacements warning of the possible danger of birth defects which may result from the consumption of alcohol during pregnancy available to each licensee governed by the provisions of this section.

(c)(1) Upon a determination by the commissioner that a licensee has failed to comply with the provisions of this section, the commissioner may impose a civil administrative penalty of not less than one hundred dollars nor more than one thousand dollars for each violation. The provisions of section fifteen of this article shall not apply to a violation of this section.

(2) The commissioner shall propose legislative rules for promulgation pursuant to the provisions of chapter twenty-nine-a of this code setting forth:

(A) Objective criteria against which the exercise of the commissioner's discretion in the determination of whether to impose a civil administrative penalty is to be measured; and

(B) Procedures meeting the requirements of due process through which an alleged violation of this section may be contested.
53 (3) The proceeds of civil administrative penalties collected for violations of this section shall be deposited in a fund hereby established in the state treasury to be known as the "fetal alcohol syndrome fund". The commissioner shall expend the moneys deposited in the fund to educate the public concerning the dangers of fetal alcohol syndrome without appropriation except as provided in this subsection. After the sum of five thousand dollars has been deposited into the fund during a fiscal year, any additional deposits shall be divided as follows: (1) An amount necessary to allow the commissioner to carry out his or her duties pursuant to this section, not to exceed one half of such additional deposits, shall be deposited in the alcohol beverage control administration fund; and (2) the remainder of such additional deposits shall be made to the state fund, general revenue. Any moneys remaining in the fund on the thirtieth day of June of each year shall be subject to reappropriation for expenditure during the following fiscal year. The commissioner shall annually file a report with the president of the Senate and the speaker of the House of Delegates, informing the Legislature as to the amounts deposited in the funds, and the purposes for which the amounts deposited in the alcohol beverage control administration fund were expended.

CHAPTER 6

(Com. Sub. for S. B. 150—By Senators Tomblin, Mr. President, and Buckalew) [By Request of the Executive]

[Passed March 21, 1998; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

Title
   I. General Provisions.
   II. Appropriations.
   III. Administration.
TITLE I—GENERAL PROVISIONS.

§1. General policy.
§2. Definitions.
§3. Classification of appropriations.
§5. Maximum expenditures.

TITLE I—GENERAL PROVISIONS.

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

1 Sec. 2. Definitions.—For the purpose of this bill:

"Governor" shall mean the governor of the state of
West Virginia.

"Code" shall mean the code of West Virginia, one
thousand nine hundred thirty-one, as amended.

"Spending unit" shall mean the department, division,
office, board, commission, agency or institution to which
an appropriation is made.

The "fiscal year one thousand nine hundred ninety-
ine" shall mean the period from the first day of July, one
thousand nine hundred ninety-eight, through the thirtieth
day of June, one thousand nine hundred ninety-nine.

"General revenue fund" shall mean the general
operating fund of the state and includes all moneys
received or collected by the state except as provided in
section two, article two, chapter twelve of the code or as
otherwise provided.

"Special revenue funds" shall mean specific revenue
sources which by legislative enactments are not required to
be accounted for as general revenue, including federal
funds.
"From collections" shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collections. If the amount collected exceeds the amount designated "from collections," the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by article two, chapter five-a of the code.

Sec. 3. Classification of appropriations.—An appropriation for:

"Personal services" shall mean salaries, wages and other compensation paid to full-time, part-time and temporary employees of the spending unit but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit.

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

"Annual increment" shall mean funds appropriated for "eligible employees" and shall be disbursed only in accordance with article five, chapter five of the code.

Funds appropriated for "annual increment" shall be transferred to "personal services" or other designated items only as required.

"Employee benefits" shall mean social security matching, workers' compensation, unemployment compensation, pension and retirement contributions, public employees insurance matching, personnel fees or any other benefit normally paid by the employer as a direct cost of employment. Should the appropriation be insufficient to cover such costs, the remainder of such cost shall be transferred by each spending unit from its "personal services" line item or its "unclassified" line item
to its "employee benefits" line item. If there is no appropriation for "employee benefits," such costs shall be transferred by each spending unit from its "personal services" line item or its "unclassified" line item. Each spending unit is hereby authorized and required to make such payments in accordance with the provisions of article two, chapter five-a of the code.

Each spending unit shall be responsible for all contributions, payments or other costs related to coverage and claims of its employees for unemployment compensation. Such expenditures shall be considered an employee benefit.

"Current expenses" shall mean operating costs other than personal services and shall not include equipment, repairs and alterations, buildings or lands.

Each spending unit shall be responsible for and charged monthly for all postage meter service and shall reimburse the appropriate revolving fund monthly for all such amounts. Such expenditures shall be considered a current expense.

"Equipment" shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year.

"Repairs and alterations" shall mean routine maintenance and repairs to structures and minor improvements to property which do not increase the capital assets.

"Buildings" shall include new construction and major alteration of existing structures and the improvement of lands and shall include shelter, support, storage, protection or the improvement of a natural condition.

"Lands" shall mean the purchase of real property or interest in real property.

"Capital outlay" shall mean and include buildings, lands or buildings and lands, with such category or item of
61 appropriation to remain in effect as provided by section
62 twelve, article three, chapter twelve of the code.

63 From appropriations made to the spending units of
64 state government, upon approval of the governor there
65 may be transferred to a special account an amount
66 sufficient to match federal funds under any federal act.

67 Appropriations classified in any of the above
68 categories shall be expended only for the purposes as
69 defined above and only for the spending units herein
70 designated: *Provided,* That the secretary of each
71 department shall have the authority to transfer within the
72 department those general revenue funds appropriated to
73 the various agencies of the department: *Provided,*
74 *however,* That no more than five percent of the general
75 revenue funds appropriated to any one agency or board
76 may be transferred to other agencies or boards within the
77 department: *Provided further,* That the secretary of each
78 department and the director, commissioner, executive
79 secretary, superintendent, chairman or any other agency
80 head not governed by a departmental secretary as
81 established by chapter five-f of the code shall have the
82 authority to transfer funds appropriated to "personal
83 services" and "employee benefits" to other lines within the
84 same account and no funds from other lines shall be
85 transferred to the "personal services" line: *And provided
86 further,* That upon written request of the speaker of the
87 house of delegates, the auditor shall transfer within the
88 general revenue fund amounts from the total
89 appropriations of the house of delegates to other agencies,
90 boards or departments: *And provided further,* That if the
91 Legislature by subsequent enactment consolidates
92 agencies, boards or functions, the secretary may transfer
93 the funds formerly appropriated to such agency, board or
94 function in order to implement such consolidation. No
95 funds may be transferred from a special revenue account,
96 dedicated account, capital expenditure account or any
97 other account or fund specifically exempted by the
98 Legislature from transfer, except that the use of the
99 appropriations from the state road fund transferred to the
office of the secretary of the department of transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

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

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

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

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

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§11. State improvement fund appropriations.

§12. Specific funds and collection accounts.


§15. Appropriations for local governments.

§16. Total appropriations.

§17. General school fund.

TITLE II—APPROPRIATIONS.

1. Section 1. Appropriations from general revenue.

—From the state fund, general revenue, there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure
during the fiscal year one thousand nine hundred ninety-nine.

**LEGISLATIVE**

*1—Senate*

Fund 0165 FY 1999 Org 2100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>003</td>
<td>Compensation of Members (R)</td>
<td></td>
<td>$816,200</td>
</tr>
<tr>
<td>005</td>
<td>Compensation and Per Diem of Officers and Employees (R)</td>
<td></td>
<td>$2,179,200</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits (R)</td>
<td></td>
<td>$414,000</td>
</tr>
<tr>
<td>021</td>
<td>Current Expenses and Contingent Fund (R)</td>
<td></td>
<td>$560,000</td>
</tr>
<tr>
<td>064</td>
<td>Repairs and Alterations (R)</td>
<td></td>
<td>$200,000</td>
</tr>
<tr>
<td>101</td>
<td>Computer Supplies (R)</td>
<td></td>
<td>$15,000</td>
</tr>
<tr>
<td>102</td>
<td>Computer Systems (R)</td>
<td></td>
<td>$200,000</td>
</tr>
<tr>
<td>103</td>
<td>Printing Blue Book (R)</td>
<td></td>
<td>$150,000</td>
</tr>
<tr>
<td>399</td>
<td>Expenses of Members (R)</td>
<td></td>
<td>$445,000</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>$4,979,400</td>
</tr>
</tbody>
</table>

The appropriations for the senate for the fiscal year 1997-98 are to remain in full force and effect and are hereby reappropriated to June 30, 1999. Any balances so reappropriated may be transferred and credited to the 1998-99 accounts.

Upon the written request of the clerk of the senate, the auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

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

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

For duties imposed by law and by the senate, the clerk of the senate shall be paid a monthly salary as provided by the senate resolution, unless increased between sessions under the authority of the president, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the senate.

The distribution of the blue book shall be by the office of the clerk of the senate and shall include seventy-five copies for each member of the Legislature and two copies for each classified and approved high school and junior high school and one copy for each elementary school within the state.

2—House of Delegates

Fund 0170 FY 1999 Org 2200
<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members</td>
<td>$2,200,000</td>
</tr>
<tr>
<td>Compensation and Per Diem of Officers and Employees</td>
<td>521,162</td>
</tr>
<tr>
<td>Current Expenses and Contingent Fund</td>
<td>3,500,000</td>
</tr>
<tr>
<td>Expenses of Members</td>
<td>1,120,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$7,341,162</strong></td>
</tr>
</tbody>
</table>

The appropriations for the house of delegates for the fiscal year 1997-98 are to remain in full force and effect and are hereby reappropriated to June 30, 1999. Any balances so reappropriated may be transferred and credited to the 1998-99 accounts.

Upon the written request of the clerk of the house of delegates, the auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

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

The speaker of the house of delegates, upon approval of the house committee on rules, shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, in addition to personnel designated in the house resolution, and the compensation of all personnel shall be as fixed in such house resolution for the session, or fixed by the speaker, with the approval of the house committee on rules, during and between sessions of the Legislature, notwithstanding such house resolution. The clerk of the house is hereby authorized to draw requisitions upon the auditor for such services, payable out of the appropriation for the
Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the house of delegates.

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

3—Joint Expenses
(WV Code Chapter 4)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0175</td>
<td>1999</td>
<td>2300</td>
<td>5,091,839</td>
</tr>
<tr>
<td>Joint Committee on Government and Finance (R)</td>
<td>104</td>
<td>$ 940,000</td>
<td></td>
</tr>
<tr>
<td>Legislative Printing (R)</td>
<td>105</td>
<td>200,000</td>
<td></td>
</tr>
<tr>
<td>Legislative Rule-Making Review Committee (R)</td>
<td>106</td>
<td>900,000</td>
<td></td>
</tr>
<tr>
<td>Legislative Computer System (R)</td>
<td>107</td>
<td>56,000</td>
<td></td>
</tr>
<tr>
<td>Joint Standing Committee on Education (R)</td>
<td>108</td>
<td>10,000,000</td>
<td></td>
</tr>
<tr>
<td>Tax Reduction and Federal Funding Increased Compliance (TRAFFIC)</td>
<td>642</td>
<td>$17,187,839</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>$17,187,839</td>
</tr>
</tbody>
</table>

The appropriations for the joint expenses for the fiscal year 1997-98 are to remain in full force and effect and are hereby reappropriated to June 30, 1999. Any balances so reappropriated may be transferred and credited to the 1998-99 accounts.

Upon the written request of the clerk of the senate, with the approval of the president of the senate, and the clerk of the house of delegates, with the approval of the speaker of the house of delegates, and a copy to the legislative auditor, the auditor shall transfer amounts
between items of the total appropriation in order to protect
or increase the efficiency of the service.

The appropriation for the Tax Reduction and Federal
Funding Increased Compliance (TRAFFIC) (fund 0175,
activity 642) is intended for possible general state tax
reductions or the offsetting of any reductions in federal
funding for state programs. It is not intended as a general
appropriation for expenditure by the Legislature.

JUDICIAL

4—Supreme Court—
General Judicial

Fund 0180  FY 1999  Org 2400

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Line</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services (R)</td>
<td>001</td>
<td>$29,934,022</td>
</tr>
<tr>
<td>Annual Increment (R)</td>
<td>004</td>
<td>456,350</td>
</tr>
<tr>
<td>Social Security Matching (R)</td>
<td>011</td>
<td>2,342,770</td>
</tr>
<tr>
<td>Public Employees' Insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Matching (R)</td>
<td>012</td>
<td>3,441,820</td>
</tr>
<tr>
<td>Public Employees' Retirement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Matching (R)</td>
<td>016</td>
<td>2,907,319</td>
</tr>
<tr>
<td>Other Expenses (R)</td>
<td>029</td>
<td>3,900,000</td>
</tr>
<tr>
<td>Judges' Retirement System (R)</td>
<td>110</td>
<td>5,416,036</td>
</tr>
<tr>
<td>Other Court Costs (R)</td>
<td>111</td>
<td>2,600,000</td>
</tr>
<tr>
<td>Judicial Training Program (R)</td>
<td>112</td>
<td>250,000</td>
</tr>
<tr>
<td>Mental Hygiene Fund (R)</td>
<td>113</td>
<td>975,000</td>
</tr>
<tr>
<td>Family Law Master Program (R)</td>
<td>190</td>
<td>1,324,055</td>
</tr>
<tr>
<td>Guardianship Attorney Fees (R)</td>
<td>588</td>
<td>150,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$53,697,372</td>
</tr>
</tbody>
</table>

The appropriations to the supreme court of appeals for
the fiscal years 1995-96, 1996-97 and 1997-98 are to
remain in full force and effect and are hereby
reappropriated to June 30, 1999. Any balances so
reappropriated may be transferred and credited to the
1998-99 accounts.
This appropriation shall be administered by the administrative director of the supreme court of appeals, who shall draw his or her requisitions for warrants in payment in the form of payrolls, making deductions therefrom as required by law for taxes and other items.

The appropriation for the Judges' Retirement System is to be transferred to the consolidated public retirement board, in accordance with the law relating thereto, upon requisition of the administrative director of the supreme court of appeals.

EXECUTIVE
5—Governor's Office
(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0101</td>
<td></td>
<td>0100</td>
<td>Personal Services</td>
<td>001 $1,699,351</td>
</tr>
<tr>
<td>002</td>
<td></td>
<td></td>
<td>Salary of Governor</td>
<td>90,000</td>
</tr>
<tr>
<td>004</td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>17,250</td>
</tr>
<tr>
<td>010</td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>428,946</td>
</tr>
<tr>
<td>099</td>
<td></td>
<td></td>
<td>Unclassified</td>
<td>991,818</td>
</tr>
<tr>
<td>123</td>
<td></td>
<td></td>
<td>National Governors' Association</td>
<td>64,900</td>
</tr>
<tr>
<td>124</td>
<td></td>
<td></td>
<td>Southern States Energy Board</td>
<td>38,732</td>
</tr>
<tr>
<td>129</td>
<td></td>
<td></td>
<td>WV Human Resource Investment Council</td>
<td>260,000</td>
</tr>
<tr>
<td>299</td>
<td></td>
<td></td>
<td>Southern Growth Policies Board</td>
<td>24,339</td>
</tr>
<tr>
<td>308</td>
<td></td>
<td></td>
<td>Southern Technology Council</td>
<td>10,000</td>
</tr>
<tr>
<td>314</td>
<td></td>
<td></td>
<td>Southern Governors' Association</td>
<td>5,740</td>
</tr>
<tr>
<td>315</td>
<td></td>
<td></td>
<td>National Governors' Association for State Budget Officers</td>
<td>11,100</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td>$3,642,176</td>
</tr>
</tbody>
</table>

6—Governor's Office—Custodial Fund
(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0102</td>
<td></td>
<td>0100</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1 Unclassified—Total ............... 096 $ 501,241
2 To be used for current general expenses, including
3 compensation of employees, household maintenance, cost
4 of official functions and additional household expenses
5 occasioned by such official functions.

7—Governor's Office—
Governor's Cabinet on Children and Families
(WV Code Chapter 5)

Fund 0104 FY 1999 Org 0100

1 Unclassified ....................... 099 $ 305,304
2 Starting Points Centers and Parent
3 Education Services ............... 316 1,244,500
4 Total .......................... $ 1,549,804
5 Any unexpended balance remaining in the
6 appropriation for Governor's Cabinet on Children and
7 Families - Total (fund 0104, activity 116) at the close of
8 the fiscal year 1997-98 is hereby reappropriated for
9 expenditure during the fiscal year 1998-99.

8—Governor's Office—
Civil Contingent Fund
(WV Code Chapter 5)

Fund 0105 FY 1999 Org 0100

1 Civil Contingent Fund—Total (R) .... 114 $ 150,000
2 Any unexpended balances remaining in the
3 appropriations for Civil Contingent Fund-Total (fund
4 0105, activity 114), Civil Contingent Fund-Surplus (fund
5 0105, activity 263) and Unclassified-Surplus-Total (fund
6 0105, activity 098) at the close of the fiscal year 1997-98
7 are hereby reappropriated for expenditure during the
8 fiscal year 1998-99.
9
10 From this appropriation there may be expended, at the
discretion of the governor, an amount not to exceed one
11 thousand dollars as West Virginia's contribution to the
12 interstate oil compact commission.
13
14 The above appropriation is intended to provide
emergency or unplanned events which may occur during
the fiscal year and is not to be expended for the normal
day-to-day operations of the governor's office.

9—Auditor's Office—

General Administration
(WV Code Chapter 12)

Fund 0116 FY 1999 Org 1200

<table>
<thead>
<tr>
<th>Description</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,815,438</td>
</tr>
<tr>
<td>Salary of Auditor</td>
<td>70,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>50,523</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>627,401</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>590,283</td>
</tr>
<tr>
<td>Office Automation (R)</td>
<td>790,000</td>
</tr>
<tr>
<td>Total</td>
<td>$3,943,645</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0116, activity 099) and Office Automation (fund 0116, activity 117), at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

Any unexpended balances remaining in the appropriations for Image Processing and Printer Replacement (fund 0116, activity 240) and Encoding System and Printer Replacement-Surplus (fund 0116, activity 767) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99. Any balances so reappropriated are hereby redesignated Office Automation (fund 0116, activity 117).

10—Auditor's Office—

Family Law Masters Administration Fund
(WV Code Chapter 48A)

Fund 0117 FY 1999 Org 1200

<table>
<thead>
<tr>
<th>Description</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$450,000</td>
</tr>
</tbody>
</table>

The above appropriation shall be expended for the administrative expenses of the family law masters.
program, excluding personal services and employee benefits.

**11—Treasurer’s Office**

(WV Code Chapter 12)

<table>
<thead>
<tr>
<th>Fund 0126 FY 1999</th>
<th>Org 1300</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001   $1,569,556</td>
</tr>
<tr>
<td>2 Salary of Treasurer</td>
<td>002</td>
</tr>
<tr>
<td>3 Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>4 Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>5 Unclassified (R)</td>
<td>099</td>
</tr>
<tr>
<td>6 Abandoned Property Program</td>
<td>118</td>
</tr>
<tr>
<td>7 Debt Payment on Morris Street—Workers’ Compensation Building</td>
<td>290</td>
</tr>
<tr>
<td>8 Hardware/Software Upgrade</td>
<td>518</td>
</tr>
<tr>
<td>9 Tuition Trust Fund</td>
<td>692</td>
</tr>
<tr>
<td>10 School Building Sinking Fund Debt Service (R)</td>
<td>770</td>
</tr>
<tr>
<td>11 Debt Payment—Regional Jails and Correctional Facilities (R)</td>
<td>771</td>
</tr>
<tr>
<td>12 Total</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0126, activity 099), Imaging System (fund 0126, activity 006), School Building Sinking Fund Debt Service (fund 0126, activity 770), Debt Payment - Regional Jails and Correctional Facilities (fund 0126, activity 771) and Tuition Trust Fund (fund 0126, activity 692) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

**12—Department of Agriculture**

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund 0131 FY 1999</th>
<th>Org 1400</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001 $3,178,115</td>
</tr>
<tr>
<td>2 Salary of Commissioner</td>
<td>002</td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>71,200</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>1,191,106</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>1,004,955</td>
</tr>
<tr>
<td>Gypsy Moth Program (R)</td>
<td>119</td>
<td>820,055</td>
</tr>
<tr>
<td>Mingo County Surface Mine</td>
<td>296</td>
<td>150,000</td>
</tr>
<tr>
<td>Moorefield Agriculture Center</td>
<td>786</td>
<td>251,430</td>
</tr>
<tr>
<td>Bee Research</td>
<td>691</td>
<td>70,000</td>
</tr>
<tr>
<td>Microbiology Program</td>
<td>785</td>
<td>150,000</td>
</tr>
<tr>
<td>Predator Control</td>
<td>470</td>
<td>90,000</td>
</tr>
<tr>
<td>Charleston Farmers Market</td>
<td>476</td>
<td>150,000</td>
</tr>
<tr>
<td>Central City Market Place</td>
<td>808</td>
<td>90,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$7,286,861</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0131, activity 099), Gypsy Moth Program (fund 0131, activity 119), Mingo County Surface Mine Project (fund 0131, activity 296), Moorefield Field Office Furnishings - Surplus (fund 0131, activity 724) and Logan Farmers Market - Surplus (fund 0131, activity 728) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

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

---

13—Department of Agriculture—
State Soil Conservation Committee
(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0132</td>
<td>1999</td>
<td>1400</td>
<td>417,844</td>
</tr>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 8,400</td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>142,382</td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>282,455</td>
<td></td>
</tr>
</tbody>
</table>
5 Soil Conservation Projects (R) ...... 120 2,500,000
6 Maintenance of Flood Control Projects (R) .............. 522 1,722,990
8 Total ........................................... $ 5,074,071
9 Any unexpended balances remaining in the appropriations for Unclassified (fund 0132, activity 099), Maintenance of Flood Control Projects (fund 0132, activity 522), Soil Conservation Projects (fund 0132, activity 120) and Soil Conservation Projects - Surplus (fund 0132, activity 269) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

14—Department of Agriculture— Meat Inspection
(WV Code Chapter 19)
Fund 0135 FY 1999 Org 1400
1 Personal Services ......................... 001 $ 348,079
2 Annual Increment ......................... 004 8,696
3 Employee Benefits ...................... 010 129,944
4 Unclassified .............................. 099 76,317
5 Total ........................................... $ 563,036
6 Any part or all of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.

15—Department of Agriculture— Agricultural Awards
(WV Code Chapter 19)
Fund 0136 FY 1999 Org 1400
1 Agricultural Awards ..................... 121 $ -0-
2 Commissioner’s Awards/Programs ...... 737 90,000
3 Fairs and Festivals ...................... 122 382,000
4 Total ........................................... $ 472,000

16—Attorney General
(WV Code Chapters 5, 14, 46A and 47)
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Fund 0150 FY 1999 Org 1500</td>
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<tr>
<td>1</td>
<td>Personal Services (R)</td>
<td>001</td>
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<tr>
<td>2</td>
<td>Salary of Attorney General</td>
<td>002</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment (R)</td>
<td>004</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits (R)</td>
<td>010</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified (R)</td>
<td>099</td>
</tr>
<tr>
<td>6</td>
<td>Better Government Bureau (R)</td>
<td>740</td>
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<tr>
<td>7</td>
<td>Total</td>
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<tr>
<td></td>
<td>Any unexpended balance remaining in the appropriation at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>When legal counsel or secretarial help is appointed by the attorney general for any state spending unit, this account shall be reimbursed from such spending unit's specifically appropriated account or from accounts appropriated by general language contained within this bill: Provided, That the spending unit shall reimburse at a rate and upon terms agreed to by the state spending unit and the attorney general: Provided, however, That if the spending unit and the attorney general are unable to agree on the amount and terms of the reimbursement, the spending unit and the attorney general shall submit their proposed reimbursement rates and terms to the joint committee on government and finance for final determination.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>17—Secretary of State (WV Code Chapters 3, 5 and 59)</td>
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<tr>
<td></td>
<td>Fund 0155 FY 1999 Org 1600</td>
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<tr>
<td>1</td>
<td>Personal Services</td>
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<td>2</td>
<td>Salary of Secretary of State</td>
<td>002</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified (R)</td>
<td>099</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Unclassified (fund 0155, activity 099), Administrative Law Improvements (fund 0155, activity 617), Technology Improvements (fund 0155, activity 599) and Technology Improvements - Surplus (fund 0155, activity 725) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

18—State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 1999 Org 1601

| Unclassified—Total | 096 | $12,000 |

DEPARTMENT OF ADMINISTRATION

19—Department of Administration—Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 1999 Org 0201

| Unclassified | 099 | $245,197 |
| Public Employees’ Insurance Match (R)-Transfer | 012 | $3,550,000 |

Total $3,795,197

The above appropriation for Public Employees’ Insurance Match (R)-Transfer (fund 0186, activity 012) shall be used to offset the January 1, 1999 increases in deductibles and copayments proposed for all state employees.

20—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 1999 Org 0205

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

21—Division of Finance  
(WV Code Chapter 5A)

<table>
<thead>
<tr>
<th>Fund 0203 FY 1999</th>
<th>Org 0209</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$ 524,650</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>11,090</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>153,362</td>
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<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>549,175</td>
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<tr>
<td>5 GAAP Project (R)</td>
<td>125</td>
<td>1,263,808</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 2,502,085</strong></td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, activity 125) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.

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

<table>
<thead>
<tr>
<th>Fund 0230 FY 1999</th>
<th>Org 0211</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$ 467,904</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>20,300</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>215,206</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>956,441</td>
</tr>
<tr>
<td>5 Capitol Complex-Capital Outlay</td>
<td>417</td>
<td>500,000</td>
</tr>
<tr>
<td>6 Fire Service Fee</td>
<td>126</td>
<td>13,440</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 2,173,291</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Capitol Building Preservation (fund 0230, activity 503), Capitol Building Preservation-Surplus (fund 0230, activity 675), Capital Improvements-Capitol Complex-Surplus (fund 0230, activity 676), Capitol Complex-Capital Outlay (fund 0230, activity 417), Capitol Complex-Capital Outlay-Surplus (fund 0230, activity 526), Capitol Complex Master Plan-Total-Surplus (fund
9 0230, activity 606), Chilled Water Plant-Phase III (fund 0230, activity 291), Capital Improvements-Capitol Complex-Surplus (fund 0230, activity 676) and Capitol Complex-Capital Outlay-Total-Surplus (fund 0230, activity 777) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

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

<table>
<thead>
<tr>
<th>Fund 0210 FY 1999 Org 0213</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ..........</td>
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<tr>
<td>2 Annual Increment ..........</td>
</tr>
<tr>
<td>3 Employee Benefits ..........</td>
</tr>
<tr>
<td>4 Unclassified ...............</td>
</tr>
<tr>
<td>5 Purchasing Card Program ...</td>
</tr>
<tr>
<td>6 Total ......................</td>
</tr>
</tbody>
</table>

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

24—Commission on Uniform State Laws
(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Fund 0214 FY 1999 Org 0217</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total ..........</td>
</tr>
</tbody>
</table>

To pay expenses of members of the commission on uniform state laws.

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

<table>
<thead>
<tr>
<th>Fund 0217 FY 1999 Org 0218</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified ...............</td>
</tr>
<tr>
<td>2 Retro Payments .............</td>
</tr>
<tr>
<td>3 Total ......................</td>
</tr>
</tbody>
</table>
The above appropriation includes funding for the purpose of paying premiums, self-insurance losses, loss adjustment expenses and loss prevention engineering fees for property, casualty and fidelity insurance for the various state agencies, except those operating from special revenue funds, with such special revenue fund agencies to be billed by the board of risk and insurance management and with such costs to be a proper charge against such spending units.

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

26—Education and State Employees’ Grievance Board
(WV Code Chapter 18)

<table>
<thead>
<tr>
<th>Fund 0220 FY 1999 Org 0219</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001 $ 660,822</td>
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<tr>
<td>2 Annual Increment .......... 004 7,683</td>
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<tr>
<td>3 Employee Benefits .......... 010 192,839</td>
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<tr>
<td>4 Unclassified ............... 099 169,678</td>
</tr>
<tr>
<td>5 Total ...................... $ 1,031,022</td>
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</table>

27—Ethics Commission
(WV Code Chapter 6B)

<table>
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<tr>
<th>Fund 0223 FY 1999 Org 0220</th>
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<tbody>
<tr>
<td>1 Personal Services .......... 001 $ 190,262</td>
</tr>
<tr>
<td>2 Annual Increment .......... 004 1,650</td>
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<tr>
<td>3 Employee Benefits .......... 010 57,149</td>
</tr>
<tr>
<td>4 Unclassified ............... 099 119,979</td>
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<tr>
<td>5 Total ...................... $ 369,040</td>
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## 28—Public Defender Services
(WV Code Chapter 29)

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<tr>
<td>8</td>
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</table>
### Public Defender Corporation-
- **28th Judicial Circuit**: 801, $197,215
- **30th Judicial Circuit**: 802, $400,155

#### Total

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$22,547,794</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0226, activity 099) and Appointed Counsel Fees and Public Defender Corporations (fund 0226, activity 127) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

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

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0233</td>
<td>1999</td>
<td>0224</td>
<td>Unclassified—Total</td>
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</table>

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

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0200</td>
<td>1999</td>
<td>0225</td>
<td>The division of highways, division of motor vehicles, bureau of employment programs, public service commission and other departments or divisions operating from special revenue funds and/or federal funds shall pay their proportionate share of the public employees health insurance cost for their respective divisions.</td>
</tr>
</tbody>
</table>

31—West Virginia Prosecuting Attorneys’ Institute

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0557</td>
<td>1999</td>
<td>0228</td>
<td>Federal Funds/Grant Match</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Funds/Grant Match</td>
<td>$80,000</td>
</tr>
<tr>
<td>Forensic Medical Examinations—Total</td>
<td>$251,346</td>
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</tbody>
</table>

33 Total

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Total</td>
<td>$331,346</td>
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**DEPARTMENT OF EDUCATION**

32—State Department of Education—School Lunch Program
### Fund 0303 FY 1999 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
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<td>$164,282</td>
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<tr>
<td>004</td>
<td>Annual Increment</td>
<td></td>
<td>3,291</td>
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<tr>
<td>010</td>
<td>Employee Benefits</td>
<td></td>
<td>56,364</td>
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<tr>
<td>099</td>
<td>Unclassified</td>
<td></td>
<td>1,781,744</td>
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<tr>
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<td>Total</td>
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<td>$2,005,681</td>
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**33—State FFA-FHA Camp and Conference Center**

### Fund 0306 FY 1999 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td></td>
<td>$138,057</td>
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<tr>
<td>004</td>
<td>Annual Increment</td>
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<td>Employee Benefits</td>
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<td>63,073</td>
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<td>099</td>
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<td>162,360</td>
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<td>$366,740</td>
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</table>

**34—State Department of Education**

### Fund 0313 FY 1999 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
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<td>$2,392,225</td>
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<td>004</td>
<td>Annual Increment</td>
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<td>38,524</td>
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<td>831,619</td>
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<td>099</td>
<td>Unclassified</td>
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<td>3,580,027</td>
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<tr>
<td>138</td>
<td>WV Education Information System (WVEIS)</td>
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<td>2,929,971</td>
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<tr>
<td>139</td>
<td>34/1000 Waiver</td>
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<td>500,000</td>
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<tr>
<td>140</td>
<td>Increased Enrollment</td>
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<td>3,373,070</td>
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<td>142</td>
<td>National Science Foundation Match</td>
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<td>143</td>
<td>Safe Schools</td>
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<td>2,000,000</td>
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</table>
| 145  | Computer Basic Skills (R) |      | 0- }
<table>
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<tr>
<th></th>
<th>Appropriations</th>
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<tbody>
<tr>
<td>12</td>
<td>Implementation of Norm Referenced</td>
<td>297</td>
</tr>
<tr>
<td>13</td>
<td>Testing Program</td>
<td>298</td>
</tr>
<tr>
<td>14</td>
<td>Technology Repair and Modernization</td>
<td>300</td>
</tr>
<tr>
<td>15</td>
<td>Curriculum Technology</td>
<td>401</td>
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<tr>
<td>16</td>
<td>Employment Programs Rate Relief</td>
<td>411</td>
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<tr>
<td>17</td>
<td>Three Tier Funding</td>
<td>695</td>
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<tr>
<td>18</td>
<td>Educational Enhancements</td>
<td>478</td>
</tr>
<tr>
<td>19</td>
<td>Governor's Honors Academy</td>
<td>482</td>
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<tr>
<td>20</td>
<td>WVGC Writing Project</td>
<td>807</td>
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<td>21</td>
<td>Marshall University Graduate</td>
<td>506</td>
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<tr>
<td>22</td>
<td>Micro Computer Network</td>
<td>596</td>
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<td>23</td>
<td>Technology and Telecommunications Initiative (R)</td>
<td>615</td>
</tr>
<tr>
<td>24</td>
<td>Professional Certification</td>
<td>621</td>
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<tr>
<td>25</td>
<td>Adult Advisory Council</td>
<td>636</td>
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<tr>
<td>26</td>
<td>Foreign Student Education (R)</td>
<td>639</td>
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<tr>
<td>27</td>
<td>Technology Demonstration Project</td>
<td>640</td>
</tr>
<tr>
<td>28</td>
<td>State Teacher of the Year</td>
<td>649</td>
</tr>
<tr>
<td>29</td>
<td>Principals Mentorship</td>
<td>693</td>
</tr>
<tr>
<td>30</td>
<td>Mingo County Board of Education-Tax Assessment Error</td>
<td>744</td>
</tr>
<tr>
<td>31</td>
<td>Allowance for Work Based Learning</td>
<td>758</td>
</tr>
<tr>
<td>32</td>
<td>Pickens School Support</td>
<td>809</td>
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<tr>
<td>33</td>
<td>Webster County Board of Education/Hacker Valley</td>
<td></td>
</tr>
<tr>
<td>34</td>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>The above appropriation includes the state board of</td>
<td></td>
</tr>
<tr>
<td>36</td>
<td>education and their executive office.</td>
<td></td>
</tr>
<tr>
<td>37</td>
<td>Any unexpended balances remaining in the</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>appropriations for Computer Basic Skills (fund 0313</td>
<td></td>
</tr>
</tbody>
</table>
activity 145), Technology and Telecommunications Initiative (fund 0313, activity 596), Foreign Student Education (fund 0313, activity 636) and Technology and Telecommunications Initiative - Surplus (fund 0313, activity 774) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

35—State Department of Education—
Aid for Exceptional Children
(WV Code Chapters 18 and 18A)
Fund 0314 FY 1999 Org 0402

1 Special Education—Counties ........ 159 $ 7,336,561
2 Special Education—Institutions ..... 160 2,889,663
3 Education of Juveniles Held in
   Predispositional Juvenile Detention Centers .............. 302 466,450
4 Education of Institutionalized
   Juveniles and Adults .............. 472 4,829,705
5 Potomac Center ..................... 810 292,805
6 Total .............................. $15,815,184

From the above appropriations, the superintendent shall have authority to expend funds for the costs of special education for those children residing in out-of-state placements.

36—State Department of Education—
State Aid to Schools
(WV Code Chapters 18 and 18A)
Fund 0317 FY 1999 Org 0402

1 Professional Educators .......... 151 $ 698,871,871
2 Service Personnel ............... 152 217,738,033
3 Fixed Charges .................... 153 80,478,350
4 Transportation ................... 154 34,363,523
<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration</td>
<td>155</td>
<td>7,676,603</td>
</tr>
<tr>
<td>Other Current Expenses</td>
<td>022</td>
<td>106,858,856</td>
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<tr>
<td>Improve Instruction Programs</td>
<td>156</td>
<td>33,000,000</td>
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<tr>
<td>Basic Foundation Allowances</td>
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<td>1,178,987,236</td>
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<tr>
<td>Less Local Share</td>
<td>332</td>
<td>(254,502,547)</td>
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<tr>
<td>Total Basic State Aid</td>
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<td>924,484,689</td>
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<tr>
<td>Public Employees' Insurance Match</td>
<td>012</td>
<td>137,488,199</td>
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<tr>
<td>Teachers' Retirement System</td>
<td>019</td>
<td>199,019,000</td>
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<tr>
<td>School Building Authority</td>
<td>453</td>
<td>22,667,120</td>
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<tr>
<td>Total</td>
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<td>$1,283,659,008</td>
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</table>

**37—State Board of Education—Division of Educational Performance Audits**

(WV Code Chapter 18)

<table>
<thead>
<tr>
<th>Fund 0573 FY 1999 Org 0402</th>
<th></th>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td>$445,000</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>2,500</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>145,000</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>235,500</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$828,000</td>
</tr>
</tbody>
</table>

**38—State Board of Education—Vocational Division**

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Fund 0390 FY 1999 Org 0402</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$717,448</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>14,902</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>268,287</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>549,707</td>
</tr>
<tr>
<td>Item</td>
<td>Amount</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>------------</td>
<td></td>
</tr>
<tr>
<td>Wood Products—Forestry</td>
<td>63,024</td>
<td></td>
</tr>
<tr>
<td>Vocational Program (R)</td>
<td>146</td>
<td></td>
</tr>
<tr>
<td>Albert Yanni Vocational Program</td>
<td>139,300</td>
<td></td>
</tr>
<tr>
<td>Vocational Aid</td>
<td>148</td>
<td></td>
</tr>
<tr>
<td>Adult Basic Education</td>
<td>149</td>
<td></td>
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<tr>
<td>Equipment Replacement</td>
<td>150</td>
<td></td>
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<tr>
<td>Program Modernization (R)</td>
<td>305</td>
<td></td>
</tr>
<tr>
<td>Aquaculture Support</td>
<td>769</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>18,286,029</td>
<td></td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Wood Products—Forestry Vocational Program (fund 0390, activity 146) and Program Modernization (fund 0390, activity 305) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

39—West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 1999 Org 0403

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>5,611,253</td>
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<tr>
<td>Annual Increment</td>
<td>4,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>2,134,009</td>
</tr>
<tr>
<td>Unclassified</td>
<td>1,473,843</td>
</tr>
<tr>
<td>Capital Outlay, Repairs and Equipment</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>9,223,105</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Fire and Smoke Alarm System Surplus (fund 0320, activity 726) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.
## DEPARTMENT OF EDUCATION AND THE ARTS

40—Department of Education and the Arts—
Office of the Secretary

(WV Code Chapter 5F)

**Fund 0294 FY 1999 Org 0431**

| Item | Description | Activity | FY 1999 | Amount  
|------|-------------|----------|---------|--------
| 1    | Unclassified (R) | 099      |         | $1,772,734 |
| 2    | Center for Professional Development (R) | 115      |         | 1,200,000 |
| 3    | WVU - University Affiliated Center for Developmental Disabilities | 157      |         | 60,000 |
| 4    | WV Humanities Council | 168      |         | 300,000 |
| 5    | Center for Professional Development-Principals' Academy | 415      |         | 500,000 |
| 6    | Technical Preparation Program (R) | 440      |         | 932,397 |
| 7    | Arts Programs | 500      |         | 40,000 |
| 8    | Community Schools/Mini Grants (R) | 530      |         | 800,631 |
| 9    | Joint Commission on Vocational-Technical-Occupational Education | 109      |         | 30,000 |
| 10   | Hospitality Training | 600      |         | 550,000 |
| 11   | Total | | | $6,185,762 |

Any unexpended balances remaining in the appropriations for Unclassified (fund 0294, activity 099), Center for Professional Development (fund 0294, activity 115), Technical Preparation Program (fund 0294, activity 440) and Community Schools/Mini Grants (fund 0294, activity 530) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

41—Division of Culture and History

(WV Code Chapter 29)
<table>
<thead>
<tr>
<th>Fund 0293 FY 1999 Org 0432</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001</td>
</tr>
<tr>
<td>2 Annual Increment ............ 004</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010</td>
</tr>
<tr>
<td>4 Unclassified ................ 099</td>
</tr>
<tr>
<td>5 Fairs and Festivals .......... 122</td>
</tr>
<tr>
<td>6 Historical Preservation Grants . 311</td>
</tr>
<tr>
<td>7 West Virginia Public Theater .. 312</td>
</tr>
<tr>
<td>8 Theater Arts of West Virginia .. 464</td>
</tr>
<tr>
<td>9 Grants for Competitive Arts Programs . 624</td>
</tr>
<tr>
<td>10 Culture and History Programming ... 732</td>
</tr>
<tr>
<td>11 Contemporary American Theater Festival .......... 811</td>
</tr>
<tr>
<td>13 Independence Hall .......... 812</td>
</tr>
<tr>
<td>14 Total .........................</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Capital Outlay, Repairs and Equipment (fund 0293, activity 589) and Capital Outlay, Repairs and Equipment - Surplus (fund 0293, activity 677) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

The Unclassified appropriation includes funding for the arts funds, department programming funds, grants, fairs and festivals and Camp Washington Carver and shall be expended only upon authorization of the division of culture and history and in accordance with the provisions of chapter five-a, article three, and chapter twelve of the code.

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

42—Library Commission
(WV Code Chapter 10)

<table>
<thead>
<tr>
<th>Fund 0296 FY 1999 Org 0433</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services 001 $1,056,833</td>
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<tr>
<td>2 Annual Increment 004 35,350</td>
</tr>
<tr>
<td>3 Employee Benefits 010 390,737</td>
</tr>
<tr>
<td>4 Unclassified 099 280,771</td>
</tr>
<tr>
<td>5 Books and Films 179 150,000</td>
</tr>
<tr>
<td>6 Services to State Institutions 180 156,310</td>
</tr>
<tr>
<td>7 Services to Blind and Handicapped 181 42,729</td>
</tr>
<tr>
<td>8 Grants to Public Libraries 182 6,838,884</td>
</tr>
<tr>
<td>9 Libraries—Special Projects 625 1,000,000</td>
</tr>
<tr>
<td>10 Total $9,951,614</td>
</tr>
</tbody>
</table>

43—Educational Broadcasting Authority
(WV Code Chapter 10)

<table>
<thead>
<tr>
<th>Fund 0300 FY 1999 Org 0439</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services 001 $3,112,491</td>
</tr>
<tr>
<td>2 Annual Increment 004 65,200</td>
</tr>
<tr>
<td>3 Employee Benefits 010 990,558</td>
</tr>
<tr>
<td>4 Unclassified 099 1,230,402</td>
</tr>
<tr>
<td>5 Total $5,398,651</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Capital Improvements-Total-Surplus (fund 0300, activity 672) and Capital Improvements-600 Capitol Street (fund 0300, activity 313) are hereby reappropriated for expenditure during the fiscal year 1998-99.
12 These funds may be transferred to special revenue accounts for matching college, university, city, county, federal and/or other generated revenues.

44—State Board of Rehabilitation—Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 1999 Org 0932

1 Personal Services .................. 001 $ 4,200,531
2 Annual Increment .................. 004 124,961
3 Employee Benefits .................. 010 1,520,220
4 Case Services .................. 162 2,826,365
5 Workshop Development .................. 163 1,749,000
6 Traumatic Brain and Spinal Cord Injury .................. 813 250,000
7 Total .................. $10,671,077

Any unexpended balances remaining in the appropriation for Technology-Related Assistance Revolving Loan Fund for Individuals with Disabilities (fund 0310, activity 766) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99 and may be transferred to a special account for the purpose of disbursement or loan.

45—Board of Trustees of the University System of West Virginia and Board of Directors of the State College System Central Office Control Account

(WV Code Chapters 18B and 18C)

Fund 0333 FY 1999 Org 0452

1 Unclassified .................. 099 $ 1,347,031
2 Higher Education Grant Program (R) .................. 164 4,700,000
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>3</td>
<td>Tuition Contract Program (R)</td>
<td>165</td>
</tr>
<tr>
<td>4</td>
<td>Minority Doctoral Fellowship</td>
<td>166</td>
</tr>
<tr>
<td>5</td>
<td>Underwood-Smith Scholarship Program</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>—Student Awards (R)</td>
<td>167</td>
</tr>
<tr>
<td>8</td>
<td>WVNET</td>
<td>169</td>
</tr>
<tr>
<td>9</td>
<td>36/50 Classified Staff</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Increment Increase</td>
<td>821</td>
</tr>
<tr>
<td>11</td>
<td>Public Employees’ Insurance</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Matching (R)</td>
<td>012</td>
</tr>
<tr>
<td>13</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for Higher Education Grant Program (fund 0333, activity 164), Tuition Contract Program (fund 0333, activity 165), Underwood-Smith Scholarship Program - Student Awards (fund 0333, activity 167), Higher Education Technology Initiative - Surplus (fund 0333, activity 508) and Higher Education Grant Program (fund 4055, activity 164) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

The appropriation for Minority Doctoral Fellowship (fund 0333, activity 166) may be transferred to special revenue accounts for matching college, university, city, county, federal, and/or other generated revenues.

46—Board of Trustees of the University System of West Virginia and Board of Directors of the State College System—Higher Education Efficiency Fund Control Account

(WV Code Chapter 18B)

Fund 0556 FY 1999 Org 0452

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Strategic Planning and Compliance - Institutions—Total</td>
</tr>
</tbody>
</table>
### Appropriations

#### Board of Trustees of the University System of West Virginia

Control Account

(WV Code Chapter 18B)

**Fund 0327 FY 1999 Org 0461**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Activity Code</th>
<th>FY 1997-98 Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>.099</td>
<td>$171,892,933</td>
</tr>
<tr>
<td>Marshall University—Southern WV Community and Technical College 2+2 Program (R)</td>
<td>170</td>
<td>350,000</td>
</tr>
<tr>
<td>Marshall University—Autism Training Center</td>
<td>548</td>
<td>575,000</td>
</tr>
<tr>
<td>Marshall University—Forensic Lab (R)</td>
<td>572</td>
<td>450,000</td>
</tr>
<tr>
<td>Marshall and West Virginia University Faculty and Course Development International Study Project</td>
<td>549</td>
<td>35,000</td>
</tr>
<tr>
<td>WVU Law School—Skills Program</td>
<td>745</td>
<td>150,000</td>
</tr>
<tr>
<td>WVU College of Engineering and Mineral Resources—Diesel Training-Transfer</td>
<td>699</td>
<td>50,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$173,502,933</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Marshall University-Southern WV Community and Technical College 2+2 Program (fund 0327, activity 170), Marshall University—Forensic Lab (fund 0327, activity 572), WVU College of Engineering and Mineral Resources - Diesel Study (fund 0327, activity 699) and Chestnut Blight Project - Total - Surplus (fund 0327, activity 780) at the close of the fiscal year 1997-98 are hereby reapropriated for expenditure during the fiscal year 1998-99.
### Appropriations

48—Board of Trustees of the University System of West Virginia—University of West Virginia Health Sciences Account
(WV Code Chapter 18B)

**Fund 0323 FY 1999 Org 0478**

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Activities</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>School of Osteopathic Medicine</td>
<td>172</td>
<td>$6,187,694</td>
</tr>
<tr>
<td>2</td>
<td>Marshall School of Medicine</td>
<td>173</td>
<td>11,057,522</td>
</tr>
<tr>
<td>3</td>
<td>WVU-Health Sciences</td>
<td>174</td>
<td>39,075,945</td>
</tr>
<tr>
<td>4</td>
<td>WVU—School of Health Sciences—</td>
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<td></td>
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<tr>
<td></td>
<td>Charleston Division</td>
<td>175</td>
<td>3,787,416</td>
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<tr>
<td>5</td>
<td>Health Sciences Scholarship Fund (R)</td>
<td>176</td>
<td>148,500</td>
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<tr>
<td>6</td>
<td>Primary Health Education</td>
<td>177</td>
<td>4,460,000</td>
</tr>
<tr>
<td>7</td>
<td>Medical Education</td>
<td>178</td>
<td>0</td>
</tr>
<tr>
<td>8</td>
<td>Rural Health Initiative</td>
<td>295</td>
<td>2,980,000</td>
</tr>
<tr>
<td>9</td>
<td>Vice Chancellor for Health Sciences</td>
<td>473</td>
<td>263,594</td>
</tr>
<tr>
<td>10</td>
<td>WVU—Health Career</td>
<td>474</td>
<td>175,000</td>
</tr>
<tr>
<td>11</td>
<td>Opportunities Program (R)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>WVU Charleston Division</td>
<td>510</td>
<td>415,985</td>
</tr>
<tr>
<td>12</td>
<td>Marshall University Medical</td>
<td>814</td>
<td>1,000,000</td>
</tr>
<tr>
<td>13</td>
<td>School-Capital Improvements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>MA Public Health Program and</td>
<td>623</td>
<td>75,000</td>
</tr>
<tr>
<td>15</td>
<td>Health Science Technology</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Total</td>
<td></td>
<td>$69,626,656</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Primary Health Education Program Support (fund 0323, activity 177), Rural Health Initiative.
Site Support (fund 0323, activity 295), Health Sciences Scholarship Fund (fund 0323, activity 176) and WVU - Health Career Opportunities Program (fund 0323, activity 474) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

49—Board of Directors of the State College System Control Account

(WV Code Chapter 18B)

Fund 0330 FY 1999 Org 0481

1 Unclassified .................. 099 $80,310,152

2 West Virginia University
   Institute of Technology
   Transfer to Board of Trustees -
   West Virginia University Institute
   of Technology Resource
   Allocation Policy Adjustment .... 454 284,526

8 Workforce Development ........ 832 500,000

9 Total ......................... $81,094,678

The above appropriation for West Virginia University Institute of Technology Transfer to Board of Trustees - West Virginia University Institute of Technology Resource Allocation Policy Adjustment (fund 0330, activity 454) is pursuant to enrolled senate bill no. 591, regular session, 1996, and shall be used solely for the purpose of implementing the provisions of section nine, article two, chapter eighteen-b of the code of West Virginia.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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

(WV Code Chapter 5F)
### APPROPRIATIONS

**Fund 0400 FY 1999 Org 0501**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$117,264</td>
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</table>

51—Division of Health—Central Office

(WV Code Chapter 16)

**Fund 0407 FY 1999 Org 0506**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>1</td>
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<td>$6,145,144</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>131,907</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>2,604,363</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>4,324,965</td>
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<tr>
<td>5</td>
<td>Corporate Nonprofit</td>
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<td>6</td>
<td>Community Health Centers</td>
<td></td>
<td></td>
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<td>7</td>
<td>F.M.H.A. Mortgage Finance</td>
<td>184</td>
<td>135,455</td>
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<td>8</td>
<td>Appalachian State Low</td>
<td></td>
<td></td>
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<tr>
<td>9</td>
<td>Level Radioactive</td>
<td></td>
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<tr>
<td>10</td>
<td>Waste Commission</td>
<td>185</td>
<td>48,000</td>
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<td>11</td>
<td>Safe Drinking Water Program</td>
<td>187</td>
<td>463,224</td>
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<tr>
<td>12</td>
<td>Women, Infants and Children</td>
<td>210</td>
<td>45,000</td>
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<tr>
<td>13</td>
<td>Early Intervention</td>
<td>223</td>
<td>2,018,357</td>
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<td>14</td>
<td>Cancer Registry</td>
<td>225</td>
<td>197,358</td>
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<tr>
<td>15</td>
<td>Transitional Funding for</td>
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<tr>
<td>16</td>
<td>Local Health Departments</td>
<td>723</td>
<td>4,302,660</td>
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<tr>
<td>17</td>
<td>Home Health - Local</td>
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<td>18</td>
<td>Health Departments</td>
<td>326</td>
<td>-0-</td>
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<tr>
<td>19</td>
<td>Black Lung Clinics</td>
<td>467</td>
<td>200,000</td>
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<tr>
<td>20</td>
<td>Pediatric Dental Services</td>
<td>550</td>
<td>150,000</td>
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<tr>
<td>21</td>
<td>Vaccine for Children</td>
<td>551</td>
<td>431,480</td>
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<tr>
<td>22</td>
<td>Adult Influenza Vaccine</td>
<td>552</td>
<td>65,000</td>
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<tr>
<td>23</td>
<td>Tuberculosis Control</td>
<td>553</td>
<td>249,420</td>
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<td>Appropriations</td>
<td>[Ch. 6</td>
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<tr>
<td>----------------</td>
<td>--------</td>
<td></td>
<td></td>
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<tr>
<td>24 Regional EMS Entities</td>
<td>557</td>
<td>630,000</td>
<td></td>
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<tr>
<td>25 Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (R)</td>
<td>575</td>
<td>4,673,043</td>
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<tr>
<td>28 Epidemiology Support</td>
<td>626</td>
<td>365,625</td>
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<tr>
<td>29 Rural EMS Equipment and Training</td>
<td>627</td>
<td>560,664</td>
<td></td>
</tr>
<tr>
<td>30 Primary Care Support</td>
<td>628</td>
<td>6,706,303</td>
<td></td>
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<tr>
<td>31 Health Right Free Clinics</td>
<td>727</td>
<td>1,200,000</td>
<td></td>
</tr>
<tr>
<td>32 State Aid to Local Health Departments</td>
<td>702</td>
<td>7,880,684</td>
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<tr>
<td>34 State EMS Coordinator</td>
<td>738</td>
<td>756,320</td>
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</tr>
<tr>
<td>35 EMS Training for Children</td>
<td>739</td>
<td>50,000</td>
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<tr>
<td>36 Osteoporosis Prevention Fund</td>
<td>729</td>
<td>200,000</td>
<td></td>
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<tr>
<td>37 Emergency Response Entities- Special Projects</td>
<td>822</td>
<td>1,000,000</td>
<td></td>
</tr>
<tr>
<td>39 Total</td>
<td></td>
<td>$45,534,972</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, activity 575) Computer Equipment (fund 0407, activity 680) and Radon and Carbon Dioxide Testing (fund 0407, activity 746) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.

From the Maternal and Child Health Clinics, Clinicians, and Medical Contracts and Fees line item, $200,000 shall be transferred to the Breast and Cervical Cancer Diagnostic Treatment Fund.

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

Fund 0525 FY 1999 Org 0506

<p>| Personal Services | 001 | $ 504,540 |</p>
<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>10,300</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>200,000</td>
</tr>
<tr>
<td>Special Olympics</td>
<td>208</td>
<td>26,074</td>
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<tr>
<td>Behavioral Health Program -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td>219</td>
<td>19,449,313</td>
</tr>
<tr>
<td>Family Support Act</td>
<td>221</td>
<td>1,088,605</td>
</tr>
<tr>
<td>Institutional Facilities Operations</td>
<td>335</td>
<td>39,274,470</td>
</tr>
<tr>
<td>Colin Anderson Community</td>
<td></td>
<td></td>
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<tr>
<td>Placement</td>
<td>803</td>
<td>3,433,963</td>
</tr>
<tr>
<td>Renaissance Program</td>
<td>804</td>
<td>200,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$64,187,265</strong></td>
</tr>
</tbody>
</table>

The secretary of the department of health and human resources, prior to the beginning of the fiscal year, shall file with the legislative auditor and the department of administration an expenditure schedule for each formerly separate spending unit which has been consolidated into the above account and which receives a portion of the above appropriation for Institutional Facilities Operations. The secretary shall also, within fifteen days after the close of the six-month period of said fiscal year, file with the legislative auditor and the department of administration an itemized report of expenditures made during the preceding six-month period.

Additional funds have been appropriated in fund 5156, fiscal year 1999, organization 0506, for the operation of the institutional facilities. The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations line item to facilitate cost effective and cost saving services at the community level.

From the above appropriation to Institutional Facilities Operations, together with available funds from the division of health—hospital services revenue account (fund 5156, activity 335), on July 1, 1998, the sum of one hundred
fifty thousand dollars shall be transferred to the department of agriculture—land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

From the Colin Anderson Community Placement (fund 0525, activity 803) funds may be both expended for the community placement costs of the Colin Anderson clients and transferred to the Medical Services Program Fund to pay the Medicaid state share of the Medicaid cost of Colin Anderson clients in the community.

### 53—Division of Health—West Virginia Drinking Water Treatment

(WV Code Chapter 16)

<table>
<thead>
<tr>
<th>Fund 0561 FY 1999 Org 0506</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia Drinking Water Treatment Revolving Fund—Transfer</td>
</tr>
</tbody>
</table>

The above appropriation for Drinking Water Treatment Revolving Fund—Transfer shall be transferred to the West Virginia Drinking Water Treatment Revolving Fund or appropriate bank depository and the Drinking Water Treatment Revolving—Administrative Expense Fund as provided by Chapter 16 of the code.

### 54—Human Rights Commission

(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Fund 0416 FY 1999 Org 0510</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
</tr>
<tr>
<td>Annual Increment</td>
</tr>
<tr>
<td>Employee Benefits</td>
</tr>
<tr>
<td>Unclassified</td>
</tr>
<tr>
<td>Anti-Hate Program and Human Rights Summit</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation for Automated Management Information System (fund 0416, activity 528) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.

55—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 1999 Org 0511

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$17,824,735</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>456,261</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>6,861,592</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>19,956,784</td>
</tr>
<tr>
<td>5</td>
<td>Child Care Development</td>
<td>144</td>
<td>1,390,400</td>
</tr>
<tr>
<td>6</td>
<td>Medical Services Contracts and Office of Managed Care</td>
<td>183</td>
<td>2,313,176</td>
</tr>
<tr>
<td>7</td>
<td>Medicaid Management Information Technology</td>
<td>186</td>
<td>-0-</td>
</tr>
<tr>
<td>8</td>
<td>Medical Services</td>
<td>189</td>
<td>165,955,333</td>
</tr>
<tr>
<td>9</td>
<td>Women's Commission</td>
<td>191</td>
<td>80,869</td>
</tr>
<tr>
<td>10</td>
<td>Social Services</td>
<td>195</td>
<td>52,010,138</td>
</tr>
<tr>
<td>11</td>
<td>Family Preservation Program</td>
<td>196</td>
<td>1,565,000</td>
</tr>
<tr>
<td>12</td>
<td>Grants for Licensed Domestic Violence Programs and Statewide Prevention</td>
<td>750</td>
<td>500,000</td>
</tr>
<tr>
<td>13</td>
<td>Grants for Licensed Domestic Violence Shelters</td>
<td>332</td>
<td>-0-</td>
</tr>
<tr>
<td>14</td>
<td>Child Protective Services Case Workers</td>
<td>468</td>
<td>6,852,721</td>
</tr>
<tr>
<td>15</td>
<td>OSCAR and RAPIDS</td>
<td>515</td>
<td>3,222,808</td>
</tr>
<tr>
<td>16</td>
<td>Child Welfare System</td>
<td>603</td>
<td>2,441,995</td>
</tr>
</tbody>
</table>
Commission for the Deaf and Hard of Hearing .................. 704 154,914
Indigent Burials ........................................ 730 680,000
Child Support Enforcement ............................. 705 1,649,816
Medicaid Auditing ....................................... 706 529,611
Temporary Assistance for
Needy Families/Maintenance
of Effort .................................................. 707 29,689,373
West Virginia Childrens’ Health Fund/Transfer .......... 714 5,000,000
Child Care—Maintenance of
Effort and Match ....................................... 708 4,409,643
Total ..................................................... 323,545,169

Any unexpended balance remaining in the appropriation for Unclassified (fund 0403, activity 099) fiscal year 1996-97 at the close of fiscal year 1997-98 is hereby reappropriated for expenditure during fiscal year 1998-99. Of the balance reappropriated, $500,000 is hereby redesignated as Medicaid Management Information Technology (fund 0403, activity 186), $823,195 is redesignated as Unclassified (fund 0403, activity 099), $136,000 is redesignated as Child Support Enforcement (fund 0403, activity 705), and any remaining balance is redesignated as Unclassified (fund 0403, activity 099).

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the department of health and human resources shall have the authority to transfer funds within the above account: Provided, That no more than ten percent of the funds appropriated to one line item may be transferred to other line items: Provided, however, That no funds from other line items shall be transferred to the personal services line item.

The secretary shall have authority to expend funds for the educational costs of those children residing in out-of-
state placements, excluding the costs of special education programs.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

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

(WV Code Chapter 5F)

Fund 0430 FY 1999 Org 0601

1 Unclassified—Total 096 $250,000

57—Adjutant General—
State Militia

(WV Code Chapter 15)

Fund 0433 FY 1999 Org 0603

1 Personal Services 001 $332,739
2 Annual Increment 004 9,150
3 Employee Benefits 010 117,276
4 Unclassified 099 3,441,336
5 College Education Fund 232 1,698,000
6 Mountaineer Challenge Academy 709 980,000
7 Armory Capital Improvements 325 400,000
8 Total $6,978,501

The College Education Fund line item above shall be the total annual appropriation for awarding scholarships. The secretary of the department of military affairs and public safety shall devise a method to equitably reimburse all eligible participants on a pro rata basis should the appropriation be insufficient to cover total annual eligible expenses.
### 58—West Virginia Parole Board
*(WV Code Chapter 62)*

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org 0605</th>
</tr>
</thead>
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</tr>
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<td>2</td>
<td>Annual Increment</td>
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</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Salaries of Members of West Virginia Parole Board</td>
<td>227</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
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</table>

### 59—Office of Emergency Services
*(WV Code Chapter 15)*

<table>
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<tr>
<th>Fund</th>
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<th>Org 0606</th>
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</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Federal Emergency Management Agency Match</td>
<td>188</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
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</tr>
</tbody>
</table>

### 60—Division of Corrections—Central Office
*(WV Code Chapters 25, 28, 49 and 62)*

<table>
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<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org 0608</th>
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<td>Personal Services</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
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</table>
### 61—Division of Corrections—Correctional Units

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

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
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<tr>
<td>0450</td>
<td>1999</td>
<td>0608</td>
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<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$13,297,271</td>
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<td>191,988</td>
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<tr>
<td>Employee Benefits</td>
<td>5,168,839</td>
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<td>Unclassified</td>
<td>6,785,391</td>
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<tr>
<td>Payment to Counties and/or Regional Jails</td>
<td>3,916,250</td>
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<tr>
<td>St. Mary's Correctional Center</td>
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<tr>
<td>Lakin Facility</td>
<td>0</td>
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<tr>
<td>Denmar Facility</td>
<td>2,498,732</td>
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<tr>
<td>Mt. Olive Correctional Complex</td>
<td>15,712,403</td>
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<tr>
<td>Northern Correctional Facility</td>
<td>5,342,505</td>
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<tr>
<td>Inmate Medical Expense</td>
<td>5,118,439</td>
</tr>
<tr>
<td>Ohio County Jail</td>
<td>1,200,000</td>
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<tr>
<td>Total</td>
<td>$67,253,017</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Capital Improvements - Surplus (fund 0450, activity 661), Ohio County Jail (fund 0450, activity 784) and St. Mary’s Correctional Center (fund 0450, activity 230) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.

The commissioner of corrections, prior to the beginning of the fiscal year, shall file with the legislative auditor and the department of administration an expenditure schedule for each formerly separate spending unit which has been consolidated into the above account and which receives a portion of the above appropriation. The commissioner shall also, within fifteen days after the
close of each six-month period of said fiscal year, file with
the legislative auditor and the department of
administration an itemized report of expenditures made
during the preceding six-month period. Such report shall
include the total of expenditures made for personal
services, annual increment, current expenses (inmate
medical expenses and other), repairs and alterations and
equipment.

From the above appropriation to Unclassified, on July
1, 1998, the sum of two hundred thousand dollars shall be
transferred to the department of agriculture — land
division as advance payment for the purchase of food
products; actual payments for such purchases shall not be
required until such credits have been completely
expended.

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

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0453</td>
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<td>0612</td>
<td>Personal Services</td>
<td>$23,404,814</td>
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<td>001</td>
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<td></td>
<td>Annual Increment</td>
<td>151,900</td>
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<tr>
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<td>4,679,140</td>
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<td>COPS Program-Federal Match</td>
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<td>Vehicle Purchase</td>
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<tr>
<td>451</td>
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<td>Barracks Maintenance and</td>
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<tr>
<td>494</td>
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<td></td>
<td>Construction (R)</td>
<td></td>
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<td>558</td>
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<td>Communications and Other</td>
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<td>558</td>
<td></td>
<td></td>
<td>Equipment (R)</td>
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<td>751</td>
<td></td>
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<td>Debt Payment/Capital Outlay,</td>
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<td>751</td>
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<td>Renovations, Repair to Barracks</td>
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<tr>
<td>568</td>
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<td></td>
<td>Overtime and Wage Court Awards</td>
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<tr>
<td>605</td>
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<td>Trooper Retirement Fund</td>
<td>15,021,220</td>
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Any unexpended balance remaining in the appropriation for Unclassified (fund 0453, activity 099), Barracks Maintenance and Construction (fund 0453, activity 494), Communications and Other Equipment (fund 0453, activity 558), and Handgun Administration Expense (fund 0453, activity 747) at the close of the fiscal year 1997-1998 is hereby reappropriated for expenditure during the fiscal year 1998-99.

Any unexpended balance remaining in the appropriation for Unclassified line item (fund 0453, activity 099) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.

The above appropriation for Trooper Class/Grant Match (fund 0453, activity 733) may qualify for federal grant funds. Should a federal grant be approved, any excess funds intended for personal services or employee benefits—which are not required for grant match—are to revert to the general revenue fund.

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

Fund 0456 FY 1999 Org 0613

1 Personal Services ...................... 001 $ 696,559
2 Annual Increment ....................... 004 20,650
3 Employee Benefits ..................... 010 321,972
4 Unclassified .......................... 099 15,920
5 Veterans' Field Offices ............... 228 129,692

*Clerk's Note: The following language was deleted by the Governor: "designated for the construction of the Moorefield/Petersburg Detachment".
100 APPROPRIATIONS

6 Veterans' Toll Free Assistance
7 Line (R) ......................... 328 25,000
8 Veterans' Field Office Improvements . 331 53,976
9 Veterans' Reeducation Assistance (R) . 329 270,000
10 Veterans' Monuments ............... 817 100,000
11 Veterans' Grant Program (R) ........ 342 150,000
12 Total ................................ $ 1,783,769

13 Any unexpended balances remaining in the
14 appropriations for Veterans' Toll Free Assistance Line
15 (fund 0456, activity 328), and Veterans' Reeducation
16 Assistance (fund 0456, activity 329) and Barboursville
17 Veterans' Home Improvements (fund 0456, activity 466)
18 at the close of the fiscal year 1997-98 are hereby
19 reappropriated for expenditure during the fiscal year

64—Division of Veterans' Affairs—
Veterans' Home

(WV Code Chapter 9A)

Fund 0460 FY 1999 Org 0618

1 Personal Services ................. 001 $ 587,375
2 Annual Increment .................. 004 16,150
3 Employee Benefits ................. 010 331,233
4 Unclassified ........................ 099 160,234
5 Total ................................ $ 1,094,992

6 Any unexpended balance remaining in the
7 appropriation for Barboursville Veterans' Home
8 Improvements (fund 0460, activity 466) at the close of the
9 fiscal year 1997-98 is hereby reappropriated for
10 expenditure during the fiscal year 1998-99.

65—Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 1999 Org 0619

1 Personal Services .................. 001 $ 547,364
## APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>11,800</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>173,556</td>
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<td>4</td>
<td>Unclassified</td>
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<td>205,601</td>
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<td>5</td>
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<td>938,321</td>
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### 66—Division of Criminal Justice and Highway Safety

(Executive Order)

<table>
<thead>
<tr>
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<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<td>0546</td>
<td>1999</td>
<td>0620</td>
<td>Personal Services</td>
<td>001</td>
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<td>Annual Increment</td>
<td>004</td>
<td>-0-</td>
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<td></td>
<td></td>
<td></td>
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<td>Statistical Analysis Program</td>
<td>597</td>
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<td></td>
<td>Total</td>
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<td>$-0-</td>
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### 67—Division of Criminal Justice Services

(Executive Order)

<table>
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<tr>
<th>Fund</th>
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<th>Org</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<td>0546</td>
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<td>0620</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>Unclassified</td>
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<td>Statistical Analysis Program</td>
<td>597</td>
<td>50,000</td>
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<td>Total</td>
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<td>$424,425</td>
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### 68—Division of Juvenile Services

(WV Code Chapter 49)

<table>
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<tr>
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<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<td>0570</td>
<td>1999</td>
<td>0621</td>
<td>Personal Services</td>
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<tr>
<td>Item</td>
<td>Description</td>
<td>Code</td>
<td>Amount</td>
<td></td>
<td></td>
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<td>------</td>
<td>------------</td>
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<td></td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>0</td>
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<td>5</td>
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**DEPARTMENT OF TAX AND REVENUE**

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

Fund 0465 FY 1999 Org 0701

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>$ 166,626</td>
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70—Tax Division
(WV Code Chapter 11)

Fund 0470 FY 1999 Org 0702

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<th>Description</th>
<th>Code</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>232,650</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>3,451,431</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>6,214,296</td>
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<td>Property Tax Valuation and Assessment System</td>
<td>477</td>
<td>2,000,000</td>
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<tr>
<td>6</td>
<td>Remittance Processor</td>
<td>570</td>
<td>325,000</td>
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<td>7</td>
<td>Total</td>
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<td>$21,801,386</td>
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Any unexpended balances remaining in the appropriations for Automation Project (fund 0470, activity 442), Automation Project—Total—Surplus (fund 0470, activity 673) and Property Tax Electronic Data Processing System Network Project (fund 0470, activity 684) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.
71—Division of Professional and Occupational Licenses—
State Athletic Commission

(WV Code Chapter 29)

Fund 0523 FY 1999 Org 0933

1 Unclassified—Total .................. 096 $ 4,719

DEPARTMENT OF TRANSPORTATION

72—Department of Transportation—
Office of the Secretary

(WV Code Chapter 5F)

Fund 0500 FY 1999 Org 0801

1 Unclassified .................... 099 $ 166,272
2 Civil Air Patrol .................... 234 186,952
3 Port Authority (R) .................. 443 493,471
4 Potomac Highlands
5 Airport Authority .................. 444 60,000
6 Aeronautics Commission ............ 818 400,000
7 Total ................................ $ 1,306,695

8 Any unexpended balances remaining in the appropriations for Port Authority (fund 0500, activity 443) and Aeronautics Commission - Surplus (fund 0500, activity 450) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

14 Any unexpended balance remaining in the appropriation for Unclassified (fund 0500, activity 099) * at the close of fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.

* Clerk's Note: The following language was deleted by the Governor: “designated for the Benedum Airport Aerospace Park Access Road”.
### 73—State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 1999 Org 0804

<table>
<thead>
<tr>
<th>Description</th>
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### 74—Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 1999 Org 0805

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<td>Unclassified—Total (R)</td>
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Any unexpended balance remaining in the appropriation for Unclassified—Total (fund 0510, activity 096) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.

### BUREAU OF COMMERCE

#### 75—Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 1999 Org 0305

<table>
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<th>Code</th>
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<tr>
<td>Personal Services</td>
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<td>Employee Benefits</td>
<td>010</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
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<tr>
<td>Aerial Tanker Air Planes</td>
<td>752</td>
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<tr>
<td>Total</td>
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<td>$2,479,108</td>
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</table>

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

### 76—Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 1999 Org 0306
Any unexpended balances remaining in the appropriations for Mineral Mapping System - Surplus (fund 0253, activity 610), Mineral Mapping System (fund 0253, activity 207) and Geographic Information System (fund 0253, activity 214) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

The above Unclassified appropriation includes funding to secure federal and other contracts and may be transferred to a special revolving fund (fund 3105, activity 099) for the purpose of providing advance funding for such contracts.

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

Fund 0256 FY 1999 Org 0307

<table>
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<th>Item</th>
<th>Description</th>
<th>Fund</th>
<th>FY 1999</th>
<th>Org</th>
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<td>Employee Benefits</td>
<td>010</td>
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<td>2,452,436</td>
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<td>5</td>
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<td>6</td>
<td>National Youth Science Camp</td>
<td>132</td>
<td>200,000</td>
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<td>7</td>
<td>Local Economic Development Partnerships (R)</td>
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<td></td>
<td>Appropriations</td>
<td>[Ch. 6]</td>
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<tr>
<td>9</td>
<td>ARC Assessment</td>
<td>136 167,308</td>
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<td>10</td>
<td>Wood Products Initiative</td>
<td>233 94,400</td>
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<td>11</td>
<td>High Tech Initiative</td>
<td>236 94,400</td>
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<td>12</td>
<td>Welfare-to-Work</td>
<td>237 -0-</td>
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<td>13</td>
<td>Polymer Alliance</td>
<td>754 100,000</td>
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<td>14</td>
<td>Guaranteed Work Force Grant (R)</td>
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<td>15</td>
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<td>Robert C. Byrd Institute for Advanced Technology and Small Business Development Program (R)</td>
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<td>Industrial Park Assistance (R)</td>
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<td>24</td>
<td>WV Film Development Office</td>
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<td>25</td>
<td>National Institute of Chemical Studies</td>
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<td>Leverage Technology and Small Business Development Program (R)</td>
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<td>WV Partnership for Industrial Modernization (R)</td>
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<td>31</td>
<td>International Offices (R)</td>
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<td>European Trade and Tourism Office</td>
<td>763 400,000</td>
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<td>819 2,000,000</td>
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<td>$22,363,652</td>
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Any unexpended balances remaining in the appropriations for Partnership Grants (fund 0256, activity 131), Guaranteed Work Force Grant (fund 0256, activity 131), and...
242), Local Economic Development Partnerships (fund 0256, activity 133), Empowerment Zone/Enterprise Community (fund 0256, activity 218), Guaranteed Work Force Grant - Surplus (fund 0256, activity 496), Guaranteed Work Force Grant/Small Business Programs (fund 0256, activity 354), Small Business Financial Assistance (fund 0256, activity 360), Industrial Park Assistance (fund 0256, activity 480), Leverage Technology and Small Business Development Program (fund 0256, activity 525), Small Business Work Force (fund 0256, activity 735), International Offices (fund 0256, activity 593) and West Virginia Partnership for Industrial Modernization (fund 0256, activity 592) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

The above appropriation to Local Economic Development Partnerships shall be used by the West Virginia development office for the award of funding assistance to county and regional economic development corporations or authorities participating in the certified development community program developed under the provisions of section three, article two, chapter five-b of the code. The West Virginia development office shall award the funding assistance through a matching grant program, based upon a formula whereby funding assistance may not exceed thirty thousand dollars per county served by an economic development corporation or authority.

78—Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 1999 Org 0308

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
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<td>1</td>
<td>Personal Services</td>
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<td>5</td>
<td>Computer/Technology Upgrades</td>
<td>322</td>
<td>-Q-</td>
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<tr>
<td></td>
<td>Total</td>
<td></td>
<td>$3,183,947</td>
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</table>
Any unexpended balance remaining in the appropriation for Computer/Technology Upgrades (fund 0260, activity 322) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.

79—Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 1999 Org 0310

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<td>107,883</td>
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<td>5 Nongame Wildlife</td>
<td>527</td>
<td>550,000</td>
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<td>6 West Virginia Stream Partners Program</td>
<td>637</td>
<td>100,000</td>
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<td>7 Upper Mud River Flood Control</td>
<td>654</td>
<td>201,768</td>
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<tr>
<td>8 Law Enforcement</td>
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<tr>
<td>9 Total</td>
<td></td>
<td>$13,238,239</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Law Enforcement - Surplus (fund 0265, activity 722) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.

Any revenue derived from mineral extraction at any state park shall be deposited in a special revenue account of the division of natural resources, first for bond debt payment purposes and with any remainder to be for park operation and improvement purposes.

80—Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 1999 Org 0314
**APPROPRIATIONS**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$3,527,623</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>60,750</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,199,437</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>1,032,350</td>
</tr>
<tr>
<td>5</td>
<td>West Virginia Diesel Equipment Commission</td>
<td>712</td>
<td>30,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$5,850,160</td>
</tr>
</tbody>
</table>

**81—Board of Coal Mine Health and Safety**

(WV Code Chapter 22)

Fund 0280 FY 1999 Org 0319

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$95,650</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>300</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>23,200</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>39,532</td>
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<td>5</td>
<td>Total</td>
<td></td>
<td>$158,682</td>
</tr>
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</table>

**82—Coal Mine Safety and Technical Review Committee**

(WV Code Chapter 22)

Fund 0285 FY 1999 Org 0320

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$73,410</td>
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</tbody>
</table>

**BUREAU OF ENVIRONMENT**

**83—Environmental Quality Board**

(WV Code Chapter 20)

Fund 0270 FY 1999 Org 0311

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$63,609</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>443</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>23,026</td>
</tr>
</tbody>
</table>
APPROPRIATIONS

4 Unclassified .................................................. 099 30,186
5 Total .................................................. $ 117,264

84—Interstate Commission on Potomac River Basin

(WV Code Chapter 29)

Fund 0263 FY 1999 Org 0313

1 West Virginia's Contribution to the Interstate Commission on Potomac River Basin—Total . . . 134 $ 41,064

85—Ohio River Valley Water Sanitation Commission

(WV Code Chapter 29)

Fund 0264 FY 1999 Org 0313

1 West Virginia's Contribution to the Ohio River Valley Water Sanitation Commission—Total . . . 135 $ 120,600

86—Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 1999 Org 0313

1 Personal Services .................. 001 $ 3,986,713
2 Annual Increment .................. 004 77,813
3 Employee Benefits .................. 010 1,366,648
4 Unclassified .................. 099 676,317
5 Black Fly Control .................. 137 240,548
6 Dam Safety .................. 607 125,671
7 Total .................. $ 6,473,710

87—Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 1999 Org 0325

1 Unclassified—Total .................. 096 $ 77,858
### Appropriations

**BUREAU OF SENIOR SERVICES**

*88—Bureau of Senior Services*

(WV Code Chapter 29)

Fund 0420 FY 1999 Org 0508

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fund Code</th>
<th>FY 1999 Org Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$116,238</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>2,333</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>57,601</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>438,101</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Local Programs Service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Delivery Costs</td>
<td>200</td>
<td>2,475,250</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Silver Haired Legislature</td>
<td>202</td>
<td>14,400</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Area Agencies Administration</td>
<td>203</td>
<td>87,428</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Foster Grandparents Stipends and Travel</td>
<td>205</td>
<td>57,734</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>In-Home Services for Senior Citizens</td>
<td>224</td>
<td>$700,000</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Total</td>
<td></td>
<td>$3,949,085</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Senior Citizens Centers—Land Acquisition, Construction and Repairs and Alterations (fund 0420, activity 201) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.

**BUREAU OF EMPLOYMENT PROGRAMS**

*89—Bureau of Employment Programs*

(WV Code Chapter 23)

Fund 0572 FY 1999 Org 0323

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fund Code</th>
<th>FY 1999 Org Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Welfare-to-Work—Total</td>
<td>416</td>
<td>$2,500,000</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Total TITLE II, Section 1—</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>General Revenue</td>
<td></td>
<td>$2,586,963,474</td>
<td></td>
</tr>
</tbody>
</table>
Sec. 2. Appropriations from state road fund.—From the state road fund there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred ninety-nine.

DEPARTMENT OF TRANSPORTATION

90—Division of Motor Vehicles

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

Fund 9007 FY 1999 Org 0802

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$6,235,008</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>92,200</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>2,287,487</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>16,426,366</td>
</tr>
<tr>
<td>5 Capital Outlay-Building</td>
<td>980,000</td>
</tr>
<tr>
<td>6 International Fuel Tax Agreement</td>
<td>623,968</td>
</tr>
<tr>
<td>7 Total</td>
<td>$26,645,029</td>
</tr>
</tbody>
</table>

91—Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 1999 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service</td>
<td>$48,700,000</td>
</tr>
<tr>
<td>2 ARC Assessment</td>
<td>794,000</td>
</tr>
<tr>
<td>3 Maintenance, Expressway, Trunkline and Feeder</td>
<td>85,000,000</td>
</tr>
<tr>
<td>5 Maintenance, State Local Services</td>
<td>129,000,000</td>
</tr>
</tbody>
</table>
6 Maintenance, Contract
7 Paving and Secondary
8 Road Maintenance ........ 272  50,000,000
9 Bridge Repair and Replacement ... 273  35,000,000
10 Inventory Revolving .......... 275  1,250,000
11 Equipment Revolving .......... 276  15,000,000
12 General Operations .......... 277  37,535,000
13 Interstate Construction ...... 278  20,000,000
14 Other Federal Aid Programs .... 279  60,000,000
15 Appalachian Programs ........ 280  30,000,000
16 Nonfederal Aid Construction ... 281  40,000,000
17 Highway Litter Control ....... 282  1,360,000
18 Total ....................... $ 553,639,000

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

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

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

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

92—Division of Highways—
Federal Aid Highway Matching Fund
(WV Code Chapters 17 and 17C)
Fund 9018 FY 1999 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Interstate Construction ............ 278</td>
<td>$ 35,000,000</td>
</tr>
<tr>
<td>2 Other Federal Aid Programs ........... 279</td>
<td>180,000,000</td>
</tr>
<tr>
<td>3 Appalachian Programs ............. 280</td>
<td>60,000,000</td>
</tr>
<tr>
<td>4 Total ................................</td>
<td>$275,000,000</td>
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</table>

93—Claims Against the State Road Fund

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Claims Against the State .......... 319</td>
<td>$ -0-</td>
</tr>
<tr>
<td>2 Total TITLE II, Section 2—</td>
<td>$855,284,029</td>
</tr>
<tr>
<td>3 State Road Fund .................</td>
<td></td>
</tr>
</tbody>
</table>

Sec. 3. Appropriations from other funds.—From the
funds designated there are hereby appropriated
conditionally upon the fulfillment of the provisions set
forth in article two, chapter five-a of the code the
following amounts, as itemized, for expenditure during the
fiscal year one thousand nine hundred ninety-nine.

LEGISLATIVE

94—Crime Victims Compensation Fund
(WV Code Chapter 14)
Fund 1731 FY 1999 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ............... 001</td>
<td>$ 145,096</td>
</tr>
<tr>
<td>2 Annual Increment .............. 004</td>
<td>2,500</td>
</tr>
</tbody>
</table>
There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the expenditure of funds other than personal services or employee benefits to enable the division to pay the direct expenses relating to land sales as provided in chapter eleven-a of the West Virginia Code.

The total amount of this appropriation shall be paid from the special revenue fund out of fees and collections as provided by law.
### 97—Auditor’s Office—
*Securities Regulation Fund*

(WV Code Chapter 32)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org 1200</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

### 98—Auditor’s Office—
*Technology Support and Acquisition Fund*

(WV Code Chapter 12)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org 1200</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unclassified—Total</td>
<td>096</td>
</tr>
</tbody>
</table>

### 99—Treasurer’s Office—
*Technology Support and Acquisition Fund*

(WV Code Chapter 12)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org 1300</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
</tr>
</tbody>
</table>

### 100—Department of Agriculture

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org 1400</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
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</tr>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>
### Ch. 6 APPROPRIATIONS

**101—Department of Agriculture—West Virginia Rural Rehabilitation Program**

(WV Code Chapter 19)

Fund 1408 FY 1999 Org 1400

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Fund</th>
<th>Student and Farm Loans—Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td>235</td>
</tr>
<tr>
<td>2</td>
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<tr>
<td>3</td>
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<td></td>
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<tr>
<td>4</td>
<td></td>
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<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>536,076</strong></td>
</tr>
</tbody>
</table>

**102—Department of Agriculture—General John McCausland Memorial Farm**

(WV Code Chapter 19)

Fund 1409 FY 1999 Org 1400

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Fund</th>
<th>Personal Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td>001</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td>010</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td>099</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td><strong>51,493</strong></td>
</tr>
</tbody>
</table>

**103—Department of Agriculture—Farm Operating Fund**

(WV Code Chapter 19)

Fund 1412 FY 1999 Org 1400

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Fund</th>
<th>Unclassified—Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td>096</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>964,094</strong></td>
</tr>
</tbody>
</table>

**104—Attorney General—Antitrust Enforcement**

(WV Code Chapter 47)

Fund 1507 FY 1999 Org 1500

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Fund</th>
<th>Personal Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td>001</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td>010</td>
</tr>
<tr>
<td>4</td>
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<td>099</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>457,493</strong></td>
</tr>
<tr>
<td>Fund</td>
<td>FY 1999</td>
<td>Org</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>---------</td>
<td>-----</td>
<td>-------------</td>
</tr>
<tr>
<td>1513</td>
<td></td>
<td>1500</td>
<td>105—Attorney General—Preneed Funeral Regulation Fund</td>
</tr>
<tr>
<td>1514</td>
<td></td>
<td>1500</td>
<td>106—Attorney General—Preneed Funeral Guarantee Fund</td>
</tr>
<tr>
<td>1610</td>
<td></td>
<td>1600</td>
<td>107—Secretary of State—Trademark Registration</td>
</tr>
<tr>
<td>2040</td>
<td></td>
<td>0201</td>
<td>108—Office of the Secretary—Natural Gas Contract Refund Fund</td>
</tr>
<tr>
<td>2220</td>
<td></td>
<td>0210</td>
<td>109—Division of Information Services and Communications</td>
</tr>
<tr>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the division of information services and communications as provided by law.

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the expenditure of funds other than personal services or employee benefits to enable the division to provide information processing services to user agencies. These services include, but are not limited to, data processing equipment, office automation and telecommunications.

Each spending unit operating from the general revenue fund, from special revenue funds or receiving reimbursement for postage from the federal government shall be charged monthly for all postage meter service and shall reimburse the revolving fund monthly for all such amounts.

110—Division of Purchasing—Revolving Fund

(WV Code Chapter 5A)

Fund 2320 FY 1999 Org 0216

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$862,535</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$36,440</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$330,591</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$610,678</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$1,840,244</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the division of purchasing as provided by law.

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the expenditure of funds other than personal services
or employee benefits to enable the division to provide printing, publishing and document services and for the purchase of supplies for resale to user agencies. These services include, but are not limited to, offset printing, electronic duplication/copying, microfilming, records storage and the sale of general office supplies.

111—Division of Personnel
(WV Code Chapter 29)
Fund 2440 FY 1999 Org 0222

1 Personal Services .............. 001 $ 2,213,677
2 Annual Increment .............. 004 60,100
3 Employee Benefits ........... . . 010 636,634
4 Unclassified .................. 099 762,121
5 Human Resource
6 Information System ........... 641 650,000
7 Total .......................... $ 4,322,532

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

112—WV Prosecuting Attorneys’ Institute
(WV Code Chapter 7)
Fund 2521 FY 1999 Org 0228

1 Unclassified—Total ............. 096 $ 163,307

DEPARTMENT OF EDUCATION
113—State Department of Education—School Building Authority
(WV Code Chapter 18)
Fund 3959 FY 1999 Org 0402

1 Personal Services .............. 001 $ 427,617
2 Annual Increment .............. 004 5,450
Employee Benefits .................. 010 $156,205
Unclassified ........................ 099 $272,819
Total ................................ $862,091

The above appropriation for the administrative expenses of the school building authority shall be paid from the interest earnings on debt service reserve accounts maintained on behalf of said authority.

114—State Department of Education—FFA-FHA Camp and Conference Center
(WV Code Chapter 18)
Fund 3960 FY 1999 Org 0402

Personal Services ...................... 001 $719,940
Annual Increment ........................ 004 $11,150
Employee Benefits ...................... 010 $323,611
Unclassified .......................... 099 $932,502
Total ................................ $1,987,203

115—State Board of Education—Strategic Staff Development
(WV Code Chapter 18)
Fund 3937 FY 1999 Org 0402

Unclassified—Total ....................... 096 $500,000

DEPARTMENT OF EDUCATION AND THE ARTS

116—State College and University Systems—State Systems Registration Fee—Revenue Bond Construction Fund
(WV Code Chapters 18 and 18B)
Fund 4033 FY 1999 Org 0453

Any unexpended balances remaining in the appropriations are hereby reappropriated for expenditure during the fiscal year 1998-99.
4 The total amount of this appropriation shall be paid
5 from the proceeds of revenue bonds issued pursuant to
6 section eight, article ten, chapter eighteen-b of the code.

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

(WV Code Chapters 18 and 18B)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>0441</td>
<td></td>
<td>0453</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th></th>
<th>Revenue Bond Costs</th>
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<tbody>
<tr>
<td>1</td>
<td>1997</td>
<td>$734,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the Appropriations are hereby reappropriated for expenditure during the fiscal year 1998-99.

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

118—Board of Trustees of the
   University System of West Virginia
   and Board of Directors of the State College System
   Lottery Education Fund Interest Earnings
   Control Account

(WV Code Chapter 18B)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
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</thead>
<tbody>
<tr>
<td>0564</td>
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<td>0453</td>
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<table>
<thead>
<tr>
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<th>Higher Education Grant</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Total</td>
</tr>
</tbody>
</table>

119—State University System—
   State System Registration Fee—
   Special Capital Improvement Fund
   (Capital Improvement and Bond Retirement Fund)
   Control Account

(WV Code Chapters 18 and 18B)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org</th>
</tr>
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<tbody>
<tr>
<td>0007</td>
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<td>0461</td>
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<table>
<thead>
<tr>
<th></th>
<th>Debt Service (R)</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Total</td>
</tr>
</tbody>
</table>
### Ch. 6] APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Capital Repairs and Alterations (R)</td>
<td>2,690,400</td>
</tr>
<tr>
<td>3</td>
<td>Miscellaneous Projects (R)</td>
<td>400,000</td>
</tr>
<tr>
<td>4</td>
<td>Computer and Telecommunications Technology (R)</td>
<td>691,200</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$8,012,612</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations are hereby reappropriated for expenditure during the fiscal year 1998-99.

The total amount of this appropriation shall be paid from the special capital improvement fund created in section eight, article ten, chapter eighteen-b of the code.

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

120—State University System—
State System Tuition Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Control Account

(WV Code Chapters 18 and 18B)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org</th>
<th>Debt Service (R)</th>
<th>$10,625,968</th>
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<tbody>
<tr>
<td>1</td>
<td>FY 1999</td>
<td>040</td>
<td>Building and Campus Renewal (R)</td>
<td>9,551,300</td>
</tr>
<tr>
<td>2</td>
<td>FY 1999</td>
<td>258</td>
<td>Facilities Planning and Administration (R)</td>
<td>190,000</td>
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<tr>
<td>3</td>
<td>FY 1999</td>
<td>386</td>
<td>Computer and Telecommunications Technology (R)</td>
<td>691,200</td>
</tr>
<tr>
<td>4</td>
<td>FY 1999</td>
<td>438</td>
<td>Total</td>
<td>$21,058,468</td>
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</table>

Any unexpended balances remaining in the appropriations are hereby reappropriated for expenditure during the fiscal year 1998-99.
The total amount of this appropriation shall be paid from the special capital improvement fund created in article twelve-b, chapter eighteen of the code.

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

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

(WV Code Chapters 18 and 18B)

Fund 4179 FY 1999 Org 0463

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

Any unexpended balance remaining in the appropriation for the West Virginia University Health Sciences Center is hereby reappropriated for expenditure during the fiscal year 1998-99.

122—State College System—
State System Registration Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Control Account

(WV Code Chapters 18 and 18B)

Fund 4289 FY 1999 Org 0481

1 Debt Service (R) .................... 040 $  2,092,035
2 Capital Repairs and Alterations (R) . 251  1,406,400
3 Total .......................... $  3,498,435

Any unexpended balances remaining in the appropriations are hereby reappropriated for expenditure during the fiscal year 1998-99.

The total amount of this appropriation shall be paid from the special capital improvement fund created in section eight, article ten, chapter eighteen-b of the code.
The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at college system institutions.

123—State College System—
   State System Tuition Fee—
   Special Capital Improvement Fund
   (Capital Improvement and Bond Retirement Fund)
   Control Account

(WV Code Chapters 18 and 18B)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>4290</td>
<td></td>
<td>0481</td>
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<table>
<thead>
<tr>
<th>Description</th>
<th>FY 1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service (R)</td>
<td>040</td>
</tr>
<tr>
<td>Capital Improvements (New) (R)</td>
<td>259</td>
</tr>
<tr>
<td>Capital Contingencies and</td>
<td>537</td>
</tr>
<tr>
<td>Emergencies (R)</td>
<td></td>
</tr>
<tr>
<td>Building and Campus</td>
<td></td>
</tr>
<tr>
<td>Renewal and Facilities</td>
<td></td>
</tr>
<tr>
<td>Planning and Administration (R)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

- Debt Service: $3,055,965
- Capital Improvements: $1,179,000
- Capital Contingencies and Emergencies: $250,000
- Building and Campus Renewal and Facilities Planning and Administration: $2,404,700
- Total: $6,889,665

Any unexpended balances remaining in the appropriations are hereby reappropriated for expenditure during the fiscal year 1998-99.

The total amount of this appropriation shall be paid from the special capital improvement fund created in article twelve-b, chapter eighteen of the code.

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

124—State Board of Rehabilitation—
Division of Rehabilitation Services—
West Virginia Rehabilitation Center
Special Account

(WV Code Chapter 18)

Fund 8664 FY 1999 Org 0932
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$700,000</td>
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<tr>
<td>Workshop Development</td>
<td>163</td>
<td>$450,000</td>
</tr>
<tr>
<td>Workshop-Supported Employment</td>
<td>484</td>
<td>$50,000</td>
</tr>
<tr>
<td>Medical Services Trust Fund-Transfer</td>
<td>512</td>
<td>$2,000,000</td>
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<tr>
<td>Total</td>
<td></td>
<td>$3,200,000</td>
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</tbody>
</table>

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**125—Board of Barbers and Cosmetologists**

(WV Code Chapters 16 and 30)

**Fund 5425 FY 1999 Org 0505**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$187,568</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$4,661</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$62,559</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$113,550</td>
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<tr>
<td>Total</td>
<td></td>
<td>$368,338</td>
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</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the board of barbers and cosmetologists as provided by law.

**126—Division of Health—Vital Statistics**

(WV Code Chapter 16)

**Fund 5144 FY 1999 Org 0506**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$212,104</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$8,203</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$111,168</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$103,950</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$435,425</td>
</tr>
</tbody>
</table>
127—Division of Health—
Hospital Services Revenue Account
(Special Fund)
(Capital Improvement, Renovation and Operations)

(WV Code Chapter 16)

Fund 5156 FY 1999 Org 0506

1 Debt Service (R) ....... 040 $ 2,420,000
2 Institutional Facilities
3 Operations (R) ......... 335 32,140,000
4 Medical Services Trust Fund—
5 Transfer (R) ............. 512 23,300,000
6 Broad Based Provider Tax (R) .... 566 $0
7 Total .................. $ 57,860,000

Any unexpended balances remaining in the appropriations for hospital services revenue account at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99, except for fund 5156, activity 335 (fiscal year 1995-96), fund 5156, activity 040, and activity 566 (fiscal year 1996-97), and fund 5156, activity 512 (fiscal year 1997-98), which shall expire on June 30, 1998.

The total amount of this appropriation shall be paid from the hospital services revenue account special fund created by section fifteen-a, article one, chapter sixteen of the code, and shall be used for operating expenses and for improvements in connection with existing facilities and bond payments.

The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations line item to facilitate cost effective and cost saving services at the community level.

Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this account or in connection with the line item
designated Institutional Facilities Operations in the consolidated medical service fund (fund 0525, fiscal year 1999, organization 0506).

From the above appropriation to Institutional Facilities Operations, together with available funds from the consolidated medical services fund (fund 0525, activity 335), on July 1, 1998, the sum of one hundred fifty thousand dollars shall be transferred to the department of agriculture—land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

128—Division of Health—Laboratory Services

(WV Code Chapter 16)

Fund 5163 FY 1999 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$435,152</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$9,450</td>
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<td>3 Employee Benefits</td>
<td>$149,628</td>
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<td>4 Unclassified</td>
<td>$450,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,044,230</strong></td>
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</table>

129—Division of Health—Health Facility Licensing

(WV Code Chapter 16)

Fund 5172 FY 1999 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$166,732</td>
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<tr>
<td>2 Annual Increment</td>
<td>$2,800</td>
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<td>3 Employee Benefits</td>
<td>$62,062</td>
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<td>4 Unclassified</td>
<td>$102,904</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$334,498</strong></td>
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</table>
130—Division of Health—
Hepatitis B Vaccine

(WV Code Chapter 16)

Fund 5183 FY 1999 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>50,056</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>1,100</td>
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<td>3</td>
<td>Employee Benefits</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>2,350,000</td>
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<td>Total</td>
<td>2,418,885</td>
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</table>

131—Division of Health—
Lead Abatement Fund

(WV Code Chapter 16)

Fund 5204 FY 1999 Org 0506

<table>
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<th>Item</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>64,800</td>
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</tbody>
</table>

132—West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 5375 FY 1999 Org 0507

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Budget</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>1,461,109</td>
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<td>Annual Increment</td>
<td>13,578</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>513,202</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>2,191,231</td>
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<tr>
<td>5</td>
<td>Total</td>
<td>4,179,120</td>
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</tbody>
</table>

The above appropriation is to be expended in accordance with and pursuant to the provisions of article twenty-nine-b, chapter sixteen of the code and from the special revolving fund designated health care cost review fund.
133—Division of Human Services—
Health Care Provider Tax
(WV Code Chapter 11)

Fund 5090 FY 1999 Org 0511

<table>
<thead>
<tr>
<th>Unclassified—Total</th>
<th>096</th>
<th>$139,000,000</th>
</tr>
</thead>
</table>

From the above appropriation, an amount not to exceed two hundred thousand dollars shall be transferred to a special revenue account in the treasury for use by the department of health and human resources for administrative purposes. The remainder of all moneys deposited in the fund shall be transferred to the West Virginia medical services fund.

134—Division of Human Services—
Child Support Enforcement
(WV Code Chapter 48A)

Fund 5094 FY 1999 Org 0511

<table>
<thead>
<tr>
<th>Unclassified—Total</th>
<th>096</th>
<th>$26,334,382</th>
</tr>
</thead>
</table>

135—Division of Human Services—
Medical Services Trust Fund
(WV Code Chapter 9)

Fund 5185 FY 1999 Org 0511

| Eligibility Expansion | 582 | $5,435,648 |
| State Institutions DPSH Payments | 583 | $6,566,355 |
| Hospice Services | 584 | $340,115 |
| Match Drop | 585 | $10,472,000 |
| Total | | $22,814,118 |

Any unexpended balances remaining in the appropriations for Medical Services Payment Backlog (fund 5185, activity 260) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.
The Match Drop line item above shall be used in conjunction with funds appropriated to the division of human services in the Medical Services line item (fund 0403, activity 189). The remainder of all moneys deposited in the fund shall be transferred to the division of human services accounts.

**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

136—State Armory Board—
General Armory Fund

(WV Code Chapter 15)

<table>
<thead>
<tr>
<th>Fund 6102 FY 1999 Org 0604</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total .......... 096 $ 390,193</td>
</tr>
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</table>

137—West Virginia Division of Corrections—
Parolee Supervision Fees

(WV Code Chapter 62)

<table>
<thead>
<tr>
<th>Fund 6362 FY 1999 Org 0608</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001 $ 85,952</td>
</tr>
<tr>
<td>2 Employee Benefits .......... 010 38,271</td>
</tr>
<tr>
<td>3 Unclassified ............... 099 115,408</td>
</tr>
<tr>
<td>4 Total ..................... $ 239,631</td>
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</tbody>
</table>

138—West Virginia State Police—
Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

<table>
<thead>
<tr>
<th>Fund 6501 FY 1999 Org 0612</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001 $ 658,751</td>
</tr>
<tr>
<td>2 Annual Increment ........... 004 3,150</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010 192,625</td>
</tr>
<tr>
<td>4 Unclassified (R) .......... 099 889,861</td>
</tr>
<tr>
<td>5 Total ..................... $ 1,744,387</td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.

Any unexpended balance remaining in the appropriation for Unclassified (fund 6501, activity 099) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.

139—West Virginia State Police—Drunk Driving Prevention Fund
(WV Code Chapter 15)
Fund 6513 FY 1999 Org 0612

1 Unclassified—Total ............... 096 $ 1,020,000

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

140—West Virginia State Police—Surplus Real Property Proceeds Fund
(WV Code Chapter 15)
Fund 6516 FY 1999 Org 0612

1 Unclassified—Total ............... 096 $ 500,000

141—West Virginia State Police—Surplus Transfer Account
(WV Code Chapter 15)
Fund 6519 FY 1999 Org 0612

1 Unclassified—Total ............... 096 $ 350,000

142—WV State Police—Central Abuse Registry Fund
(WV Code Chapter 15)
Fund 6527 FY 1999 Org 0612
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>FY 1999</th>
<th>Org 0615</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$67,156</td>
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</tbody>
</table>

**143—Regional Jail and Correctional Facility Authority**

(WV Code Chapter 31)

Fund 6675 FY 1999 Org 0615

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>FY 1999</th>
<th>Org 0615</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$600,263</td>
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</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>7,050</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>196,614</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Debt Service</td>
<td>040</td>
<td>10,000,000</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>253,289</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$11,057,216</td>
<td></td>
</tr>
</tbody>
</table>

**144—Division of Veterans’ Affairs—Veterans’ Home**

(WV Code Chapter 19A)

Fund 6754 FY 1999 Org 0618

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>FY 1999</th>
<th>Org 0618</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$216,000</td>
<td></td>
</tr>
</tbody>
</table>

**145—Fire Commission—Fire Marshal Fees**

(WV Code Chapter 29)

Fund 6152 FY 1999 Org 0619

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>FY 1999</th>
<th>Org 0619</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$403,125</td>
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</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>5,200</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>123,969</td>
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</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>296,080</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$828,374</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended cash balance remaining in fund 6152 at the close of the fiscal year 1997-98 is hereby available for expenditure as part of the fiscal year 1998-99 appropriation.
### APPROPRIATIONS

**146—Criminal Justice—
Court Security Fund**

(Executive Order)

**Fund 6804 FY 1999 Org 0620**

<table>
<thead>
<tr>
<th>Item</th>
<th>_amount</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$2,000,000</td>
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</tbody>
</table>

**DEPARTMENT OF TAX AND REVENUE**

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

(WV Code Chapter 47A)

**Fund 3040 FY 1999 Org 0303**

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$5,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>988</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>5,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$10,988</td>
</tr>
</tbody>
</table>

**148—Division of Banking**

(WV Code Chapter 31A)

**Fund 3041 FY 1999 Org 0303**

<table>
<thead>
<tr>
<th>Item</th>
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<tr>
<td>Personal Services</td>
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<td>$1,132,933</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>14,200</td>
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<td>Employee Benefits</td>
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<td>$2,038,914</td>
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**149—Tax Division—
Office of Chief Inspector**

(WV Code Chapter 6)

**Fund 7067 FY 1999 Org 0702**

<table>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,362,010</td>
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<td>Annual Increment</td>
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<td>23,000</td>
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</table>
### 150—Tax Division—Cemetery Company Account

(WV Code Chapter 35)

<table>
<thead>
<tr>
<th>Fund 7071 FY 1999 Org 0702</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001</td>
</tr>
<tr>
<td>2 Employee Benefits .......... 010</td>
</tr>
<tr>
<td>3 Unclassified .............. 099</td>
</tr>
<tr>
<td>4 Total .....................</td>
</tr>
</tbody>
</table>

### 151—Tax Division—Special Audit and Investigative Unit

(WV Code Chapter 11)

<table>
<thead>
<tr>
<th>Fund 7073 FY 1999 Org 0702</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001</td>
</tr>
<tr>
<td>2 Annual Increment ........... 004</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010</td>
</tr>
<tr>
<td>4 Unclassified .............. 099</td>
</tr>
<tr>
<td>5 Total .....................</td>
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</tbody>
</table>

### 152—Insurance Commissioner—Examination Revolving Fund

(WV Code Chapter 33)

<table>
<thead>
<tr>
<th>Fund 7150 FY 1999 Org 0704</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001</td>
</tr>
<tr>
<td>2 Annual Increment ........... 004</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010</td>
</tr>
<tr>
<td>4 Unclassified .............. 099</td>
</tr>
<tr>
<td>5 Total .....................</td>
</tr>
</tbody>
</table>
153—Insurance Commissioner—Consumer Advocate
(WV Code Chapter 33)

Fund 7151 FY 1999 Org 0704

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
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<td>5</td>
<td>Total</td>
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</table>

154—Insurance Commissioner
(WV Code Chapter 33)

Fund 7152 FY 1999 Org 0704

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
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<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

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

155—Racing Commission—Relief Fund
(WV Code Chapter 19)

Fund 7300 FY 1999 Org 0707

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Medical Expenses—Total</td>
<td>245</td>
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</tbody>
</table>

The total amount of this appropriation shall be paid from the special revenue fund out of collections of license fees and fines as provided by law.
No expenditures shall be made from this account except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

**156—Racing Commission—Administration and Promotion**

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org 0707</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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<tr>
<td>1</td>
<td>Personal Services 001</td>
<td>$53,700</td>
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<td>2</td>
<td>Annual Increment 004</td>
<td>900</td>
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<td>3</td>
<td>Employee Benefits 010</td>
<td>23,459</td>
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<td>4</td>
<td>Unclassified 099</td>
<td>47,408</td>
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<td>Total</td>
<td>$125,467</td>
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</table>

**157—Racing Commission—General Administration**

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org 0707</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Personal Services 001</td>
<td>$1,138,980</td>
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<td>2</td>
<td>Annual Increment 004</td>
<td>17,250</td>
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<td>3</td>
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<td>290,817</td>
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<td>5</td>
<td>Total</td>
<td>$1,778,600</td>
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</table>

**158—Racing Commission—Administration, Promotion and Education Fund**

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org 0707</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Unclassified—Total 096</td>
<td>$35,000</td>
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</table>

**159—Alcohol Beverage Control Administration—Wine License Special Fund**
### Fund 7351 FY 1999 Org 0708

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fiscal Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$205,700</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,100</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>77,744</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>157,072</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$444,616</td>
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</table>

**160—Alcohol Beverage Control Administration**

### Fund 7352 FY 1999 Org 0708

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fiscal Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$2,641,028</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>73,251</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>1,456,730</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>2,023,296</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$6,194,305</td>
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</tbody>
</table>

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

The above appropriation includes the salary of the commissioner and the salaries, expenses and equipment of administrative offices, warehouses and inspectors.

There is hereby appropriated from liquor revenues, in addition to the above appropriation, the necessary amount for the purchase of liquor as provided by law.

### DEPARTMENT OF TRANSPORTATION

**161—Division of Motor Vehicles**

**Driver's License Reinstatement Fund**

### Fund 8213 FY 1999 Org 0802

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fiscal Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>$500,650</td>
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</table>
### 162—Division of Motor Vehicles

**Driver Rehabilitation**

(WV Code Chapter 17C)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org 0802</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096 $</td>
</tr>
</tbody>
</table>

### 163—Division of Motor Vehicles

**Insurance Certificate Fees**

(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org 0802</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001 $</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$</td>
</tr>
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</table>

### 164—Division of Motor Vehicles

**Motorboat Licenses**

(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org 0802</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096 $</td>
</tr>
</tbody>
</table>

### 165—Division of Motor Vehicles

**Returned Check Fees**

(WV Code Chapter 17)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org 0802</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096 $</td>
</tr>
</tbody>
</table>

**BUREAU OF COMMERCE**

### 166—Division of Forestry

(WV Code Chapter 19)
### Fund 3081 FY 1999 Org 0305

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$3,300</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$81,956</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$363,044</td>
</tr>
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<td><strong>Total</strong></td>
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<td><strong>$751,465</strong></td>
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</table>

### 167—Division of Forestry
### Timberland Enforcement Operations

(WV Code Chapter 19)

### Fund 3082 FY 1999 Org 0305

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
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</table>

### 168—Division of Forestry
### Severance Tax Operations

(WV Code Chapter 11)

### Fund 3084 FY 1999 Org 0305

<table>
<thead>
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<th>Item</th>
<th>Code</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
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<td>$2,929,560</td>
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<tr>
<td>Computer Upgrades</td>
<td>349</td>
<td>$127,500</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$3,057,060</strong></td>
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</table>

### 169—Geological and Economic Survey

(WV Code Chapter 29)

### Fund 3100 FY 1999 Org 0306

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$508</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$7,327</td>
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<td>Unclassified</td>
<td>099</td>
<td>$177,847</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$226,575</strong></td>
</tr>
</tbody>
</table>
The above appropriation shall be used in accordance with section four, article two, chapter twenty-nine of the code.

170—West Virginia Development Office—Energy Assistance

(WV Code Chapter 5B)

Fund 3144 FY 1999 Org 0307

Any unexpended balances remaining in the appropriations for Unclassified (fund 3144, activity 099) and Energy Assistance-Total (fund 3144, activity 647) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

171—Division of Labor Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 1999 Org 0308

<table>
<thead>
<tr>
<th>Description</th>
<th>FY 1999</th>
<th>Org 0308</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$745,311</td>
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<tr>
<td>Annual Increment</td>
<td>$11,012</td>
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<tr>
<td>Employee Benefits</td>
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<td>811,892</td>
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<tr>
<td>Total</td>
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</table>

172—Division of Labor Elevator Safety Act

(WV Code Chapter 21)

Fund 3188 FY 1999 Org 0308

<table>
<thead>
<tr>
<th>Description</th>
<th>FY 1999</th>
<th>Org 0308</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<tr>
<td>Annual Increment</td>
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<tr>
<td>Employee Benefits</td>
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<tr>
<td>Unclassified</td>
<td>82,068</td>
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<tr>
<td>Total</td>
<td>$306,772</td>
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</tr>
</tbody>
</table>
173—Division of Natural Resources
(WV Code Chapter 20)

Fund 3200 FY 1999 Org 0310

1 Personal Services .................. 001 $ 6,541,543
2 Annual Increment .................. 004 151,360
3 Employee Benefits .................. 010 2,493,950
4 Unclassified ......................... 099 2,090,124
5 Capital Improvements and
6 Land Purchase (R) ............... 248 1,247,953
7 Total ............................. $ 12,524,930

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

Any unexpended balance remaining in the appropriation for Capital Improvements and Land Purchase (fund 3200, activity 248) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.

174—Division of Natural Resources
Game, Fish and Aquatic Life Fund

(WV Code Chapter 20)

Fund 3202 FY 1999 Org 0310

1 Unclassified—Total .................. 096 $ 26,000

175—Division of Natural Resources
Nongame Fund

(WV Code Chapter 20)

Fund 3203 FY 1999 Org 0310

1 Personal Services .................. 001 $ 83,908
2 Annual Increment .................. 004 1,200
3 Employee Benefits .................. 010 28,249
### 176—Division of Natural Resources
#### Planning and Development Division

(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Fund ID</th>
<th>FY Year</th>
<th>Org Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>3205</td>
<td>1999</td>
<td>0310</td>
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<table>
<thead>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
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<td>001</td>
<td>213,440</td>
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<td>004</td>
<td>5,250</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>82,787</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>310,208</td>
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<td>5</td>
<td>Total</td>
<td></td>
<td>611,685</td>
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</table>

### 177—Division of Natural Resources
#### Whitewater Study and Improvement Fund

(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Fund ID</th>
<th>FY Year</th>
<th>Org Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>3253</td>
<td>1999</td>
<td>0310</td>
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<table>
<thead>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>130,000</td>
</tr>
</tbody>
</table>

### 178—Division of Natural Resources
#### Recycling Assistance Fund

(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Fund ID</th>
<th>FY Year</th>
<th>Org Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>3254</td>
<td>1999</td>
<td>0310</td>
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</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>131,016</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>2,500</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>2,619,306</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>2,807,158</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 3254, activity 099) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year.

179—Division of Natural Resources
Whitewater Advertising and Promotion Fund
(WV Code Chapter 20)

Fund 3256 FY 1999  Org 0310

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

BUREAU OF EMPLOYMENT PROGRAMS

180—Bureau of Employment Programs
Workers' Compensation Fund
(WV Code Chapter 23)

Fund 3440 FY 1999  Org 0322

1 Personal Services .................. 001 $ 20,144,138
2 Annual Increment .................. 004 357,553
3 Employee Benefits .................. 010 6,893,070
4 Unclassified (R) .................. 099 12,317,522
5 Employer Excess Liability Fund ... 226 114,307
6 Contractual and
7 Professional Services .......... 830 7,712,711
8 Total .............................. $ 47,539,301

9 Any unexpended balances remaining in the appropriations for Unclassified (fund 3440, activity 099) and Contractual Services -TQI (fund 3440, activity 748) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

BUREAU OF ENVIRONMENT

181—Solid Waste Management Board
### Appropriations

(WV Code Chapter 20)

**Fund 3288  FY 1999  Org 0312**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$424,047</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$3,200</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>$150,727</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>$1,122,668</td>
</tr>
<tr>
<td>5 Business/Technical Assistance</td>
<td>$80,886</td>
</tr>
<tr>
<td>6 Total</td>
<td>$1,781,528</td>
</tr>
</tbody>
</table>

**182—Division of Environmental Protection**

**Special Reclamation Fund**

(WV Code Chapter 22A)

**Fund 3321  FY 1999  Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$188,089</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$6,900</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>$72,957</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>$7,561,155</td>
</tr>
<tr>
<td>5 Total</td>
<td>$7,829,101</td>
</tr>
</tbody>
</table>

**183—Division of Environmental Protection**

**Oil and Gas Reclamation Trust**

(WV Code Chapter 22B)

**Fund 3322  FY 1999  Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>$465,000</td>
</tr>
</tbody>
</table>

**184—Division of Environmental Protection**

**Oil and Gas Operating Permits**

(WV Code Chapter 22B)

**Fund 3323  FY 1999  Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$207,106</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$3,825</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>---</td>
<td>------------------</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
</tr>
</tbody>
</table>

185—Division of Environmental Protection
Mines and Minerals Operations Fund
(WV Code Chapter 22)

Fund 3324 FY 1999 Org 0313

| 1 | Personal Services | 001 | $ 2,287,336 |
| 2 | Annual Increment  | 004 | 33,450      |
| 3 | Employee Benefits | 010 | 710,993     |
| 4 | Unclassified      | 099 | 768,031     |
| 5 | Total             |     | 3,799,810   |

186—Division of Environmental Protection
Underground Storage Tanks
Administrative Fund
(WV Code Chapter 20)

Fund 3325 FY 1999 Org 0313

| 1 | Personal Services | 001 | $ 290,856 |
| 2 | Annual Increment  | 004 | 4,450     |
| 3 | Employee Benefits | 010 | 104,521   |
| 4 | Unclassified      | 099 | 146,356   |
| 5 | Total             |     | 546,183   |

187—Division of Environmental Protection
Hazardous Waste Emergency and Response Fund
(WV Code Chapter 20)

Fund 3331 FY 1999 Org 0313

| 1 | Personal Services | 001 | $ 365,846 |
| 2 | Annual Increment  | 004 | 7,925     |
| 188—Division of Environmental Protection Solid Waste Reclamation and Environmental Response Fund |
|---|---|---|---|
| **Fund 3332 FY 1999 Org 0313** |
| 1 | Personal Services | 001 | $165,600 |
| 2 | Annual Increment | 004 | 2,400 |
| 3 | Employee Benefits | 010 | 53,032 |
| 4 | Unclassified | 099 | 786,353 |
| 5 | Total | | $1,007,385 |

| 189—Division of Environmental Protection Solid Waste Enforcement Fund |
|---|---|---|---|
| **Fund 3333 FY 1999 Org 0313** |
| 1 | Personal Services | 001 | $1,455,142 |
| 2 | Annual Increment | 004 | 24,600 |
| 3 | Employee Benefits | 010 | 477,940 |
| 4 | Unclassified | 099 | 779,550 |
| 5 | Litter Control-Conservation Officers | 564 | 200,000 |
| 6 | Total | | $2,937,232 |

| 190—Division of Environmental Protection Fees and Operating Expenses |
|---|---|---|---|
| **(WV Code Chapter 16)** |
### Appropriations

**Fund 3336 FY 1999 Org 0313**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$2,567,590</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$10,950</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$814,315</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$1,230,319</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$4,623,174</strong></td>
</tr>
</tbody>
</table>

191—Division of Environmental Protection—
Environmental Laboratory
Certification Fund

(WV Code Chapter 22)

**Fund 3340 FY 1999 Org 0313**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$110,345</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$1,500</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$34,971</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$72,051</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$218,867</strong></td>
</tr>
</tbody>
</table>

192—Division of Environmental Protection
Stream Restoration Fund

**Fund 3349 FY 1999 Org 0313**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>

193—Oil and Gas Conservation Commission

(WV Code Chapter 22)

**Fund 3371 FY 1999 Org 0315**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$151,503</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$1,300</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$29,118</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$49,074</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$230,995</strong></td>
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</tbody>
</table>
MISCELLANEOUS BOARDS AND COMMISSIONS

194—Hospital Finance Authority
(WV Code Chapter 16)
Fund 5475 FY 1999 Org 0509

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$28,568</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>450</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>11,599</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>25,895</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$66,512</td>
</tr>
</tbody>
</table>

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

195—Municipal Bond Commission
(WV Code Chapter 13)
Fund 7253 FY 1999 Org 0706

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$151,994</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>3,000</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>55,063</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>69,931</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$279,988</td>
</tr>
</tbody>
</table>

196—WV State Board of Examiners for Licensed Practical Nurses
(WV Code Chapter 30)
Fund 8517 FY 1999 Org 0906

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$339,109</td>
</tr>
</tbody>
</table>

197—WV Board of Examiners for Registered Professional Nurses
**198—West Virginia Cable Television Advisory Board**

(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8520</td>
<td>1999</td>
<td>0907</td>
<td>Unclassified—Total</td>
<td>789,648</td>
</tr>
<tr>
<td>8609</td>
<td>1999</td>
<td>0924</td>
<td>Personal Services</td>
<td>154,664</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>4,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>45,347</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Unclassified</td>
<td>68,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td>272,011</td>
</tr>
</tbody>
</table>

**199—Public Service Commission**

(WV Code Chapter 24)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8623</td>
<td>1999</td>
<td>0926</td>
<td>Personal Services</td>
<td>6,296,252</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>120,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>2,047,563</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Unclassified</td>
<td>2,452,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>765 KV Transmission Line Study</td>
<td>250,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td>11,165,815</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of collections for special license fees from public service corporations as provided by law.

The Public Service Commission is authorized to spend up to $250,000, from surplus funds in this account, to meet the expected deficiencies in the Motor Carrier
Division account due to passage of enrolled house bill no. 2715, regular session, 1997.

200—Public Service Commission—
Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8624 FY 1999 Org 0926

| 1   | Personal Services ............. 001 $   | 136,547 |
| 2   | Annual Increment .............. 004 $   | 5,556   |
| 3   | Employee Benefits ............. 010 $   | 42,839  |
| 4   | Unclassified ................. 099 $   | 98,500  |
| 5   | Total ................................ | $ 283,442 |

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

201—Public Service Commission—
Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 1999 Org 0926

| 1   | Personal Services ............. 001 $   | 1,367,053 |
| 2   | Annual Increment .............. 004 $   | 34,723    |
| 3   | Employee Benefits ............. 010 $   | 436,720   |
| 4   | Unclassified ................. 099 $   | 670,500   |
| 5   | Total ................................ | $ 2,508,996 |

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

(WV Code Chapter 24)

Fund 8627 FY 1999 Org 0926

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>FY 1999</th>
<th>Org 0926</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>403,887</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>4,350</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>122,375</td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>297,985</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$828,597</strong></td>
<td></td>
</tr>
</tbody>
</table>

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

203—Real Estate Commission

(WV Code Chapter 47)

Fund 8635 FY 1999 Org 0927

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>FY 1999</th>
<th>Org 0927</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>293,668</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>4,200</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>99,108</td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>269,400</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$666,376</strong></td>
<td></td>
</tr>
</tbody>
</table>

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

204—WV Board of Examiners
for Speech-Language
Pathology and Audiology

(WV Code Chapter 30)

Fund 8646 FY 1999 Org 0930

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>FY 1999</th>
<th>Org 0930</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>70,000</td>
<td></td>
</tr>
</tbody>
</table>
205—WV Board of Respiratory Care  
(WV Code Chapter 30)  
Fund 8676 FY 1999 Org 0935  
1 Unclassified—Total ............... 096 $ 107,961

206—WV Board of Licensed Dietitians  
Fund 8680 FY 1999 Org 0936  
1 Unclassified—Total ............... 096 $ 15,000

207—Massage Therapy Licensure Board  
(WV Code Chapter 37)  
Fund 8671 FY 1999 Org 0938  
1 Unclassified—Total ............... 096 $ 8,000

208—Claims Against Other Funds

1 Claims Against the State ........... 319 $ 0-  
2 Total TITLE II, Section 3—  
3 Other Funds ....................... $ 497,784,156

Sec. 4. Appropriations from lottery net profits.—  
2 Net profits of the lottery, not to exceed eighty million one  
hundred sixteen thousand one hundred thirteen dollars,  
are to be deposited by the lottery director to the following  
accounts in the amounts indicated. The auditor shall  
prorate each deposit of net profits by the lottery director  
among fund numbers 2252, 3067, 3267, 3507, 3951,  
3963, and 5405 in the proportion the appropriation for  
each account bears to the total of the appropriations for  
the seven accounts.

209—West Virginia Development Office—Division of Tourism  
(WV Code Chapter 5B)  
Fund 3067 FY 1999 Org 0304
### Appropriations

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Tourism—Telemarketing Center . . . 463</td>
<td>$ 100,000</td>
</tr>
<tr>
<td>2 Tourism—Advertising (R) ........ . 618</td>
<td>$ 2,240,000</td>
</tr>
<tr>
<td>3 State Parks and Recreation</td>
<td></td>
</tr>
<tr>
<td>4 Advertising (R) . . . . . . 619</td>
<td>$ 560,000</td>
</tr>
<tr>
<td>5 Tourism—Unclassified (R) . . . 662</td>
<td>$ 2,973,920</td>
</tr>
<tr>
<td>6 Total ...................................</td>
<td>$ 5,873,920</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Tourism-Advertising (fund 3067, activity 618), State Parks and Recreation Advertising (fund 3067, activity 619), Tourism-Unclassified (fund 3067, activity 662) and Raleigh County Meeting and Convention Center - Total - Surplus (fund 3067, activity 763) are hereby reappropriated for expenditure during the fiscal year 1998-99.

### 210—Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 1999 Org 0310

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Picketts Fort State Park . . . . 324</td>
<td>$ 120,000</td>
</tr>
<tr>
<td>2 Parks Operations—</td>
<td></td>
</tr>
<tr>
<td>3 Unclassified (R) . . . . . . 645</td>
<td>$ 1,440,143</td>
</tr>
<tr>
<td>4 Canaan Valley—Land</td>
<td></td>
</tr>
<tr>
<td>5 Acquisition (R) . . . . . . 710</td>
<td>$ 200,000</td>
</tr>
<tr>
<td>6 Total ...................................</td>
<td>$ 1,760,143</td>
</tr>
</tbody>
</table>

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

Fund 3951 FY 1999 Org 0402

1 Educational Development ........... 823 $ 1,500,000
2 Computer Basic Skills—Total (R) . . . 567 $ 16,300,000
3 Total .................................. $ 17,800,000

Any unexpended balances remaining in the appropriation for Elementary Computer Education-Total (fund 3951, activity 285), Computer Basic Skills—Total (fund 3951, activity 567) and Pendleton County Schools - Capital Improvements - Total - Surplus (fund 3951, activity 761) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

212—State Department of Education—School Building Authority — Debt Service Fund
(WV Code Chapter 18)

Fund 3963 FY 1999 Org 0402

1 Debt Service—Total .................. 310 $ 18,000,000

213—Department of Education and the Arts—Office of the Secretary

Control Account
(WV Code Chapter 5F)

Fund 3507 FY 1999 Org 0431

1 Center for Professional Development—Total .......................... 504 $ -0-
3 Unclassified ............................ 099 3,520,000
4 Higher Education Grant Program . . 164 6,662,050
5 Infomine Network-Library Commission ................................. 158 1,000,000
7 WV 2001 Project ........................ 836 1,500,000
8 Total .................................. $ 12,682,050
214—Library Commission

(WV Code Chapter 10)

Fund 3559 FY 1999 Org 0433

1 Infomine Network—Total .......... 158 $ ~0-

215—Department of Education and the Arts—
Central Office—State College and University Systems
Control Account

(WV Code Chapter 5F)

Fund 4800 FY 1999 Org 0453

1 Unclassified ....................... 099 $ ~0-
2 Higher Education Grant Program .. 164 ~0-
3 Total ............................ $ ~0-

Any unexpended balances remaining in the
appropriations for Shepherd College - Capital
Improvements - Lottery Surplus (fund 4800, activity 759),
West Virginia Northern Community College - Capital
Improvements - Lottery Surplus (fund 4800, activity 760),
Capital Outlay and Improvements - Lottery Surplus (fund
4800, activity 762), Educational Broadcasting Authority -
600 Capital Street - Lottery Surplus (fund 4800, activity
781), Shepherd College - Capital Improvements - Total -
Lottery Surplus (fund 4800, activity 764) and
Unclassified—Total (fund 4800, activity 096) at the close
of fiscal year 1997-98 is hereby reappropriated for
expenditure during the fiscal year 1998-99.

216—Bureau of Senior Services

(WV Code Chapter 29)

Fund 5405 FY 1999 Org 0508

1 Senior Citizen Centers and
     Programs  ....................... 462 $ 1,200,000
2 Direct Services  ................... 481 2,800,000
4 Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens .......... 539 $10,000,000

8 Total ....................... $ 14,000,000

9 Any unexpended balances remaining in the appropriations for Senior Citizens Centers and Programs - Surplus (fund 5405, activity 782) and Holly Grove Mansion Restoration - Surplus (fund 5405, activity 765) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-99.

10 The above appropriation for Health Care and Title XIX Waiver for Senior Citizens along with the federal moneys generated thereby shall be used for reimbursement for services provided under the program. Further, the program shall be preserved within the aggregate of these funds.

217—Education, Arts, Sciences and Tourism Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 1999 Org 0211

1 Debt Service—Total .............. 310 $ 10,000,000

2 Any unexpended balance remaining in the appropriation for Debt Service - Total (fund 2252, activity 310) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99, except fund 2252, activity 310 (fiscal year 1996-97) which shall expire on June 30, 1998.

8 Total TITLE II, Section 4—

9 Lottery Funds .................... $ 80,116,113

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

**LEGISLATIVE**

*218—Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 8738 FY 1999 Org 2300

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

**JUDICIAL**

*219—Supreme Court—General Judicial*

Fund 8805 FY 1999 Org 2400

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total 096</td>
<td>$125,019</td>
</tr>
</tbody>
</table>

**EXECUTIVE**

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

(WV Code Chapter 5)

Fund 8792 FY 1999 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total 096</td>
<td>$691,433</td>
</tr>
</tbody>
</table>

*221—Governor's Office—Governor's Cabinet on Children and Families—Office of Economic Opportunity*

(WV Code Chapter 5)

Fund 8797 FY 1999 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total 096</td>
<td>$11,461,310</td>
</tr>
</tbody>
</table>

*222—Governor's Office—Commission for National and Community Service*

(WV Code Chapter 5)
### APPROPRIATIONS

#### Fund 8800 FY 1999 Org 0100

1. Unclassified—Total ............ 096 $ 3,500,000

#### 223—Auditor's Office

(WV Code Chapter 12)

#### Fund 8807 FY 1999 Org 1200

1. Unclassified—Total ............ 096 $ 10,000,000

#### 224—Department of Agriculture

(WV Code Chapter 19)

#### Fund 8736 FY 1999 Org 1400

1. Unclassified—Total ............ 096 $ 2,202,627

#### 225—Department of Agriculture—Meat Inspection

(WV Code Chapter 19)

#### Fund 8737 FY 1999 Org 1400

1. Unclassified—Total ............ 096 $ 706,511

#### DEPARTMENT OF EDUCATION

#### 226—State Department of Education

(WV Code Chapters 18 and 18A)

#### Fund 8712 FY 1999 Org 0402

1. Unclassified—Total ............ 096 $ 14,422,616

#### 227—State Department of Education—School Lunch Program

(WV Code Chapters 18 and 18A)

#### Fund 8713 FY 1999 Org 0402

1. Unclassified—Total ............ 096 $ 63,631,441
### 228—State Board of Education—
Vocational Division

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified—Total</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8714</td>
<td>1999</td>
<td>0402</td>
<td>096 $</td>
<td>22,834,773</td>
</tr>
</tbody>
</table>

229—State Department of Education—
Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified—Total</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8715</td>
<td>1999</td>
<td>0402</td>
<td>096 $</td>
<td>35,025,249</td>
</tr>
</tbody>
</table>

### DEPARTMENT OF EDUCATION AND THE ARTS

230—Division of Culture and History

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified—Total</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8718</td>
<td>1999</td>
<td>0432</td>
<td>096 $</td>
<td>1,481,989</td>
</tr>
</tbody>
</table>

231—Library Commission

(WV Code Chapter 10)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified—Total</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8720</td>
<td>1999</td>
<td>0433</td>
<td>096 $</td>
<td>1,903,007</td>
</tr>
</tbody>
</table>

232—Educational Broadcasting Authority

(WV Code Chapter 10)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified—Total</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8721</td>
<td>1999</td>
<td>0439</td>
<td>096 $</td>
<td>150,000</td>
</tr>
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</table>

233—State Board of Rehabilitation—
Division of Rehabilitation Services

(WV Code Chapter 18)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified—Total</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8734</td>
<td>1999</td>
<td>0932</td>
<td>096 $</td>
<td>45,050,070</td>
</tr>
</tbody>
</table>
DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

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

Fund 8723 FY 1999 Org 0506

1 Unclassified—Total ............... 096 $ 6,119,996

235—Division of Health—
Central Office
(WV Code Chapter 16)

Fund 8802 FY 1999 Org 0506

1 Unclassified—Total ............... 096 $ 51,645,392

236—Division of Health—
West Virginia Safe Drinking Water Treatment
(WV Code Chapter 16)

Fund 8824 FY 1999 Org 0506

1 Unclassified—Total ............... 096 $ 12,000,000

237—Human Rights Commission
(WV Code Chapter 5)

Fund 8725 FY 1999 Org 0510

1 Unclassified—Total ............... 096 $ 165,428

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

Fund 8722 FY 1999 Org 0511

1 Unclassified—Total ............... 096 $1,082,145,706

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

239—Adjutant General—State Militia
(WV Code Chapter 15)
<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>8726</td>
<td></td>
<td>0603</td>
</tr>
<tr>
<td>240</td>
<td>Office of Emergency Services</td>
<td>(WV Code Chapter 15)</td>
</tr>
<tr>
<td>8727</td>
<td></td>
<td>0606</td>
</tr>
<tr>
<td>241</td>
<td>West Virginia State Police</td>
<td>(WV Code Chapter 15)</td>
</tr>
<tr>
<td>8741</td>
<td></td>
<td>0612</td>
</tr>
<tr>
<td>242</td>
<td>Division of Veterans' Affairs—Veterans' Home</td>
<td>(WV Code Chapter 9A)</td>
</tr>
<tr>
<td>8728</td>
<td></td>
<td>0618</td>
</tr>
<tr>
<td>243</td>
<td>Fire Commission</td>
<td>(WV Code Chapter 29)</td>
</tr>
<tr>
<td>8804</td>
<td></td>
<td>0619</td>
</tr>
<tr>
<td>244</td>
<td>Division of Criminal Justice</td>
<td>(Executive Order)</td>
</tr>
<tr>
<td>8803</td>
<td></td>
<td>0620</td>
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<tr>
<td>245</td>
<td>Tax Division</td>
<td>(WV Code Chapter 11)</td>
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</table>

**DEPARTMENT OF TAX AND REVENUE**

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1999</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>7069</td>
<td></td>
<td>0702</td>
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</table>
1 Unclassified—Total ............... 096 $ 75,000

DEPARTMENT OF TRANSPORTATION

246—Department of Transportation—Office of the Secretary
(WV Code Chapter 5F)
Fund 8782 FY 1999 Org 0801
1 Unclassified—Total ............... 096 $ 1,700,000

247—State Rail Authority
(WV Code Chapter 29)
Fund 8733 FY 1999 Org 0804
1 Unclassified—Total ............... 096 $ 550,000

248—Division of Public Transit
(WV Code Chapter 17)
Fund 8745 FY 1999 Org 0805
1 Unclassified—Total ............... 096 $ 9,378,749

249—Division of Motor Vehicles
(WV Code Chapter 17B)
Fund 8787 FY 1999 Org 0802
1 Unclassified—Total ............... 096 $ 1,756,860

BUREAU OF COMMERCE

250—Division of Forestry
(WV Code Chapter 19)
Fund 8703 FY 1999 Org 0305
1 Unclassified—Total ............... 096 $ 1,030,145

251—Geological and Economic Survey
(WV Code Chapter 29)
Fund 8704 FY 1999 Org 0306
1  Unclassified—Total ............... 096 $  794,290

252—West Virginia Development Office
(WV Code Chapter 5B)
Fund 8705 FY 1999 Org 0307

1  Unclassified—Total ............... 096 $  3,918,199

253—Division of Labor
(WV Code Chapters 21 and 47)
Fund 8706 FY 1999 Org 0308

1  Unclassified—Total ............... 096 $  390,512

254—Division of Natural Resources
(WV Code Chapter 20)
Fund 8707 FY 1999 Org 0310

1  Unclassified—Total ............... 096 $  7,819,592

255—Division of Miners' Health,
Safety and Training
(WV Code Chapter 22)
Fund 8709 FY 1999 Org 0314

1  Unclassified—Total ............... 096 $  522,933

BUREAU OF ENVIRONMENT

256—Solid Waste Management Board
(WV Code Chapter 22)
Fund 8820 FY 1999 Org 0312

1  Unclassified—Total ............... 096 $  37,663

257—Division of Environmental Protection
(WV Code Chapter 22)
Fund 8708 FY 1999 Org 0313

1  Unclassified—Total ............... 096 $ 101,605,707
BUREAU OF SENIOR SERVICES

258—Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 1999 Org 0508

1 Unclassified—Total .................. 096 $ 11,519,651

MISCELLANEOUS BOARDS AND COMMISSIONS

259—Public Service Commission—
Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 1999 Org 0926

1 Unclassified—Total .................. 096 $ 911,198

260—Public Service Commission—
Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8744 FY 1999 Org 0926

1 Unclassified—Total .................. 096 $ 261,601

2 Total TITLE II, Section 5—
3 Federal Funds ......................... $1,562,844,798

Sec. 6. Appropriations from federal block grants.—

The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 1998-99.

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

Fund 8799 FY 1999 Org 0100

1 Unclassified—Total .................. 096 $ 7,145,797

262—West Virginia Development Office—
Community Development

Fund 8746 FY 1999 Org 0307
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2019</th>
<th>Org 0323</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$21,312,272</td>
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**263—Bureau of Employment Programs—Job Training Partnership Act**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2019</th>
<th>Org 0323</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$57,584,411</td>
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**264—State Department of Education—Education Grant**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2019</th>
<th>Org 0402</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$112,014,911</td>
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</table>

**265—Division of Health—Maternal and Child Health**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2019</th>
<th>Org 0506</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$7,563,937</td>
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</tr>
</tbody>
</table>

**266—Division of Health—Preventive Health**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2019</th>
<th>Org 0506</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$2,167,929</td>
<td></td>
</tr>
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</table>

**267—Division of Health—Substance Abuse Prevention and Treatment**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2019</th>
<th>Org 0506</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$9,514,161</td>
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</tbody>
</table>

**268—Division of Health—Community Mental Health Services**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2019</th>
<th>Org 0506</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$2,817,065</td>
<td></td>
</tr>
</tbody>
</table>

**269—Division of Health—Abstinence Education Program**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2019</th>
<th>Org 0506</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$487,536</td>
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</tr>
</tbody>
</table>
270—Division of Human Services—Energy Assistance

Fund 8755 FY 1999 Org 0511

<table>
<thead>
<tr>
<th>Unclassified—Total</th>
<th>$12,093,923</th>
</tr>
</thead>
</table>

271—Division of Human Services—Child Care and Development

Fund 8756 FY 1999 Org 0511

<table>
<thead>
<tr>
<th>Unclassified—Total</th>
<th>$6,900,000</th>
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</thead>
</table>

272—Division of Human Services—Social Services

Fund 8757 FY 1999 Org 0511

<table>
<thead>
<tr>
<th>Unclassified—Total</th>
<th>$16,795,528</th>
</tr>
</thead>
</table>

273—Division of Human Services—Temporary Assistance Needy Families

Fund 8816 FY 1999 Org 0511

<table>
<thead>
<tr>
<th>Unclassified—Total</th>
<th>$110,587,556</th>
</tr>
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</table>

274—Division of Human Services—Child Care and Development

Fund 8817 FY 1999 Org 0511

<table>
<thead>
<tr>
<th>Unclassified—Total</th>
<th>$15,985,965</th>
</tr>
</thead>
</table>

2 Total TITLE II, Section 6—Federal Block Grants $382,970,991

Sec. 7. Appropriation from surplus accrued.—The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year 1998-99 out of surplus funds only, accrued from fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus accrued as of the thirty-first day of July, one thousand
nine hundred ninety-eight from fiscal year ending the
thirtieth day of June one thousand nine hundred ninety-
eight.

In the event that surplus revenues available on the
thirty-first day of July, one thousand nine hundred ninety-
eight, are not sufficient to meet all the appropriations
made pursuant to this section, then the appropriations shall
be made to the extent that surplus funds are available as of
the date mandated, and shall be allocated first to provide
the necessary funds to meet the first appropriation of this
section; next, to provide the funds necessary for the
second appropriation of this section; and subsequently to
provide the funds necessary for each appropriation in
succession before any funds are provided for the next
subsequent appropriation.

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

Fund 0230 FY 1999 Org 0211

Capital Improvements—
Total—Surplus ............... 672 $ -0-

Capitol Building Roof—
Total—Surplus ............... 820 $ 800,000

The above appropriation is intended to be expended
for capital improvements to state owned buildings
including but not limited to repairs, renovations and
capital expenditure for entrance doors, fire escapes, roof
repairs, loading dock access and general construction or
reconstruction projects.

276—Department of Agriculture
(WV Code Chapter 19)

Fund 0131 FY 1999 Org 1400

Capital Improvements—
Total—Surplus ............... 672 $ 350,000

The above appropriation is intended to be expended to
construct an addition to the WV Building on the state fair
grounds and to provide for repair and renovations to farmers markets.

277—Division of Corrections—Correctional Units

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

Fund 0450 FY 1999 Org 0608

1 Capital Improvements—
2     Total—Surplus ............... 672 $    -0-

The above appropriation is intended to be expended for capital improvements to the Pruntytown Correctional Center and the Denmar Correctional Facility including but not limited to repairs, renovations and capital expenditures for electrical system upgrade, fire safety improvements, building and ground repairs and renovations to include paving.

278—West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 1999 Org 0612

1 Automated Finger Print System—
2     Total—Surplus ............... 452 $    -0-

279—Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 1999 Org 0621

1 Capital Improvements—
2     Total—Surplus ............... 672 $    -0-

The above appropriation is intended to be expended for capital improvements to the Davis Center and the Industrial Home for Youth including but not limited to repairs, renovations and capital expenditures for roof repair and replacement and doorways and restroom ADA compliance.
280—Division of Miners’ Health, Safety, and Training
(WV Code Chapter 22)
Fund 0277 FY 1999 Org 0314

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overtime and Wage Court Awards—Total—Surplus</td>
<td>$331,030</td>
</tr>
</tbody>
</table>

281—Division of Public Transit
(WV Code Chapter 17)
Fund 0510 FY 1999 Org 0805

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Funds/Grant Match</td>
<td>$700,000</td>
</tr>
</tbody>
</table>

282—Jobs Investment Trust Board
Fund 0577 FY 1999 Org 0201

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jobs Investment Loans and Assistance</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Total TITLE II, Section 7—Surplus Accrued</td>
<td>$3,181,030</td>
</tr>
</tbody>
</table>

Sec. 8. Awards for claims against the state.—There are hereby appropriated, for the remainder of the fiscal year 1997-1998 and to remain in effect until June 30, 1999, from the fund as designated, in the amounts as specified and for the claimants named in enrolled house bill no. 4238, regular session 1998-crime victims compensation funds of $15,000.00 for payment of claims against the state.

There are hereby appropriated for the remainder of the fiscal year 1997-1998 and to remain in effect until June 30, 1999, from the fund as designated, in the amounts as specified and for the claimants named in enrolled senate bill no. 426, regular session 1998, and enrolled committee substitute for house bill no. 4252, regular session 1998, unappropriated surplus general revenue funds of $1,331,511.94 for payment of claims against the state.

The total general revenue funds above do not include payment for claims in the amount of $6,095.79 from the supreme court-general judicial, fund 0180, specifically...
made payable from the appropriation for the current fiscal year 1997-98.

There are hereby appropriated for the remainder of the fiscal year 1997-98 and to remain in effect until June 30, 1999, from the funds as designated, in the amounts as specified and for the claimants as named in enrolled senate bill no. 426 and enrolled committee substitute for house bill no. 4252, regular session 1998—special revenue funds of $807,902.30 state road funds of $48,400.25 and federal funds of $19,347.41 for payment of claims against the state.

Sec. 9. Appropriations from lottery net profit.—The following items are hereby appropriated from lottery net profits, and are to be made available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight. The auditor shall prorate each deposit of net profits by the lottery director among fund numbers 3505 and 5405 in the proportion the appropriation for each account bears to the total of the appropriations for the two accounts.

283—Department of Education and the Arts—Office of the Secretary

(WV Code Chapter 5F)

Fund 3505 FY 1998 Org 0431

1 Capital Outlay and Improvements—
   2 Total .......................... 762 $ 10,000,000

284—Bureau of Senior Services—

(WV Code Chapter 29)

Fund 5405 FY 1998 Org 0508

1 Senior Citizens Centers,*
   2 Maintenance and Repair ........ 686 $ 4,800,000

3 Holly Grove Mansion Restoration . 765 200,000

4 Total .......................... $ 5,000,000

5 Total TITLE II, Section 9—

6 Lottery Net Profits ............. $ 15,000,000

*Clerk's Note: The word "Programs" and a comma were deleted by the Governor.
Sec. 10. Special revenue appropriations.—There are hereby appropriated for expenditure during the fiscal year one thousand nine hundred ninety-nine Appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of section two, article two, chapter twelve of the code: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of articles two and three, chapter twelve and article two, chapter five-a of the code, with due consideration to the digest of legislative intent of the budget bill prepared pursuant to article one, chapter four, unless the spending unit has filed with the director of the budget, the auditor and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund;

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended.

Sec. 11. State improvement fund appropriations.—Bequests or donations of nonpublic funds, received by the governor on behalf of the state during the fiscal year one thousand nine hundred ninety-nine, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.

There are hereby appropriated all moneys so deposited during the fiscal year one thousand nine hundred ninety-nine to be expended as authorized by the governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 12. Specific funds and collection accounts.—A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection
account and shall be expended according to the provisions of article three, chapter twelve of the code.

Sec. 13. Appropriations for refunding erroneous payment.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he or she shall issue his or her requisition upon the auditor for the refunding of the proper amount. The auditor shall issue his or her warrant to the treasurer and the treasurer shall pay the warrant out of the fund into which the amount was originally paid.

Sec. 14. Sinking fund deficiencies.—There is hereby appropriated to the governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by section twenty-b, article eighteen, chapter thirty-one of the code, or in the funds of the municipal bond commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The governor is authorized to transfer from time to time such amounts to the municipal bond commission as may be necessary for these purposes.

The municipal bond commission shall reimburse the state of West Virginia through the governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

Sec. 15. Appropriations for local governments.—There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts and municipal corporations and which have been paid into the treasury:

(a) For redemption of lands;
Sec. 16. Total appropriations.—Where only a total sum is appropriated to a spending unit, the total sum shall include personal services, annual increment, employee benefits, current expenses, repairs and alterations, equipment and capital outlay, where not otherwise specifically provided and except as otherwise provided in TITLE I—GENERAL PROVISIONS, Sec. 3.

Sec. 17. General school fund.—The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with section sixteen, article nine-a, chapter eighteen of the code.

TITLE III—ADMINISTRATION.

§1. Appropriations conditional.
§2. Constitutionality.

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

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

Sec. 2. Constitutionality.—If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.
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 governor's office, account no. fund 0101, fiscal year 1998, organization 0100, all supplementing, amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0101, fiscal year 1998, organization 0100, be supplemented and amended by increasing the total appropriation by one hundred sixteen thousand six hundred forty dollars as follows:

1  TITLE II—APPROPRIATIONS.

2  Sec. 1. Appropriations from general revenue.
CHAPTER 8

(S. B. 514—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 9, 1998, in effect from passage. Approved by the Governor.]
WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor’s executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0102, fiscal year 1998, organization 0100, be supplemented and amended by increasing the total appropriation by twenty-eight thousand dollars as follows:

```
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

6—Governor’s Office—
Custodial Fund

(WV Code Chapter 5)

Account No.

Fund 0102 FY 1998 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding twenty-eight thousand dollars to an existing appropriation for expenditure during fiscal year one thousand nine hundred ninety-eight.
CHAPTER 9
(H. B. 4703—By Delegates Michael, Doyle, Leach, Kelley, Campbell, Fantasia and Compton)

[Passed March 14, 1998; 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-eight, in the amount of twenty million dollars from the income tax refund reserve fund, account no. fund 1313, organization 1300, and making supplementary appropriations 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-eight, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1998, organization 0100; to the department of education, West Virginia schools for the deaf and the blind, account no. fund 0320, fiscal year 1998, organization 0403; to the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1998, organization 0511; and to the department of military affairs and public safety, division of corrections—correctional units, account no. fund 0450, fiscal year 1998, organization 0608, all for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood and other natural disaster victims and to fund other needed infrastructure, community development and other 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-eight; and

WHEREAS, The income tax refund reserve fund has a sufficient balance available for appropriation in the fiscal year
ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the income tax refund reserve fund, account no. fund 1313, organization 1300, be decreased by expiring the amount of twenty 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-eight, to account no. fund 0105, fiscal year 1998, organization 0100, be supplemented and amended by increasing the total appropriation by five million 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>EXECUTIVE</td>
</tr>
<tr>
<td>8—Governor's Office—</td>
</tr>
<tr>
<td>Civil Contingent Fund</td>
</tr>
<tr>
<td>(WV Code Chapter 5A)</td>
</tr>
<tr>
<td>Account No.</td>
</tr>
<tr>
<td>Fund 0105 FY 1997 Org 0100</td>
</tr>
<tr>
<td>General Revenue Fund</td>
</tr>
<tr>
<td>1 Civil Contingent Fund - Surplus (R) 263 $ 5,000,000</td>
</tr>
<tr>
<td>Any unexpended balances remaining in the appropriation for Civil Contingent Fund - Surplus (R) (fund 0105, activity 263) at the close of the fiscal year</td>
</tr>
</tbody>
</table>
16 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-1999.

18 That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0320, fiscal year 1998, organization 0403, be supplemented and amended by increasing the total appropriation by four hundred thousand dollars in a new line item as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

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

Account No.

Fund 0320  FY 1998  Org 0403

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>5a</td>
<td>Capital Outlay, Repairs and Equipment (R)</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for Capital Outlay, Repairs and Equipment (fund 0320, activity 589) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-1999.

18 That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0403, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by fourteen million dollars in a new line item as follows:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

56—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Account No.

Fund 0403 FY 1998 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>35a Medical Services</td>
<td>$14,000,000</td>
</tr>
<tr>
<td>35b Payment Backlog-Transfer</td>
<td>783</td>
</tr>
</tbody>
</table>

The total amount from the above appropriation to medical services payment backlog-transfer (fund 0403, activity 783) shall be transferred to the division of human services—medical services trust fund, account no. fund 5185, fiscal year 1998, organization 0511 (activity 260), to make payments of the medical services backlog.

And, that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0450, fiscal year 1998, organization 0608, be supplemented and amended by increasing the total appropriation by six hundred thousand dollars as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

62—Division of Corrections—

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

Account No.

Fund 0450 FY 1998 Org 0608

<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$342,500</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>$130,000</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>$111,000</td>
</tr>
<tr>
<td>10 Inmate Medical Expense</td>
<td>535</td>
<td>$16,500</td>
</tr>
</tbody>
</table>

The purpose of this bill is to expire the sum of twenty million dollars from the income tax refund reserve fund, account no. fund 1313, organization 1300, and to supplement the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1998, organization 0100, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding five million dollars to the existing appropriation; to supplement the department of education, West Virginia schools for the deaf and the blind, account no. fund 0320, fiscal year 1998, organization 0403, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding four hundred thousand dollars to a new line item in the existing appropriation; to supplement the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1998, organization 0511, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding fourteen million dollars to a new line item in the existing appropriation; and to supplement the department of military affairs and public safety, division of corrections—correctional units, account no. fund 0450, fiscal year 1998, organization 0608, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding six hundred thousand dollars to the existing appropriation.
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 auditor's office — general administration, account no. fund 0116, fiscal year 1998, organization 1200, all supplementing, amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0116, fiscal year 1998, organization 1200, be supplemented and amended by increasing the total appropriation by one million six hundred fifty-three thousand one hundred sixteen dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.
EXECUTIVE

10—Auditor’s Office—
General Administration

(WV Code Chapter 12)

Account No.

Fund 0116  FY 1998  Org 1200

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>6a Payroll System Acquisition</td>
<td>$1,653,116</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Payroll System Acquisition (fund 0116, activity 594) at the close of the fiscal year 1997-98, is hereby reappropriated for expenditure during fiscal year 1998-99.

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-eight, by adding one million six hundred fifty-three thousand one hundred sixteen dollars to a new appropriation for expenditure during the fiscal year one thousand nine hundred ninety-eight.

CHAPTER 11

(S. B. 431—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed February 9, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state fund, general revenue, to the treasurer’s office, account no. fund 0126, fiscal year 1998, organization 1300, all supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.
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-eight, to account no. fund 0126, fiscal year 1998, organization 1300, be supplemented and amended to read as follows:

1 TITLE II—APPROPRIATIONS.

EXECUTIVE

12—Treasurer's Office

(WV Code Chapter 12)

Account No.

Fund 0126 FY 1998 Org 1300

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>$ 1,539,316</td>
</tr>
<tr>
<td>002</td>
<td>65,000</td>
</tr>
<tr>
<td>004</td>
<td>34,856</td>
</tr>
<tr>
<td>010</td>
<td>499,318</td>
</tr>
<tr>
<td>099</td>
<td>1,246,101</td>
</tr>
<tr>
<td>118</td>
<td>437,167</td>
</tr>
<tr>
<td>518</td>
<td>54,000</td>
</tr>
<tr>
<td>692</td>
<td>150,000</td>
</tr>
<tr>
<td>310</td>
<td>9,839,000</td>
</tr>
<tr>
<td>290</td>
<td>2,000,000</td>
</tr>
<tr>
<td>643</td>
<td>10,000,000</td>
</tr>
<tr>
<td>26</td>
<td>$25,864,758</td>
</tr>
</tbody>
</table>

5 4 Employee Benefits .......... 010 499,318
14 5 Unclassified ................. 099 1,246,101
15 6 Abandoned Property Program 118 437,167
16 7 Hardware/Software Upgrade . 518 54,000
17 8 Tuition Trust Fund .......... 692 150,000
18 9 School Building Sinking Fund
19 10 Debt Services .............. 310 9,839,000
20 11 Debt Payment on Morris Street-
21 12 Workers' Compensation
22 13 Building .................... 290 2,000,000
23 14 Regional Jails and
24 15 Correctional Facilities-
25 Transfer ..................... 643 10,000,000
26 16 Total ..................... $25,864,758
Any unexpended balances remaining in the appropriation for unclassified (fund 0126, activity 099) and imaging system (fund 0126, activity 006) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

The above appropriation for regional jails and correctional facilities-transfer shall be transferred to the regional jails and correctional facilities authority to be used for construction projects.

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-eight, by amending language with no new money being appropriated.

CHAPTER 12

[Passed March 11, 1998; 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 surplus balance in the state fund, general revenue, to the treasurer's office, account no. fund 0126, fiscal year 1998, organization 1300, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for the fiscal year
1997-98, less net appropriation balances forwarded and regular appropriations for the fiscal year 1997-98; and

Whereas, It appears from the governor's executive budget document there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0126, fiscal year 1998, organization 1300, be supplemented and amended by increasing the total appropriation by one million 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>Executive</td>
</tr>
<tr>
<td>12—Treasurer's Office</td>
</tr>
<tr>
<td>(WV Code Chapter 12)</td>
</tr>
<tr>
<td>Account No.</td>
</tr>
<tr>
<td>Fund 0126 FY 1998 Org 1300</td>
</tr>
<tr>
<td>General Revenue Fund</td>
</tr>
<tr>
<td>Activity</td>
</tr>
<tr>
<td>692</td>
</tr>
<tr>
<td>8 Tuition Trust Fund</td>
</tr>
<tr>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding one million dollars to an existing appropriation for the tuition trust fund for expenditure during the fiscal year one thousand nine hundred ninety-eight.
CHAPTER 13
(S. B. 511—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 14, 1998; 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 surplus balance in the state fund, general revenue, to the department of administration — division of finance, account no. fund 0203, fiscal year 1998, organization 0209, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for the fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for the fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0203, fiscal year 1998, organization 0209, be supplemented and amended by increasing the total appropriation by four hundred fifty thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF ADMINISTRATION
CHAPTER 14

(S. B. 509—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 14, 1998; 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 surplus balance in the state fund, general revenue, to the department of administration—division of purchasing, account no. fund 0210, fiscal year 1998, organization 0213, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for the fiscal year...
1997-98, less net appropriation balances forwarded and regular appropriations for the fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0210, fiscal year 1998, organization 0213, be supplemented and amended by increasing the total appropriation by four 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>DEPARTMENT OF ADMINISTRATION</td>
</tr>
<tr>
<td>24—Division of Purchasing</td>
</tr>
<tr>
<td>(WV Code Chapter 5A)</td>
</tr>
<tr>
<td>Account No.</td>
</tr>
<tr>
<td>Fund 0210 FY 1998 Org 0213</td>
</tr>
<tr>
<td>Activity</td>
</tr>
<tr>
<td>--------</td>
</tr>
<tr>
<td>4 Unclassified</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding four hundred thousand dollars to an existing appropriation for unclassified for relocation expenses for expenditure during the fiscal year one thousand nine hundred ninety-eight.
CHAPTER 15

(Com. Sub. for H. B. 4357—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 14, 1998; 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 — public defender services, account no. fund 0226, fiscal year 1998, organization 0221, all supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor’s executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0226, fiscal year 1998, organization 0221, be supplemented and amended by increasing the total appropriation by six million dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.

3 DEPARTMENT OF ADMINISTRATION
29—Public Defender Services
(WV Code Chapter 29)

Account No.

Fund 0226 FY 1998 Org 0221

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

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

CHAPTER 16
(H. B. 4715—By Delegates Michael, Doyle and Leach )

[Passed March 14, 1998; 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 bureau of commerce—division of labor, account no. fund 0260, fiscal year 1998, organization 0308, all supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1,
1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

Whereas, It appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0260, fiscal year 1998, organization 0308, be supplemented and amended by increasing the total appropriation by ninety-eight thousand four hundred dollars as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Computer/Technology Upgrade</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding ninety-eight thousand four hundred dollars to an existing appropriation for computer technology upgrades for expenditure during fiscal year one thousand nine hundred ninety-eight.
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 bureau of commerce — division of natural resources, account no. fund 0265, fiscal year 1998, organization 0310, all supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0265, fiscal year 1998, organization 0310, be supplemented and amended by increasing the total appropriation by seven hundred eighteen thousand one hundred ninety-eight dollars as follows:

1  TITLE II—APPROPRIATIONS.
2  Sec. 1. Appropriations from general revenue.
BUREAU OF COMMERCE

79—Division of Natural Resources—

(WV Code Chapter 20)

Account No.

Fund 0265  FY 1998  Org 0310

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$516,109</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>62,089</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>100,000</td>
</tr>
<tr>
<td>5 Pricketts Fort State Park</td>
<td>40,000</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding five hundred sixteen thousand one hundred nine dollars to an existing appropriation for personal services, sixty-two thousand eighty-nine dollars to employee benefits for minimum wage increases, one hundred thousand to unclassified expenditures, and forty thousand dollars to Pricketts Fort State Park for expenditure during fiscal year one thousand nine hundred ninety-eight.

CHAPTER 18

(H. B. 4359—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

[By Request of the Executive]

[Passed March 14, 1998; 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 education and the arts — division of culture and history, account no. fund 0293, fiscal year 1998, organization 0432, all supplementing and amending the appropriation for the fiscal year ending the
thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for the fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor’s executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0293, fiscal year 1998, organization 0432, be supplemented and amended by increasing the total appropriation by eighty-five thousand nine hundred fifty-nine dollars as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Unclassified</td>
<td>$85,959</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding eighty-five thousand nine hundred fifty-nine dollars to an existing appropriation for unclassified expenditure during the fiscal year one thousand nine hundred ninety-eight.
AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of education — state department of education, account no. fund 0313, fiscal year 1998, organization 0402, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0313, fiscal year 1998, organization 0402, be supplemented and amended by increasing the total appropriation by one million three hundred seventy-three thousand seventy dollars as follows:

1. TITLE II—appropriations.

2. Section 1. Appropriations from general revenue.
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 1998, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which
included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor’s executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0403, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by six million nine hundred sixty-one thousand four hundred twenty-seven dollars as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Unclassified</td>
<td>$6,961,427</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding six million nine hundred sixty-one thousand four hundred twenty-seven dollars to an existing appropriation for unclassified for disallowances for expenditure during fiscal year one thousand nine hundred ninety-eight.
CHAPTER 21
(S. B. 530—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 14, 1998; 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 surplus 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 1998, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

Whereas, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for the fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for the fiscal year 1997-98; and

Whereas, It appears from the governor’s executive budget document there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0403, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by three million four hundred forty thousand dollars as follows:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

56—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Account No.

Fund 0403 FY 1998 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Unclassified</td>
<td>$3,440,000</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding three million four hundred forty thousand dollars to an existing appropriation for unclassified for early intervention and family support services and child welfare services for family and children’s tracking system (FACTS) for expenditure during the fiscal year, one thousand nine hundred ninety-eight.

CHAPTER 22

(S. B. 531—By Senators Tomblin, Mr. President, and Buckalew) [By Request of the Executive]

[Passed February 26, 1998; 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 human services, account no. fund 0403, fiscal year 1998, organization 0511, all supplementing and amending the appropriation for the fiscal year ending
the thirtieth day of June, one thousand nine hundred ninety-eight.

Whereas, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

Whereas, It appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0403, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by sixteen million one hundred eighty-nine thousand one hundred fifty dollars as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Services</td>
<td>$16,189,150</td>
</tr>
</tbody>
</table>

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

5 56—Division of Human Services

6 (WV Code Chapters 9, 48 and 49)

7 Account No.

8 Fund 0403 FY 1998 Org 0511

9

10 Activity

11

12 17 Social Services ............ 195
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-eight, by adding sixteen million one hundred eighty-nine thousand one hundred fifty dollars to an existing appropriation for social services for expenditure during fiscal year one thousand nine hundred ninety-eight.

CHAPTER 23

(S. B. 741—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 9, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the state 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 1998, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for the fiscal year 1997-98.

WHEREAS, It thus appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during
the fiscal year ending the thirtieth day of June, one thousand
nine hundred ninety-eight; 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-eight, to
account no. fund 0403, fiscal year 1998, organization 0511, be
supplemented and amended by increasing the total appropriation
by three hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.
2
3 Section 1. Appropriations from general revenue.
4
5 DEPARTMENT OF HEALTH AND HUMAN
6 RESOURCES
7 56—Division of Human Services
8 (WV Code Chapters 9, 48 and 49)
9
10 Account No.
11
12 Fund 0403 FY 1998 Org 0511
13
14 Activity Unclassified 099
15 General $300,000
16 Revenue
17 Fund
18
19 The purpose of this bill is to supplement this account
20 in the budget act for the fiscal year ending the thirtieth
day of June, one thousand nine hundred ninety-eight, by
adding three hundred thousand dollars to an existing
appropriation for unclassified for indigent burials for
expenditure during the fiscal year one thousand nine
hundred ninety-eight.
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 1998, organization 0506, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0407, fiscal year 1998, organization 0506, be supplemented and amended by increasing the total appropriation by thirty-five thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Division of Health—
Central Office

(WV Code Chapter 16)

Account No.

Fund 0407 FY 1998 Org 0506

General Activity Revenue Fund

4 Unclassified 099 $35,000

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding thirty-five thousand dollars to an existing appropriation for unclassified for a safe drinking water information system for expenditure during fiscal year one thousand nine hundred ninety-eight.

CHAPTER 25

(Com. Sub. for H. B. 4365—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
By Request of the Executive

[Passed March 14, 1998; 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 military affairs and public safety — office of the secretary, account no. fund 0430, fiscal year 1998, organization 0601, all supplementing and amending the appropriation for the fiscal year ending
the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0430, fiscal year 1998, organization 0601, be supplemented and amended by increasing the total appropriation by twenty-four thousand nine hundred dollars as follows:

| Activity | Unclassified—Total | 096 | $24,900 |
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-eight, by adding twenty-four thousand nine hundred dollars to an existing appropriation for unclassified-total for expenditure during fiscal year one thousand nine hundred ninety-eight.

CHAPTER 26
(Com. Sub. for H. B. 4366—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 14, 1998; 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 military affairs and public safety, adjutant general — state militia, account no. fund 0433, fiscal year 1998, organization 0603, all supplanting and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor’s executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0433, fiscal year 1998, organization 0603, be supplemented and amended by increasing the total appropriation by one hundred thirty-two thousand dollars as follows:

1. **TITLE II—APPROPRIATIONS.**

2. **Sec. 1. Appropriations from general revenue.**

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

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

Account No.

Fund 0433  FY 1998  Org 0603

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 Mountaineer Challenge Academy— Student Stipends</td>
<td>$ 132,000</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding one hundred thirty-two thousand dollars to a new line item appropriation for mountaineer challenge academy - student stipends for expenditure during fiscal year one thousand nine hundred ninety-eight.
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 — fire commission, account no. fund 0436, fiscal year 1998, organization 0619, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor’s executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0436, fiscal year 1998, organization 0619, be supplemented and amended by increasing the total appropriation by sixty-five thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.
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 corrections — correctional units, account no. fund 0450, fiscal year 1998, organization 0608, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting
forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0450, fiscal year 1998, organization 0608, be supplemented and amended by increasing the total appropriation by one million nine hundred twenty-five 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—Division of Corrections—
6 Correctional Units
7 (WV Code Chapters 25, 28, 49 and 62)
8 Account No.
9 Fund 0450 FY 1998 Org 0608
10 Activity
11
12 10a St. Mary's Correctional Center . . 230 $1,450,000
13 10b Ohio County Jail ............... 784 475,000
14 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-eight, by adding one million nine hundred twenty-five thousand dollars to a new appropriation for the St. Mary’s correctional center and Ohio County jail for expenditure during the fiscal year one thousand nine hundred ninety-eight.
CHAPTER 29

(S. B. 520—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 11, 1998; 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 military affairs and public safety, division of corrections — correctional units, account no. fund 0450, fiscal year 1998, organization 0608, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor’s executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0450, fiscal year 1998, organization 0608, be supplemented and amended by increasing the total appropriation by two million five hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.
DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

62—Division of Corrections—
Correctional Units

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

Account No.

Fund 0450 FY 1998 Org 0608

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 Payments to Counties and/or</td>
<td></td>
</tr>
<tr>
<td>6 Regional Jails ................. 229</td>
<td>$2,500,000</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding two million five hundred thousand dollars to an existing appropriation for payments to counties and/or regional jails for expenditure during fiscal year one thousand nine hundred ninety-eight.

CHAPTER 30

(S. B. 633—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Preziosi, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 5, 1998; 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 military affairs and public safety-West Virginia state police, account no. fund 0453, fiscal year 1998, organization 0612, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.
WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98.

WHEREAS, It thus appearing from the governor’s executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0453, fiscal year 1998, organization 0612, be supplemented and amended by increasing the total appropriation by two million three hundred eighty-four thousand six hundred thirty-five dollars to read as follows:

<table>
<thead>
<tr>
<th>Activity Description</th>
<th>Amount</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$21,900,498</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>148,550</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>3,697,692</td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td>5,582,653</td>
<td></td>
</tr>
<tr>
<td>COPS Program-Federal Match</td>
<td>258,924</td>
<td></td>
</tr>
<tr>
<td>Vehicle Purchase</td>
<td>1,000,000</td>
<td></td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation for barracks maintenance and construction (fund 0453, activity 494) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

Any unexpended balance remaining in the appropriation for communications and other equipment (fund 0453, activity 558) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

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 and redesignated as Riverside high detachment-transfer. Any balance so reappropriated and redesignated shall be transferred to the school building authority-school building capital improvement fund (fund 3958, organization 0402) for the Riverside high detachment.

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-eight, by adding two hundred fourteen thousand nine hundred fifty dollars to an existing appropriation for unclassified (fund 0453, activity 099) for expenditure during fiscal year one thousand nine hundred ninety-eight, adding two million one hundred sixty-nine thousand six hundred eighty-five dollars to the overtime and wage court awards (fund 0453, activity 568) for expenditure during fiscal year one thousand nine hundred ninety-eight, and by amending and reenacting language related to Riverside high detachment.
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 tax and revenue, tax division, account no. fund 0470, fiscal year 1998, organization 0702, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

Whereas, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

Whereas, It appears from the governor’s executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0470, fiscal year 1998, organization 0702, be supplemented and amended by increasing the total appropriation by one million one hundred sixty thousand dollars as follows:

1  TITLE II—APPROPRIATIONS.

2  Section 1. Appropriations from general revenue.

3  DEPARTMENT OF TAX AND REVENUE
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-eight, by adding one million one hundred sixty thousand dollars to an existing appropriation for unclassified for expenditure during fiscal year one thousand nine hundred ninety-eight.

CHAPTER 32
(S. B. 504—By Senators Tomblin, Mr. President, and Buckalew)
(By Request of the Executive)

[Passed March 9, 1998; 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 tax and revenue, tax division, account no. fund 0470, fiscal year 1998, organization 0702, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year
1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor’s executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0470, fiscal year 1998, organization 0702, be supplemented and amended by increasing the total appropriation by one hundred sixty-six thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 DEPARTMENT OF TAX AND REVENUE
4 70—Tax Division
5 (WV Code Chapter 11)
6 Account No.
7 Fund 0470 FY 1998 Org 0702
8
9 Activity General Revenue Fund
10
11 5a Administrative Hearing
12 Examiner Program .............. 713 $166,000
13
14 Any unexpended balance remaining in the appropriation for administrative hearing examiner program (fund 0470, activity 713) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.
15
16 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-eight, by adding one hundred sixty-six thousand dollars to a new line item for administrative hearing examiner program for expenditure during fiscal year one thousand nine hundred ninety-eight.
CHAPTER 33

(S. B. 522—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 9, 1998; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state fund, general revenue, to the department of tax and revenue — tax division, account no. fund 0470, fiscal year 1998, organization 0702, as originally appropriated by chapter five, acts of the Legislature, first regular session, one thousand nine hundred ninety-seven, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state fund, general revenue, to the department of tax and revenue, tax division, account no. fund 0470, fiscal year 1998, organization 0702, be amended and reduced in the line items as follows:

1 TITLE II— Appropriations.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF TAX AND REVENUE

4 70—Tax Division

5 (WV Code Chapter 11)

6 Account No.

7 Fund 0470  FY 1998  Org 0702

8

9 Activity

10

11 4 Unclassified ................. 099 $271,256

General Revenue Fund
12 And, that the items of the total appropriations from the
13 state fund, general revenue, to the department of tax and
14 revenue, tax division, account no. fund 0470, fiscal year
15 1998, organization 0702, be amended and increased in the
16 line item as follows:

17 TITLE II—APPROPRIATIONS.

18 Section 1. Appropriations from general revenue.

19 DEPARTMENT OF TAX AND REVENUE

20 70—Tax Division

21 (WV Code Chapter 11)

22 Account No.

23 Fund 0470  FY 1998  Org 0702

24 General
25 Act
26 Revenue
27  Activity
28 Fund

27 1 Personal Services .............. 001 $271,256

28 The purpose of this supplementary appropriation bill
29 is to supplement, amend, reduce and transfer between
30 existing items in the aforesaid account for the designated
31 spending unit. The item for unclassified is reduced by
32 two hundred seventy-one thousand two hundred fifty-six
33 dollars. The item for personal services is increased by two
34 hundred seventy-one thousand two hundred fifty-six
35 dollars. The amounts as itemized for expenditure in the
36 fiscal year ending the thirtieth day of June, one thousand
37 nine hundred ninety-eight, shall be available for
38 expenditure immediately upon the effective date of this
39 bill.
AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of tax and revenue — tax division, account no. fund 0470, fiscal year 1998, organization 0702, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for the fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for the fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 0470, fiscal year 1998, organization 0702, be supplemented and amended by increasing the total appropriation by one hundred eighty thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.
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-eight, by adding one hundred eighty thousand dollars to an existing appropriation for unclassified for relocation expenses for expenditure during the fiscal year one thousand nine hundred ninety-eight.

CHAPTER 35

(S. B. 501—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 11, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state fund, general revenue, to the department of health and human resources — division of health — West Virginia drinking water treatment, account no. fund 0561, fiscal year 1998, organization 0506, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

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-eight, to account no. fund 0561, fiscal year 1998, organization 0506, be supplemented and amended to read as follows:

1. **TITLE II—APPROPRIATIONS.**

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

3. DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4. 53—Division of Health—

5. West Virginia Drinking Water Treatment

6. (WV Code Chapter 16)

7. Account No.

8. Fund 0561  FY 1998  Org 0506

9. 

10. | General Activity | Revenue Fund |
11. | 689 | $700,000 |

12. The above appropriation for drinking water treatment revolving fund — transfer shall be transferred to the West Virginia drinking water treatment revolving fund or appropriate bank depository and the drinking water treatment revolving — administrative expense fund as provided by chapter sixteen of the code.

13. 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-eight, by amending language with no new money being appropriated.
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 juvenile services, account no. fund 0570, fiscal year 1998, organization 0621, all supplementing, amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

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

Be it enacted by the Legislature of West Virginia:

That chapter five, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, known as the "Budget Bill", be supplemented and amended by adding to Title II, section one thereof, the following:

1 TITLE II—APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.
DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

68a—Division of Juvenile Services—
(WV Code Chapter 49)

Account No.

Fund 0570 FY 1998 Org 0621

General
Revenue
Fund

Activity

1 Unclassified—Total ............... 096 $800,000

The purpose of this bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by providing for a new item of appropriation to be established therein to appropriate general revenue funds in the amount of eight hundred thousand dollars for unclassified for expenditure during fiscal year one thousand nine hundred ninety-eight.

CHAPTER 37
(S. B. 742—By Senators Craigo, Anderson, Bailey, Chafin, Heimick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 12, 1998; 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-eight, in the amount of four million dollars from the abandoned property claims trust, account no. fund 1324, fiscal year 1998, organization 1300, activity 099.
WHEREAS, The Legislature finds that the account balance in the abandoned property claims trust, account no. fund 1324, fiscal year 1998, organization 1300, activity 099, exceeds that which is necessary for the purposes for which the account was established; 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-eight, to the abandoned property claims trust, account no. fund 1324, fiscal year 1998, organization 1300, activity 099, be decreased by expiring the amount of four million dollars to the unappropriated surplus balance of the state fund, general revenue, to be available for further and additional appropriation.

The purpose of this bill is to expire the sum of four million dollars from the abandoned property claims trust, account no. fund 1324, fiscal year 1998, organization 1300, activity 099, 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-eight, to be available for further and additional appropriation.

CHAPTER 38

(S. B. 498—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 9, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, in the department of administration, division of purchasing — revolving fund, account no. fund 2320, fiscal year 1998, organization 0216, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.
WHEREAS, The governor has established that there now remains an unappropriated balance in the division of purchasing — revolving fund, account no. fund 2320, fiscal year 1998, organization 0216, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 2320, fiscal year 1998, organization 0216, be supplemented and amended by increasing the total appropriation by forty thousand one hundred sixteen dollars in the line item as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$30,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>10,116</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding thirty thousand dollars to the existing appropriation for personal services and by adding ten thousand one hundred sixteen dollars to the existing appropriation for employee benefits for expenditure during the fiscal year one thousand nine hundred ninety-eight.
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, in the bureau of commerce-division of natural resources, account no. fund 3200, fiscal year 1998, organization 0310, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established that there now remains an unappropriated balance in the bureau of commerce-division of natural resources, account no. fund 3200, fiscal year 1998, organization 0310, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 3200, fiscal year 1998, organization 0310, be supplemented and amended by increasing the total appropriation by one hundred forty-three thousand dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 3. Appropriations from other funds.
3 BUREAU OF COMMERCE
4 169—Division of Natural Resources
5 (WV Code Chapter 20)
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding one hundred forty-three thousand dollars to the existing appropriation for endowment fund-Ohio River fisheries management/research for expenditure during the fiscal year one thousand nine hundred ninety-eight.

CHAPTER 40

(S. B. 542—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 9, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary transfer of public moneys out of the treasury from the unappropriated surplus balance in other funds, by transferring an amount not to exceed sixty thousand eight hundred sixty-two dollars and fifty cents which has accrued from the bureau of commerce — division of miners' health, safety and training — surface reclamation bonds mine openings fund, account no. fund 3353, organization 0314, to the bureau of commerce — division of miners' health, safety and training, test fees fund, account no. fund 3350, organization 0314.

WHEREAS, The Legislature finds that the account balance in the bureau of commerce — division of miners' health, safety and training — surface reclamation bonds mine openings fund exceeds that which is necessary for the purposes for which the account was established; therefore
Be it enacted by the Legislature of West Virginia:

1 That an amount not to exceed sixty thousand eight
2 hundred sixty-two dollars and fifty cents which has
3 accrued in the unappropriated surplus balance of the
4 bureau of commerce — division of miners' health, safety
5 and training — surface reclamation bonds mine openings
6 fund, account no. fund 3353, organization 0314, be
7 decreased and expired by transferring an amount not to
8 exceed sixty thousand eight hundred sixty-two dollars and
9 fifty cents to the bureau of commerce — division of
10 miners' health, safety and training, test fees fund, account
11 no. fund 3350, organization 0314.

12 The purpose of this bill is to decrease and expire a
13 sum not to exceed sixty thousand eight hundred sixty-two
14 dollars and fifty cents which has accrued in the
15 unappropriated surplus balance in other funds, account
16 no. fund 3353, organization 0314, by transferring an
17 amount not to exceed sixty thousand eight hundred sixty-
18 two dollars and fifty cents to account no. fund 3350,
19 organization 0314, in order to fully and effectively carry
20 out the provisions of West Virginia code chapter twenty-
21 two-a.

CHAPTER 41

(S. B. 358—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Preziosi, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed February 19, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the
balance of moneys remaining unappropriated for the fiscal
year ending the thirtieth day of June, one thousand nine
hundred ninety-seven, in the lottery net profits, all
supplementing and amending the appropriation for the fiscal
year ending the thirtieth day of June, one thousand nine
hundred ninety-eight.
WHEREAS, The governor has established that there now remains an unappropriated balance in the lottery net profits available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; therefore

Be it enacted by the Legislature of West Virginia:

That chapter five, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, known as the "Budget Bill", be supplemented and amended to hereafter read as follows:

TITLE II—APPROPRIATIONS.

Sec. 10. Appropriations from lottery net profit surplus.

The following items are hereby appropriated from lottery net profits, and are to be made available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, only out of surplus lottery net profits accrued for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, and only after all appropriations made pursuant to Title II, section nine of this act are fully funded. In the event that surplus revenue available on the thirty-first day of July, one thousand nine hundred ninety-seven, is not sufficient to meet all the appropriations made pursuant to this section, then the appropriations shall be made to the extent that surplus revenues are available as of the date mandated and shall be allocated first to provide the necessary funds to meet the first appropriation of this section; next, to provide the funds necessary for the second appropriation of this section; and subsequently to provide the funds necessary for each appropriation in succession before any funds are provided for the next subsequent appropriation.

278—Board of Directors of the State College System—Control Account

(WV Code Chapter 18B)

Account No.
<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Total</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4291</td>
<td>4291</td>
<td>1998</td>
<td>0481</td>
<td>Shepherd College-Capital Improvements—Total</td>
<td>764</td>
<td>$2,600,000</td>
</tr>
<tr>
<td>3067</td>
<td>3067</td>
<td>1998</td>
<td>0304</td>
<td>West Virginia Development Office—Tourism Commission (WV Code Chapter 5B)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3067</td>
<td>3067</td>
<td>1998</td>
<td>0304</td>
<td>Raleigh County Meeting and Convention Center—Total</td>
<td>763</td>
<td>$0</td>
</tr>
<tr>
<td>3505</td>
<td>3505</td>
<td>1998</td>
<td>0431</td>
<td>Department of Education and the Arts—Office of the Secretary (WV Code Chapter 5F)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3505</td>
<td>3505</td>
<td>1998</td>
<td>0431</td>
<td>Capital Outlay and Improvements</td>
<td>762</td>
<td>$1,100,000</td>
</tr>
<tr>
<td>5405</td>
<td>5405</td>
<td>1998</td>
<td>0508</td>
<td>Bureau of Senior Services (WV Code Chapter 29)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3067</td>
<td>3067</td>
<td>1998</td>
<td>0304</td>
<td>Senior Citizens Centers and Programs</td>
<td>462</td>
<td>$700,000</td>
</tr>
<tr>
<td>3067</td>
<td>3067</td>
<td>1998</td>
<td>0304</td>
<td>Tourism-Unclassified (R)</td>
<td>662</td>
<td>$550,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Total, TITLE II, Section 10-</td>
<td></td>
<td>$4,950,000</td>
</tr>
</tbody>
</table>

Total Lottery Net Profit Surplus: $4,950,000
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, in the department of health and human resources — division of human services — health care provider tax, account no. fund 5090, fiscal year 1998, organization 0511, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources — division of human services — health care provider tax, account no. fund 5090, fiscal year 1998, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 5090, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by two million nine hundred ninety-eight thousand eight hundred twenty-three dollars in the line item as follows:

1

TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH

AND HUMAN RESOURCES

129—Division of Human Services—

Health Care Provider Tax

(WV Code Chapter 11)
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding two million nine hundred ninety-eight thousand eight hundred twenty-three dollars to the existing appropriation for unclassified to match federal funds to pay medicaid providers for expenditure during the fiscal year one thousand nine hundred ninety-eight.

CHAPTER 43

(S. B. 495—By Senators Tomblin, Mr. President, and Buckalew) [By Request of the Executive]

[Passed March 4, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, in the department of health and human resources — division of human services — child support enforcement, account no. fund 5094, fiscal year 1998, organization 0511, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources — division of human services — child support enforcement, account no. fund 5094, fiscal year 1998,
organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 5094, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by two hundred seven thousand one hundred seventy dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

130—Division of Human Services—
Child Support Enforcement

(WV Code Chapter 48A)

Account No.

Fund 5094 FY 1998 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$207,170</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding two hundred seven thousand one hundred seventy dollars to the existing appropriation for unclassified for the access and visitation program and for the family law masters program for expenditure during the fiscal year one thousand nine hundred ninety-eight.
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, in the department of health and human resources, division of human services - medical services trust fund, account no. fund 5185, fiscal year 1998, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources, division of human services - medical services trust fund, account no. fund 5185, fiscal year 1998, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, account no. fund 5185, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by three million nine hundred eighty-two thousand four hundred twelve dollars in the line items as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 3. Appropriations from other funds.
3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, in the department of health and human resources, division of human services - medical services trust fund, account no. fund 5185, fiscal year 1998, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.
WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources, division of human services - medical services trust fund, account no. fund 5185, fiscal year 1998, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 5185, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by fourteen million dollars in a new line item as follows:

<table>
<thead>
<tr>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 3. Appropriations from other funds.</td>
</tr>
<tr>
<td>DEPARTMENT OF HEALTH AND HUMAN RESOURCES</td>
</tr>
<tr>
<td>131—Human Services—</td>
</tr>
<tr>
<td>Medical Services Trust Fund</td>
</tr>
<tr>
<td>(WV Code Chapter 9)</td>
</tr>
<tr>
<td>Account No.</td>
</tr>
<tr>
<td>Fund 5185 FY 1998 Org 0511</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>4c Medical Services</td>
<td></td>
</tr>
<tr>
<td>4d Payment Backlog</td>
<td>260</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this fund in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding fourteen million dollars to a new item of appropriation for medical services payment backlog for expenditure during fiscal year one thousand nine hundred ninety-eight.
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, in the department of military affairs and public safety — West Virginia state police — surplus transfer account, account no. fund 6519, fiscal year 1998, organization 0612, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of military affairs and public safety — West Virginia state police — surplus transfer account, account no. fund 6519, fiscal year 1998, organization 0612, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight, to account no. fund 6519, fiscal year 1998, organization 0612, be supplemented and amended by increasing the total appropriation by two hundred eighty-five thousand five hundred dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 3. Appropriations from other funds.
3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY
5 137—West Virginia State Police—
6 Surplus Transfer Account
7 (WV Code Chapter 15)

8 Account No.

9 Fund 6519 FY 1998 Org 0612

10 Activity Other

11 1 Unclassified—Total (R) ............ 096 $285,500

12 Any unexpended balance remaining in the appropriation for unclassified—total (fund 6519, activity 096) at the close of fiscal year 1997-98, is hereby reappropriated for expenditure during the fiscal year 1998-99.

13 The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding two hundred eighty-five thousand five hundred dollars to the existing appropriation for unclassified for expenditure during the fiscal year one thousand nine hundred ninety-eight.

CHAPTER 47

(S. B. 634—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 10, 1998; 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-eight, in the amount of five hundred ten thousand seventy-two dollars from the insurance commissioner-examination revolving fund, fund 7150, and in the amount of eight hundred eighty-seven thousand seventy-seven dollars from the insurance commissioner-cash control fund, fund 7152.
WHEREAS, The Legislature finds that the fund balance in the insurance commissioner-examination revolving fund and the insurance commissioner-cash control fund, exceeds that which is necessary for the purposes for which the accounts were established; 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-eight, to the insurance commissioner-examination revolving fund, fund 7150, be decreased by expiring the amount of five hundred ten thousand seventy-two dollars and to the insurance commissioner-cash control fund, fund 7152, be decreased by expiring the amount of eight hundred eighty-seven thousand seventy-seven dollars to the state fund, general revenue, to be available for further and additional appropriation.

The purpose of this bill is to expire the sum of the five hundred ten thousand seventy-two dollars from the insurance commissioner-examination revolving fund, fund 7150, and to expire the sum of eight hundred eighty-seven thousand seventy-seven dollars from the insurance commissioner-cash control, fund 7152, 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-eight, to be available for further and additional appropriation.

CHAPTER 48

(S. B. 785—By Senators Craig, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations to the public service commission, account no. fund 8623, fiscal year 1998,
organization 0926, as originally appropriated by chapter five, acts of the Legislature, first regular session, one thousand nine hundred ninety-seven, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation to the public service commission-motor carrier division, account no. fund 8623, fiscal year 1998, organization 0926, be amended and reduced in the line item as follows:

1 TITLE II— Appropriations.

Sec. 3. Appropriations from other funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

194—Public Service Commission

(WV Code Chapter 24A)

Account No.

Fund 8623  FY 1998  Org 0926

Activity  Other

Unclassified ................. 099  $ 357,000

And, that the items of the total appropriations to the public service commission, account no. fund 8623, fiscal year 1998, organization 0926, be amended and increased in the line items as follows:

15 TITLE II— Appropriations.

Sec. 3. Appropriations from other funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

194—Public Service Commission

(WV Code Chapter 24A)

Account No.

Fund 8623  FY 1998  Org 0926
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid account for the designated spending unit. The item for unclassified is reduced by three hundred fifty-seven thousand dollars. The item for personal services is increased by three hundred thousand dollars. The item for employee benefits is increased by fifty-seven thousand dollars. The amounts as itemized for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 49

(S. B. 784—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations to the public service commission-motor carrier division, account no. fund 8625, fiscal year 1998, organization 0926, as originally appropriated by chapter five, acts of the Legislature, first regular session, one thousand nine hundred ninety-seven, known as the "Budget Bill”.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation to the public service commission-motor carrier division, account no. fund 8625, fiscal
year 1998, organization 0926, be amended and reduced in the line item as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 3. Appropriations from other funds.
3 MISCELLANEOUS BOARDS AND COMMISSIONS
4 196—Public Service Commission—
5 Motor Carrier Division
6 (WV Code Chapter 24A)
7 Account No.
8 Fund 8625 FY 1998 Org 0926
9
10 Activity Other Funds
11 4 Unclassified ............... 099 $ 114,240
12 And, that the items of the total appropriations to the public service commission, account no. fund 8625, fiscal year 1998, organization 0926, be amended and increased in the line items as follows:

16 TITLE II—APPROPRIATIONS.
17 Sec. 3. Appropriations from other funds.
18 MISCELLANEOUS BOARDS AND COMMISSIONS
19 196—Public Service Commission—
20 Motor Carrier Division
21 (WV Code Chapter 24A)
22 Account No.
23 Fund 8625 FY 1998 Org 0926
24 Activity Other Funds
25 1 Personal Services ............. 001 $ 96,000
26 3 Employee Services ............ 010 18,240
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid account for the designated spending unit. The item for unclassified is reduced by one hundred fourteen thousand two hundred forty dollars. The item for personal services is increased by ninety-six thousand dollars. The item for employee benefits is increased by eighteen thousand two hundred forty dollars. The amounts as itemized for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 50
(H. B. 4385—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the bureau of commerce - division of labor, account no. fund 8706, fiscal year 1998, organization 0308, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

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-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:
That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 8706, fiscal year 1998, organization 0308, be supplemented and amended by increasing the total appropriation by ten thousand eight hundred eighty-one dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.
2 Section 5. Appropriations of federal funds.
3 BUREAU OF COMMERCE
4 247—Division of Labor—
5 (WV Code Chapters 21 and 47)
6 Account No.
7 Fund 8706 FY 1998 Org 0308
8

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$10,881</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding ten thousand eight hundred eighty-one dollars to the existing appropriation for unclassified for the collection of occupational injury and illness data for expenditure during fiscal year one thousand nine hundred ninety-eight.

CHAPTER 51

(H. B. 4386—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed February 27, 1998: in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for fiscal year ending the thirtieth
day of June, one thousand nine hundred ninety-eight, to the
department of health and human resources - division of
human services, account no. fund 8722, fiscal year 1998,
organization 0511, supplementing and amending the
appropriation for fiscal year ending the thirtieth day of June,
one thousand nine hundred ninety-eight.

WHEREAS, The governor has established the availability of
federal funds for continuing programs now available for
expenditure in fiscal year ending the thirtieth day of June, one
thousand nine hundred ninety-eight, which are hereby
appropriated by the terms of this supplementary appropriation
bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the
thirtieth day of June, one thousand nine hundred ninety-eight, to
account no. fund 8722, fiscal year 1998, organization 0511, be
supplemented and amended by increasing the total appropriation
by six million three hundred seventeen thousand forty-one
dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.
2 Section 5. Appropriations of federal funds.
3 DEPARTMENT OF HEALTH
4 AND HUMAN RESOURCES
5 232—Division of Human Services—
6 (WV Code Chapters 9, 48 and 49)
7 Account No.
8 Fund 8722 FY 1998 Org 0511
9 Activity Federal
10
11 1 Unclassified—Total .......... 096 $6,317,041
12 The purpose of this supplementary appropriation bill
13 is to supplement this account in the budget act for fiscal
14 year ending the thirtieth day of June, one thousand nine
15 hundred ninety-eight, by adding six million three hundred
16 seventeen thousand forty-one dollars to the existing
17 appropriation for unclassified for social services for
18 expenditure during fiscal year one thousand nine hundred
19 ninety-eight.
AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the department of health and human resources - division of human services, account no. fund 8722, fiscal year 1998, organization 0511, supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 8722, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by eight hundred seventy thousand dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.
2 Section 5. Appropriations of federal funds.
3 DEPARTMENT OF HEALTH
4 AND HUMAN RESOURCES
5 232—Division of Human Services—
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding eight hundred seventy thousand dollars to the existing appropriation for unclassified for child welfare services for the family and children's tracking system (FACTS) for expenditure during fiscal year one thousand nine hundred ninety-eight.

CHAPTER 53

(H. B. 4387—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

(By Request of the Executive)

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the department of health and human resources - human rights commission, account no. fund 8725, fiscal year 1998, organization 0510, supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.
WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 8725, fiscal year 1998, organization 0510, be supplemented and amended by increasing the total appropriation by twenty thousand dollars in the line item as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$20,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding twenty thousand dollars to the existing appropriation for unclassified for EEOC and HUD programs for expenditure during fiscal year one thousand nine hundred ninety-eight.
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-eight, to the department of military affairs and public safety - West Virginia state police, account no. fund 8741, fiscal year 1998, organization 0612, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

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-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 8741, fiscal year 1998, organization 0612, be supplemented and amended by increasing the total appropriation by one million seventy thousand three hundred ninety-one dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.

Section 5. Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

235—West Virginia State Police—
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding one million seventy thousand three hundred ninety-one dollars to the existing appropriation for unclassified for law enforcement improvements for expenditure during fiscal year one thousand nine hundred ninety-eight.

CHAPTER 55

(H. B. 4396—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 14, 1998: in effect from passage. Approved by the Governor.]
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-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 8746, fiscal year 1998, organization 0307, be supplemented and amended by increasing the total appropriation by four million dollars in the line item as follows:

<table>
<thead>
<tr>
<th>Title II—Appropriations.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 6. Appropriations from federal block grants.</td>
</tr>
<tr>
<td>255—West Virginia Development Office—</td>
</tr>
<tr>
<td>Community Development Account No.</td>
</tr>
<tr>
<td>Fund 8746 FY 1998 Org 0307</td>
</tr>
<tr>
<td>Activity</td>
</tr>
<tr>
<td>1</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding four million dollars to the existing appropriation for the small cities block grant program to be expended during the fiscal year one thousand nine hundred ninety-eight.
CHAPTER 56

(Com. Sub. for H. B. 4389—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the department of transportation - office of the secretary, account no. fund 8782, fiscal year 1998, organization 0801, supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

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-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 8782, fiscal year 1998, organization 0801, be supplemented and amended by increasing the total appropriation by five hundred fifty-one thousand five hundred seventy dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.
2 Section 5. Appropriations of federal funds.
3 DEPARTMENT OF TRANSPORTATION
4 240—Office of the Secretary—
5 (WV Code Chapter 5F)
6 Account No.
7 Fund 8782 FY 1998 Org 0801
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding five hundred twenty-six thousand five hundred seventy dollars to the existing appropriation for the development of the West Virginia regional transpark and twenty-five thousand dollars for a mobile aircraft rescue and fire fighting training simulator needs survey for expenditure during fiscal year one thousand nine hundred ninety-eight.

CHAPTER 57
(H. B. 4390—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to a new item of appropriation designated to the department of agriculture - state soil conservation committee, account no. fund 8783, fiscal year 1998, organization 1400, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

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-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter five, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, known as the budget bill, be supplemented and amended by adding to Title II, section five thereof, the following:

TITLE II—APPROPRIATIONS.

Section 5. Appropriations of federal funds.

EXECUTIVE

219a—Department of Agriculture—
State Soil Conservation Committee

Account No.

Fund 8783 FY 1998 Org 1400

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$28,617</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by providing for a new item of appropriation to be established therein to appropriate federal funds in the amount of twenty-eight thousand six hundred seventeen dollars to be expended during fiscal year one thousand nine hundred ninety-eight.
CHAPTER 58
(H. B. 4391—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the governor’s office - governor’s cabinet on children and families, account no. fund 8792, fiscal year 1998, organization 0100, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

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-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 8792, fiscal year 1998, organization 0100, be supplemented and amended by increasing the total appropriation by four hundred sixty thousand dollars in the line item as follows:

TITLE II—APPROPRIATIONS.

Section 5. Appropriations of federal funds.

EXECUTIVE

213—Governor’s Office—
Governor’s Cabinet on Children and Families
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding four hundred sixty thousand dollars to the existing appropriation for the governor's cabinet on children and families for expenditure during fiscal year one thousand nine hundred ninety-eight.

CHAPTER 59

(Com. Sub. for H. B. 4392—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]
expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 8800, fiscal year 1998, organization 0100, be supplemented and amended by increasing the total appropriation by seven hundred seven thousand five hundred dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 5. Appropriations of federal funds.

3 EXECUTIVE

4 215—Governor's Office—

5 Commission for National and Community Service

(WV Code Chapter 5)

6 Account No.

7 Fund 8800 FY 1998 Org 0100

8 Activity Federal Funds

9 Unclassified—Total 096 $707,500

10 The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding seven hundred seven thousand five hundred dollars to the existing appropriation for unclassified for the commission for national and community service for expenditure during fiscal year one thousand nine hundred ninety-eight.
CHAPTER 60
(H. B. 4393—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to a new item of appropriation designated to the department of health and human resources — West Virginia drinking water treatment, account no. fund 8824, fiscal year 1998, organization 0506, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

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-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter five, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, known as the “Budget Bill”, be supplemented and amended by adding to Title II, section five thereof the following:

1 TITLE II—APPROPRIATIONS.
2 Section 5. Appropriations of federal funds.
3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES
4 229a—Division of Health—
5 West Virginia Drinking Water Treatment
The above appropriation for Unclassified—Total shall be transferred to the West Virginia Water Treatment Revolving Fund or appropriate bank depository and the Drinking Water Treatment Revolving — Administrative Expense Fund as provided by chapter 16, of the code.

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by providing for a new item of appropriation to be established therein to appropriate federal funds in the amount of twelve million five hundred fifty-eight thousand dollars to Unclassified for West Virginia Drinking Water Treatment to be expended during fiscal year one thousand nine hundred ninety-eight.

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining as an unappropriated balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to a new item of appropriation designated to the department of health and human resources, division of health, abstinence education program, account no. fund
Ch. 61] APPROPRIATIONS 263

8825, fiscal year 1998, organization 0506, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established the availability of federal funds for establishing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter five, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, known as the "Budget Bill", be supplemented and amended by adding a new item of appropriation to Title II, section six thereof the following:

1 TITLE II—APPROPRIATIONS.

2 Sec. 6. Appropriations from federal block grants.

3 DEPARTMENT OF HEALTH

4 AND HUMAN RESOURCES

5 261a—Division of Health—

6 Abstinence Education Program

7 Account No.

8 Fund 8825 FY 1998 Org 0506

9  Activity Other

10

11 1 Unclassified—Total ............... 096 $243,000

12 The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding two hundred forty-three thousand dollars by providing for a new item of appropriation to be established therein to appropriate federal funds in the amount of two hundred forty-three thousand dollars to the Unclassified total for Abstinence Education Program to be expended during fiscal year one thousand nine hundred ninety-eight.
AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state road fund to the department of transportation, division of motor vehicles, account no. fund 9007, fiscal year 1998, organization 0802, as originally appropriated by chapter five, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, known as the "Budget Bill".

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included the statement of the state road fund setting forth therein the cash balances and investments as of July 1, 1997, and further included the estimate of revenues for the fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for the fiscal year 1997-98.

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

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to account no. fund 9007, fiscal year 1998, organization 0802, 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 92—Division of Motor Vehicles
5 (WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)
6 Account No.
And, that the items of the total appropriations from the state road fund to account no. fund 9007, fiscal year 1998, organization 0802, be amended and increased in the line items as follows:

**TITLE II—APPROPRIATIONS.**

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

**DEPARTMENT OF TRANSPORTATION***

*92—Division of Motor Vehicles*

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

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
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<tbody>
<tr>
<td>001</td>
<td>001</td>
</tr>
<tr>
<td>010</td>
<td>010</td>
</tr>
<tr>
<td>099</td>
<td>099</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid account for the designated spending unit. The item for capital outlay-building is reduced by one million eight hundred sixty thousand dollars. The item for personal services is increased by two hundred six thousand four hundred seventy-five dollars, employee benefits is increased by twenty-three thousand eight hundred dollars and unclassified is increased by three hundred seventy-six thousand one hundred seventy-three dollars. The amounts as itemized for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, shall be available for expenditure immediately upon the effective date of this bill.
CHAPTER 63

(S. B. 206—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed February 5, 1998; 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 1998, organization 0803, as originally appropriated by chapter five, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, known as the “Budget Bill”.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included the statement of the state road fund setting forth therein the cash balances and investments as of July 1, 1997, and further included the estimate of revenues for the fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98.

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

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to account no. fund 9017, fiscal year 1998, 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 93—Division of Highways
(WV Code Chapters 17 and 17C)

Account No.

Fund 9017 FY 1998 Org 0803

State
Activity Road
Fund

2 ARC Assessment ................. 136 $293,000

And, that the items of the total appropriations from the state road fund to account no. fund 9017, fiscal year 1998, 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

93—Division of Highways

(WV Code Chapters 17 and 17C)

Account No.

Fund 9017 FY 1998 Org 0803

State
Activity Road
Fund

5 Maintenance, State Local Service . 271 $3,000,000

6 Maintenance, Contract Paving and Secondary Road Maintenance . 272 3,000,000

7 Bridge Repair and Replacement . 273 9,000,000

12 Interstate Construction .......... 278 5,000,000

13 Other Federal Aid Programs ..... 279 64,000,000

14 Appalachian Programs .......... 280 17,000,000

15 Nonfederal Aid Construction .... 281 17,000,000
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid account for the designated spending unit. The item for ARC assessment is reduced by two hundred ninety-three thousand dollars. The item for maintenance, state local service is increased by three million dollars, maintenance, contract paving and secondary road maintenance is increased by three million dollars, bridge repair and replacement is increased by nine million dollars, interstate construction is increased by five million dollars, other federal aid programs is increased by sixty-four million dollars, Appalachian programs is increased by seventeen million dollars, and nonfederal aid construction is increased by seventeen million dollars. The amounts as itemized for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 64

(S. B. 205—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed February 4, 1998; 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 9018, fiscal year 1998, organization 0803, as originally appropriated by chapter five, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, known as the “Budget Bill”.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to account no. fund 9018, fiscal year 1998, 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

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

Account No.
Fund 9018 FY 1998 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Other Federal Aid Programs</td>
<td>$18,000,000</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriations from the state road fund to account no. fund 9018, fiscal year 1998, 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

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

Account No.
Fund 9018 FY 1998 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Appalachian Programs</td>
<td>$15,000,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid account for the designated spending unit. The item for other federal aid programs is reduced by eighteen million dollars. The item for Appalachian programs is increased by fifteen million dollars. The amounts as itemized for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, shall be available for expenditure immediately upon the effective date of this bill.
CHAPTER 65

(Com. Sub. for H. B. 4474—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the amount of money that can be borrowed from the revenue shortfall reserve fund.

Be it enacted by the Legislature of West Virginia:

That section twenty, article two, 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 2. FINANCE DIVISION.

§5A-2-20. Reduction of appropriations; powers of governor; revenue shortfall reserve fund and permissible expenditures therefrom.

1. (a) Notwithstanding any provision of this section, the governor may reduce appropriations according to any of the methods set forth in sections twenty-one and twenty-two of this article. The governor may, in lieu of imposing a reduction in appropriations, request an appropriation by the Legislature from the revenue shortfall reserve fund established in this section.

2. (b) A revenue shortfall reserve fund is hereby continued within the state treasury. The revenue shortfall reserve fund shall be funded as set forth in this subsection from surplus revenues, if any, in the state fund, general revenue, as the surplus revenues may accrue from time to time. Within sixty days of the end of each fiscal year, the secretary shall cause to be deposited into the revenue shortfall reserve fund the first fifty percent of all surplus revenues, if any, determined to have accrued during the fiscal year just ended. The revenue shortfall reserve fund...
shall be funded continuously and on a revolving basis in accordance with this subsection up to an aggregate amount not to exceed five percent of the total appropriations from the state fund, general revenue, for the fiscal year just ended. If at the end of any fiscal year the revenue shortfall reserve fund is funded at an amount equal to or exceeding five percent of the state's general revenue fund budget for the fiscal year just ended, then there shall be no further obligation of the secretary under the provisions of this section to apply any surplus revenues as set forth in this subsection until such time as the revenue shortfall reserve fund balance is less than five percent of the total appropriations from the state fund, general revenue.

(c) Not earlier than the first day of November of each calendar year, if the state's fiscal circumstances are such as to otherwise trigger the authority of the governor to reduce appropriations under this section or section twenty-one or section twenty-two of this article, then in that event the governor may notify the presiding officers of both houses of the Legislature in writing of his or her intention to convene the Legislature pursuant to section 19, article VI of the West Virginia constitution for the purpose of requesting the introduction of a supplementary appropriation bill or to request a supplementary appropriation bill at the next preceding regular session of the Legislature to draw money from the surplus revenue shortfall reserve fund to meet any anticipated revenue shortfall. If the Legislature fails to enact a supplementary appropriation from the revenue shortfall reserve fund during any special legislative session called for the purposes set forth in this section or during the next preceding regular session of the Legislature, then the governor may proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article. Should any amount drawn from the revenue shortfall reserve fund pursuant to an appropriation made by the Legislature prove insufficient to address any anticipated shortfall, then the governor may also proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article.
(d) Upon the creation of the fund, the Legislature is authorized and may make an appropriation from the revenue shortfall reserve fund for revenue shortfalls, for emergency revenue needs caused by acts of God or natural disasters or for other fiscal needs as determined solely by the Legislature.

(e) Prior to the thirty-first day of October, in any fiscal year in which revenues are inadequate to make timely payments of the state's obligations, the governor may by executive order, after first notifying the presiding officers of both houses of the Legislature in writing, borrow funds from the revenue shortfall reserve fund. The amount of funds borrowed under this subsection shall not exceed one and one-half percent of the general revenue estimate for the fiscal year in which the funds are to be borrowed, or the amount the governor determines is necessary to make timely payment of the state's obligations, whichever is less. Any funds borrowed pursuant to this subsection shall be repaid, without interest, and redeposited to the credit of the revenue shortfall reserve fund within ninety days of their withdrawal.

CHAPTER 66

(H. B. 4055—By Delegates Seacrist, Michael, Laird and Campbell)

[Passed February 17, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty, relating to payment of funds of county boards of education, county commissions, municipal corporations by electronic or wire transfer, inclusion of appropriate electronic remittance voucher information; and specifying effective date.

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

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-20. Electronic or wire transfer.

(a) Notwithstanding any other provision of this code to the contrary, whenever the treasurer of a county board of education, a county commission or a municipality is authorized or directed pursuant to law to disburse or transfer on behalf of the county board of education, county commission or municipality, funds in the custody of the treasurer or in the treasury of the county board of education, county commission or municipality, the treasurer is authorized to disburse or transfer the funds by means of electronic or wire transfer and that transfer shall include appropriate electronic remittance voucher information. The county board of education, county commission or governing body of a municipality may enter into a written agreement with the banking institution in which the funds are deposited, prescribing the manner in which electronic or wire transfer of the funds shall be accomplished, identifying by number and name those accounts from which electronic or wire transfers may be made, identifying which person or persons are authorized to order the electronic or wire transfer of funds from those accounts, and implementing a security procedure as defined in section two hundred one, article four-a, chapter forty-six of this code.

(b) It is the duty of the county board of education, county commission or governing body of a municipality to adopt a system of internal controls satisfactory to the tax commissioner as ex officio, the chief inspector and supervisor of public offices for the documentation and reporting of all transfers or disbursements of funds accomplished by electronic or wire transfer to ensure the safety and integrity of the payment process.
(c) The county board of education, county commission or governing body of a municipality shall also adopt procedures:

(1) Governing the method by which the treasurer is authorized to direct payments from the funds of the county board of education, county commission or municipality on deposit with a banking institution;

(2) Governing the method of payment of obligations of the county board of education, county commission or municipality, including payment by check, draft, electronic or wire transfer, or other method of payment mutually acceptable to the county board of education, county commission or governing body of a municipality, and the banking institution; and

(3) Covering any other matters it believes necessary to ensure the safety and integrity of the payment process.

(d) A county board of education, county commission or governing body of a municipality shall file a copy of the procedures it adopts in accordance with the provisions of subsection (c) of this section with each banking institution in which its funds are deposited.

(e) The treasurer of the county board of education, county commission or municipality, and the banking institution shall agree to follow rules and procedures for electronic fund transfers promulgated by the federal reserve bank and the national clearing house association (NACHA) to ensure the safety and integrity of the payment process. These safeguards must be approved by the county board of education, county commission or governing body of a municipality. If the county board of education, county commission or governing body of a municipality finds that the safeguards are consistent with and do not contravene the procedures adopted under the provisions of subsection (c) of this section, the safeguards must be approved.

(f) This section applies to disbursements or transfers made after the thirty-first day of May, one thousand nine hundred ninety-eight.
CHAPTER 67

(Com. Sub. for H. B. 4096—By Delegates Thompson, Jenkins, Kominar, H. White, Heck, Hunt and Tomblin)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the duty of banking commissioner to require criminal background investigations of certain applicants regulated by the banking division.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of department transferred to commissioner; powers and duties of commissioner.

1 (a) Subject to the powers vested in the board by article three of this chapter, the commissioner shall have supervision and jurisdiction over state banks, regulated consumer lenders, second mortgage lenders and brokers, credit unions, and all other persons now or hereafter made subject to his or her supervision or jurisdiction. All powers, duties, rights and privileges vested in the department are hereby vested in the commissioner. He or she shall be the chief executive officer of the department of banking and shall be responsible for the department's organization, services and personnel, and for the orderly and efficient administration, enforcement and execution of the provisions of this chapter and all laws vesting authority or powers in or prescribing duties or functions for the department or the commissioner.
(b) The commissioner shall:

(1) Maintain the office for the department at the state capitol, and there keep a complete record of all the department's transactions, of the financial conditions of all financial institutions and such records of the activities of other persons as the commissioner may deem important. Notwithstanding any other provision of the code of West Virginia, heretofore or hereafter enacted, the records relating to the financial condition of any financial institution and any information contained therein shall be confidential for the use of the commissioner and authorized personnel of the department of banking. No person shall divulge any information contained in any such records except as hereafter authorized in response to a valid subpoena or subpoena duces tecum issued pursuant to law in a criminal proceeding or in a civil enforcement action brought by the state or federal regulatory authorities. Subpoenas shall first be directed to the commissioner, who shall authorize disclosure of relevant records and information therefrom for good cause, upon imposing terms and conditions as are deemed necessary to protect the confidential nature of the records, the financial integrity of the financial institution or the person to which the records relate, and the legitimate privacy interests of any individual named in such records. Conformity with federal procedures shall be sought where the institution maintains federal deposit insurance. The commissioner shall have and may exercise reasonable discretion as to the time, manner and extent the other records in his or her office and the information contained therein shall be available for public examination;

(2) Require all financial institutions to comply with all the provisions of this chapter and other applicable laws, or any rule promulgated or order issued thereunder;

(3) Investigate all alleged violations of this chapter and all other laws which he or she is required to enforce and of any rule promulgated or order issued thereunder; and

(4)(1) Require a criminal background investigation, including fingerprint checks, of each: (A) Applicant seeking approval to charter and/or control a state bank,
state credit union, or a foreign bank state agency or representative office; (B) applicant seeking a license to engage in the business of money transmission, currency exchange, or other activity regulated under article two, chapter thirty-two-a of this code; (C) applicant subject to the commissioner's supervision seeking a license to engage in the business of regulated consumer lending, mortgage lending or brokering; and (D) department of banking financial institutions regulatory employee applicant, to be made through the West Virginia state police and the federal bureau of investigation: Provided, That where the applicant is a company or entity already subject to supervision and regulation by the federal reserve board or other federal bank, thrift or credit union regulator, or is a direct or indirect subsidiary of a company or entity subject to such supervision and regulation, or where the applicant is a company subject to the supervision and regulation of the federal securities and exchange commission whose stock is publicly traded on a registered exchange or through the national association of securities dealers automated quotation system, or the applicant is a direct or indirect subsidiary of such a company, the investigation into criminal background shall not be so required. The provisions of this subdivision are not applicable to applicants seeking interim bank charters organized solely for the purpose of facilitating the acquisition of another bank pursuant to section five, article four of this chapter.

(2) Where a nonexempt applicant hereunder is not a natural person, the principals of the applicant shall be subject to the requirements of subdivision (1) of this subsection. As used in this subdivision, the term "principals" means the chief executive officer, regardless of title, managing partner if a partnership, members of the organizing group if no chief executive officer has yet been appointed, trustee, or other person controlling the conduct of the affairs of a licensee. A person controlling ten percent or more of the stock of any corporate applicant shall be deemed to be a principal under this provision.
(c) In addition to all other authority and powers vested in the commissioner by provisions of this chapter and other applicable laws, the commissioner is authorized and empowered:

(1) To provide for the organization of the department and the procedures and practices thereof and implement the same by the promulgation of rules and forms as appropriate, which rules shall be promulgated in accordance with article three, chapter twenty-nine-a of this code;

(2) To employ, direct, discipline, discharge and establish qualifications and duties for all personnel for the department, including, but not limited to, examiners, assistant examiners, conservators and receivers, to establish the amount and condition of bonds for such thereof as he or she deems appropriate and to pay the premiums thereon, and if he or she so elects, to have all such personnel subject to and under the classified service of the state personnel department;

(3) To cooperate with organizations, agencies, committees and other representatives of financial institutions of the state in connection with schools, seminars, conferences and other meetings to improve the responsibilities, services and stability of the financial institutions;

(4) In addition to the examinations required by section six of this article, to inspect, examine and audit the books, records, accounts and papers of all financial institutions at such times as circumstances in his or her opinion may warrant;

(5) To call for and require all such data, reports and information from financial institutions under his or her jurisdiction, at such times and in such form, content and detail, deemed necessary by him or her in the faithful discharge of his or her duties and responsibilities in the supervision of the financial institutions;

(6) Subject to the powers vested in the board by article three of this chapter, to supervise the location,
organization, practices and procedures of financial institutions and, without limitation on the general powers of supervision thereof, to require financial institutions to:

(A) Maintain their accounts consistent with such regulations as he or she may prescribe and in accordance with generally accepted accounting practices;

(B) Observe methods and standards which he or she may prescribe for determining the value of various types of assets;

(C) Charge off the whole or any part of an asset which at the time of his or her action could not lawfully be acquired;

(D) Write down an asset to its market value;

(E) Record or file writings creating or evidencing liens or other interests in property;

(F) Obtain financial statements from prospective and existing borrowers;

(G) Obtain insurance against damage and loss to real estate and personal property taken as security;

(H) Maintain adequate insurance against such other risks as he or she may deem and determine to be necessary and appropriate for the protection of depositors and the public;

(I) Maintain an adequate fidelity bond or bonds on its officers and employees;

(J) Take such other action as may in his or her judgment be required of the institution in order to maintain its stability, integrity and security as required by law and all rules promulgated by him or her; and

(K) Verify any or all asset or liability accounts;

(7) Subject to the powers vested in the board by article three of this chapter, to receive from any person or persons and to consider any request, petition or application relating to the organization, location, conduct, services, policies and procedures of any financial
institution and to act thereupon in accordance with any provisions of law applicable thereto;

(8) In connection with the investigations required by subdivision (3), subsection (b) of this section, to issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings, any such subpoenas or subpoenas duces tecum to be issued, served and enforced in the manner provided in section one, article five, chapter twenty-nine-a of this code. Any person appearing and testifying at such a hearing may be accompanied by an attorney employed by him or her;

(9) To issue declaratory rulings in accordance with the provisions of section one, article four, chapter twenty-nine-a of this code;

(10) To study and survey the location, size and services of financial institutions, the geographic, industrial, economic and population factors affecting the agricultural, commercial and social life of the state, and the needs for reducing, expanding or otherwise modifying the services and facilities of financial institutions in the various parts of the state, and to compile and keep current data thereon to aid and guide him or her in the administration of the duties of his or her office;

(11) To implement all of the provisions of this chapter (except the provisions of article three) and all other laws which he or she is empowered to administer and enforce by the promulgation of rules in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(12) To implement the provisions of chapter forty-six-a of this code applicable to consumer loans and consumer credit sales by the promulgation of rules in accordance with the provisions of article three, chapter twenty-nine-a of this code so long as said rules do not conflict with any rules promulgated by the state's attorney general;

(13) To foster and encourage a working relationship between the department of banking and financial
institutions, credit, consumer, mercantile and other commercial and finance groups and interests in the state in order to make current appraisals of the quality, stability and availability of the services and facilities of financial institutions;

(14) To provide to financial institutions and the public copies of the West Virginia statutes relating to financial institutions, suggested drafts of bylaws commonly used by financial institutions, and such other forms and printed materials as may be found by him or her to be helpful to financial institutions, their shareholders, depositors and patrons, and to make reasonable charges therefor;

(15) To delegate the powers and duties of his or her office, other than the powers and duties in this subsection hereinafter excepted, to qualified department personnel, who shall act under the direction and supervision of the commissioner and for whose acts he or she shall be responsible, but the commissioner may delegate to the deputy commissioner of banking and to no other department personnel the following powers, duties and responsibilities, all of which are hereby granted to and vested in the commissioner and for all of which the commissioner shall likewise be responsible:

(A) To order any person to cease violating any provision or provisions of this chapter or other applicable law or any rule promulgated or order issued thereunder;

(B) To order any person to cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution or depositor thereof;

(C) To revoke the certificate of authority, permit or license of any financial institution except a banking institution in accordance with the provisions of section thirteen of this article; and

(D) To accept an assurance in writing that the person will not in the future engage in the conduct alleged by the commissioner to be unlawful, which conduct could be subject to an order under the provisions of this chapter. Such assurance of voluntary compliance shall not be
considered an admission of violation for any purpose, except that if a person giving such assurance fails to comply with its terms, the assurance is prima facie evidence that prior to such assurance the person engaged in conduct described in such assurance;

(16) To seek and obtain from courts, civil penalties against any person who violates this chapter, the rules issued pursuant thereto, or any orders lawfully entered by the commissioner or board of banking and financial institutions in an amount not less than fifty dollars nor more than five thousand dollars for each violation;

(17) To receive from state banking institutions applications to change the locations of their principal offices and to approve or disapprove such applications; and

(18) To take such other action as he or she may deem necessary to enforce and administer the provisions of this chapter (except the provisions of article three) and all other laws which he or she is empowered to administer and enforce, and to apply to any court of competent jurisdiction for appropriate orders, writs, processes and remedies.

CHAPTER 68

(Com. Sub. for S. B. 442—By Senators Ross, Bowman, Dittmar, Kessler, Snyder, White, Deem, Kimble, Wooton, Helmick, Sharpe, Hunter, Jackson, Oliverio, McKenzie, Sprouse, Ball, Anderson, Schoonover, Dugan and Plymale)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a; to amend article four of said chapter by adding thereto a new section, designated section ten-a; and to amend article five,
chapter thirty-one-c of said code by adding thereto a new section, designated section eleven, all relating generally to limiting access to certain records of financial institutions; providing for the access of certain governmental entities to financial records; defining terms; establishing requirements for government access to records; permitting access upon written authorization of a customer; requiring state entity to certify compliance; enumerating exceptions; establishing subpoena and notice requirements; setting forth procedures when subpoena issued by grand jury; providing for civil and criminal liability and penalties; establishing the statute of limitations and the tolling thereof; authorizing injunctive relief; providing for the exclusiveness of remedies; limiting stockholder inspection of books and records of state banking institutions; and limiting the inspection of books and records by credit union members.

Be it enacted by the Legislature of West Virginia:

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

Chapter
31A. Banks and Banking.
31C. Credit Unions.

CHAPTER 31A. BANKS AND BANKING.

Article
4. Banking Institutions and Services Generally.

ARTICLE 2A. MAXWELL GOVERNMENTAL ACCESS TO FINANCIAL RECORDS ACT.

§31A-2A-2. Requirements for government access to records.
§31A-2A-3. Written authorization of customer; contents; certification of compliance.
§31A-2A-5. Subpoena and notice requirements.


As used in this article:

(a) "Customer" means any person or his or her duly authorized representative who has transacted business with or has used the services of a financial institution or for whom a financial institution has acted as a fiduciary in relation to an account maintained in such person's name;

(b) "Financial institution" means a bank, a savings and loan association, a trust company or a credit union chartered pursuant to any state or federal law;

(c) "Financial record" means the original or a copy of any record or document held by a financial institution pertaining to a customer of the financial institution, including any record of a transaction conducted by means of a customer bank communication terminal or other electronic device. "Financial record" also means any information derived from such records or documents;

(d) "Investigation" includes, but is not limited to, any inquiry by a state or local law-enforcement officer, sheriff or prosecuting attorney, or any inquiry made by a state or local governmental entity for the purpose of determining whether there has been a violation of any law which is punishable by imprisonment or by a fine or other monetary liability;

(e) "Person" means an individual, partnership, corporation, limited liability company, association, trust or any other legal entity;

(f) "State entity" means any state or local governmental office, officer, department, division, bureau, board or commission, including the Legislature, and any
other state or local government agency of West Virginia, its political subdivisions and any agent thereof; and

(g) "Subpoena" includes a subpoena duces tecum or any other lawful subpoena to compel testimony or the disclosure or production of documents.

§31A-2A-2. Requirements for government access to records.

(a) No state entity may have access to or obtain from a financial institution financial records of any customer except as set forth in section four of this article or under the following circumstances:

(1) The customer has executed a written authorization pursuant to section three of this article;

(2) The financial records are disclosed in response to a judicial order, warrant, summons or subpoena issued by a court of competent jurisdiction or a valid administrative order or subpoena of a state entity expressly ordering or requiring the disclosure of financial records: Provided, That any subpoena issued pursuant to the provisions of this subsection shall comply with the provisions of section five of this article;

(3) The financial records are disclosed in response to a judicial order authorizing the appointment of the state entity or its agent: (A) As guardian of the customer or conservator of his or her property; or (B) as administrator or executor of the customer's estate;

(4) The financial records are disclosed: (A) Pursuant to a state or federal rule of civil or criminal procedure or any comparable rule of another court of competent jurisdiction; (B) in response to a subpoena issued in connection with any pending civil or criminal proceeding in which a state entity is a party; or (C) in response to interrogatories in aid of execution propounded by a state entity where it is a judgment creditor of the customer;

(5) The financial records are disclosed to law-enforcement officers pursuant to a grand jury or trial subpoena resulting from a criminal investigation which
complies with the provisions of section six of this article; or

(6) As may be required or permitted by any other state or federal law.

(b) No state entity obtaining financial records pursuant to the provisions of this article and no person who obtains financial records from a state entity which obtained such financial records pursuant to the provisions of this article shall disclose such financial records: (i) To any other state entity unless such other state entity has authority or authorization to receive the financial record in accordance with the provisions of this article; or (ii) to any person unless such person has authority or authorization to receive the financial record: Provided, That nothing herein shall limit or prevent the disclosure of financial records which are otherwise public documents or matters of public record or the disclosure of financial records made to facilitate a lawful proceeding, investigation, examination or inspection by a state entity. Financial records obtained under this article by a state entity shall not be subject to disclosure under the provisions of article one, chapter twenty-nine-b of this code.

§31A-2A-3. Written authorization of customer; contents; certification of compliance.

(a) A customer may authorize disclosure under section two of this article by signing and dating a statement in which he or she:

(1) Authorizes the disclosure for such period as may be agreed upon;

(2) Indicates an understanding of his or her right to revoke such authorization at any time before the financial records are disclosed;

(3) Identifies the financial records which are authorized to be disclosed;

(4) Specifies the purposes for which, and the state entity to which, such records may be disclosed; and
(5) Acknowledges that he or she has been advised of his or her rights under this article by the state entity seeking the disclosure of the financial records.

(b) No authorization as provided in subsection (a) of this section shall be required as a condition of doing business with any financial institution.

(c) No financial institution shall release the financial records of a customer pursuant to his or her authorization under this section until the state entity seeking the records also provides certification in writing to the financial institution that it has complied with the applicable provisions of this article. The financial institution and the state entity seeking to obtain the disclosure of the financial records shall retain copies of this written authorization.


(a) Nothing in this article is intended to, or shall prohibit, apply to or interfere with:

(1) The lawful authority or ability of the commissioner of banking or any other state or federal regulatory agency of a bank, savings and loan association, trust company or credit union to obtain or to share between such regulatory agencies any records which the commissioner of banking or such state or federal regulatory agency may deem appropriate for the examination and regulation of the financial institution;

(2) The lawful authority or ability of the commissioner of insurance or the state auditor to obtain any records from a financial institution relating to the financial institution’s sale of insurance or securities;

(3) The dissemination or publication of information derived from financial records if the information cannot be identified to any particular customer, deposit or account, or if the information is in composite form and is not disseminated or published in a way which identifies any particular customer, deposit or account;
(4) The making of reports or returns specifically required or permitted by federal or state law, including applicable tax law or regulations;

(5) The disclosure of any information under the provisions of the uniform commercial code governing the dishonor of a negotiable instrument, or the disclosure to any purported state entity payee or to any purported state entity holder of a check, draft, order or other item, whether or not such instrument has been accepted by such payee or holder as payment, as to whether or not such instrument would be honored if presented at the time of such disclosure;

(6) A state entity obtaining a credit report or consumer credit report from anyone other than a financial institution;

(7) The exchange, in the regular course of business, of information showing the outstanding balance of a mortgage loan account in connection with a sale, refinancing or foreclosure of real property in a transaction to which the state entity is a party; or the disclosure, in the regular course of business, of information on a mortgage or deed of trust on a subject property to a state entity as holder of any subordinate mortgage, deed of trust or security interest;

(8) The disclosure to the department of health and human resources, upon written request, of an individual’s financial records which the department determines are necessary to verify or confirm the individual’s eligibility or ineligibility for public assistance;

(9) The disclosure of an individual’s financial records in response to a written request by the department of health and human resources, as authorized by the federal parent locator service of the United States department of health and human services;

(10) The examination or audit of financial records relating to preneed funeral trust accounts pursuant to article fourteen, chapter forty-seven of this code;
(11) The disclosure of financial records relating to unclaimed property pursuant to article eight, chapter thirty-six of this code, including the examination of financial records by the state treasurer or his or her agent to determine compliance with the handling and reporting of unclaimed property as provided by, and subject to, the limitations set forth in section twenty of said article;

(12) The presentation to appropriate local, state or federal law-enforcement authorities of a certificate under oath by an authorized representative of a financial institution drawee that declares the dishonor of the check, draft or order by the drawee, the lack of an account with the drawee at the time of utterance or the insufficiency of the drawer's funds at the time of presentation and utterance in connection with any criminal action for obtaining property or services by a worthless check, draft or order;

(13) The notification to appropriate local, state or federal law-enforcement authorities or regulatory agencies that the financial institution, its officers, employees or agents thereof have information which may be relevant to a possible violation of any statute or regulation. The disclosure of any information pursuant to this subdivision may only include the name or other identifying information concerning any individual, corporation or account involved in and the nature of any suspected illegal activity;

(14) The disclosure of information or records by a financial institution to any court or other appropriate state entity which is incidental to recording a lien, perfecting a security interest, proving a claim in bankruptcy or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary;

(15) The disclosure of information or records by a financial institution which is incidental to processing an application for assistance to a customer in the form of a government loan, loan guaranty, or loan insurance agreement, or which is incidental to processing a default on, or administering, a government guaranteed or insured loan or to initiating contact with an appropriate state entity
for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under a loan, loan guaranty or loan insurance agreement;

(16) The disclosure of information incidental to a transaction in the normal course of business of the financial institution where there is no reasonable cause to believe that the information is intended to be used by the state entity in connection with an investigation of the customer;

(17) The preparation, review, handling or maintenance of financial records in the ordinary course of business by any officer, employee or agent of a financial institution having custody of the records; or

(18) The disclosure to appropriate law-enforcement officials of the financial records of any officer, director, employee or controlling shareholder of a financial institution by a financial institution or by any state or federal regulatory agency having authority to regulate the financial institution, if there is reason to believe that the financial record is relevant to a possible violation by such person of any law relating to a crime against the financial institution or any such state or federal regulatory agency. No state or federal regulatory agency which discloses any information pursuant to this subdivision shall be deemed to have waived any privilege applicable to that record under law.

(b) Nothing in this article shall preclude a state entity from obtaining information that is public record without regard to this article although the information may have been derived from financial records.

(c) Nothing in this article shall preclude a state entity from obtaining information or financial records voluntarily submitted to it by others in an attempt to seek governmental assistance or redress of a grievance, including legislative change: Provided, That the financial record or information was not solicited by the state entity in an effort to evade the requirements of this article or
§31A-2A-5. Subpoena and notice requirements.

(a) A financial institution may disclose or produce financial records to a state entity in compliance with a subpoena served upon it if the subpoena contains a certification that: (1) A copy of the subpoena has been served on the customer whose records are sought by the state entity seeking disclosure or production of the records at least ten days prior to the date on which disclosure or production is sought; or (2) that service on the customer has been waived for good cause by the circuit court of Kanawha County or other circuit court of competent jurisdiction.

(b) Any person whose financial records are to be disclosed pursuant to a subpoena served under the provisions of subdivision (1), subsection (a) of this section may challenge the subpoena by filing a motion to quash in a court of competent jurisdiction at any time prior to the disclosure of the records. After the filing and service of the motion upon the financial institution and the state entity requesting the issuance of the subpoena, the production of financial records shall be stayed, without liability to the financial institution, until the court holds a hearing on the motion and an order is entered sustaining, modifying or quashing the subpoena.


(a) In addition to the requirements of section five of this article, financial records obtained pursuant to a subpoena issued under the authority of a grand jury:

(1) Shall be returned and actually presented to the grand jury;

(2) Shall be used only: (A) For the purpose of considering whether to issue an indictment or presentment by that grand jury; (B) for the purpose of prosecuting a crime for which that indictment or presentment is issued; or (C) for any other purpose authorized by the West Virginia rules of criminal procedure; and
(3) Shall be destroyed or returned to the financial institution if not used for one of the purposes specified in subdivision (2) of this subsection.

(b) Financial records obtained pursuant to a subpoena issued under the authority of a grand jury and any descriptions of the contents of such financial records must be maintained in sealed records of the grand jury unless such financial records or descriptions thereof have been used in the prosecution of a crime for which the grand jury issued an indictment or presentment or for any other purpose authorized by the West Virginia rules of criminal procedure.


(a) Any state, county or local government official or employee who knowingly and willfully discloses financial records with intent to violate this article, or who knowingly and willfully induces or attempts to induce an officer, employee, agent or director of a financial institution to disclose financial records to a state entity with intent to violate this article, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars.

(b) Any customer whose financial records or the information contained therein has been negligently disclosed by a state entity or a financial institution in violation of this article may file an action in any circuit court of this state against the state entity or financial institution and, if the customer proves that the state entity or financial institution negligently disclosed the customer's financial records or the information contained therein, may recover from the state entity or financial institution an amount equal to the sum of:

(1) Up to one thousand dollars in civil damages, as penalty, without regard to the volume of records involved or lack of actual damages;

(2) Any actual damages sustained by the customer as a result of the disclosure; and
The costs of the action, including reasonable attorney's fees, as may be allowed by the court.

(c) No financial institution or person shall be held liable, notwithstanding subsection (a) or (b) of this section, for the disclosure of financial records pursuant to a subpoena, summons, warrant, court order or administrative order which on its face appears to have been issued upon lawful authority. No financial institution or agent or employee thereof who discloses financial records pursuant to this article: (i) In good faith reliance upon a certificate by any state entity that this article has been complied with; or (ii) pursuant to the provisions of subdivision (13), subsection (a), section four of this article shall be liable under this article or any other law or rule of this state or any political subdivision hereof.


(a) An action to enforce any provision of this article may be brought in any circuit court of competent jurisdiction in this state within three years from the date on which the violation occurs or the date of discovery of such violation, whichever is later.

(b) If any customer files a motion or application under this article which has the effect of delaying the access of a state entity to financial records pertaining to such customer, any applicable statute of limitations shall be tolled for the period extending from the date such motion or application was filed until the date an order is entered pursuant thereto.


In addition to any other remedy contained in this article, injunctive relief shall be available to require compliance with any procedure established in this article. Any customer awarded injunctive relief pursuant to this section may recover costs and reasonable attorney's fees as determined by the court.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-10a. Stockholder inspection of books and records.

(a) Any stockholder or group of stockholders of a state banking institution, holding of record the number of voting shares of such bank specified below, upon making written demand stating a proper purpose, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, nonconfidential portions of its books and records of account, minutes and record of stockholders and to make extracts therefrom. Such right of examination is limited to a stockholder or group of stockholders holding of record:

(1) Voting shares having a cost of not less than one hundred thousand dollars or constituting not less than one percent of the total outstanding voting shares: Provided, That such stockholder or group of stockholders have held of record such voting shares for a period of at least six months before making such written demand; or

(2) Not less than five percent of the total outstanding voting shares.

(b) Except as provided in subsection (a) of this section and in section ten of this article with respect to inspection of a list of stockholders, no stockholder or group of stockholders of a state banking institution shall have any other right under this section or common law to examine its books and records of account, minutes and record of stockholders.

(c) The right to examination authorized by subsection (a) of this section and any right to inspect the list of stockholders provided by a bank's bylaws to an extent greater than that authorized under section ten of this article may be denied to any stockholder or group of stockholders upon the refusal of any such stockholder or group of stockholders to furnish such institution, its transfer agent or registrar an affidavit that such
examination or inspection is not desired for any purpose which is in the interest of a business or object other than the business of the institution, that such stockholder has not within the five years preceding the date of the affidavit sold or offered for sale, and does not now intend to sell or offer for sale, any list of stockholders of the bank or of any other bank or bank holding company, and that such stockholder has not within said five-year period aided or abetted any other person in procuring any list of stockholders for purposes of selling or offering such list for sale.

(d) Notwithstanding any provision of this section or any common law, no stockholder or group of stockholders shall have the right to obtain, inspect or copy any portion of any books or records of a state banking institution containing:

(1) A list of depositors in, borrowers from or customers of such banking institution;

(2) The addresses of the banking institution’s depositors, borrowers or customers;

(3) Individual deposit or loan balances or records of the banking institution’s depositors, borrowers or customers; or

(4) Any data from which such information could be reasonably constructed.

(e) For purposes of this section, a confidential record includes, but is not limited to:

(1) Any document or information relating to a nonpublic market strategy or plan of the bank;

(2) Any document or information relating to matters declared confidential under state or federal law, including, but not limited to, bank regulatory reports;

(3) Any document or information relating to a proposed merger, acquisition or sale of assets which has not yet been disclosed to the public by the bank, including any document or information which constitutes inside
information for purposes of state or federal securities law; and

(4) Any document or information deemed by the bank as proprietary relating to the loan policy established by the bank.

CHAPTER 31C. CREDIT UNIONS.

ARTICLE 5. DIRECTION OF CREDIT UNION AFFAIRS.

§31C-5-11. Inspection of books and records by members.

(a) Each credit union shall keep at its principal office in this state a record of the names and addresses of its members entitled to vote. A credit union shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors. Any member or group of members of a credit union, upon making a demand stating a proper purpose, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, nonconfidential portions of its books and records of account, minutes and records of members and to make extracts therefrom.

(b) The right to examination authorized by subsection (a) of this section and any right to inspect the list of members provided by a credit union's bylaws to an extent greater than that provided by this section may be denied to any member or group of members upon the refusal of any such member or group of members to furnish the credit union with an affidavit that such examination or inspection is not desired for any purpose which is in the interest of a business or object other than the business of the credit union.

(c) Notwithstanding any provision of this section or common law, no member or group of members shall have the right to obtain, inspect or copy any portion of any books or records of a credit union containing:
(1) Individual deposit or loan balances or records regarding other credit union members or information respecting their personal affairs; or

(2) Any data from which such information could be reasonably constructed.

(d) For purposes of this section, a confidential record includes, but is not limited to, the following:

(1) Any document or information relating to a nonpublic market strategy or plan of the credit union;

(2) Any document or information relating to matters declared confidential under state or federal law, including, but not limited to, credit union regulatory reports; and

(3) Any document or information deemed by the credit union as proprietary relating to the loan policy established by the credit union.

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CHAPTER 69

(H. B. 4038—By Delegates Thompson and Kominar)

[Passed February 16, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing West Virginia state-chartered banks authority and parity with national banks in the marketing and sale of insurance and annuities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.
§31A-4-13. Powers of state banking institutions generally.

(a) Any state-chartered banking institution shall have and exercise all of the powers necessary for, or incidental to, the business of banking, and without limiting or restricting such general powers, it shall have the right to buy or discount promissory notes and bonds, negotiate drafts, bills of exchange and other evidences of indebtedness, borrow money, receive deposits on such terms and conditions as its officers may prescribe, buy and sell, exchange, bank notes, bullion or coin, loan money on personal or other security, rent safe-deposit boxes and receive on deposit, for safekeeping, jewelry, plate, stocks, bonds and personal property of whatsoever description and provide customer services incidental to the business of banking, including, but not limited to, the issuance and servicing of and lending money by means of credit cards as letters of credit or otherwise. Any state-chartered banking institution may accept, for payment at a future date, not to exceed one year, drafts drawn upon it by its customers. Any state-chartered banking institution may issue letters of credit, with a specified expiration date or for a definite term, authorizing the holders thereof to draw drafts upon it or its correspondents, at sight or on time. Any such banking institution may organize, acquire, own, operate, dispose of, and otherwise manage wholly owned subsidiary corporations for purposes incident to the banking powers and services authorized by this chapter.

(b) Any state-chartered banking institution may acquire, own, hold, use and dispose of real estate, which shall in no case be carried on its books at a value greater than the actual cost: Provided, That such property shall be necessary for the convenient transaction of its business, including any buildings, office space or other facilities to rent as a source of income: Provided, however, That such investment hereafter made shall not exceed sixty-five percent of the amount of its capital stock and surplus, unless the consent in writing of the commissioner of banking is first secured.

(c) Any state-chartered banking institution may acquire, own, hold, use and dispose of real estate, which shall be carried on its books at the lower of fair value or cost as defined in rules promulgated by the commissioner of banking, subject to the following limitations:
(1) Such as shall be mortgaged to it in good faith as security for debts in its favor;

(2) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business dealings; and

(3) Such as it shall purchase at sales under judgments, decrees, trust deeds or mortgages in its favor, or shall purchase at private sale, to secure and effectuate the payment of debts due to it.

(d) The value at which any real estate is held shall not be increased by the addition thereto of taxes, insurance, interest, ordinary repairs, or other charges which do not materially enhance the value of the property.

(e) Any real estate acquired by any such banking institution under subdivisions (2) and (3) of subsection (c) of this section shall be disposed of by the banking institution at the earliest practicable date, but the officers thereof shall have a reasonable discretion in the matter of the time to dispose of such property in order to save the banking institution from unnecessary losses: Provided, That in every case such property shall be disposed of within ten years from the time it is acquired by the banking institution, unless an extension of time is given in writing by the commissioner of banking.

(f) The sale of insurance by state-chartered banking institutions shall be subject to the following:

Any state-chartered banking institution having its main or a branch office in any place the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census, through its employees or agents, may, from that place or office, directly or through a controlled subsidiary, act as agent for any fire, life, casualty, liability or other insurance company authorized by the authorities of the state to do business in this state, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered all permissible fees or commissions as may be agreed upon between the bank and the insurance company for which it may act as agent: Provided, That no such bank shall in any case assume or guarantee the payment on insurance policies issued through its agency by its principal:
Provided, however, That the bank shall not guarantee the
truth of any statement made by an insured in filing his,
er or its application for insurance. For purposes of this
section, a "controlled subsidiary" is one in which the state-
chartered banking institution owns at least eighty percent
of all classes of stock. This provision is intended to give
state-chartered banking institutions parity with national
banks operating in this state with regard to the marketing
and sale of insurance notwithstanding the prohibitions and
limitations contained in article eight-c or elsewhere in this
chapter, and shall be construed consistently with
interpretations of 12 U.S.C. §92, the regulations
promulgated thereunder, and any successor legislation or
regulations.

(g) Any state-chartered banking institution may,
through its employees or agents, market and sell, as agent,
annuities, either at its main office or at any of its branches.
The marketing and sale of annuities may be made by the
bank, through its employees or agents, directly, or through
a controlled subsidiary, as defined in subsection (f) above.
This provision is intended to give state-chartered banks
parity with national banks operating in this state with
regard to the sale of annuities, notwithstanding the
prohibitions and limitations contained in article eight-c or
elsewhere in this chapter.

(h) Unless waived in writing by the commissioner, a
state-chartered bank may not invest or otherwise expend
in excess of ten percent of its capital and surplus
calculated at the end of the previous calendar year on the
activities permitted by subsections (f) and (g) on an
aggregate basis together with any of its approved
financially related products and services. For purposes of
this section, approved financially related products and
services means those products and services offered by a
state-chartered bank pursuant to an approved application
submitted under article eight-c of this chapter.

(i) The commissioner shall promulgate rules in
accordance with chapter twenty-nine-a of this code
relating to the sale of insurance or annuities, including, but
not limited to, rules requiring notice of the intention to
engage in such activities and relating to the policies and
procedures state-chartered banking institutions should
adopt in connection with such activities.
(j) Any state-chartered banking institution and its employees or agents engaged in the sale of insurance or annuities permitted hereby must also comply with all applicable requirements for the sale of such products imposed by the West Virginia commissioner of insurance and by any state or federal securities regulator.

(k) No state-chartered banking institution shall hereafter invest more than twenty percent of the amount of its capital and surplus in furniture and fixtures, whether the same be installed in a building owned by such banking institution, or in quarters leased by it, unless the consent in writing of the commissioner of banking is first secured.

CHAPTER 70

(H. B. 4101—By Delegates Thompson, Dempsey, Jenkins, Faircloth, Kominar, Clements and Laird)

[Passed February 16, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing state banks with the ability to file their quarterly reports with the commissioner of banking by electronic transmission; and to revise the provisions to conform with changes in federal law regarding publication of reports.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-19. Reports.
Every state banking institution shall make at least four reports each year to the commissioner of banking upon his or her call therefor. The reports shall be called for as nearly as conveniently may be on the dates on which the comptroller of the currency shall call for reports by national banking associations, and be in the form and contain the details as shall be prescribed by the commissioner of banking. The reports shall be verified by the oath of the president or active vice president or cashier and attested by the signatures of at least three directors of the banking institution. Each report shall show in detail, under appropriate heads, the resources and liabilities of the banking institution at the close of business on the date specified by the banking commissioner, and shall be transmitted to the commissioner within ten days from the receipt of the request for the report. The reports may be submitted or made available electronically in a format specified by the commissioner of banking. An electronic filing with the appropriate federal bank regulatory agency may be deemed as meeting the requirements of this section, unless the commissioner objects in writing and requires alternative filing(s).

In lieu of the report, the commissioner of banking shall have discretion to accept from a banking institution which is a member of the federal reserve system a report, the submission thereof which is required of the banking institution by the federal reserve board, or by its agency, provided that the report shall show in detail, under appropriate heads, the resources and liabilities of the banking institution at the close of business on the day specified by the federal reserve board, or by its agency, and shall contain such further details as may be deemed necessary or desirable by the commissioner of banking.

Any report shall be at the expense of the banking institution.
AN ACT to amend and reenact section thirty-five, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reproduction of checks and other records and disposition of originals; and providing separate retention periods for the accounting and legal documents related to trusts and fiduciary relationships and for the supporting transactional records related to such trusts and relationships.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-35. Reproduction of checks and other records; admissibility of copies in evidence; disposition of originals; record production generally.

(a) Any bank may cause to be copied or reproduced, by any photographic, photostatic, microphotographic or by similar miniature photographic process or by nonerasable optical image disks (commonly referred to as compact disks) or by other records retention technology approved by rule of the commissioner of banking, all or any number of its checks, and all or any part of its documents, books, records, correspondence and all other instruments, papers and writings, in any manner relating to the operation of its business, other than its notes, bonds, mortgages and other securities and investments, and may substitute such copies or reproductions either in positive or negative form for the originals thereof. Thereafter,
such copy or reproduction in the form of a positive print thereof, shall be deemed for all purposes to be an original counterpart of and shall have the same force and effect as the original thereof and shall be admissible in evidence in all courts and administrative agencies in this state, to the same extent, and for the same purposes as the original thereof, and the banking institution may destroy or otherwise dispose of the original, but every banking institution shall retain either the originals or such copies or reproductions of its records of final entry, including, without limiting the generality of the foregoing, cards used under the card system and deposit tickets for deposits made, for a period of at least six years from the date of the last entry on such books or the date of making of such deposit tickets and card records, or, in the case of a banking institution exercising trust or fiduciary powers, accounting and legal records shall be retained until the expiration of six years from the date of termination of any trust or fiduciary relationship relating to such accounting and legal records by a final accounting, release, court decree or other proper means of termination, and supporting documentation for fiduciary account transactions shall be retained for six years from the dates of entry of such transactions.

All circumstances surrounding the making or issuance of such checks, documents, books, records, correspondence and other instruments, papers or writings, or the photographic, photostatic or microphotographic copies or optical disks or other permissible reproductions thereof, when the same are offered in evidence, may be shown to affect the weight but not the admissibility thereof.

Any device used to copy or reproduce such documents and records shall be one which correctly and accurately reproduces the original thereof in all details and any disk or film used therein shall be of durable material.

(b) When a subpoena duces tecum is served upon a custodian of records of any bank in an action or proceeding in which the bank is neither a party nor the place where any cause of action is alleged to have arisen
and the subpoena requires the production of all or any part of the records of the bank relating to the conduct of its business with its customers, the bank shall be entitled to a search fee not to exceed ten dollars, together with reimbursement for costs incurred in the copying or other reproduction of any such record or records which have already been reduced to written form, in an amount not to exceed seventy-five cents per page. Any and all such costs shall be borne by the party requesting the production of the record or records.

CHAPTER 72

(Com. Sub. for H. B. 4039—By Delegates Thompson, Kominar, H. White, Jenkins, Amores, Clements and Cann)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article eight, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the establishment and use of mobile bank facilities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12a. Banking from mobile units; limitation of messenger services.

(a) It is illegal for any banking institution or other depository institution to conduct its business in a facility that is a mobile unit not permanently attached to the real estate upon which it is located, except: (i) That such mobile units may be used as temporary banking quarters
pending construction of a permanent bank building on
the same or adjacent property thereto if a charter for said
bank has previously been approved; or except (ii) as
provided by subsection (b) of this section. This section
shall not be construed or interpreted to prohibit a financial
institution from providing messenger services to its
customers by which items are received by mail, armored
car service or other courier or delivery service for
subsequent deposit: Provided, That all such messenger
services are confined to the territorial boundaries of the
county in which an office of such financial institution is
located or within fifty miles of an office of such financial
institution.

(b) Upon the approval of the commissioner, a banking
institution may establish one or more mobile facilities to
accept or withdraw deposits, pay checks, issue cashier’s
checks, traveler’s checks and other instruments, as well as
perform other banking services. Each mobile facility shall
be affiliated with and operated by a bank or branch office
of a bank physically located and authorized to do business
in West Virginia. All mobile facilities permitted hereunder
are confined to the territorial boundaries of the county in
which an office of such financial institution is located or
within thirty miles of an office of such financial
institution. A mobile facility shall be viewed as an
extension of the qualified offices of the bank located in
West Virginia and the transactions shall be governed by
the laws applicable as if made at such offices. The term
“mobile facility” shall include a mobile customer bank
communications terminal which is intended to be moved
or driven from place to place. A mobile customer bank
communications terminal will be treated as an off-
premises unit subject to mandatory sharing laws and rules
notwithstanding any contrary provisions of this
subsection: Provided, That no mobile customer bank
communications terminal may serve as an automatic loan
machine (ALM) terminal on behalf of any other
institution other than the operating bank: Provided,
however, That no mobile facility may be operated within
two thousand feet of another bank’s main office or
branch office.
AN ACT to amend and reenact article two, chapter thirty-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 three, all relating to licensing and regulating the businesses of the issuance and sale of checks and money orders, money transmitting, currency exchange, currency transportation, and check cashing; providing procedures for license application, issuance and renewal; setting fees; authorizing the banking commissioner to propose legislative rules; establishing qualifications for licenses and renewals including bonding and net worth requirements; establishing the right of the commissioner to examine licensee’s records; granting the commissioner subpoena powers; establishing notification requirements; establishing an affirmative duty of licensee to keep and maintain records; establishing criminal and civil penalties for violations of this article; granting the commissioner the power to revoke or suspend licenses in certain circumstances, to enter into consent orders and issue cease and desist orders; providing for civil liability of licensees; providing for confidentiality of records; providing hearing procedures; permitting the commissioner to limit certain advertising by legislative rule; permitting licensees to conduct business through authorized delegates; requiring a license for check cashing services not incidental to a merchant’s business; limiting service fees for check cashing; prohibiting check cashing loans; establishing penalties for violations; and providing for injunctive relief.

Be it enacted by the Legislature of West Virginia:

That article two, chapter thirty-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 three, all to read as follows:

**Article**

2. Checks and Money Order Sales, Money Transmission Services, Transportation and Currency Exchange.

3. Check Cashing.

**ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.**

§32A-2-1. Definitions.

§32A-2-2. License required.


§32A-2-4. License application, issuance, and renewal.

§32A-2-5. Fees.

§32A-2-6. Denial of license or renewal of license.


§32A-2-8. Qualifications for license or renewal of license.


§32A-2-25. Hearing on suspension or revocation of license.

§32A-2-26. Deceptive name or advertising.


§32A-2-1. Definitions.
(1) "Commissioner" means the commissioner of banking of this state.

(2) "Check" or "payment instrument" means any check, traveler's check, draft, money order, or other instrument for the transmission or payment of money whether or not the instrument is negotiable. The term does not include a credit card voucher, a letter of credit or any instrument that is redeemable by the issuer in goods or services.

(3) "Currency" means a medium of exchange authorized or adopted by a domestic or foreign government.

(4) "Currency exchange" means the conversion of the currency of one government into the currency of another government, but does not include the issuance and sale of travelers checks denominated in a foreign currency. Transactions involving the electronic transmission of funds by licensed money transmitters which may permit, but do not require, the recipient to obtain the funds in a foreign currency outside of West Virginia are not currency exchange transactions: Provided, That they are not reportable as currency exchange transactions under federal laws and regulations.

(5) "Currency exchange, transportation, transmission business" means a person who is engaging in currency exchange, currency transportation, or currency transmission as a service or for profit.

(6) "Currency transmission" or "money transmission" means engaging in the business of selling or issuing checks or the business of receiving currency for the purpose of transmitting the currency or its equivalent by wire, facsimile, or other electronic means, or through the use of a financial institution, financial intermediary, the federal reserve system, or other funds transfer network. It includes the transmission of funds through the issuance and sale of stored value cards which are intended for general acceptance and use in commercial or consumer transactions.
(7) "Currency transportation" means knowingly engaging in the business of physically transporting currency from one location to another in a manner other than by a licensed armored car service exempted under section three of this article.

(8) "Licensee" means a person licensed by the commissioner under this article.

(9) "Money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his agent for the receipt, transmission or handling of money, whether the instrument is signed by the seller, the purchaser or remitter, or some other person.

(10) "Person" means any individual, partnership, association, joint stock association, limited liability company, trust or corporation.

(11) "Principal" means a licensee's owner, president, senior officer responsible for the licensee's business, chief financial officer or any other person who performs similar functions or who otherwise controls the conduct of the affairs of a licensee. A person controlling ten percent or more of the voting stock of any corporate applicant is a principal under this provision.

(12) "Securities" means all bonds, debentures or other evidences of indebtedness: (a) Issued by the United States of America or any agency thereof, or guaranteed by the United States of America, or for which the credit of the United States of America or any agency thereof is pledged for the payment of the principal and interest thereof; and/or (b) which are direct general obligations of this state, or any other state if unconditionally guaranteed as to the principal and interest by the other state and if the other state has the power to levy taxes for the payment of the principal and interest thereof and is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness; and/or (c) which are general obligations of any county, school district or municipality in this state, issued pursuant to law and payable from ad valorem taxes levied on all of the
taxable property located therein, if the county, school
district or municipality is not in default in the payment of
any part of the principal or interest on any debt evidenced
by its bonds, debentures or other evidences of
indebtedness.

§32A-2-2. License required.

(a) Except as provided by section three of this article,
a person may not engage in the business of currency
exchange, transportation, or transmission in this state
without a license issued under this article.

(b) Any person who was previously licensed as a
check seller under this chapter who holds a valid license
on the effective date of this article shall be issued a
provisional license under this article without the need of
an additional application and fee. This provisional license
shall expire upon six months of its issuance, during which
time the licensee may continue to conduct its check selling
business, provided that it maintains the net worth and
security required under its previous license. The
commissioner may require the licensee to obtain
expanded bond coverage consistent with this article for the
protection of purchasers of money transmission services
and currency exchange services, as well as for covered
currency transportation services, when the licensee
conducts one or more of these businesses. At the
expiration of a provisional license granted by this section,\
any person who wishes to continue to engage in any
business regulated in this article shall apply for a license
and meet the criteria under the provisions of this article. A
provisional license granted by this section may upon
hearing be suspended or revoked by the commissioner for
good cause shown.


(a) The following are exempt from the provisions of
this article:

(1) Banks, trust companies, foreign bank agencies,
credit unions, savings banks, and savings and loan
associations authorized to do business in the state, or
which qualify as federally insured depository institutions, whether organized under the laws of this state, any other state, or the United States;

(2) The United States and any department or agency thereof;

(3) The United States post office;

(4) This state and any political subdivision thereof;

(5) The provision of electronic transfer of government benefits for any federal, state or county governmental agency as defined in Federal Reserve Board Regulation E, by a contractor for and on behalf of the United States or any department, agency or instrumentality of the United States, or any state or any political subdivisions of a state; and

(6) Persons engaged in the business of currency transportation who operate an armored car service in this state pursuant to licensure under article eighteen, chapter thirty of this code: Provided, That the net worth of the licensee exceeds five million dollars. The term “armored car service” as used in this article means a service provided by a person transporting or offering to transport, under armed security guard, currency or other things of value in a motor vehicle specially equipped to offer a high degree of security. Persons seeking to claim this exemption shall notify the commissioner of their intent to do so and demonstrate that they qualify for its use.

(b) Any person who holds and maintains a valid license under this article may engage in the business of money transmission or currency exchange at one or more locations in this state through or by means of an authorized delegate or delegates as set forth in section twenty-seven of this article, as said licensee may designate and appoint from time to time, and no such authorized delegate shall be required to obtain a separate license under this article.

(c) The issuance and sale of stored value cards which are intended to purchase items only from the issuer or
§32A-2-4. License application, issuance, and renewal.

(a) An applicant for a license shall submit an application to the commissioner on a form prescribed by the commissioner.

(b) Each application shall be accompanied by a nonrefundable application fee and a license fee. If the application is approved, the application fee is the license fee for the first year of licensure.

(c) The commissioner shall issue a license if the commissioner finds that the applicant meets the requirements of this article and the rules adopted under this article. The commissioner shall approve or deny every application for an original license within one hundred twenty days from the date a complete application is submitted, unless the commissioner extends the period for good cause. A license is valid for one year from the date the license is issued by the commissioner.

(d) The licensee at each office it owns and operates in West Virginia shall prominently display, or maintain available for inspection, a copy of the license authorizing the conduct of a currency exchange business, if the location offers and provides such services. Where the currency exchange business is conducted through a licensee’s authorized delegates in this state, each authorized delegate location offering such services shall maintain available for inspection, proof of their appointment by the licensee to conduct such business.

(e) As a condition for renewal of a license, the licensee must submit to the commissioner an application for renewal on a form prescribed by the commissioner and an annual license renewal fee.

(f) A license issued under this article may not be transferred or assigned.

(g) An applicant for a license who is not located in this state shall file an irrevocable consent, duly acknowledged,
that suits and actions may be commenced against the
applicant in the courts of this state by service of process
upon a person located within the state designated to accept
service, or by service upon the secretary of state, as well as
by service as set forth in this chapter.

§32A-2-5. Fees.

(a) The commissioner shall charge and collect the
license application fees, license fees, license renewal fees,
and examination fees in amounts reasonable and
necessary to defray the cost of administering this article as
follows:

(1) For applying for a license, an application and
licensing fee of five hundred dollars, plus ten dollars for
each location within the state at which the applicant and its
authorized delegates are conducting business or propose
to conduct business excepting the applicant’s principal
place of business.

(2) For renewal of a license, a fee of two hundred
fifty dollars plus ten dollars for each location within the
state at which the licensee and its authorized delegates are
conducting business or propose to conduct business
excepting the applicant’s principal place of business.

(3) The total of fees required by subdivisions (1) or
(2) of this subsection may not exceed two thousand five
hundred dollars for any one application.

(4) For a change in address by the licensee of its
principal place of business, a fee of one hundred dollars.

(5) For failure to timely submit an application of
renewal or file audited financial statements required for
renewal as set forth in this article, a penalty fee of ten
dollars per day for each day late, unless an extension of
time has been granted or the fee waived by the
commissioner.

(b) Beginning one year after the effective date of this
article, the commissioner may, by rules proposed for
legislative approval in accordance with the provisions of
article three, chapter twenty-nine-a of this code, amend the
§32A-2-6. Denial of license or renewal of license.

(a) The commissioner may deny the grant of a license or renewal of a license for a failure to comply or otherwise meet the requirements and qualifications of this article or a rule adopted under this article, including failure to submit a complete application.

(b) The denial of a license or denial of renewal by the commissioner and the appeal from that action are governed by the procedures for a contested case hearing under the provisions of article five, chapter twenty-nine-a of this code and shall conform to that provided for financial institutions pursuant to sections one and two, article eight, chapter thirty-one-a of this code and the rules thereunder.

(c) Whenever the commissioner refuses to issue a license, or refuses to renew a license, he or she shall make and enter an order to that effect and shall cause a copy of the order to be served in person or by certified mail, return receipt requested, or in any other manner in which process in a civil action in this state may be served, on the applicant or licensee, as the case may be.


The commissioner may propose rules necessary to implement this article for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§32A-2-8. Qualifications for license or renewal of license.

(a) The commissioner may issue a license to an applicant only upon first determining that the financial condition, business experience, and character and general
fitness of an applicant are such that the issuance of the license is in the public interest.

(b) An applicant for a license shall agree in writing to comply with the currency reporting and record-keeping requirements of 31 U.S.C. § 5313, as well as those set forth in 31 C.F.R. Part 103 and any other relevant federal law.

(c) A person is not eligible for a license or shall surrender an existing license if, during the previous ten years:

1. The person or a principal of the person, if a business:
   (A) Has been convicted of a felony or a crime involving fraud, deceit, or moral turpitude under the laws of this state, any other state, or the United States;
   (B) Has been convicted of a crime under the laws of another country that involves fraud, deceit, or moral turpitude or would be a felony if committed in the United States; or
   (C) Has been convicted under a state or federal law relating to currency exchange or transmission or any state or federal monetary instrument reporting requirement; or
2. The person, a principal of the person, or the spouse of the person or a principal of the person has been convicted of an offense under a state or federal law relating to drug trafficking, money laundering, or a reporting requirement of the Bank Secrecy Act (Pub. L. 91-508).

(d) The commissioner will review the application to determine whether the application:

1. Has recklessly failed to file or evaded the obligation to file a currency transaction report as required by 31 U.S.C. Section 5313 during the previous three years;
2. Has recklessly accepted currency for exchange, transport, or transmission during the previous three years.
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in which a portion of the currency was derived from an illegal transaction or activity;

(3) Will conduct its authorized business within the bounds of state and federal law, including, but not limited to, section forty-nine, article one, chapter thirty-one of this code;

(4) Warrants the trust of the community;

(5) Has and will maintain a minimum net worth of fifty thousand dollars computed according to generally accepted accounting principles as shown by the most recent audited financial statement filed with and satisfactory to the commissioner, and in addition has and will maintain a minimum net worth of twenty-five thousand dollars, computed according to generally accepted accounting principles for each office or delegate location in the state other than its principal office at which its licensed business is transacted, except that an applicant for a license or renewal of a license may not be required by this article to maintain a net worth of more than one million dollars, computed according to generally accepted accounting principles; and

(6) Does not owe delinquent taxes, fines, or fees to any local or state taxing authority or governmental agency, department, or other political subdivision of this state.

e) A person is not eligible for a license, and a person who holds a license shall surrender the license to the commissioner, if the person or a principal of the person has at any time been convicted of:

(1) A felony involving the laundering of money that is the product of or proceeds from criminal activity under chapter sixty-one of this code, or a similar provision of the laws of another state or the United States; or

(2) A felony violation of 31 U.S.C. Section 5313 or 5324 or a rule adopted under those sections.

(f) Before approving an application for a license of an applicant who has less than one year’s experience in the proposed business governed by this article as a regulated
entity in another state, or whose license has been suspended or revoked by another state, the commissioner may, in his or her discretion, conduct an on-site investigation of an applicant at the sole expense of the applicant and may require the applicant to pay a nonrefundable payment of the anticipated expenses for conducting the investigation. Failure to make the payment or cooperate with the investigation is grounds for denying the application.


The commissioner may refuse to grant a license or may suspend or revoke a license if the applicant or licensee fails to provide information required by section four, article two, chapter thirty-one-a of this code, or other information sought by the commissioner relevant to conducting an adequate criminal background check.


(a) A person who is licensed under this article shall post a bond with a qualified surety company doing business in this state that is acceptable to the commissioner. The bond shall be in the amount of one hundred thousand dollars for a licensee which issues or sells checks or money orders, or which engages in currency exchange; or three hundred thousand dollars for a licensee which engages in receiving money for transmission by wire, facsimile or electronic transfer, or which engages in currency transportation. A licensee which engages in multiple types of these activities shall post the higher amount. A merchant obtaining a license solely to engage in the check cashing business not incidental to the main business of the merchant as required by article three of this chapter shall post a bond of one hundred thousand dollars. The amount of the surety bond will be increased by twenty-five thousand dollars per licensee location or authorized delegate in the state, but in no event to exceed one million dollars.

(b) Instead of the bond required under subsection (a) of this section, a licensee, with the prior written permission of the commissioner, may deposit with the commissioner or a
federally-insured depository institution in this state designated by the licensee and approved for that purpose by the commissioner, United States currency or cash equivalent instruments or securities acceptable to the commissioner. The amount of currency or the fair market value of the instruments or securities shall be an amount equal to or exceeding the amount required for the bond under subsection (a) of this section. When securities are deposited as aforesaid, the value of the securities shall at all times be equal to the amount of bond otherwise required, computed on the basis of the principal amount or the market value thereof, whichever is lower.

(c) A bond posted by a licensee shall be conditioned upon compliance with the provisions of this article and any rules thereunder for as long as the person holds the license. The deposit or bond, as the case may be, shall be made to the state of West Virginia for the benefit and protection of any claimant against the applicant or licensee with respect to the receipt, handling, transmission, and payment of money by the licensee or authorized delegate in connection with the licensed operations in this state. A claimant damaged by a breach of the conditions of the bond or deposit shall, upon the assent of the commissioner, have a right of action against the bond or deposit for damages suffered thereby and may bring suit directly thereon, or the commissioner may bring suit on behalf of the claimant. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. So long as the person making a deposit under this section is not in violation of any of the provisions of this article, that person is permitted to receive all interest and dividends on the deposit, and shall have the right, with the approval of the commissioner, to substitute other securities. If the deposit is made at a bank, any custodial fees therefor shall be paid by the person making the deposit.

(d) A penalty fee under subdivision (5), subsection (a), section five of this article, expenses under section eleven of this article, or a civil penalty under section nineteen of this article may be paid out of and collected from the proceeds of a bond or deposit under this section.
(e) After receiving a license, the licensee shall maintain the required bond or securities until five years after it ceases to do business in this state unless all outstanding checks/payment instruments are cleared or covered by the provisions of article eight, chapter thirty-six of this code pertaining to the distribution of unclaimed property which have become operative and are adhered to by the licensee. Notwithstanding this provision, however, the commissioner may permit the security to be reduced following cessation of business in the state to the extent the amount of the licensee’s checks/payment instruments outstanding in this state are reduced.

(f) If the commissioner at any time reasonably determines that the required bond or deposit is insecure, deficient in amount, or exhausted, in whole or in part, he or she may in writing require the filing of a new or supplemental bond or other security in order to secure compliance with this article and may demand compliance with the requirement within thirty days following service on the licensee. The total amount of the bonds or security required of the licensee may not, however, exceed the one million dollars set forth in subsection (a) of this section.


(a) Each licensee is subject to a periodic examination of the licensee’s business records by the commissioner at the expense of the licensee. For the purpose of carrying out this article, the commissioner may examine all books, records, papers, or other objects that the commissioner determines are necessary for conducting a complete examination and may also examine under oath any person associated with the license holder, including an officer, director, or employee of the licensee or authorized delegate. Unless it will interfere with the commissioner’s duties under this article, reasonable notice shall be given to the licensee and any authorized delegate before any on-site examination visit. If a person required by the commissioner to submit to an examination refuses to permit the examination or to answer any question
authorized by this article, the commissioner may suspend
the person's license until the examination is completed.

(b) The licensee shall bear the cost of any on-site
examination made pursuant to this section, at a rate of
fifty dollars for each examiner hour expended, together
with all reasonable and necessary travel expenses incurred
in connection with the examination.

(c) A person, for the purpose of evading a reporting
or record-keeping requirement of 31 U.S.C. Section 5313,
or 31 C.F.R. Part 103, or by this article, or a rule adopted
under this article, may not with respect to a transaction
with a licensee:

(1) Cause or attempt to cause the licensee to:

(A) Not maintain a record or file a report required by
a law listed by this subsection; or

(B) Maintain a record or file a report required by a
law listed by this subsection that contains a material
omission or misstatement of fact; or

(2) Fraudulently structure the transaction.

(d) For the purposes of this article, a person
fraudulently structures a transaction if the person conducts
or attempts to conduct a transaction in any amount of
currency with a licensee in a manner having the purpose
of evading a record-keeping or reporting requirement of
this article, or of a law listed by subsection (c) of this
section, including the division of a single amount of
currency into smaller amounts or the conduct of a
transaction or series of transactions in amounts equal to or
less than the reporting or record-keeping threshold of a
law listed by subsection (c) of this section.

(e) A transaction is not required to exceed a record-
keeping or reporting threshold of a single licensee on a
single day to be a fraudulently structured transaction.


(a) In addition to the examinations required by section
eleven of this article, the commissioner is authorized to
inspect, examine and audit the books, records, accounts
and papers of all licensees and their authorized delegates
at times that the circumstances in his or her opinion may
warrant. Unless it will interfere with the commissioner’s
duties under this article, reasonable notice shall be given to
an authorized delegate or licensee before any on-site
examination visit. However, an authorized delegate is
deemed to consent to the commissioner’s inspection, with
or without prior notice to the licensee or authorized
delegate, of the books and records of the authorized
delegate when the commissioner has a reasonable basis to
believe that the licensee or authorized delegate is in
noncompliance with this article. The commissioner may
call for and require any data, reports or information from
any licensees under his or her jurisdiction at any time,
and in the form, content and detail the commissioner
determines to be necessary in the faithful discharge of his
or her duty.

(b) In connection with the investigations undertaken
pursuant to this article, the commissioner is authorized to
issue subpoenas and subpoenas duces tecum, administer
oaths, examine persons under oath, and hold and conduct
hearings, with any subpoenas or subpoenas duces tecum to
be issued, served and enforced in the manner provided in
section one, article five, chapter twenty-nine-a of this code.
Any person appearing and testifying at the hearing may
be accompanied by an attorney.


(a) A licensee shall notify the commissioner of any
change in its principal place of business, or its
headquarters office if different from its principal place of
business, within fifteen days after the date of the change.

(b) A licensee shall notify the commissioner of any of
the following significant developments within fifteen days
after gaining actual notice of its occurrence:

(1) The filing of bankruptcy or for reorganization
under the bankruptcy laws;
(2) The institution of license revocation or suspension procedures against the licensee in any other state;

(3) A felony indictment related to money transmission, currency exchange, fraud, failure to fulfill a fiduciary duty, or other activities of the type regulated under this article of the licensee or its authorized delegates in this state, or of the licensee's or authorized delegate's officers, directors, or principals; and

(4) A felony conviction or plea related to the money transmission, currency exchange, fraud, failure to fulfill a fiduciary duty, or other activities of the type regulated under this article of the licensee or its authorized delegates in this state, or of the licensee's or authorized delegate's officers, directors, or principals.

(c) A licensee shall notify the commissioner of any merger or acquisition which may result in a change of control or a change in principals of a licensee within fifteen days of announcement or publication of the proposal, or its occurrence, whichever is earlier. Upon notice of these circumstances by a corporate licensee, the commissioner may require all information necessary to determine whether it results in a transfer or assignment of the license and thus if a new application is required in order for the company to continue doing business under this article. A licensee that is an entity other than a corporation shall in these circumstances submit a new application for licensure at the time of notice.


(a) A licensee shall keep its business books, accounts, and records in accordance with generally accepted accounting principals. A licensee shall retain all of its records of final entry for the period of time as required in section thirty-five, article four, chapter thirty-one-a of this code for banking institutions. The licensee shall also preserve its general ledger, settlement sheets from its authorized delegates, bank statements, and bank reconciliation records for this said same established period of time.
(b) Unless the documents or data therefrom has been transmitted to the licensee for recordation, the licensee shall require its authorized delegates to preserve records relating to its licensed activities for the period set forth in subsection (a) of this section.

(c) Records may be kept using retention technologies, including nonerasable optical disk, as is provided for banking institutions and with the same effect as set forth in section thirty-five, article four, chapter thirty-one-a of this code.

(d) A licensee shall maintain records relating to its business under this article at its principal place of business, or with notice to the commissioner, at another location designated by the licensee. If the records are located outside the state, the licensee at its option shall make them available to the commissioner at a convenient location within this state within seven days, or shall pay the reasonable and necessary expenses for the commissioner or his or her representatives to examine them at the place where they are maintained.


(a) Every check sold by the licensee or its authorized delegates shall bear the name of the licensee and a unique number clearly stamped or imprinted thereon. When an order for the transmission of money results in the issuance of a check, both the order and the check may bear the same number.

(b) The licensee or its authorized delegates shall record the face amount and unique number of its checks upon their sale.

(c) The licensee or its authorized delegates shall record the date on which money was received for transmission, the amount transmitted, the name of the customer and the intended recipient, and the location to which the money was transmitted if specified by the customer. Unless otherwise directed by the customer, the transmission of money or availability of funds shall be made by the licensee or authorized delegate within three
business days after the receipt of payment. The customer shall be provided a written receipt sufficient to identify the transaction, the licensee, and the amount.

(d) If the transaction involves the exchange of foreign currency, or the sale of travelers checks denominated in a foreign currency, the licensee or authorized delegate shall record the date of the transaction, the amount of the transaction, and the rate of exchange at the time of transaction. The customer shall be provided a written receipt sufficient to identify the transaction, the licensee, and the amount.

(e) Records required by this section shall be maintained by the licensee or authorized delegate as set forth in section fourteen of this article, and shall be available for examination by the commissioner.


The commissioner, with the assistance of the West Virginia state police, may investigate violations of this article or rules adopted under this article. Based on the investigation, the commissioner or any law-enforcement agency may file a criminal referral with the prosecuting attorney of Kanawha County or with the prosecuting attorney of the county in which a violation is alleged to have occurred. In addition, the commissioner may bring civil actions to enforce the provisions of this article or the rules adopted under this article.


(a) The commissioner shall cooperate with federal and state agencies in discharging the commissioner's responsibilities under this article. The commissioner may:

(1) Arrange for the exchange of information among government officials concerning the regulation of a currency exchange, transportation or transmission business;

(2) Cooperate in and coordinate training programs concerning the regulation of currency exchange, transportation or transmission businesses; and
(3) Assist state and federal agencies in their enforcement and investigatory activities and supply those agencies with documentation and information.

(b) The commissioner may request the assistance of the West Virginia state police in enforcing this article.


(a) A person commits a criminal offense if the person knowingly:

(1) Violates a requirement of this article;

(2) Makes a false, fictitious, or fraudulent statement, representation, or entry in a record or report required under 31 U.S.C. Section 5313 or 31 C.F.R. Part 103, or by this article, or a rule adopted under this article; or

(3) Fraudulently structures or attempts to fraudulently structure a transaction in violation of section eleven of this article.

(b) An offense under this section is a felony.

(c) Any officer, director, employee or agent of any licensee or any other person guilty of any felony offense as provided in this section shall, upon conviction thereof, be imprisoned in the penitentiary not less than one nor more than five years and also, in the discretion of the court, may be fined up to ten thousand dollars for each violation. Each transaction in violation of this article and each day that a violation continues is a separate offense.


The commissioner may bring civil actions to enforce this article in the circuit court of Kanawha County or the county in which the violation occurred and seek civil penalties. If, after notice and a hearing, the court finds that a person has violated this article, a rule adopted under this article, or an order of the commissioner issued under this article, the court may order the person to pay to the state a civil penalty. The amount of a civil penalty under this section may not exceed five thousand dollars for each violation or, in the case of a continuing violation, up to
five thousand dollars for each day that the violation continues. A civil penalty assessed may be collected from the bond or deposit required under section ten of this article.


If it appears to the commissioner that a person has committed or is about to commit a violation of this article, a rule promulgated thereunder, or an order of the commissioner, the commissioner may apply to the circuit court of Kanawha County or the county in which the violation occurred for an order enjoining the person from violating or continuing to violate the article, rule, or order and for injunctive or other relief that the nature of the case may require and may, in addition, request the court to assess civil penalties as provided under this article.


(a) The commissioner may enter into consent orders at any time with a person to resolve a matter arising under this article. A consent order shall be signed by the person to whom it is issued and shall indicate agreement to the terms contained in it. A consent order need not constitute an admission by a person that this article or a rule or order issued or promulgated under this article has been violated, nor need it constitute a finding by the commissioner that the person has committed a violation.

(b) Notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order unless by its terms the consent order expressly precludes the commissioner from doing so.


(a) If the commissioner, upon information, has cause to believe that a licensee or other person is engaged in practices contrary to this article or the rules adopted under this article, the commissioner may issue an order directing the licensee or person to cease and desist the violation. A cease and desist order is appropriate in any case where the
commissioner, upon information, reasonably believes that
a principal or the licensee acting through any authorized
person has:

(1) Violated or refused to comply with a provision of
this article, a rule adopted under this article, or any other
law or regulation applicable to a currency exchange,
transportation or transmission business, or to the business
of check cashing;

(2) Committed a fraudulent practice in the conduct of
the licensee's business;

(3) Refused to submit to an examination;

(4) Conducted business in an unsafe or unauthorized
manner; or

(5) Violated any condition of its license or of any
agreement entered into with the commissioner.

(b) The commissioner shall serve notice and a copy of
the cease and desist order on the affected party either
personally or by certified mail, return receipt requested.
Service by mail shall be deemed completed if the notice is
deposited in the post office, postage prepaid, addressed to
the last known address for a licensee or the person
designated by the licensee to accept service in this state.

(c) The order shall include a statement of the alleged
conduct of the licensee or principal which gave rise to the
order, and set forth the facts and law on which it is based.

(d) A person is entitled to a hearing on the cease and
desist order before the commissioner, or a hearing
examiner appointed by him or her, if the person files with
the commissioner a written demand for hearing within ten
days after receiving written notice of the order, or within
thirty days after the date of service, whichever occurs first.
A person's right to a hearing as provided by this
subsection shall be disclosed in the notice of service.

(e) Hearings and judicial review of any order shall be
under procedures provided in sections one and two, article
eight, chapter thirty-one-a of this code and procedural
rules thereunder.
(f) The issuance of a cease and desist order under this section shall not be a prerequisite to the taking of any action by the commissioner or others under any other section of this article.


Except in cases of gross negligence or intentional acts that result in harm to a person, a licensee's responsibility to a person for a money transmission conducted on that person's behalf by the licensee or the licensee's authorized delegate is limited to the amount of money transmitted or the face amount of the payment instrument purchased.


(a) Reports of investigation and examination, together with related documents and financial information not normally available to the public that is submitted in confidence by a person regulated under this article, are confidential and may not be disclosed to the public by the commissioner or employees of the division of banking, and are not subject to the state's freedom of information act. The commissioner may release information if:

(1) The commissioner finds that immediate and irreparable harm is threatened to the licensee's customers or potential customers or the general public;

(2) The licensee consents before the release;

(3) The commissioner finds that release of the information is required in connection with a hearing under this article, in which event information may be related to the parties of that hearing; or

(4) The commissioner finds that the release is reasonably necessary for the protection of the public and in the interest of justice, in which event information may be distributed to representatives of an agency, department, or instrumentality of this state, any other state, or the federal government.

(b) Nothing herein prevents release to the public of any list of licensees or aggregated financial data for the
licensees, prevents disclosure of information the presiding
officer deems relevant to the proper adjudication or
administration of justice at public administrative or
judicial hearings, or prevents disclosure of information
relevant to supporting the issuance of any administrative
or judicial order.

§32A-2-25. Hearing on suspension or revocation of license.

(a) A license may not be revoked or suspended except
after notice and opportunity for hearing on that action.
The commissioner may issue to a person licensed under
this article an order to show cause why the license should
not be revoked, or should not be suspended for a period
not in excess of six months. The order shall state the place
for a hearing and set a time for the hearing that is no less
than ten days from the date of the order. After the hearing
the commissioner shall revoke or suspend the license if he
or she finds that:

(1) The licensee has knowingly or repeatedly violated
this chapter or any rule or order lawfully made or issued
pursuant to this article;

(2) The licensee has failed to remit its required
renewal fees;

(3) Facts or conditions exist which would clearly have
justified the commissioner in refusing to grant a license
had these facts or conditions been known to exist at the
time the application for the license was made;

(4) The licensee does not have available the net worth
required by the provisions of section eight of this article,
and after ten days' written notice from the commissioner,
fails to take steps that the commissioner determines are
necessary to remedy the deficiency; or

(5) The licensee has failed or refused to keep the bond
or other security required by section ten of this article in
full force and effect.

(b) No revocation or suspension of a license under
this article is lawful unless prior to institution of
proceedings by the commissioner notice is given to the
licensee of the facts or conduct which warrant the intended
action, and the licensee is given an opportunity to show
compliance with all lawful requirements for retention of
the license.

(c) If the commissioner finds that probable cause for
revocation of a license exists and that enforcement of this
article to prevent imminent harm to public welfare
requires immediate suspension of the license pending
investigation, the commissioner may, after a hearing upon
five days' written notice, enter an order suspending the
license for not more than thirty days.

(d) Nothing in this section limits the authority of the
commissioner to take action against a licensee or person
under other sections of this article.

(e) Whenever the commissioner revokes or suspends a
license, an order to that effect shall be entered and the
commissioner shall forthwith notify the licensee of the
revocation or suspension. Within five days after the entry
of the order the commissioner shall mail by registered or
certified mail, or shall provide for personal delivery to the
licensee, of a copy of the order and the findings
supporting the order.

(f) Any person holding a license under this article
may relinquish the license by notifying the commissioner
in writing of its relinquishment, but any relinquishment
does not affect a person's liability for acts previously
committed.

(g) No revocation, suspension, or relinquishment of a
license shall impair or affect the obligation of any
preexisting lawful contract between the licensee and any
person.

(h) The commissioner may reinstate a license,
terminate a suspension or grant a new license to a person
whose license has been revoked or suspended if no fact or
condition then exists which clearly would have justified
the commissioner in refusing to grant a license.

§32A-2-26. Deceptive name or advertising.
(a) A licensee who advertises the prices to be charged by the currency exchange or currency transmission business for services that are governed by this article shall specifically state in the advertisement all fees or commissions to be charged to the consumer.

(b) The commissioner may propose for legislative approval rules establishing requirements for the size and type of lettering a licensee is permitted to use in an advertisement for prices or rates.

(c) A person who violates this section or a rule adopted under this section commits an unfair and deceptive act or practice within the meaning of section one hundred four, article six, chapter forty-six-a of this code.

(d) A corporate licensee may not use the same name as, or a name deceptively similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to transact business in this state, except as otherwise provided by the commissioner or secretary of state pursuant to law.


(a) A licensee may conduct the business of money transmission and currency exchange regulated by this article at one or more locations in this state through authorized delegates designated by the licensee.

(b) A licensee may not knowingly authorize a person to act as its delegate who has, within the previous ten years, a disqualifying criminal conviction of the type set forth in subdivision (2), subsection (c), section eight of this article.

(c) A licensee shall enter into a contract with its authorized delegate detailing the nature and scope of the relationship between the licensee and the authorized delegate. The contract shall require that the authorized delegate operate in full compliance with the laws of this state and of the United States. The licensee shall, upon request, provide the commissioner with the sample written contract.
(d) The financial responsibility of a licensee for the actions of its authorized delegate shall not exceed the amount of funds received by the authorized delegate on behalf of its licensee for the business regulated under this article.

(e) An authorized delegate has an affirmative duty not to: (i) Commit fraud or misrepresentation; or (ii) submit fraudulent statements to the licensee. A licensee shall promptly report to the commissioner and to any other appropriate state or federal official when it has probable cause to believe that an authorized delegate has violated the affirmative duty set forth in this subsection.

(f) The licensee shall require the authorized delegate to hold in trust for the licensee from the moment of receipt of the proceeds of any business transacted under this article in an amount equal to the amount of proceeds due the licensee less the amount due the authorized delegate. The funds shall remain the property of the licensee whether or not commingled by the authorized delegate with its own funds. In the event that the license is revoked by the commissioner, all proceeds held in trust by the authorized delegate of that licensee are considered to be assigned to the commissioner. If an authorized delegate fails to remit funds to the licensee in accordance with the time specified in the contract with the licensee, the licensee may bring a civil action against the authorized delegate for three times the actual damages. The commissioner may by rule set a maximum remittance time for authorized delegates.

(g) An authorized delegate shall report to the licensee the theft or loss of payment instruments within twenty-four hours from the time the authorized delegate knew or should have known of the theft or loss.

(h) Upon any suspension or revocation of a license, the failure of a licensee to renew a license, or the denial of the renewal of a license, the licensee shall notify its authorized delegates of the event and demand that they immediately cease operations as authorized delegates.
55 (i) A licensee shall report the removal of an 56 authorized delegate location, or the termination of 57 operations of an authorized delegate location, to the 58 commissioner on a quarterly basis, and shall in the report 59 list any new authorized delegate locations in this state.

60 (j) No authorized delegate shall act outside its scope 61 of authority as defined under this article and by its 62 contract with the licensee with regard to any transaction 63 regulated by this article.


1 (a) The commissioner may issue an order suspending 2 an authorized delegate, or barring a person from 3 becoming an authorized delegate of any licensee, during 4 the period for which the order is in effect. Upon issuance 5 of the order, the licensee shall terminate its relationship 6 with the authorized delegate according to the terms of the 7 order. Orders may be issued if, after notice and a hearing, 8 the commissioner finds that any authorized delegate of a 9 licensee or any administrator, officer, employee or 10 principal of the authorized delegate:

11 (1) Has violated a provision of this article or of any 12 rule or order issued under this article;

13 (2) Has engaged in or participated in an unsafe or 14 unsound act with respect to the business of selling or 15 issuing payment instruments of the licensee or the 16 business of money transmission; or

17 (3) Has made or caused to be made in any application 18 or report filed with the commissioner or in any 19 proceeding before the commissioner a statement that was, 20 at the time and in the circumstances under which it was 21 made, false or misleading with respect to any material fact, 22 or has omitted to state in the application or report a 23 material fact required to be stated.

24 (b) An authorized delegate to whom an order is 25 issued under this section may apply to the commissioner 26 to modify or rescind the order. The commissioner may 27 not grant the application unless the commissioner finds 28 that it is in the public interest to do so and that it is
reasonable to believe that the person will comply with all
applicable provisions of this chapter and of any rule and
order issued under this chapter if the order is modified or
rescinded.

(c) The right of a person to whom an order is issued
under this section to petition for judicial review of an
order is not affected by the failure of the person to apply
to the commissioner to modify or rescind the order.

ARTICLE 3. CHECK CASHING.

§32A-3-1. Check cashing permitted.
§32A-3-2. Obstruction of investigations.
§32A-3-3. Violations and penalties.
§32A-3-4. Injunctions.

§32A-3-1. Check cashing permitted.

(a) A merchant primarily in the business of making
retail consumer sales may offer check cashing services at
its stores to accommodate its customers in the course of
said business, and may collect a fee for the service, if the
check cashing service and any fees charged are incidental
to the main business of the merchant. Except as set forth
in subsection (b) of this section, the term “check cashing
services” does not include a transaction where a customer
presents a check for the exact amount of a purchase. Fees
charged in connection with check cashing services may
not exceed the greater of one dollar, or one percent of the
face value of the check cashed.

(b) Merchants may not, in connection with providing
check cashing services, agree to hold checks submitted to
them for deposit at a later date for the purpose of
providing a loan of money and deriving profit therefrom.

(c) No license is required as a condition for a
merchant providing check cashing services in conformity
with subsections (a) and (b) of this section.

(d) Where a merchant derives more than five percent
of his or her gross revenues from cashing checks, the
check cashing services are not considered incidental to the
main business of the merchant, and the merchant is
required to be licensed under article two of this chapter.
(e) Persons holding a license pursuant to article two of this chapter may in conjunction with their licensed business, or other lawful business, engage in the business of check cashing in West Virginia. Fees charged for check cashing services by a licensee under article two of this chapter shall be posted and conform to those permitted merchants under this section. No licensee may in connection with providing check cashing services agree to hold checks submitted to it for deposit at a later date for the purpose of providing a loan of money and deriving profit therefrom.

(f) Federally-insured depository institutions, foreign bank agencies, and governmental entities exempt from licensure as money transmitters under this chapter are exempt from the provisions of this article. Other financial institutions licensed by and under the jurisdiction of the commissioner of banking may upon written approval engage in the check cashing business permitted merchants under this article.

(g) Except as provided or allowed by this article, no person may engage in the check cashing business. As used in this article the term "check cashing business" means any person who engages in the business of cashing checks, including drafts, money orders, or other instruments for the transmission or payment of money for a fee. However, the term "check" as used in this article does not include a travelers check or a foreign denomination check.

§32A-3-2. Obstruction of investigations.

No merchant or person subject to this article may obstruct or refuse to permit any lawful investigation into their check cashing activities by the commissioner of banking, a person acting on behalf of an agency of the state or political subdivision thereof, or a law-enforcement officer.

§32A-3-3. Violations and penalties.

(a) The charging of fees for check cashing services in excess of those permitted under this article gives rise to a
cause of action by the injured party to recover twice the actual damages suffered by reason of the violation.

(b) The charging of fees for check cashing services in violation of the provisions of subsections (b) or (e), section one of this article, prohibiting lending through a check cashing transaction, constitutes prohibited finance charges, and gives rise to a cause of action by the party upon whom the charge was imposed to recover all fees paid and all actual damages suffered by reason of the violation. Where the transaction is of an amount and for purposes that would constitute a consumer loan, the conduct of impermissible check cashing services is considered an unfair and deceptive act and may be subject to provisions and penalties set forth in chapter forty-six-a of this code.

(c) Engaging in the check cashing business without the license required by this article gives rise to a cause of action by the injured party to recover all fees paid and all actual damages suffered by reason of the violation.

(d) Actions brought under this article by customers for recovery of actual damages shall be brought within one year of the occurrence of the transaction.

§32A-3-4. Injunctions.

If any merchant or person is in violation of this article, the commissioner of banking or other appropriate law-enforcement officer may apply to the circuit court of Kanawha County or the county in which the violation occurred for an order enjoining the merchant or person from violating or continuing to violate the article, rule, or order and for injunctive or other relief that the nature of the case may require. The authority to seek injunctions under this section is cumulative with any other enforcement right accruing under other provisions of law and this code.
CHAPTER 74

(Com. Sub. for H. B. 4554—By Delegates Doyle and Manuel)

[Passed March 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing the boundary line between Jefferson County, West Virginia, and Loudoun County, Virginia.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. WEST VIRGINIA BOUNDARY COMMISSION.

§29-23-3. Establishing and marking boundary line between Jefferson County, West Virginia, and Loudoun County, Virginia; effect of certain rights and prosecutions; transmission to members of Congress; effective date.

(a) The boundary line between Jefferson County, West Virginia, and Loudoun County, Virginia, is hereby, on the part of this state, established and declared to be the watershed line of the top of the ridge of the Blue Ridge mountains, as established by the survey approved by the commission on the twenty-ninth day of April, one thousand nine hundred ninety-seven, and to be recorded in the land books in the courthouses of Jefferson County, West Virginia, and Loudoun County, Virginia.

(b) No vested right of any individual, partnership or corporation within the territory affected by this section may in any way be impaired, restricted or affected by this section. This section is not retrospective in its operation
and it does not in any way affect the rights of any individual, partnership or corporation in any suit now pending in any of the courts of this state or of the United States wherein the cause of action arose over, or is in any way based upon, the territory affected. This section in no way precludes the state of West Virginia from prosecuting any individual, partnership or corporation for violation of any of the criminal laws of this state within the territory until this section goes into effect.

(c) The secretary of state shall furnish a certified copy of this section to the governor of the commonwealth of Virginia and shall also furnish certified copies to the United States senators from the state of West Virginia and to the representative from the second congressional district of West Virginia in the House of Representatives, who are requested to have the section presented to the Congress of the United States.

(d) The commission created by section two of this article is continued and is directed, in cooperation with the like commission created by the commonwealth of Virginia, or other agency designated by the commonwealth of Virginia for the purpose, to complete its work, including: (i) The recordation of the survey in the Jefferson County courthouse not later than the first day of April, one thousand nine hundred ninety-eight, which survey shall take into account KD Map 25A Parcel 0002 through which the watershed line runs and which includes such residence on the Virginia side of the boundary line; and (ii) the erection of permanent markers designating the boundary line set forth in this section. The markers shall be of the nature and kind the commission considers appropriate.

(e) This section shall take effect upon the adoption and approval by the General Assembly of the commonwealth of Virginia of appropriate legislation ratifying the boundary line set forth herein.
CHAPTER 75

(H. B. 4453—By Delegates Amores, Trump and Linch)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eleven, twelve, thirteen, fourteen and fifty-one, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section six-a; to amend and reenact sections one hundred five and one hundred six, article one, chapter thirty-one-b of said code; to amend and reenact sections two hundred three and two hundred eleven, article two of said chapter; to amend and reenact section one thousand two, article ten of said chapter; to amend and reenact sections four and five, article eight, chapter forty-seven of said code; to amend and reenact sections two, three and fifty-one, article nine of said chapter; to amend and reenact sections one through six, inclusive, article nine-a of said chapter; and to further amend said article by adding thereto a new section, designated section seven, all relating to certification and registration requirements for business entities; requiring business entities to notify the secretary of state of changes in officers, trustees, and members authorized to execute certain documents to be filed with the secretary of state; setting forth name requirements and requiring that names of business entities be distinguishable from the names of other business entities and trade names; providing for the reservation of corporate names, including a temporary name reservation procedure; authorizing the registration of corporate names by foreign corporations and the renewal of such registrations; updating various provisions to recognize new authorized business entities; authorizing the use and reservation of names for limited liability companies; modifying requirements for articles of incorporation, the filing of annual reports, and applications for certificates of authority for limited liability companies; revising requirements for the filing of applications for registration of trade names; providing for names and the reservation of names of limited partnerships and the registration of names of foreign limited partnerships; setting forth detailed procedures for the certification and registration of business trusts and voluntary associations; requiring the secretary of
state to issue certificates which must be filed with the clerk of
certain county commissions; creating various requirements
for business trusts and voluntary associations, including
requirements relating to the names of such entities, the
adoption and use of trade names and seals, the amendment
of organizing documents, changes in the identities of
authorized persons and agents for receipt of service of
process, and the dissolution and withdrawal of such entities;
permitting business trusts and voluntary associations to use
trade names and providing for the acknowledgment of
certain deeds and other writings; validating previously
executed instruments; and providing for the repeal of
inconsistent acts and the severability of provisions.

Be it enacted by the Legislature of West Virginia:

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

Chapter

47. Regulation of Trade.

CHAPTER 31. CORPORATIONS.

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-6a. Signatures on documents filed with the secretary of state.
§31-1-11. Corporate name; requirements; certain names prohibited.
§31-1-12. Reserved name.
§31-1-13. Registered name.
§31-1-14. Renewal of registered name.
§31-1-51. Corporate name of foreign corporation; when certificate of authority shall not be issued.

§31-1-6a. Signatures on documents filed with the secretary of state.

(a) No document which is required to be executed or verified by an officer or officers of a corporation shall be filed with the secretary of state unless:

(1) The officers who have executed or verified the document to be filed are the current officers of the corporation and the secretary of state has on file: (A) A current annual return of the corporation filed pursuant to section three, article twelve-c, chapter eleven of this code which identifies such officers; or (B) another corporate document which identifies such officers; or

(2) The document to be filed is accompanied by appropriate documentation showing that the persons executing or verifying the document are current officers of the corporation or are otherwise authorized to execute or verify the document on behalf of the current officers of the corporation.

(b) For purposes of subsection (a) of this section, the term "appropriate documentation" means: (1) A copy of the minutes of the board of directors of the corporation reflecting the election or appointment of new officers, which copy includes or is accompanied by a notarized statement of authenticity signed by at least one director; (2) a court order reflecting the identity of the current officers or the authorization of any person to act for any officer; or (3) any other legally authorized document assigning to the person executing or verifying the document clear authority to execute or verify documents on behalf of the corporation.

§31-1-11. Corporate name; requirements; certain names prohibited.

(a) Except for corporations in existence prior to the effective date of this article, the corporate name:

(1) Shall contain the word "corporation," "company," "incorporated" or "limited," or shall contain an abbreviation of one of such words.
(2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(3) Shall not be the same as, and shall be distinguishable from: (A) The name of any domestic corporation, domestic limited partnership, domestic limited liability partnership, or domestic limited liability company existing under the laws of this state; (B) the name of any foreign corporation, foreign limited partnership, foreign limited liability partnership, foreign limited liability company, or any other foreign business entity authorized to conduct affairs or transact business in this state; (C) a name the exclusive right to which is, at the time, reserved in the manner provided by law; or (D) the name of a corporation, limited partnership, limited liability partnership, or limited liability company which has in effect a registration of its business name as provided by law. The requirements of this subdivision shall not apply if the applicant files with the secretary of state either (X) a written consent to the use and a written undertaking by the present user, registrant or owner of a reserved name submitted in a form satisfactory to the secretary of state to change the name to a name that is distinguishable from the name applied for or (Y) a certified copy of a final order of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state. For purposes of this subdivision, any terms or abbreviations required to be included in the business name to identify the type of business entity shall not alone be sufficient to make one name distinguishable from another.

(4) Shall be transliterated into letters of the English alphabet, if it is not in English.

(b) A corporation with which another corporation, domestic or foreign, is merged, or which is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease or other disposition to or exchange with, a domestic corporation of all or substantially all the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of, or is authorized to conduct affairs or do or transact business in this state.
(c) After the effective date of this section, no corporation shall be chartered in this state under any name which includes the word "engineer," "engineers," "engineering" or any combination of same unless the purpose of the corporation is to practice professional engineering as defined in article thirteen, chapter thirty of this code, as amended, and one or more of the incorporators is a registered professional engineer as therein defined.

§31-1-12. Reserved name.

(a) The exclusive right to the use of a corporate name may be reserved by:

(1) Any person intending to organize a corporation under this article.

(2) Any domestic corporation intending to change its name.

(3) Any foreign corporation intending to make application for a certificate of authority to conduct affairs or do or transact business in this state.

(4) Any foreign corporation authorized to conduct affairs or do or transact business in this state and intending to change its name.

(5) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to conduct affairs or do or transact business.

(b) The reservation may be made by filing with the secretary of state an application to reserve a specified corporate name executed by the applicant and by submitting the fee prescribed by section two, article one, chapter fifty-nine of this code. If the secretary of state finds that the name is available for corporate use, the name shall be reserved for the exclusive use of the applicant for a period of one hundred twenty days. A reservation may be renewed for one additional period of one hundred twenty days, but may not thereafter be reserved by the same or associated persons within one calendar year of the expiration of the last reservation period.

(c) A temporary reservation may be made in person or by telephone without a fee through the office of
business registration established under article twelve-d, chapter eleven of this code. If the secretary of state finds that the name is available for corporate use, the name shall be reserved for the exclusive use of the applicant for a period of seven days. A reservation made under this subsection shall expire on the seventh day after it is made unless the name is first reserved pursuant to subsection (b) of this section. A temporary reservation under this subsection may not be renewed by another temporary reservation. The secretary of state shall establish procedures for the making of temporary reservations under this subsection.

(d) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

§31-1-13. Registered name.

Any corporation organized and existing under the laws of any state or territory of the United States may register its corporate name under this article, provided its corporate name complies with the requirements of subdivision (3), subsection (a), section eleven of this article.

Such registration shall be made by:

(a) Filing with the secretary of state: (1) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged; and (2) a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations; and

(b) Paying to the secretary of state the registration fee prescribed by section two, article one, chapter fifty-nine of this code.
Such registration shall be effective until the close of the fiscal year in which the application for registration is filed.

§31-1-14. Renewal of registered name.

A corporation which has in effect a registration of its corporate name may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying the fee prescribed by section two, article one, chapter fifty-nine of this code. A renewal application may be filed between the first day of April and the thirtieth day of June in each year, and shall extend the registration for the following fiscal year.

§31-1-51. Corporate name of foreign corporation; when certificate of authority shall not be issued.

(a) No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(1) Shall contain the word "corporation," "company," "incorporated" or "limited," or shall contain an abbreviation of one of such words, or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof.

(2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes in its articles of incorporation, or if the corporate name of such corporation indicates or implies that it is authorized or empowered to conduct the business of banking or insurance unless such corporation is so authorized or empowered under the laws of this state.

(3) Shall comply with subdivision (3), subsection (a), section eleven of this article.

(4) Shall be transliterated into letters of the English alphabet, if it is not in English.

(b) The provisions of subdivision (3), subsection (a) of this section shall not apply if the foreign corporation
applying for a certificate of authority files with the secretary of state any one of the following:

(1) A resolution of its board of directors adopting a fictitious name for use in conducting affairs or doing or transacting business in this state, which fictitious name complies with the requirements of subdivision (3), subsection (a), section eleven of this article, or

(2) A written consent to the use and a written undertaking of the present user, registrant or owner of a reserved name submitted in a form satisfactory to the secretary of state to change the name to a name that is distinguishable from the name applied for; or

(3) A certified copy of a final order of a court of competent jurisdiction establishing the prior right of such foreign corporation to the use of such name in this state.

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-105. Name.

(a) The name of a limited liability company must contain "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C." or "LC". "Limited" may be abbreviated as "Ltd." and "company" may be abbreviated as "Co.".

(b) Except as authorized by subsections (c) and (d) of this section, the name of a limited liability company must be distinguishable upon the records of the secretary of state from:

(1) The name of any corporation, limited partnership, limited liability partnership or limited liability company incorporated, organized or authorized to transact business in this state;
(2) A name reserved or registered under sections 1-106 or 1-107 of this article or under sections twelve or thirteen of article one, chapter thirty-one of this code.

(3) A fictitious name approved under section 10-1005 for a foreign company authorized to transact business in this state because its real name is unavailable.

(c) A limited liability company may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records of the secretary of state from one or more of the names described in subsection (b) of this section. The secretary of state shall authorize use of the name applied for if:

(1) The present user, registrant or owner of a reserved name consents to the use in a record and submits an undertaking in form satisfactory to the secretary of state to change the name to a name that is distinguishable upon the records of the secretary of state from the name applied for; or

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A limited liability company may use the name, including a fictitious name, of another domestic or foreign company which is used in this state if the other company is organized or authorized to transact business in this state and the company proposing to use the name has:

(1) Merged with the other company;

(2) Been formed by reorganization with the other company; or

(3) Acquired substantially all of the assets, including the name, of the other company.

§31B-1-106. Reserved name.

(a) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious name for a foreign company whose name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the name
applied for is available, it must be reserved for the applicant's exclusive use for a one hundred twenty-day period. The reservation may be renewed for one additional period of one hundred twenty days, but may not thereafter be reserved by the same or associated persons within one calendar year of the expiration of the last reservation period.

(b) The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer which states the name and address of the transferee.

ARTICLE 2. ORGANIZATION.

§31B-2-203. Articles of organization.

§31B-2-211. Annual report for secretary of state.

§31B-2-203. Articles of organization.

(a) Articles of organization of a limited liability company must set forth:

1. The name of the company;

2. The address of the initial designated office;

3. The name and street address of the initial agent for service of process;

4. The name and address of each organizer and of each member having authority to execute instruments on behalf of the limited liability company;

5. Whether the company is to be a term company and, if so, the term specified;

6. Whether the company is to be manager-managed, and, if so, the name and address of each initial manager;

7. Whether one or more of the members of the company are to be liable for its debts and obligations under section 3-303(c).

(b) Articles of organization of a limited liability company may set forth:
(1) Provisions permitted to be set forth in an operating agreement; or
(2) Other matters not inconsistent with law.

(c) Articles of organization of a limited liability company may not vary the nonwaivable provisions of section 1-103(b). As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(1) The operating agreement controls as to managers, members and members' transferees; and
(2) The articles of organization control as to persons other than managers, members and their transferees who reasonably rely on the articles to their detriment.

§31B-2-211. Annual report for secretary of state.

(a) A limited liability company, and a foreign limited liability company authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report that sets forth:

(1) The name of the company and the state or country under whose law it is organized;
(2) The address of its designated office and the name and address of its agent for service of process in this state;
(3) The address of its principal office; and
(4) The names and business addresses of any managers and the name and address of each member having authority to execute instruments on behalf of the limited liability company.

(b) Information in an annual report must be current as of the date the annual report is signed on behalf of the limited liability company.

(c) The first annual report must be delivered to the secretary of state between the first day of January and the first day of April of the year following the calendar year in which a limited liability company was organized or a foreign company was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between the first day of January and the first day of April of the ensuing calendar years.
(d) If an annual report does not contain the information required in subsection (a) of this section, the secretary of state shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) of this section and delivered to the secretary of state within thirty days after the effective date of the notice, it is timely filed.

ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.

§31B-10-1002. Application for certificate of authority.

(a) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing, together with a fee in the amount of one hundred fifty dollars. The application must set forth:

(1) The name of the foreign company or, if its name is unavailable for use in this state, a name that satisfies the requirements of section 10-1005;

(2) The name of the state or country under whose law it is organized;

(3) The street address of its principal office;

(4) The name and address of each member having authority to execute instruments on behalf of the limited liability company;

(5) The address of its initial designated office in this state;

(6) The name and street address of its initial agent for service of process in this state;

(7) Whether the duration of the company is for a specified term and, if so, the period specified;

(8) Whether the company is manager-managed, and, if so, the name and address of each initial manager; and

(9) Whether the members of the company are to be liable for its debts and obligations under a provision similar to section 3-303(c).

(b) A foreign limited liability company shall deliver with the completed application a certificate of existence or
28 a record of similar import authenticated by the secretary
29 of state or other official having custody of company
30 records in the state or country under whose law it is
31 organized.

CHAPTER 47. REGULATION OF TRADE.

Article
8. Trade Names
9A. Voluntary Associations and Business Trusts.

ARTICLE 8. TRADE NAMES.

§47-8-4. Corporations, associations, limited partnerships, limited liability
partnerships, and limited liability companies not to conduct
business under assumed name without certificate of trade name;
application; issuance of certificate of trade name.

§47-8-5. Penalty for violations.

§47-8-4. Corporations, associations, limited partnerships,
limited liability partnerships, and limited liability
companies not to conduct business under assumed
name without certificate of trade name; application; issuance of certificate of trade name.

(a) No business entity organized as a corporation,
limited partnership, limited liability partnership, limited
liability company, business trust or voluntary association
required to register with the secretary of state in order to
conduct business within the state may conduct or transact
any business in this state under any assumed name, or
under any designation, name or style, corporate or
otherwise, other than the name established by the original
certificate establishing the business entity or by an
amendment thereto, unless the business entity files in the
office of the secretary of state an application for
registration of trade name. The application shall set forth:

(1) The name under which the business entity is
organized and registered;

(2) The name under which the business of such
business entity is, or is to be, conducted or transacted upon
approval of the application, which name must be
distinguishable from the name of any other corporation,
limited partnership, limited liability partnership, limited
liability company, business trust or voluntary association,
and from any name reserved or registered for any of those business entities;

(3) The address of the principal office within the state or, if no office is maintained within the state, the address of the principal office in the state in which the business entity is established; and

(4) The name, title and signature of a person having authority to make the application.

The secretary of state shall grant a certificate of registration to any applicant who has met the requirements of this subsection. A new certificate of registration is to be filed if the business entity desires to conduct or transact any business in this state under any other assumed name not on file in the office of the secretary of state.

(b) Two executed originals of the application for trade name registration shall be delivered to the secretary of state. If the filing officer finds that the application for trade name registration conforms to law, he or she shall, when all fees have been paid as prescribed by law: (i) Endorse on each of the originals the word "filed" and the month, day and year of the filing; (ii) file one of the originals; and (iii) issue to the applicant the certificate of registration of trade name with the other original attached.

(c) Upon discontinuing the use of a registered trade name the certificate of registration of trade name shall be withdrawn by filing a certificate of withdrawal with the office of the secretary of state setting forth the name to be discontinued, the real name, the address of the party transacting business and the date upon which the original certificate of registration of trade name was filed.

(d) Any corporation authorized to transact business in this state shall procure an amended certificate of incorporation in the event it changes its corporate name by filing articles of amendment with the office of the secretary of state as provided in article one, chapter thirty-one of this code.

(e) A domestic business entity having its principal office within the state shall file a certified copy of any certificate of trade name with the clerk of the county commission of the county in which the principal office is located. A foreign business entity having its principal office outside the state shall file a certified copy of any
such certificate with the clerk of the county commission of
a county in which its principal business is transacted.

(f) The secretary of state shall keep an alphabetical
index by trade name of all certificates issued under this
section.

(g) Any corporation registering a trade name pursuant
to the provisions of this section is subject to the limitations
set forth in subsection (c), section eleven, article one,
chapter thirty-one of this code regarding use of the words
"engineer", "engineers", "engineering", or any combination
thereof.

(h) Any limited liability company registering a trade
name pursuant to the provisions of this section is subject
to the limitations set forth in section one hundred five,
article one, chapter thirty-one-b of this code.

§47-8-5. Penalty for violations.

Any individual, sole proprietorship, general
partnership, corporation, limited partnership, limited
liability partnership, limited liability company, business
trust or voluntary association or other person owning,
carrying on, conducting or transacting business as
aforesaid who willfully fails to comply with the provisions
of section two or four of this article shall be guilty of a
misdemeanor and, upon conviction thereof, shall be fined
not less than twenty-five nor more than one hundred
dollars, or imprisoned in the county jail for a term not
exceeding thirty days, or both fined and imprisoned.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-2. Name of limited partnership.

§47-9-3. Reservation of name.

§47-9-51. Registration of name of foreign limited partnership.

§47-9-2. Name of limited partnership.

The name of each limited partnership as set forth in its
certificate of limited partnership:

(1) Shall contain the words "limited partnership," or
the abbreviation "Ltd. Partnership," "LP" or "L.P.";

(2) May not contain the name of a limited partner
unless: (i) It is also the name of a general partner or the
corporate name of a corporate general partner; or (ii) the
The business of the limited partnership had been carried on under the name before the admission of that limited partner;

(3) May not be the same as, and must be distinguishable from, the name of any corporation, limited partnership, limited liability partnership, or limited liability company organized under the laws of this state or licensed or registered as a foreign corporation, limited partnership, limited liability partnership, or limited liability company in this state; and

(4) May not include the words "engineer", "engineers", "engineering" or any combination of those words unless the purpose of the corporation is to practice professional engineering as defined in article thirteen, chapter thirty of this code, as amended, and one or more of the incorporators is a registered professional engineer as defined therein.

§47-9-3. Reservation of name.

(a) The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited partnership under this article and to adopt that name;

(2) Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(3) Any foreign limited partnership intending to register in this state and adopt that name; and

(4) Any person intending to organize a foreign limited partnership and intending to have it registered in this state and adopt that name.

(b) The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name along with the fee prescribed by section two, article one, chapter fifty-nine of this code. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve that name for the exclusive use of the applicant for
a period of one hundred twenty days. The reservation may be renewed for one additional period of one hundred twenty days, but may not thereafter be reserved by the same or associated persons within one calendar year of the expiration of the last reservation period. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

§47-9-51. Registration of name of foreign limited partnership.

A foreign limited partnership may register with the secretary of state under any name, whether or not it is the name under which it is registered in its state of organization, that could be registered by a domestic limited partnership under the provisions of section two of this article.

ARTICLE 9A. VOLUNTARY ASSOCIATIONS AND BUSINESS TRUSTS.

§47-9A-1. Right to acquire and dispose of property; execution of deeds and other writings.


§47-9A-3. Filing of voluntary association; issuance of certificate of voluntary association; recordation in county.

§47-9A-4. Application of laws relating to corporations; name of business trust or voluntary association; adoption and use of trade name and seal; amendment of declaration, articles or agreement; change of agent for service of process, trustees, and members; dissolution; filing.

§47-9A-5. Providing for use of trade names; acknowledgment of deeds and other writings.

§47-9A-6. Validation of deeds and other writings heretofore executed.

§47-9A-7. Repeal of conflicting acts; severability.

§47-9A-1. Right to acquire and dispose of property; execution of deeds and other writings.

Any persons who are now or who have heretofore been voluntarily associated together for the transaction or
doing of business under and pursuant to the terms and
provisions of a declaration of trust or articles or agreement
of association, commonly designated as a Massachusetts
trust or business trust, or any other lawful voluntary
association by whatever name known, may purchase,
acquire, hold, deal in, sell, lease, convey, exchange, pledge,
mortgage and encumber any real estate or personal
property or interest therein within this state, and may
execute all deeds, leases, contracts, or other instruments in
writing with respect to real estate or personal property or
interest therein as may be necessary or required, either in
the name or names of the trustees for the time being
designated in such declaration, articles or agreement, or
their successors, or in the name or names of another
person or persons designated in such declaration, articles
or agreement, or by a descriptive, assumed or trade name,
when signed by a duly authorized officer or officers
thereof, all as may be provided for and stated in such
declaration, articles or agreement: Provided, That such
association or trust shall have qualified to do business in
West Virginia, as hereinafter provided for in sections two
and three of this article.

§47-9A-2. Application for registration of business trust;
issuance of certificate of business trust;
recording of certificate in county.

(a) For the purposes of this article, a “business trust”
is any trust organized for the purpose of conducting
business and commonly designated as a Massachusetts
trust.

(b) Any business trust organized in this state shall file
with secretary of state: (1) Two executed original copies of
an application for registration; and (2) two executed
original copies of the declaration, articles or agreement of
trust creating the business trust.

(c) Any business trust organized outside this state and
operating within this state shall file with the secretary of
state: (1) Two executed original copies of an application
for registration; (2) two executed original copies of the
declaration, articles or agreement of trust creating the
business trust as recorded in the state or country of origin
of the business trust; and (3) a statement or certificate
from the proper officer of the state or country of origin
that the business trust is in good standing.

(d) An application for registration shall set forth:

(1) The name of the business trust;

(2) If organized within the state, a statement that it is a
West Virginia business trust, or if organized outside the
state, the state in which it was organized and the formation
date of the business trust;

(3) The purpose or purposes for which the business
trust is organized;

(4) The address of its principal office;

(5) The name and address of the person to whom
notice of process may be sent;

(6) The names and addresses of all trustees having
authority to act on behalf of the business trust; and

(7) A statement reflecting the business trust's consent
to and recognition of the application to the business trust
of the law of this state with respect to corporations.

(e) An application for registration shall contain the
notarized signature of a trustee of the business trust.

(f) If the secretary of state determines that an
application for registration has been properly filed in
complete form and that the fee prescribed in section two,
article one, chapter fifty-nine of this code has been paid,
he or she shall stamp on each of the two executed original
copies of the application the word "Filed" and the month,
day and year of the filing. The secretary of state shall
then issue a certificate of business trust to the applicant
showing the applicant to be duly authorized and qualified
to do business in this state as a business trust, to which he
or she shall affix one of the stamped original copies of the
application. The secretary of state shall file the other
stamped original copy of the application for its records.

(g) A business trust shall file its certificate of business
trust, together with a copy of its declaration, articles or
agreement creating the business trust, in the office of the
clerk of the county commission of each county in this
state in which its business is or will be conducted or in
which it will purchase, acquire, hold, sell, lease, convey,
exchange, pledge, mortgage, encumber or otherwise
dispose of real or personal property or interests therein.

§47-9A-3. Filing of voluntary association; issuance of
certificate of voluntary association; recordation in county.

(a) For purposes of this article, a "voluntary association" is any association organized for the purpose of conducting business in this state, but does not include an organization formed as an unincorporated nonprofit association under the provisions of article eleven, chapter thirty-six of this code.

(b) Any voluntary association organized in this state shall file with secretary of state: (1) Two executed original copies of an application for registration; and (2) two executed original copies of the agreement of association creating the voluntary association (if such an agreement exists apart from the application for registration itself).

(c) Any voluntary association organized outside this state and operating within this state shall file with the secretary of state: (1) Two executed original copies of an application for registration; (2) two executed original copies of the agreement of association creating the voluntary association; and (3) a statement or certificate from the proper officer of the state or country of origin that the voluntary association is in good standing.

(d) An application for registration shall set forth:

(1) The name of the voluntary association;

(2) The physical address of the voluntary association;

(3) The mailing address of the voluntary association, if different from the physical address;

(4) The name and address of the person to whom notice of process may be sent;

(5) Whether the voluntary association is organized for profit or as a nonprofit voluntary association;
(6) The purpose or purposes for which the voluntary association is formed;

(7) The full names and addresses of one or more of the organizers of the voluntary association;

(8) The full names and addresses of no fewer than two officers, owners or members of the voluntary association who have signatory authority for the association;

(9) Any additional statements as may be required for the type of business to be conducted; and

(10) A statement reflecting the voluntary association's consent to and recognition of the application of the law of this state with respect to corporations to the voluntary association.

(e) An application for registration shall contain the notarized signature of at least one organizer or member of the voluntary association.

(f) If the secretary of state determines that an application for registration has been properly filed in complete form and that the fee prescribed in section two, article one, chapter fifty-nine of this code has been paid, he or she shall stamp on each of the two original copies of the application for registration the word "Filed" and the month, day and year of the filing. The secretary of state shall then issue a certificate of voluntary association to the applicant showing the applicant to be duly authorized and qualified to do business in this state as a voluntary association, to which he or she shall affix one of the stamped original copies of the application. The secretary of state shall file the other stamped original copy of the application for its records.

(g) A voluntary association shall file its certificate of voluntary association, together with a copy of the agreement of association creating the voluntary association (if any), in the office of the clerk of the county commission of the county or counties of this state in which its business is or will be conducted or in which it will purchase, acquire, hold, sell, lease, convey, exchange, pledge, mortgage, encumber or otherwise dispose of real or personal property or interests therein.
§47-9A-4. Application of laws relating to corporations; name of business trust or voluntary association; adoption and use of trade name and seal; amendment of declaration, articles or agreement; change of agent for service of process, trustees, and members; dissolution; filing.

(a) Unless otherwise specifically provided in this article, any business trust or voluntary association conducting business in this state is subject to the laws of this state with respect to corporations, including laws relating to license fees and all other taxes, to the extent such laws are applicable.

(b) The name of any business trust or voluntary association applying for registration shall meet the requirements for corporate names set forth in section eleven, article one, chapter thirty-one of this code, except that the name shall not contain the words “incorporated,” “corporation,” “limited,” or any abbreviation of these terms.

(c) Any business trust or voluntary association may use a trade name upon complying with the provisions of section four, article eight, chapter forty-seven of this code. Any business trust or voluntary association may adopt and use a common seal.

(d) Upon the adoption of an amendment to the declaration, articles or agreement of trust of a business trust or the agreement of association of a voluntary association, the business trust or voluntary association shall file two executed original copies of the amendment, containing the notarized signature of at least one trustee of the business trust or at least one organizer or member of the voluntary association, with the office of the secretary of state and with the office of the clerk of the county commission of each county in which the declaration, articles or agreement of trust or the agreement of association has been filed.

(e) Upon any change of trustees, organizers, members or other persons previously recorded as having authority to act on behalf of the business trust or voluntary association, or upon any change of the agent of the
business trust or voluntary association for service of process, a business trust or voluntary association shall file notice of the change with the secretary of state.

(f) Upon the determination of the majority of trustees of a business trust or a majority of members of a voluntary association that the business trust or voluntary association shall be dissolved, the business trust or voluntary association shall file with the secretary of state a statement of intent to dissolve containing the notarized signature of at least one trustee of the business trust or at least one organizer or member of the voluntary association. After all debts, liabilities and obligations of the business trust or voluntary association have been paid and discharged, the business trust or voluntary association shall distribute all of the remaining assets of the business trust or voluntary association and file articles of dissolution with the secretary of state in the manner provided for corporations in section thirty-nine, article one, chapter thirty-one of this code. Upon verification by the appropriate state agencies that the business trust or voluntary association has paid all taxes, assessments and fees due to the state, the secretary of state shall issue a certificate of dissolution to the business trust or voluntary association.

(g) A business trust or voluntary association organized outside the state and registered to do business within this state may withdraw from the state in the manner provided for corporations in section sixty, article one, chapter thirty-one of this code.

(h) No document required to be filed by this section shall be filed with the secretary of state unless the trustee of the business trust or the organizer or member of the voluntary association is currently authorized as such and the secretary of state has on file a document which identifies such trustee, organizer or member, or unless the business trust or voluntary association attaches to the document to be filed appropriate documentation showing that the person signing the document is a current trustee, organizer or member or is otherwise authorized to sign the document on behalf of a current trustee, organizer or member of the business trust or voluntary association. For purposes of this subsection, the term "appropriate
"documentation" means: (1) A notice of change filed pursuant to subsection (e) of this section; (2) a court order reflecting the identity of the current trustees, organizers or members or the authorization of any person to act for any trustee, organizer or member; or (3) any other legally authorized document assigning to the person signing the document clear authority to execute or verify documents on behalf of the business trust or voluntary association.

§47-9A-5. Providing for use of trade names; acknowledgment of deeds and other writings.

Any declaration, articles or agreement of trust of a business trust and any agreement of association of a voluntary association which provides for the use of a trade name shall authorize and designate or shall contain provisions for the authorization or designation of persons by whom deeds, leases, contracts and other written instruments shall be executed. All such deeds, leases, contracts and other instruments in writing shall be deemed to be properly acknowledged for the purposes of recordation if acknowledged in the form provided by statute for acknowledgments by corporations, or, if executed by trustees or other persons, then in the form provided by statute therefor.

§47-9A-6. Validation of deeds and other writings heretofore executed.

All such deeds, leases, contracts and other written instruments with respect to real or personal property or any interest therein within this state heretofore made and delivered by any business trust or voluntary association which comply with the requirements of this article are hereby expressly validated.

§47-9A-7. Repeal of conflicting acts; severability.

All acts or parts of acts in conflict with this article are hereby repealed.

The provisions of this article shall be construed to be severable and if any are held unconstitutional or otherwise invalid, such invalidity or unconstitutionality shall not affect the operation of the remaining provisions.
AN ACT to amend and reenact section eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing the maximum tax credits available for qualified West Virginia capital companies and deleting restrictions requiring that the authority only accept applications from those companies which certify that their entire capital base will be invested in one or more small business investment corporations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§SE-1-8. Tax credits.

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

(b) The total credits authorized by the authority for all companies may not exceed a total of ten million dollars each fiscal year: Provided, That for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-seven, the total credits authorized for all companies may not exceed a total of five million five hundred thousand dollars: Provided, however, That for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-eight, the total credits authorized for all companies may not exceed a total of six million dollars: Provided further, That the capital base of any such qualified company shall be invested in accordance with the provisions of this article. The
authority shall allocate these credits to qualified
companies in the order that said companies are qualified.

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

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

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

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

(g) Notwithstanding any provision in this code to the
contrary, the tax commissioner shall publish in the state
register the name and address of every taxpayer, and the
amount, by category, of any credit asserted under this
article. The categories by dollar amount of credit received
shall be as follows:
(1) More than $1.00, but not more than $50,000;
(2) More than $50,000, but not more than $100,000;
(3) More than $100,000, but not more than $250,000;
(4) More than $250,000, but not more than $500,000;
(5) More than $500,000, but not more than $1,000,000;
(6) More than $1,000,000.

CHAPTER 77
(S. B. 760—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, DuGAN, McKenzie, Minear and Sprouse)

[Passed March 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article four, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of administration; general services division; regulation of parking on state-owned property; requiring the construction of a state capitol parking garage; creating special funds for the construction of a parking garage and maintenance and repair of the Morris square properties; and authorizing the relocation of the land division of the auditor's office.

Be it enacted by the Legislature of West Virginia:

That section five, article four, 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 4. GENERAL SERVICES DIVISION.

§5A-4-5. Regulation of parking on state-owned property in Charleston; construction of parking garage for general public; penalties; jurisdiction; creation of funds.

(a) It is the intent of the Legislature to provide a parking facility for the general public and to direct the
secretary of the department of administration to plan and
construct a parking garage at the state capitol complex
that will provide sufficient and additional parking for the
general public.

(b) The secretary may regulate the parking of motor
vehicles in accordance with the provisions of this section
with regard to the following state-owned property in the
city of Charleston, Kanawha County:

(1) The east side of Greenbrier street between
Kanawha boulevard and Washington street, east;

(2) The west side of California avenue between
Kanawha boulevard and Washington street, east;

(3) Upon the state-owned grounds upon which state
office building no. 3 is located;

(4) Upon the state-owned grounds which state office
building no. 4, 112 California avenue, is located;

(5) In the state-owned parking garage at 212
California avenue and upon the state-owned grounds upon
which such parking garage is located;

(6) Upon the state-owned property at Michigan
avenue and Virginia terrace; and

(7) Upon any other property now or hereafter owned
by the state and used for parking purposes in conjunction
with the state capitol or state office buildings numbers
three and four, including the Laidley field complex:

Provided, That the secretary shall present to the joint
committee on government and finance for its suggestions,
on or before the first day of July, one thousand nine
hundred ninety-eight, plans for the construction of a state
capitol parking garage to be constructed, on property
owned by the state or to be purchased by the state, no later
than the thirtieth day of June, one thousand nine hundred
ninety-nine. The submitted plans shall include proposals
for general public parking, including the estimated use
and cost; relocation of parking for official state vehicles;
and state employee parking, including the estimated use
and cost.

(c) The secretary shall propose rules for promulgation
respecting parking and to allocate parking spaces to
public officers and employees of the state upon all of the
property set forth in subsection (a) of this section:
Provided, That during sessions of the Legislature, including regular, extended, extraordinary and interim sessions, parking on the east side of Greenbrier street between Kanawha boulevard and Washington street, east, in the science and culture center parking lot, on the north side of Kanawha boulevard between Greenbrier street and California avenue, and on the west side of California avenue between Kanawha boulevard and Washington street, east, is subject to rules promulgated jointly by the speaker of the House of Delegates and the president of the Senate. Any person parking any vehicle contrary to the rules promulgated under authority of this subsection is subject to a fine of not less than one dollar nor more than twenty-five dollars for each offense. In addition, the secretary or the Legislature, as the case may be, may cause the removal at owner expense of any vehicle that is parked in violation of the rules. Magistrates in Kanawha County have jurisdiction of all the offenses.

(d) The secretary may employ the persons as may be necessary to enforce the parking rules promulgated under the provisions of this section.

(e) There is created in the department of administration a special fund to be named the "Parking Garage Fund" in which shall be deposited funds that are appropriated and funds from other sources to be used for the construction and maintenance of a parking garage on the state capitol complex.

(f) There is created in the department of administration a special fund to be named the "Morris Square Repair Fund" in which shall be deposited funds that are appropriated and funds from other sources to be used for maintenance and repairs to the Morris square properties.

(g) The secretary shall include within the planning for the buildings to be constructed or remodeled pursuant to subsections (e) and (f) of this section, the location of the land division of the auditor’s office. The secretary shall consult with the auditor in planning the relocation of the land division of the auditor’s office.
AN ACT to amend and reenact section ten, article twenty-two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to distribution of proceeds from net terminal income of racetrack video lottery proceeds; funding of veterans memorial archives, restoration and maintenance of monuments; funding the construction and maintenance of a parking garage on the state capitol complex; and funding maintenance and repairs of the Morris square properties.

Be it enacted by the Legislature of West Virginia:

That section ten, article twenty-two-a, 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 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

(a) The commission shall provide to manufacturers, or applicants applying for a manufacturer's permit, the protocol documentation data necessary to enable the respective manufacturer's video lottery terminals
communicate with the commission's central computer for transmitting auditing program information and for activation and disabling of video lottery terminals.

(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission thirty days' advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission, the commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack, and the resulting amount after such deduction shall be the net terminal income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income.

(c) Net terminal income shall be divided as set out in this subsection. The licensed racetrack's share shall be in lieu of all lottery agent commissions and is considered to cover all costs and expenses required to be expended by the licensed racetrack in connection with video lottery operations. The division shall be made as follows:

(1) The commission shall receive thirty percent of net terminal income, which shall be paid into the general revenue fund of the state to be appropriated by the Legislature;

(2) Fourteen percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee, and used for payment of regular purses in addition to other amounts provided for in article twenty-three, chapter nineteen of this code;
(3) The county where the video lottery terminals are located shall receive two percent of the net terminal income;

(4) One half of one percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the racing commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia thoroughbred development fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia greyhound breeding development fund created under section ten, article twenty-three, chapter nineteen of this code shall receive an equal share of a total of not less than one and one-half percent of the net terminal income: Provided, That for any racetrack which does not have a breeder's program supported by the thoroughbred development fund or the greyhound breeding development fund, the one and one-half percent provided for in this subdivision shall be deposited in the special fund established by the licensee and used for payment of regular purses, in addition to other amounts provided for in subdivision (2) of this subsection and article twenty-three, chapter nineteen of this code;

(6) The West Virginia thoroughbred breeders classic shall receive one percent of the net terminal income which shall be used for purses. The moneys shall be deposited in the separate account established for the classic under section thirteen, article twenty-three, chapter nineteen of this code;

(7) A licensee shall receive forty-seven percent of net terminal income;

(8) The tourism promotion fund established in section nine, article one, chapter five-b of this code shall receive three percent of the net terminal income; and
The veterans memorial program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the state capitol complex in Charleston, West Virginia. The moneys shall be deposited in the state treasury in the division of culture and history special fund created under section three, article one-i, chapter twenty-nine of this code: Provided, That only after sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded indebtedness on the veterans memorial, not more than twenty thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited into a special revenue fund in the state treasury, to be known as the "John F. 'Jack' Bennett Fund". The moneys in this fund shall be expended by the division of veterans affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The division of veterans affairs shall promulgate legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code specifying the manner in which the funds are spent, determine the ability of the surviving spouse to pay for the placement of the marker, and setting forth the standards to be used to determine the priority in which the veterans grave markers will be placed in the event that there are not sufficient funds to complete the placement of veterans grave markers in any one year, or at all. Upon payment in full of the bonded indebtedness on the veteran's memorial, one hundred thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited in the special fund in the division of culture and history created under section three, article one-i, chapter twenty-nine of this code and be expended by the division of culture and history to establish a West Virginia veterans memorial archives within the cultural center to serve as a repository for the documents and records pertaining to the veterans memorial, to restore and maintain the monuments and memorial on the capitol grounds, and not more than twenty thousand dollars be deposited in the "John F.
Jack' Bennett Fund":  Provided, however, That five
hundred thousand dollars of the one percent of net
terminal income shall be deposited in the state treasury in
a special fund of the department of administration, created
under section five, article four, chapter five-a of this code
to be used for construction and maintenance of a parking
garage on the state capitol complex: Provided further,
That the remainder of the one percent of net terminal
income shall be deposited in a special fund of the
department of administration created under section five,
article four, chapter five-a of this code to be used to
maintain and make repairs to the Morris square properties.

(d) Each licensed racetrack shall maintain in its
account an amount equal to or greater than the gross
terminal income from its operation of video lottery
machines, to be electronically transferred by the
commission on dates established by the commission.
Upon a licensed racetrack's failure to maintain this
balance, the commission may disable all of a licensed
racetrack's video lottery terminals until full payment of all
amounts due is made. Interest shall accrue on any unpaid
balance at a rate consistent with the amount charged for
state income tax delinquency under chapter eleven of this
code, which interest shall begin to accrue on the date
payment is due to the commission.

(e) The commission's central control computer shall
keep accurate records of all income generated by each
video lottery terminal. The commission shall prepare and
mail to the licensed racetrack a statement reflecting the
gross terminal income generated by the licensee's video
lottery terminals. Each licensed racetrack must report to
the commission any discrepancies between the
commission's statement and each terminal's mechanical
and electronic meter readings. The licensed racetrack is
solely responsible for resolving income discrepancies
between actual money collected and the amount shown on
the accounting meters or on the commission's billing
statement.

(f) Until an accounting discrepancy is resolved in
favor of the licensed racetrack, the commission may make
no credit adjustments. For any video lottery terminal
reflecting a discrepancy, the licensed racetrack shall submit to the commission the maintenance log which includes current mechanical meter readings and the audit ticket which contains electronic meter readings generated by the terminal's software. If the meter readings and the commission's records cannot be reconciled, final disposition of the matter shall be determined by the commission. Any accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the commission.

(g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies licensed racetracks that remittance by this method is required. The licensed racetracks shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets, and remit such amount as generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the day when the payment would otherwise be completed through electronic funds transfer.

(h) Licensed racetracks may, upon request, receive additional reports of play transactions for their respective video lottery terminals and other marketing information not considered confidential by the commission. The commission may charge a reasonable fee for the cost of producing and mailing any report other than the billing statements.

(i) The commission has the right to examine all accounts, bank accounts, financial statements and records in a licensed racetrack's possession, under its control or in which it has an interest and the licensed racetrack must authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.
CHAPTER 79

(S. B. 752—By Senators Wooton, Ball, Bowman, Dittmar, Hunter, Kessler, Oliverio, Ross, Schoonover, Snyder, White, Deem and Kimble)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections fifteen and fifteen-a, article two, chapter forty-eight of said code; to further amend said article by adding thereto a new section, designated section ten-c; to amend and reenact section thirty, article one-a, chapter forty-eight-a of said code; to amend and reenact section nine, article one-b of said chapter; to amend and reenact sections twenty-two, twenty-four, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, forty and forty-one, article two of said chapter; to further amend said article by adding thereto two new sections, designated sections twenty-four-a and forty-three; to amend and reenact sections one, two, three, four and five, article five of said chapter; to further amend said article by adding thereto two new sections, designated sections four-a and seven; to amend and reenact sections one and four, article six of said chapter; and to amend and reenact section twelve, article one, chapter fifty-seven of said code, all relating to child support and authorizing the state registrar of vital statistics to offer voluntary paternity establishment services; providing for parent education classes for parents of minor children when the parents are involved in actions for divorce, paternity, custody or separate maintenance; authorizing the child support enforcement division to file a motion for modification of a child support order; transferring health care coverage for a child to a health plan offered by the obligated parent's new employer; defining "support order"; establishing who may use and what information may be requested from the state and federal parent locator services; establishing the time for disbursement of child support collections; authorizing the child support enforcement division to redirect support...
payments administratively where someone other than the
custodial parent has physical custody; specifying the
conditions under which the child support enforcement
division may obtain consumer credit reports; providing for
submission of information by parties to support proceedings
to the state case registry; allowing enforcement of subpoenas
issued by out-of-state agencies administering certain
programs for child support enforcement; providing for
development of a data match system with financial
institutions for obtaining information regarding obligor
depositors and for immunity from liability for financial
institutions supplying such information; reporting of
information regarding employment and income by an
employer and specifying who has access to such
information; providing for an administrative review and
adjustment of child support orders which differ from the
child support guidelines; prohibiting the release of
information on the whereabouts of a protected party or
child; providing the child support enforcement division and
certain out-of-state agencies access to records of public and
private entities for purposes of child support enforcement;
recording social security numbers in certain family matters;
providing procedures for administrative enforcement of
child support orders through writs of execution, suggestions
or suggestee executions on personal property; withholding
from income of amounts payable as support; creating liens
against real property for overdue child support; providing
for release of real property liens upon satisfaction of the
overdue support obligation; providing procedures for
enforcing liens on real property for overdue child support;
authorizing the circuit court to order one found in contempt
for violating a child support order to work or to pay support
in accordance with a plan approved by the child support
enforcement division; authorizing the child support
enforcement division to increase monthly support payments
to secure overdue child support; restating that there is no
right to trial by jury in a paternity proceeding; issuing
temporary child support in paternity actions in cases of clear
and convincing evidence of paternity; providing for
admission into evidence of bills for testing as prima facie
evidence in a paternity case without third-party testimony;
and requiring full faith and credit be given to records and
proceedings in other jurisdictions in conformity with federal law.

Be it enacted by the Legislature of West Virginia:

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

Chapter
48. Domestic Relations.
48A. Enforcement of Family Obligations.
57. Evidence and Witness.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-5. Duties of state registrar of vital statistics; enforcement of article.

1 (a) The state registrar of vital statistics shall:

2 (1) Administer and enforce the provisions of this article and all other applicable laws of this state and all lawful rules and regulations adopted and promulgated thereunder;
(2) Direct and supervise the statewide system of vital
statistics and the operation of the division of vital statistics,
and act as custodian of its records;

(3) Direct, supervise and control the activities of local
registrars and the activities of public officers in relation to
the operation of the vital statistics system and provide
them with the postage necessary for them to carry out
their duties under this article;

(4) Prescribe, provide and distribute, subject to the
rules and regulations promulgated by the board of health,
all forms necessary to carry out the provisions of this
article and of the rules and regulations adopted and
promulgated thereunder;

(5) Prepare and publish annual reports of vital
statistics of this state, and such other reports as may be
required by the director of the state health department;

(6) Offer voluntary paternity establishment services.

(b) The state registrar of vital statistics may delegate
such functions and duties as are hereby vested in him or
her to officers and employees of the division of vital
statistics and to local registrars as the state registrar may
deem necessary or expedient.

(c) The state registrar, either personally or by a duly
deployed representative, shall have authority to investigate
cases of irregularity or violation of law arising under the
provisions of this article, and all local registrars, deputy
local registrars and subregistrars shall aid him or her, upon
request, in such investigations. When he or she shall deem
it necessary, he or she shall report cases of violation of any
of the provisions of this article to the prosecuting attorney
of the county, with a statement of the facts and
circumstances. When any such case is reported to him or
her by the state registrar, the prosecuting attorney shall
forthwith initiate and promptly prosecute the necessary
court proceedings against the person or corporation
responsible for the alleged violation of law. Upon request
of the state registrar, the attorney general shall assist in the
enforcement of the provisions of this article.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-10c. Parent education classes.
§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.
§48-2-15a. Medical support enforcement.

§48-2-10c. Parent education classes.

(a) A circuit court, or a judge thereof, may, by administrative rule or order, and with the approval of the supreme court of appeals, designate an organization or agency to establish and operate education programs designed for parents who have filed an action for divorce, paternity, support or separate maintenance and who have minor children. The education programs shall be designed to instruct and educate parents about the effects of divorce and custody disputes on their children and to teach parents ways to help their children and minimize their trauma.

(b) The circuit court may issue an order requiring parties to an action for divorce, paternity, custody or separate maintenance to attend parental education classes established pursuant to subsection (a) of this section and may, by order, establish sanctions for failure to attend.

(c) The circuit court may require that each person attending a parental education class pay a fee, not to exceed twenty-five dollars, to the clerk of such court to defray the cost of materials and of hiring teachers: Provided, That where it is determined that a party is indigent and unable to pay for such classes, the court shall waive the payment of the fee for such party. The clerk of the circuit court shall, on or before the tenth day of each month, transmit all fees collected under this subsection to the state treasurer for deposit in the state treasury to the credit of special revenue fund to be known as the "parental education fund", which is hereby created. All
moneys collected and received under this subsection and paid into the state treasury and credited to the “parental education fund” shall be used by the administrative office of the supreme court of appeals solely for reimbursing the provider of parental education classes for the costs of materials and of providing such classes. Such moneys shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(d) The administrative office of the supreme court of appeals shall submit a report to the joint committee on government and finance summarizing the effectiveness of any program of parent education no later than two years from the initiation of the program.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

(a) Upon ordering a divorce or granting a decree of separate maintenance, the court may require either party to pay alimony in the form of periodic installments, or a lump sum, or both, for the maintenance of the other party. Payments of alimony are to be ordinarily made from a party's income, but when the income is not sufficient to adequately provide for those payments, the court may, upon specific findings set forth in the order, order the party required to make those payments to make them from the corpus of his or her separate estate. An award of alimony shall not be disproportionate to a party's ability to pay as disclosed by the evidence before the court.

(b) Upon ordering the annulment of a marriage or a divorce or granting of decree of separate maintenance, the court may further order all or any part of the following relief:

(1) The court may provide for the custody of minor children of the parties, subject to such rights of visitation, both in and out of the residence of the custodial parent or other person or persons having custody, as may be appropriate under the circumstances. In every action where visitation is awarded, the court shall specify a schedule for visitation by the noncustodial parent: Provided, That with respect to any existing order which
provided for visitation but which does not provide a specific schedule for visitation by the noncustodial parent, upon motion of any party, notice of hearing and hearing, the court shall issue an order which provides a specific schedule of visitation by the noncustodial parent;

(2) When the action involves a minor child or children, the court shall require either party to pay child support in the form of periodic installments for the maintenance of the minor children of the parties in accordance with support guidelines promulgated pursuant to article one-b, chapter forty-eight-a of this code. Payments of child support are to be ordinarily made from a party's income, but in cases when the income is not sufficient to adequately provide for those payments, the court may, upon specific findings set forth in the order, order the party required to make those payments to make them from the corpus of his or her separate estate;

(3) When the action involves a minor child or children, the court shall provide for medical support for any minor children in accordance with section fifteen-a of this article;

(4) As an incident to requiring the payment of alimony or child support, the court may order either party to continue in effect existing policies of insurance covering the costs of health care and hospitalization of the other party: Provided, That if the other party is no longer eligible to be covered by such insurance because of the granting of an annulment or divorce, the court may require a party to substitute such insurance with a new policy to cover the other party or may consider the prospective cost of such insurance in awarding alimony to be paid in periodic installments. Payments made to an insurer pursuant to this subdivision, either directly or by a deduction from wages, shall be deemed to be alimony or installment payments for the distribution of marital property, in such proportion as the court shall direct: Provided, however, That if the court does not set forth in the order that a portion of such payments is to be deemed installment payments for the distribution of marital property, then all such payments made pursuant to this subdivision shall be deemed to be alimony: Provided
further, That the designation of insurance coverage as alimony under the provisions of this subdivision shall not, in and of itself, give rise to a subsequent modification of the order to provide for alimony other than insurance for covering the costs of health care and hospitalization;

(5) The court may grant the exclusive use and occupancy of the marital home to one of the parties, together with all or a portion of the household goods, furniture and furnishings reasonably necessary for such use and occupancy. Such use and occupancy shall be for a definite period, ending at a specific time set forth in the order, subject to modification upon the petition of either party. Except in extraordinary cases supported by specific findings set forth in the order granting relief, a grant of the exclusive use and occupancy of the marital home shall be limited to those situations when such use and occupancy is reasonably necessary to accommodate the rearing of minor children of the parties. The court may require payments to third parties in the form of home loan installments, land contract payments, rent, property taxes and insurance coverage if the amount of such coverage is reduced to a fixed monetary amount set forth in the court's order. When such third party payments are ordered, the court shall specify whether such payments or portions of payments are alimony, child support, a partial distribution of marital property or an allocation of marital debt: Provided, That if the court does not set forth in the order that a portion of such payments is to be deemed child support or installment payments for the distribution of marital property, then all such payments made pursuant to this subdivision shall be deemed to be alimony. When such third party payments are ordered, the court shall specify whether such payments or portions of payments are alimony, child support, a partial distribution of marital property or an allocation of marital debt. If the payments are not designated in an order and the parties have waived any right to receive alimony, the court may designate the payments upon motion by any party. Nothing contained in this subdivision shall abrogate an existing contract between either of the parties and a third party or affect the
rights and liabilities of either party or a third party under the terms of such contract;

(6) As an incident to requiring the payment of alimony, the court may grant the exclusive use and possession of one or more motor vehicles to either of the parties. The court may require payments to third parties in the form of automobile loan installments or insurance coverage if available at reasonable rates, and any such payments made pursuant to this subdivision for the benefit of the other party shall be deemed to be alimony or installment payments for the distribution of marital property, as the court may direct. Nothing contained in this subdivision shall abrogate an existing contract between either of the parties and a third party or affect the rights and liabilities of either party or a third party under the terms of such contract;

(7) When the pleadings include a specific request for specific property or raise issues concerning the equitable division of marital property as defined in section one of this article, the court shall order such relief as may be required to effect a just and equitable distribution of the property and to protect the equitable interests of the parties therein;

(8) Unless a contrary disposition is ordered pursuant to other provisions of this section, then upon the motion of either party, the court may compel the other party to deliver to the moving party any of his or her separate estate which may be in the possession or control of the respondent party and may make such further order as is necessary to prevent either party from interfering with the separate estate of the other;

(9) When allegations of abuse have been proven, the court shall enjoin the offending party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other or interfering with the custodial or visitation rights of the other. Such order may permanently enjoin the offending party from entering the school, business or place of employment of the other for the purpose of molesting or harassing the other; or from contacting the other, in person or by
telephone, for the purpose of harassment or threats; or from harassing or verbally abusing the other in a public place;

(10) The court may order either party to take necessary steps to transfer utility accounts and other accounts for recurring expenses from the name of one party into the name of the other party or from the joint names of the parties into the name of one party. Nothing contained in this subdivision shall affect the liability of the parties for indebtedness on any such account incurred before the transfer of such account.

(c) When an annulment or divorce is denied, the court shall retain jurisdiction of the case and may order all or any portion of the relief provided for in subsections (a) and (b) of this section which has been demanded or prayed for in the pleadings.

(d) When a divorce or annulment is granted in this state upon constructive service of process and personal jurisdiction is thereafter obtained of the defendant in such case, the court may order all or any portion of the relief provided for in subsections (a) and (b) of this section which has been demanded or prayed for in the pleadings.

(e) After the entry of an order pursuant to the provisions of this section, the court may revise the order concerning the maintenance of the parties and enter a new order concerning the same, as the circumstances of the parties may require.

The court may also from time to time afterward, upon motion of either of the parties and upon proper service, revise such order to grant relief pursuant to subdivision (9), subsection (b) of this section, and enter a new order concerning the same, as the circumstances of the parties and the benefit of children may require. The court may also from time to time afterward, upon the motion of either of the parties or other proper person having actual or legal custody of the minor child or children of the parties, revise or alter the order concerning the custody and support of the children, and make a new order concerning the same, issuing it forthwith, as the
circumstances of the parents or other proper person or persons and the benefit of the children may require: Provided, That all orders modifying child support shall be in conformance with the requirements of support guidelines promulgated pursuant to article one-b, chapter forty-eight-a of this code: Provided, however, That an order providing for child support payments may be revised or altered for the reason, inter alia, that the existing order provides for child support payments in an amount that is less than eighty-five percent or more than one hundred fifteen percent of the amount that would be required to be paid under the child support guidelines promulgated pursuant to the provisions of said section: Provided further, That the child support enforcement division may review a child support order and, if appropriate, file a motion with the circuit court for modification of the child support order pursuant to the provisions of section thirty-five, article two, chapter forty-eight-a of this code.

In granting relief under this subsection, the court may, when other means are not conveniently available, alter any prior order of the court with respect to the distribution of marital property, if such property is still held by the parties, and if necessary to give effect to a modification of alimony, child support or child custody or necessary to avoid an inequitable or unjust result which would be caused by the manner in which the modification will affect the prior distribution of marital property.

(f) When a separation agreement is the basis for an award of alimony, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for alimony to continue beyond the death of the payor party or to cease in such event. When alimony is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of alimony is to continue beyond the death of the payor party or is to cease, or when the parties have not entered into a separation agreement and alimony is to be awarded, the court shall specifically state as a part of its order whether such payments of alimony are to be continued beyond the death of the payor party or cease.
(g) When a separation agreement is the basis for an award of alimony, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for alimony to continue beyond the remarriage of the payee party or to cease in such event. When alimony is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of alimony is to continue beyond the remarriage of the payee party or is to cease; or when the parties have not entered into a separation agreement and alimony is to be awarded, the court shall specifically state as a part of its order whether such payments of alimony are to be continued beyond the remarriage of the payee party or cease.

(h) In addition to the disclosure requirements set forth in section thirty-three of this article, the court may order accounts to be taken as to all or any part of marital property or the separate estates of the parties and may direct that the accounts be taken as of the date of the marriage, the date upon which the parties separated or any other time in assisting the court in the determination and equitable division of property.

(i) In determining whether alimony is to be awarded, or in determining the amount of alimony, if any, to be awarded under the provisions of this section, the court shall consider and compare the fault or misconduct of either or both of the parties and the effect of such fault or misconduct as a contributing factor to the deterioration of the marital relationship. However, alimony shall not be awarded when both parties prove grounds for divorce and are denied a divorce, nor shall an award of alimony under the provisions of this section be ordered which directs the payment of alimony to a party determined to be at fault, when, as a grounds granting the divorce, such party is determined by the court:

1. To have committed adultery; or
2. To have been convicted for the commission of a crime which is a felony, subsequent to the marriage if such conviction has become final; or
(3) To have actually abandoned or deserted his or her spouse for six months.

(j) Whenever under the terms of this section or section thirteen of this article a court enters an order requiring the payment of alimony or child support, if the court anticipates the payment of such alimony or child support or any portion thereof to be paid out of "disposable retired or retainer pay" as that term is defined in 10 U.S.C. §1408, relating to members or former members of the uniformed services of the United States, the court shall specifically provide for the payment of an amount, expressed in dollars or as a percentage of disposable retired or retainer pay, from the disposable retired or retainer pay of the payor party to the payee party.

(k) Any order which provides for the custody or support of a minor child shall include:

(1) The name of the custodian;
(2) The amount of the support payments;
(3) The date the first payment is due;
(4) The frequency of the support payments;
(5) The event or events which trigger termination of the support obligation;
(6) A provision regarding wage withholding;
(7) The address where payments shall be sent;
(8) A provision for medical support; and
(9) When child support guidelines are not followed, a specific written finding pursuant to section fourteen, article one-b, chapter forty-eight-a of this code.

(I) (1) Unless the best interests of the child require otherwise, every final order and every modification order which provides for the custody of a minor child of the parties shall also provide for the following:

(A) The custodial parent shall be required to authorize school authorities in the school in which the child is
enrolled to release to the noncustodial parent copies of any and all information concerning the child which would otherwise be properly released to the custodial parent;

(B) The custodial parent shall be required, promptly after receipt, to transmit to the noncustodial parent a copy of the child's grades or report card and copies of any other reports reflecting the status or progress of the child;

(C) The custodial parent shall be required, when practicable, to arrange appointments for parent-teacher conferences at a time when the noncustodial parent can be present;

(D) The custodial parent shall be required to authorize medical providers to release to the noncustodial parent copies of any and all information concerning medical care provided to the child which would otherwise be properly released to the custodial parent;

(E) The custodial parent shall be required to promptly inform the noncustodial parent of any illness of the child which requires medical attention; or, if the child is in the actual physical custody of the noncustodial parent during a period of visitation, the noncustodial parent shall be required to promptly inform the custodial parent of any illness of the child which requires medical attention;

(F) The custodial parent shall be required to consult with the noncustodial parent prior to any elective surgery being performed on the child; and in the event emergency medical procedures are undertaken for the child which require the parental consent of either parent, if time permits, the other parent shall be consulted, or if time does not permit such consultation, the other parent shall be promptly informed of such emergency medical procedures: Provided, That the same duty to inform the custodial parent applies to the noncustodial parent in the event that the emergency medical procedures are required while the child is in the physical custody of the noncustodial parent during a period of visitation: Provided, however, That nothing contained herein shall be deemed to alter or amend the law of this state as it otherwise pertains to physicians or health care facilities
obtaining parental consent prior to providing medical care or performing medical procedures.

(2) In the event a custodial parent shall fail or refuse to authorize the release of school or medical records as provided for by subdivision (1) of this subsection, then upon the ex parte application of the noncustodial parent, the family law master shall prepare an order for entry by the circuit court which appoints the family law master as a special commissioner authorized to execute a consent for the release of such records and direct it to the appropriate school authorities or medical providers.

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

(a) For the purposes of this section:

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

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

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

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

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

(6) "Insurer" means any company, health maintenance organization, self-funded group, multiple employer welfare arrangement, hospital or medical services corporation, trust, group health plan, as defined in 29 U.S.C. §1167, Section 607(1) of the Employee Retirement Income Security Act of 1974 or other entity which provides insurance coverage or offers a service benefit plan.
(b) In every action to establish or modify an order which requires the payment of child support, the court shall ascertain the ability of each parent to provide medical care for the children of the parties. In any temporary or final order establishing an award of child support or any temporary or final order modifying a prior order establishing an award of child support, the court shall order one or more of the following:

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

(2) If the court finds that insurance coverage is not available to either parent on a group basis through an employer, multiemployer trust or employees' union, or that the group insurer is not accessible to the parties, the court may order either parent or both parents to obtain insurance coverage which is otherwise available at a reasonable cost.

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

(4) If insurance coverage is available, the court shall also determine the amount of the annual deductible on insurance coverage which is attributable to the children and designate the proportion of the deductible which each party shall pay.
(5) The order shall require the obligor to continue to provide the child support enforcement division created by article two, chapter forty-eight-a of this code with information as to his or her employer's name and address and information as to the availability of employer-related insurance programs providing medical care coverage so long as the child continues to be eligible to receive support.

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

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

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

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

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

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

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

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

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

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

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

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

(1) To permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any enrollment season restrictions;
(2) If the parent is enrolled but fails to make application to obtain coverage of the child, to enroll the child under family coverage upon application by the child's other parent, by the state agency administering the medicaid program or by the child support enforcement division;

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

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

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

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

(4) To withhold from the employee's compensation the employee's share, if any, of premiums for health coverage and to pay this amount to the insurer: Provided, That the amount so withheld may not exceed the maximum amount permitted to be withheld under 15 U.S.C. §1673, Section 303(b) of the Consumer Credit Protection Act.

(i) (1) The signature of the custodian for the child shall constitute a valid authorization to the insurer for the purposes of processing an insurance payment to the provider of medical care for the child.

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

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

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

(j) Where an obligated parent changes employment,
and the new employer provides the obligated parent's
health care coverage, the child support enforcement
division shall transfer to the new employer notice of the
obligated parent’s duty to provide health care coverage.
Unless contested by the obligated parent in writing and in
accordance with section eight, article five, chapter forty-
eight-a of this code, the notice shall operate to enroll the
child in the new employer's health care plan.

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

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

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

(1) Hold the obligated parent in contempt for failing
or refusing to provide the insurance coverage or for
failing or refusing to provide the information required in
subsection (d) of this section;
(2) Enter an order for a sum certain against the obligated parent for the cost of medical care for the child and any insurance premiums paid or provided for the child during any period in which the obligated parent failed to provide the required coverage;

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

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

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

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

(n) Proof of failure to maintain court ordered insurance coverage for the child constitutes a showing of substantial change in circumstances or increased need pursuant to section fifteen of this article, and provides a basis for modification of the child support order.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article
1A. Definitions.
1B. Guidelines for Child Support Awards.
2. West Virginia Support Enforcement Commission; Child Support Enforcement Division; Establishment and Organization.
5. Remedies for the Enforcement of Support Obligations and Visitation.

ARTICLE 1A. DEFINITIONS.


(a) For cases being enforced pursuant to Title IV-D of the Social Security Act, "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.

(b) For all other cases, "support order" means an order as defined in subsection (a) of this section and, in addition, an order for the support and maintenance of a spouse or former spouse.

ARTICLE 1B. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48A-1B-9. Adjustment for obligor's social security benefits sent directly to the child; receipt by child of supplemental security income.

(a) If a proportion of the obligor's social security benefit is paid directly to the custodian of his or her dependents who are the subject of the child support order, the following adjustment shall be made. The total amount of the social security benefit which includes the amounts paid to the obligor and the obligee shall be counted as gross income to the obligor. In turn, the child support order will be calculated as described in section six of this article. To arrive at the final child support amount, however, the amount of the social security benefits sent directly to the child's household will be subtracted from the child support order. If the child support order amount results in a negative amount it shall be set at zero.
(b) If a child is a recipient of disability payments as supplemental security income for aged, blind and disabled, under the provisions of 42 U.S.C. §1382, et seq., and if support furnished by an obligor would be considered unearned income that renders the child ineligible for disability payments or medical benefits, no child support order shall be entered for that child. If a support order is entered for the child’s siblings or other persons in the household, the child shall be excluded from the calculation of support, and the amount of support for the child shall be set at zero.

ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION; CHILD SUPPORT ENFORCEMENT DIVISION; ESTABLISHMENT AND ORGANIZATION.

§48A-2-24. Disbursements of amounts collected as support.
§48A-2-24a. Amounts collected as support to be disbursed to person having custody; procedure for redirecting disbursement of payments where physical custody transferred to a person other than the custodial parent.
§48A-2-31. Providing information to consumer reporting agencies; requesting consumer credit reports for child support purposes.
§48A-2-33a. Liability for financial institutions providing financial records to the child support enforcement division; agreements for data match system; encumbrance or surrender of assets.
§48A-2-34. Employment and income reporting.
§48A-2-35. Review and adjustment of child support orders.
§48A-2-43. Recording of social security numbers in certain family matters.


(a) The child support enforcement division shall establish a parent locator service to locate individuals for the purposes of establishing parentage and of establishing, modifying or enforcing child support obligations, utilizing all sources of information and available records and the parent locator service in the federal department of
health and human services. For purposes of obtaining
information from the parent locator service, any person,
agency or entity providing services to the child support
enforcement division pursuant to a contract that includes a
provision to ensure that the confidentiality of information
is maintained shall be deemed to be an agent of the child
support enforcement division.

(b) Upon entering into an agreement with the
secretary of the federal department of health and human
services for the use of that department's parent locator
service, the child support enforcement division shall accept
and transmit to the secretary of the federal department of
health and human services requests from authorized
persons for information with regard to the whereabouts of
a noncustodial obligor to be furnished by such federal
parent locator service. For purposes of this subsection,
"authorized persons" means: (1) An attorney or agent of
the child support enforcement division; (2) a family law
master or circuit judge or any agent thereof; or (3) a
resident parent, legal guardian, attorney or agent for a
child. The child support enforcement division shall charge
a reasonable fee sufficient to cover the costs to the state
and to the federal department of health and human
services incurred by reason of such requests, and shall
transfer to that department from time to time, so much of
the fees collected as are attributable to the costs incurred
by that department.

(c) The information obtained by the child support
enforcement division from the federal parent locator
service shall be used for, but not limited to, the following
purposes:

(1) Establishing parentage and establishing, setting the
amount of, modifying or enforcing child support
obligations;

(2) Obtaining and transmitting information to any
family law master or circuit court or agent thereof or to an
attorney or employee of the United States or of any state
responsible for enforcing any federal or state law with
respect to the unlawful taking or restraint of a child or
making or enforcing a child custody or visitation determination.

(d) The child support enforcement division may request from the federal parent locator service information:

(1) About, or which will facilitate the discovery of information about, the location of any individual: (A) Who is under an obligation to pay child support; (B) against whom such an obligation is sought; or (C) to whom such an obligation is owed, including the individual's social security number, or numbers, most recent address, and the name, address and employer identification number of the individual's employer;

(2) Concerning the individual's wages or other income from, and benefits of, employment, including rights to or enrollment in group health care coverage; and

(3) Concerning the type, status, location and amount of any assets of, or debts owed by or to, any such individual.

(e) A circuit court shall have jurisdiction to hear and determine, upon a petition by an authorized person, as defined in subsection (b) of this section, whether the release of information from the federal parent locator service to that person could be harmful to the custodial parent or the child.

§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 two business days after receipt from the employer or other source of periodic income. 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
12 payments to the family during that period (with
13 appropriate reimbursement of the federal government to
14 the extent of its participation in the financing);

15 (2) Amounts in excess of amounts required to
16 reimburse the department of health and human resources
17 under subdivision (1) of this subsection and not in excess
18 of the amount required to be paid during such period to
19 the family by a court order shall be paid to the obligee;
20 and

21 (3) Amounts in excess of amounts required to be
22 distributed under subdivisions (1) and (2) of this
23 subsection shall be: (A) Paid by the child support
24 enforcement division to the appropriate administrative unit
25 of the department of health and human resources (with
26 appropriate reimbursement of the federal government to
27 the extent of its participation in the financing) as
28 reimbursement for any past assistance payments made to
29 the family for which the department has not been
30 reimbursed; or (B) if no assistance payments have been
31 made by the department which have not been repaid, such
32 amounts shall be paid to the obligee.

33 (b) (1) Whenever a family for whom support
34 payments have been collected and distributed under the
35 provisions of this chapter ceases to receive assistance from
36 the department of health and human resources, the child
37 support enforcement division shall provide notice to the
38 family of their rights with regard to a continuation of
39 services. Unless notified by the family that services are no
40 longer desired, the child support enforcement division
41 shall continue to collect amounts of support payments
42 which represent monthly support payments from the
43 obligor and pay any amount so collected, which represents
44 monthly support payments, to the family (without
45 requiring any formal reapplication and without the
46 imposition of any application fee) on the same basis as in
47 the case of other obligees who are not receiving assistance
48 from the department of health and human resources.

49 (2) So much of any amounts of support so collected
50 shall be paid, first, to the obligee until all past due support
51 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) Notwithstanding the preceding provisions of this
section, amounts collected by the child support
enforcement division as child support for months in any
period on behalf of a child for whom the department of
health and human resources is making foster care
maintenance payments shall:

(1) 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);

(2) 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

(3) 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 (1) and (2) of this
subsection, to the extent that such portion is necessary to
reimburse the department of health and human resources
(with appropriate reimbursement to the federal
government to the extent of its participation in the
financing), for any past foster care maintenance payments or payments of aid to families with dependent children or temporary assistance to needy families which were made with respect to the child (and with respect to which past collections have not previously been retained);

(d) The commission shall establish bonding requirements for employees of the child support enforcement division who receive, disburse, handle or have access to cash.

(e) 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.

(f) 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.

(g) For purposes of this section, "business day" means a day on which state offices are open for regular business.

§48A-2-24a. Amounts collected as support to be disbursed to person having custody; procedure for redirecting disbursement of payments where physical custody transferred to a person other than the custodial parent.

(a) Any payment required to be made under the provisions of section twenty-four of this article to a family shall be made to the resident parent, legal guardian or
(b) Where physical custody of the child has been transferred from the custodial parent to another person, the child support enforcement division may redirect disbursement of support payments to such other person, on behalf of the child, in the following circumstances:

(1) Where the noncustodial parent has physical custody of the child, excluding visitation, upon filing with the child support enforcement division:

(A) An affidavit attesting that the noncustodial parent has obtained physical custody of the child, describing the circumstances under which the transfer of physical custody took place, and stating that he or she anticipates that his or her physical custody of the child will continue for the foreseeable future; and

(B) Documentary proof that the noncustodial parent has instituted proceedings in circuit court for a modification of legal custody.

(2) Where a person other than the custodial or noncustodial parent has physical custody of the child, excluding visitation, filing with the child support enforcement division:

(A) An affidavit attesting that the person has obtained physical custody of the child, describing the circumstances under which the transfer of physical custody took place, and stating that he or she anticipates that his or her physical custody of the child will continue for the foreseeable future; and

(B) Documentary proof that the person claiming physical custody is currently the person responsible for the child by producing at least one of the following:

(i) School records demonstrating that school authorities consider the person claiming physical custody the adult responsible for the child;
(ii) Medical records demonstrating that the person claiming physical custody is empowered to make medical decisions on behalf of the child;

(iii) Documents from another public assistance agency showing that the person claiming physical custody is currently receiving other public assistance on behalf of the child;

(iv) A notarized statement from the custodial parent attesting to the fact that he or she has transferred physical custody to the person;

(v) A verifiable order of a court of competent jurisdiction transferring physical or legal custody to the person;

(vi) Documentation that the person claiming physical custody has filed a petition in circuit court to be appointed the child's guardian;

(vii) Documentation that the child, if over the age of fourteen, has instituted proceedings in circuit court to have the person claiming physical custody nominated as his or her guardian; or

(viii) Any other official documents of a federal, state or local agency or governing body demonstrating that the person currently has physical custody of the child and has taken action indicating that he or she anticipates such physical custody to continue in the foreseeable future.

(c) The child support enforcement division shall mail, by first class mail, a copy of the affidavit and supporting documentary evidence required under subsection (b) of this section, to the circuit court which issued the support order being enforced by child support enforcement division and to the parties to the order, at their last known addresses, together with a written notice stating that any party has ten days to object to the redirection of support payments by filing an affidavit and evidence showing that the person seeking redirection of the payments does not have physical custody of the child. If no objection is received by the child support enforcement division by the end of the ten-day period, the division may order
 payments redirected to the person claiming physical
custody for the benefit of the child. If a responsive
affidavit and supporting evidence is filed within the ten-
day period and, in the opinion of the child support
enforcement division, either disproves the claim of the
person seeking redirection of support payments or raises a
genuine issue of fact as to whether the person has actual
physical custody of the child, the child support
enforcement division shall continue to forward support
payments to the custodial parent. Any person who
disagrees with the determination of the child support
enforcement division may petition the circuit court for
modification of the child support order.

(d) Any person who files a false affidavit pursuant to
this section shall be guilty of false swearing and, upon
conviction thereof, shall be punished as provided by law
for such offense.

§48A-2-31. Providing information to consumer reporting
agencies; requesting consumer credit reports
for child support purposes.

(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.

(1) 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.

(2) The procedural rule adopted shall afford the obligor with procedural due process prior to making information available with respect to the obligor.

(c) 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.

(d) The child support enforcement division may impose a fee for furnishing such information, not to exceed the actual cost thereof.

(e) The head of the child support enforcement division, or her or his designee, may request a consumer reporting agency to prepare and furnish to the child support enforcement division a consumer report for purposes relating to child support, by certifying to the consumer reporting agency that:

(1) The consumer report is needed for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of such payments in order to set an initial or modified child support award;

(2) The paternity of the child of the individual has been established or acknowledged by the individual in accordance with state law;

(3) The individual whose report is being requested has been given at least ten days' prior notice of such request by certified mail to his or her last known address that such report is being requested; and

(4) The consumer report will be kept confidential, will be used solely for a purpose described in subdivision (1) of this subsection and will not be used in connection with
any other civil, administrative or criminal proceeding or
for any other purpose.


(a) 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 thirty-four of this article shall compare
information received to determine if the new hire's income
is subject to wage withholding and notify the employer
pursuant to that section.

(b) Each party to a child support proceeding shall,
upon entry of an order awarding or modifying child
support, complete and file with the clerk of the circuit
court issuing the order a form, to be promulgated by the
administrative office of the supreme court of appeals,
listing information concerning the location and identity of
a party including, but not limited to: The party's social
security number, residential and mailing address,
telephone number and driver's license number; the child's
name, birth date and social security number; and the
party's employer's name, address and telephone number.
The clerk shall promptly forward all such information to
the state case registry. The parties are required to notify
the state case registry of any change in the information
contained on the form, and every order for support shall
so state. All information provided to the state case registry
shall be subject to the privacy and confidentiality
safeguards contained in section forty of this article.

(c) In any subsequent child support enforcement
action between the parties, there shall be a presumption
that the requirements for notice and service of process
have been met upon a showing that the child support
enforcement division has made a diligent effort to
38 ascertain the location of a party by delivery of written
39 notice by certified mail, return receipt requested, to the
40 most recent employer or residential mailing address filed
41 with the state case registry pursuant to subsection (b) of
42 this section.


1 In order to obtain financial and medical insurance or
2 other information pursuant to the establishment,
3 enforcement and modification provisions set forth in this
4 chapter or chapter forty-eight of this code, the child
5 support enforcement division or any out-of-state agency
6 administering a program under Title IV-D of the Social
7 Security Act may serve, by certified mail or personal
8 service, an administrative subpoena on any person,
9 corporation, partnership, financial institution, labor
10 organization or state agency, for an appearance or for
11 production of financial or medical insurance or other
12 information. In case of disobedience to the subpoena, the
13 child support enforcement division may invoke the aid of
14 any circuit court in requiring the appearance or
15 production of records and financial documents. The child
16 support enforcement division may assess a civil penalty of
17 no more than one hundred dollars for the failure of any
18 person, corporation, financial institution, labor
19 organization or state agency to comply with requirements
20 of this section.

§48A-2-33a. Liability for financial institutions providing
financial records to the child support
enforcement division; agreements for data
match system; encumbrance or surrender of
assets.

1 (a) Notwithstanding any other provision of this code, a
2 financial institution shall not be liable under the law of this
3 state to any person for:
4
5 (1) Disclosing any financial record of an individual to
6 the child support enforcement division in response to a
7 subpoena issued by the division pursuant to section thirty-
8 three of this article;
(2) Disclosing any financial record of an individual to
the child support enforcement division pursuant to the
terms of an agreement with such financial institution
pursuant to subsection (f) of this section;

(3) Encumbering or surrendering assets held by such
financial institution in response to a notice of lien or levy
issued by the child support enforcement division as
provided in subsection (g) of this section; or

(4) For any other action taken in good faith to comply
with the requirements of this section.

(b) The child support enforcement division, 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
44 financial institution pertaining to a customer's relationship with the financial institution.

46 (f) Notwithstanding any provision of this code to the contrary, the child support enforcement division shall enter into agreements with financial institutions doing business in the state to develop and operate, in coordination with such financial institutions, a data match system, using automated data exchanges, to the maximum extent feasible, in which each financial institution is required to provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each obligor, as defined in section twenty-three, article one-a of this chapter, who maintains an account at such institution and who owes past due support. The child support enforcement division will identify to the financial institution an obligor who owes past due support by his or her name and social security number or other taxpayer identification number. The child support enforcement division, upon written request and proof of actual costs incurred, may pay a reasonable fee to a financial institution for conducting the data match not to exceed the actual costs incurred by such financial institution.

67 (g) The financial institution, in response to a notice of a lien or levy, shall encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a lien for child support.

§48A-2-34. Employment and income reporting.

1 (a) For purposes of this section:

2 (1) "Employee" means an individual who is an "employee" for purposes of federal income tax withholding, as defined in 26 U.S.C. §3401;

5 (2) "Employer" means the person or entity for whom an individual performs or performed any service of whatever nature and who has control of the payment of the individual’s wages for performance of such service or services, as defined in 26 U.S.C. §3401;
(3) An individual is considered a "new hire" on the first day in which that individual performs services for remuneration and on which an employer begins to withhold amounts for income tax purposes.

(b) Except as provided in subsections (c) and (d) of this section, all employers doing business in the state shall report to the child support enforcement division:

(1) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings; and

(2) The rehiring or return to work of any employee who resides or works in this state.

(c) Employers are not required to report the hiring, rehiring or return to work of any person who is an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of such agency has determined that reporting could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(d) An employer that has employees in states other than this state and that transmits reports magnetically or electronically is not required to report to the child support enforcement division the hiring, rehiring or return to work of any employee if the employer has filed with the secretary of the federal department of health and human services, as required by 42 U.S.C. §653A, a written designation of another state in which it has employees as the reporting state.

(e) 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. The report shall include the employee's name, address and social security number, the employer's name and address, any different address of the payroll office and the employer's federal tax identification number. The
employer may report other information, such as date of birth or income information, if desired.

(f) Employers shall submit a report within fourteen days of the date of the hiring, rehiring or return to work of the employee. However, if the employer transmits the reports magnetically or electronically by two monthly submissions, the reports shall be submitted not less than twelve days nor more than sixteen days apart.

(g) An employer shall provide to the child support enforcement division, upon its written request, information regarding an obligor's employment, wages or salary, medical insurance, and location of employment.

(h) 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-five dollars per failure. If the failure to report is the result of a conspiracy between the employer and the employee not to supply the required report or to supply a false or incomplete report, the employer shall be assessed a civil penalty of no more than five hundred dollars.

(i) Employers required to report under this section may assess each employee so reported one dollar for the administrative costs of reporting.

(j) Uses for the new hire information include, but are not limited to, the following:

(1) The state directory of new hires shall furnish the information to the national directory of new hires;

(2) The child support enforcement division shall use information received pursuant to this section to locate individuals for purposes of establishing paternity and of establishing, modifying and enforcing child support obligations, and may disclose such information to any agent of the agency that is under contract with the division to carry out such purposes;

(3) State agencies responsible for administering a program specified in 42 U.S.C. §1320b-7(b) shall have
access to information reported by employers for purposes of verifying eligibility for the program; and

(4) The bureau of employment programs shall have access to information reported by employers for purposes of administering employment security and workers' compensation programs.

§48A-2-35. Review and adjustment of child support orders.

(a) Either parent or, if there has been an assignment of support to the department of health and human resources, the child support enforcement division shall have the right to request an administrative review of the child support award in the following circumstances:

(1) Where the request for review is received thirty-six months or more after the date of the entry of the order or from the completion of the previous administrative review, whichever is later, the child support enforcement division shall conduct a review to determine whether the amount of the child support award in such order varies from the amount of child support that would be awarded at the time of the review pursuant to the guidelines for child support awards contained in article one-b of this chapter. If the amount of the child support award under the existing order differs by ten percent or more from the amount that would be awarded in accordance with the child support guidelines, the child support enforcement division shall file with the circuit court a motion for modification of the child support order. If the amount of the child support award under the existing order differs by less than ten percent from the amount that would be awarded in accordance with the child support guidelines, the child support enforcement division may, if it determines that such action is in the best interest of the child or otherwise appropriate, file with the circuit court a motion for modification of the child support order.

(2) Where the request for review of a child support award is received less than thirty-six months after the date of the entry of the order or from the completion of the previous administrative review, the child support enforcement division shall undertake a review of the case
only where it is alleged that there has been a substantial change in circumstances. If the child support enforcement division determines that there has been a substantial change in circumstances and if it is in the best interests of the child, the division shall file with the circuit court a motion for modification of the child support order in accordance with the guidelines for child support awards contained in article one-b of this chapter.

(b) The child support enforcement division shall notify both parents at least once every three years of their right to request a review of a child support order. The notice may be included in any order granting or modifying a child support award. The child support enforcement division shall give each parent at least thirty days' notice before commencing any review, and shall further notify each parent, upon completion of a review, of the results of the review, whether of a proposal to move for modification or of a proposal that there should be no change.

(c) When the result of the review is a proposal to move for modification of the child support order, each parent shall be given thirty days' notice of the hearing on the motion, the notice to be directed to the last known address of each party by first class mail. When the result of the review is a proposal that there be no change, any parent disagreeing with that proposal may, within thirty days of the notice of the results of the review, file with the court a motion for modification setting forth in full the grounds therefor.

(d) For the purposes of this section, a "substantial change in circumstances" includes, but is not limited to, a changed financial condition, a temporary or permanent change in physical custody of the child which the court has not ordered, increased need of the child, or other financial conditions. "Changed financial conditions" means increases or decreases in the resources available to either party from any source. Changed financial conditions includes, but is not limited to, the application for or receipt of any form of public assistance payments, unemployment compensation and workers' compensation,
or a fifteen percent or more variance from the amount of
the existing order and the amount of child support that
would be awarded according to the child support
guidelines.

(e) All child support orders shall contain a notice
which contains language substantially similar to the
following: "The amount of the monthly child support can
be modified as provided by law based upon a change in
the financial or other circumstances of the parties if those
circumstances are among those considered in the child
support formula. In order to make the modification a
party must file a motion to modify the child support
amount. Unless a motion to modify is filed, the child
support amount will continue to be due and cannot later
be changed retroactively even though there has been a
change of circumstances since the entry of the order. Self
help forms for modification can be found at the circuit
clerk's office." The failure of an order to have such a
provision does not alter the effectiveness of the order.


(a) All records in the possession of the child support
enforcement division, including records concerning an
individual case of child or spousal support, shall be kept
confidential and shall not be released except as provided
below:

(1) Records shall be disclosed or withheld as required
by federal law or regulations promulgated thereunder
notwithstanding other provisions of this section.

(2) Information as to the whereabouts of a party or the
child shall not be released to a person against whom a
protective order has been entered with respect to such
party or child or where the state has reason to believe that
the release of the information to the person making the
request may result in physical or emotional harm to the
party or the child.

(3) The phone number, address, employer and other
information regarding the location of the obligor, the
obligee and the child shall only be disclosed: (A) Upon
his or her written consent, to the person whom the consent
designates; or (B) notwithstanding subdivision (4) of this
subsection, to the obligee, the obligor, the child or the
caretaker or representative of the child, upon order of a
court if the court finds that the disclosure is for a bona
fide purpose, is not contrary to the best interest of a child
and does not compromise the safety of any party:  
Provided, That the identity and location of the employer
may be disclosed on the letters, notices and pleadings of
the division as necessary and convenient for the
determination of support amounts and the establishment,
investigation, modification, enforcement, collection and
distribution of support.

(4) Information and records other than the phone
number, address, employer and information regarding the
location of the obligor, the obligee and the child shall be
disclosed to the obligor, the obligee, the child or the
caretaker of the child or his or her duly authorized
representative, upon his or her written request:  Provided,
That when the obligor requests records other than
collection and distribution records, financial records
relevant to the determination of the amount of support
pursuant to the guidelines, or records the obligor has
supplied, the division shall mail a notice by first class mail
to the last known address of the obligee notifying him or
her of the request. The notice shall advise the obligee of
his or her right to object to the release of records on the
grounds that the records are not relevant to the
determination of the amount of support, or the
establishment, modification, enforcement, collection or
distribution of support. The notice shall also advise the
obligee of his or her right to disclosure of records
provided in this section in order to determine what records
the child support enforcement division may have. In the
event of any objection, the division shall determine
whether or not the information shall be released.

(5) Information in specific cases may be released as is
necessary or to determine the identity, location,
employment, income and assets of an obligor.
(6) Information and records may be disclosed to the bureau of vital statistics, bureau of employment programs, the workers' compensation division, state tax department and the internal revenue service, or other state or federal agencies or departments as may be necessary or desirable in obtaining any address, employment, wage or benefit information for the purpose of determining the amount of support or establishing, enforcing, collecting and distributing support.

(b) Any person who willfully violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars, or confined in jail not more than six months, or both fined and imprisoned.


(a) All state, county and municipal agencies, offices and employers, including profit, nonprofit and governmental employers, receiving a request for information and assistance from the child support enforcement division or any out-of-state agency administering a program under Title IV-D of the Social Security Act, shall cooperate with the division or with the out-of-state agency in the location of parents who have abandoned and deserted children and shall provide the division or the out-of-state agency with all available pertinent information concerning the location, income and property of those parents.

(b) Notwithstanding any other provision of law to the contrary, any entity conducting business in this state or incorporated under the laws of this state shall, upon certification by the division or any out-of-state agency administering a program under Title IV-D of the Social Security Act that the information is needed to locate a parent for the purpose of collecting or distributing child support, provide the division or the out-of-state agency with the following information about the parent: Full name, social security number, date of birth, home address, wages and number of dependents listed for income tax purposes: Provided, That no entity may provide any
information obtained in the course of providing legal services, medical treatment or medical services.

(c) (1) The child support enforcement division shall have access, subject to safeguards on privacy and information security, and to the nonliability of entities that afford such access under this subdivision, to information contained in the following records, including automated access, in the case of records maintained in automated data bases:

(A) Records of other state and local government agencies including, but not limited to:

(i) Vital statistics, including records of marriage, birth and divorce;

(ii) State and local tax and revenue records, including information on residence address, employer, income and assets;

(iii) Records concerning real and titled personal property;

(iv) Records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships, and other business entities;

(v) Employment security records;

(vi) Records of agencies administering public assistance programs;

(vii) Records of the division of motor vehicles; and

(viii) Corrections records.

(B) Certain records held by private entities with respect to individuals who owe or are owed support or certain individuals against, or with respect to, whom a support obligation is sought, consisting of:

(i) The names and addresses of such individuals and
the names and addresses of the employers of such individuals, as appearing in the customer records of public utilities and cable television companies, pursuant to an
59 administrative subpoena authorized by section thirty-three, 
60 article two of this chapter; and 
61 (ii) Information, including information on assets and 
62 liabilities, on such individuals held by financial 
63 institutions.

64 (2) Out-of-state agencies administering programs 
65 under Title IV-D of the Social Security Act shall, without 
66 the need for any court order, have the authority to access 
67 records in this state by making a request through the child 
68 support enforcement division.

69 (d) All federal and state agencies conducting activities 
70 under Title IV-D of the Social Security Act shall have 
71 access to any system used by this state to locate an 
72 individual for purposes relating to motor vehicles or law 
73 enforcement.

74 (e) Out-of-state agencies administering programs 
75 under Title IV-D of the Social Security Act shall have the 
76 authority and right to access and use, for the purpose of 
77 establishing or enforcing a support order, the state law-
78 enforcement and motor vehicle data bases.

79 (f) The child support enforcement division and out-
80 of-state agencies administering programs under Title IV-D 
81 of the Social Security Act shall have the authority and 
82 right to access and use, for the purpose of establishing or 
83 enforcing a support order, interstate networks that state 
84 law-enforcement agencies and motor vehicle agencies 
85 subscribe to or participate in, such as the national law-
86 enforcement telecommunications system (NLETS) and the 
87 American association of motor vehicle administrators 
88 (AAMVA) networks.

§48A-2-43. Recording of social security numbers in certain 
family matters.

1 (a) The social security number, if any, of any 
2 applicant for a professional license, driver's license, 
3 occupational license, recreational license, or marriage 
4 license must be recorded on the application for such 
5 license.
(b) The social security number of any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment must be placed in the records relating to the matter.

(c) For the purposes of subsection (a) of this section, if the licensing authority allows the use of a number other than the social security number on the face of the document while the social security number is kept on file at the agency, the applicant shall be so advised by such authority.

ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS AND VISITATION.

§48A-5-1. Action to obtain an order for support of minor child.

§48A-5-2. Arrearages; liens on personal property; enforcement through writ of execution, suggestion or suggestee execution.

§48A-5-3. Withholding from income of amounts payable as support.

§48A-5-4. Liens against real property for overdue support.

§48A-5-4a. Enforcement by the child support enforcement division of lien on real property.

§48A-5-5. Enforcement of support orders by contempt proceedings; penalties.


§48A-5-1. Action to obtain an order for support of minor child.

(a) An action may be brought in circuit court to obtain an order for the support of a minor child when:

(1) Such child has a parent and child relationship with an obligor;

(2) Such obligor is not the primary caretaker or guardian of the child;

(3) The obligor is not meeting an obligation to support the child;

(4) An enforceable order for the support of the child by the obligor has not been entered by a court of competent jurisdiction; and
(5) There is no pending action for divorce, separate maintenance or annulment in which the obligation of support owing from the obligor to the child is at issue.

(b) An action may be brought under the provisions of subsection (a) of this section by:

(1) A custodial parent of a child, when the divorce order or other order which granted custody did not make provision for the support of the child by the obligor;

(2) A primary caretaker of a child;

(3) A guardian of the property of a child or the committee for a child; or

(4) The child support enforcement division, on behalf of the state, when the department of health and human resources is providing assistance on behalf of the child in the form of temporary assistance to needy families, and any right to support has been assigned to the department or in any other case wherein a party has applied for child support enforcement services from the child support enforcement division.

(c) An action under the provisions of this section may be brought in the county where the obligee, the obligor or the child resides.

(d) When an action for child support is brought under the provisions of this section by an obligee against his or her spouse, such obligee may also seek spousal support from the obligor, unless such support has been previously waived by agreement or otherwise.

(e) Every order of support heretofore or hereafter entered or modified under the provisions of this section shall include a provision for the income withholding in accordance with the provisions of section fifteen-a or fifteen-b, article two, chapter forty-eight of this code.

(f) At any time after the entry of an order for support, the court may, upon the verified petition of an obligee or the obligor, revise or alter such order, and make a new order, as the altered circumstances or needs of a child, an
obligee, or the obligor may render necessary to meet the
ends of justice.

§48A-5-2. Arrearages; liens on personal property; enforce­
ment 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, 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 abstract of
the order giving rise to the support obligation and an
"Affidavit of Accrued Support", setting forth the
particulars of such arrearage and requesting a writ of
execution, suggestion or suggestee execution. The filing
of the abstract and affidavit shall give rise, by operation of
law, to a lien against personal property of an obligor who
resides within this state for overdue support.

(b) If the duty of support is based upon an order from
another jurisdiction, the obligee shall first register the
order in accordance with the provisions of chapter forty­
eight-b of this code: Provided, That nothing in this
subsection shall prevent the child support enforcement
division from enforcing foreign orders for support
without registration of the order in accordance with the
provisions of section five hundred seven, article five,
chapter forty-eight-b of this code.

(c) The affidavit may be filed with the clerk of the
circuit court in the county wherein the obligee or the
obligor resides, or where the obligor’s source of income is
located.
(d) 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.

(e) 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.

(f) 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 child support enforcement division 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 child support enforcement division.

(g) The notice provided for in subsection (f) 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 child support enforcement division in writing of the reasons why the affidavit is contested and request a meeting with the child support enforcement division; or (2) where a court of this state has jurisdiction over the parties, obtain a date for a hearing before the circuit court or the family law master and mail written notice of such
hearing to the obligee and to the child support
enforcement division 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.

(h) Upon being informed by an obligor that he or she
desires to contest the affidavit, the child support
enforcement division shall inform the circuit court of such
fact, and the circuit court shall require the obligor to give
security, post a bond, or give some other guarantee to
secure payment of overdue support.

(i) 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 support enforcement division. The notice of the
filing of an affidavit shall be in a form prescribed by the
child support enforcement division.

(j) Writs of execution, suggestions or suggestee
executions 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.

(k) Notwithstanding any other provision of this code
to the contrary, the amount to be withheld from the
disposable earnings of an obligor pursuant to a suggestee
execution in accordance with the provisions of this section
shall be the same amount which could properly be
withheld in the case of a withholding order under the
provisions of subsection (e), section three of this article.

(l) Any person who files a false affidavit shall be
guilty of false swearing and, upon conviction thereof, shall
be punished as provided by law for such offense.

(m) The provisions of this section apply to support
orders issued by an out-of-state court or tribunal, as
§48A-5-3. Withholding from income of amounts payable as support.

(a) The withholding from an obligor's income of amounts payable as spousal or child support shall be enforced by the child support enforcement division in accordance with the provisions of section fifteen-a or fifteen-b, article two, chapter forty-eight of this code. Every support order heretofore or hereafter entered by a circuit court or a magistrate of this state and every support order entered by a court of competent jurisdiction of another state shall be considered to provide for an order of income withholding in accordance with the provisions of said sections, notwithstanding the fact that such support order does not in fact provide for such an order of withholding.

(b) When immediate income withholding is not required due to the findings required by subsection (c), section fifteen-b, article two, chapter forty-eight of this code, the child support enforcement division shall mail a notice to the obligor pursuant to this section when the support payments required by the order are in arrears in an amount equal to:

(1) One month's support, if the order requires support to be paid in monthly installments;

(2) Four weeks' support, if the order requires support to be paid in weekly or biweekly installments; or

(3) Two biweekly installments, if biweekly payments are provided.

(c) When withholding is required by either subsection (a) or (b) of this section, the child support enforcement division shall send by first class mail or electronic means to the obligor notice that withholding has commenced. The notice shall inform the obligor of the following:

(1) The amount owed;
(2) That a withholding from the obligor's income of amounts payable as support has commenced;

(3) That the amount withheld will be equal to the amount required under the terms of the current support order, plus amounts for any outstanding arrearage;

(4) The definition of "gross income" as defined in section nineteen, article one-a of this chapter;

(5) That the withholding will apply to the obligor's present source of income and to any future source of income and, therefore, no other notice of withholding will be sent to the obligor. A copy of any new or modified withholding notice will be sent to the obligor at approximately the same time the original is sent to the source of income;

(6) That any action by the obligor to purposefully minimize his or her income will result in the enforcement of support being based upon potential and not just actual earnings;

(7) That payment of the arrearage after the date of the notice is not a bar to such withholding;

(8) That the obligor may contest the withholding by written request to the child support enforcement division when the obligor has information showing an error in the current or overdue support amount or a mistake as to the identity of the obligor;

(9) That a mistake of fact exists only when there is an error in the amount of current or overdue support claimed in the notice, or there is a mistake as to the identity of the obligor;

(10) That matters such as lack of visitation, inappropriateness of the support award, or changed financial circumstances of the obligee or the obligor will not be considered at any hearing held pursuant to the withholding, but may be raised by the filing of a separate petition in circuit court;

(11) That if the obligor contests the withholding, in writing, a meeting with the child support enforcement
division will be held at an arranged time and place for the
purpose of attempting to settle the contested issues;

(12) That if the meeting with the child support
enforcement division fails to resolve the contested issues,
the obligor may petition the circuit court for a resolution;
and

(13) That while the withholding is being contested
through either the child support enforcement division or
the court, the income withholding may not be stayed.

(d) Withholding shall occur and the notice to withhold
shall be sent to the source of income when the support
order provides for immediate income withholding, or if
immediate income withholding is not so provided, when
the support payments are in arrears in the amount
specified in subsection (b) of this section. The source of
income shall withhold so much of the obligor's income as
is necessary to comply with the order authorizing such
withholding, up to the maximum amount permitted under
applicable law. Such withholding, unless otherwise
terminated under the provisions of this section, shall apply
to any subsequent source of income or any subsequent
period of time during which income is received by the
obligor.

(e) Notwithstanding any other provision of this code
to the contrary which provides for a limitation upon the
amount which may be withheld from earnings through
legal process, the amount of an obligor's aggregate
disposable earnings for any given workweek which may
be withheld as support payments is to be determined in
accordance with the provisions of this subsection, as
follows:

(1) After ascertaining the status of the payment record
of the obligor under the terms of the support order, the
payment record shall be examined to determine whether
any arrearage is due for amounts which should have been
paid prior to a twelve-week period which ends with the
workweek for which withholding is sought to be enforced.
(2) When none of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) When the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed fifty percent of the obligor's disposable earnings for that week; and

(B) When the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed sixty percent of the obligor's disposable earnings for that week.

(3) When a part of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) Where the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed fifty-five percent of the obligor's disposable earnings for that week; and

(B) Where the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed sixty-five percent of the obligor's disposable earnings for that week.

(4) In addition to the percentage limitations set forth in subdivisions (2) and (3) of this subsection, it shall be a further limitation that when the current month's obligation plus arrearages are being withheld from salaries or wages in no case shall the total amounts withheld for the current month's obligation plus arrearage exceed the amounts withheld for the current obligation by an amount greater than twenty-five percent of the current monthly support obligation.

(5) The provisions of this subsection shall apply directly to the withholding of disposable earnings of an obligor regardless of whether the obligor is paid on a weekly, biweekly, monthly or other basis.
(6) The child support enforcement division has the authority to prorate the current support obligation in accordance with the pay cycle of the source of income. This prorated current support obligation shall be known as the "adjusted support obligation". The current support obligation or the adjusted support obligation is the amount, if unpaid, on which interest will be charged.

(7) When an obligor acts so as to purposefully minimize his or her income and to thereby circumvent the provisions of this section which provide for withholding from income of amounts payable as support, the amount to be withheld as support payments may be based upon the obligor's potential earnings rather than his or her actual earnings, and such obligor may not rely upon the percentage limitations set forth in this subsection which limit the amount to be withheld from disposable earnings.

(f) The source of income of any obligor who is subject to withholding, upon being given notice of withholding, shall withhold from such obligor's income the amount specified by the notice and pay such amount to the child support enforcement division for distribution. The notice given to the source of income shall contain only such information as may be necessary for the source of income to comply with the withholding order. Such notice to the source of income shall include, at a minimum, the following:

(1) The amount to be withheld from the obligor's disposable earnings, and a statement that the amount to be withheld for support and other purposes, including the fee specified under subdivision (3) of this subsection, may not be in excess of the maximum amounts permitted under Section 303(b) of the federal Consumer Credit Protection Act or limitations imposed under the provisions of this code;

(2) That the source of income shall send the amount to be withheld from the obligor's income to the child support enforcement division, along with such identifying information as may be required by the division, the same day that the obligor is paid;
(3) That, in addition to the amount withheld under the provisions of subdivision (1) of this subsection, the source of income may deduct a fee, not to exceed one dollar, for administrative costs incurred by the source of income, for each withholding;

(4) That withholding is binding on the source of income until further notice by the child support enforcement division or until the source of income notifies the child support enforcement division of a termination of the obligor's employment in accordance with the provisions of subsection (1) of this section;

(5) That the source of income is subject to a fine for discharging an obligor from employment, refusing to employ, or taking disciplinary action against any obligor because of the withholding;

(6) That when the source of income fails to withhold income in accordance with the provisions of the notice, the source of income is liable for the accumulated amount the source of income should have withheld from the obligor's income;

(7) That the withholding under the provisions of this section shall have priority over any other legal process under the laws of this state against the same income, and shall be effective despite any exemption that might otherwise be applicable to the same income;

(8) That when an employer has more than one employee who is an obligor who is subject to wage withholding from income under the provisions of this code, the employer may combine all withheld payments to the child support enforcement division when the employer properly identifies each payment with the information listed in this section. A source of income is liable to an obligee, including the state of West Virginia or the department of health and human resources where appropriate, for any amount which the source of income fails to identify with the information required by this section and is therefore not received by the obligee;
(9) That the source of income shall implement withholding no later than the first pay period or first date for payment of income that occurs after fourteen days following the date the notice to the source of income was mailed; and

(10) That the source of income shall notify the child support enforcement division promptly when the obligor terminates his or her employment or otherwise ceases receiving income from the source of income, and shall provide the obligor's last known address and the name and address of the obligor's new source of income, if known.

(g) The commission shall, by administrative rule, establish procedures for promptly refunding to obligors amounts which have been improperly withheld under the provisions of this section.

(h) After implementation in accordance with the provisions of subsection (k) of this section, a source of income shall send the amount to be withheld from the obligor's income to the child support enforcement division and shall notify the child support enforcement division of the date of withholding, the same date that the obligor is paid.

(i) In addition to any amounts payable as support withheld from the obligor's income, the source of income may deduct a fee, not to exceed one dollar, for administrative costs incurred by the source of income, for each withholding.

(j) Withholding of amounts payable as support under the provisions of this section is binding on the source of income until further notice by the child support enforcement division or until the source of income notifies the child support enforcement division of a termination of the obligor's employment in accordance with the provisions of subsection (l) of this section.

(k) Every source of income who receives a notice of withholding under the provisions of this section shall implement withholding no later than the first pay period or first date for the payment of income which occurs after
fourteen days following the date the notice to the source of income was mailed.

(I) A source of income who employs or otherwise pays income to an obligor who is subject to withholding under the provisions of this section shall notify the child support enforcement division promptly when the obligor terminates employment or otherwise ceases receiving income from the source of income, and shall provide the child support enforcement division with the obligor's last known address and the name and address of the obligor's new source of income, if known.

(m) When an employer has more than one employee who is an obligor who is subject to wage withholding from income for amounts payable as support, the employer may combine all withheld payments to the child support enforcement division when the employer properly identifies each payment with the information listed in this section. A source of income is liable to an obligee, including the state of West Virginia or the department of health and human resources where appropriate, for any amount which the source of income fails to identify in accordance with this section and is therefore not received by the obligee.

(n) A source of income is liable to an obligee, including the state of West Virginia or the department of health and human resources where appropriate, for any amount which the source of income fails to withhold from income due an obligor following receipt by such source of income of proper notice under subsection (f) of this section: Provided, That a source of income shall not be required to vary the normal pay and disbursement cycles in order to comply with the provisions of this section.

(o) Any source of income who knowingly and willfully conceals the fact that the source of income is paying income to an obligor, with the intent to avoid withholding from the obligor's income of amounts payable as support, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars.
(p) When the child support enforcement division makes a written request to a source of income to provide information as to whether the source of income has paid income to a specific obligor, within the preceding sixty-day period, the source of income shall, within fourteen days thereafter, respond to such request, itemizing all such income, if any, paid to the obligor during such sixty-day period. A source of income shall not be liable, civilly or criminally, for providing such information in good faith.

(q) Support collection under the provisions of this section shall have priority over any other legal process under the laws of this state against the same income, and shall be effective despite any exemption that might otherwise be applicable to the same income.

(r) Any source of income who discharges from employment, refuses to employ, or takes disciplinary action against any obligor subject to income withholding required by this section because of the existence of such withholding and the obligations or additional obligations which it imposes on the source of income, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars.

§48A-5-4. Liens against real property for overdue support.

(a) An order for support entered by a court of competent jurisdiction will give rise, by operation of law, to a lien against real property of an obligor who resides or owns property within this state for overdue support upon the filing by the obligee, or, when appropriate, the child support enforcement division, an abstract of the order giving rise to the support obligation and an "Affidavit of Accrued Support" setting forth the particulars of the arrearage.

(b) The affidavit and abstract shall be filed with the clerk of the county commission in which the real property is located. 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) Allege that the support obligor is at least thirty days in arrears in the payment of child support;

(4) State the total amount of accrued support which has not been paid by the obligor; and

(5) List the date or dates when support payments should have been paid but were not, and the amount of each such delinquent payment.

(c) If the duty of support is based upon a foreign order the obligee shall first register the order in accordance with the provisions of chapter forty-eight-b of this code: Provided, That nothing in this subsection shall prevent the child support enforcement division from enforcing foreign orders for support without registration of the order in accordance with the provisions of section five hundred seven, article five, chapter forty-eight-b of this code.

(d) This state will accord full faith and credit to liens described in subsection (a) of this section arising in another state, when the out-of-state agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the other state.

(e) Upon satisfaction of the overdue support obligation, the obligee shall issue a release to the obligor and file a copy thereof with the clerk of the county commission in the county in which the lien arose pursuant to this section. The child support enforcement division shall issue a release in the same manner and with the same effect as liens taken by the tax commissioner pursuant to section twelve, article ten, chapter eleven of this code.
(f) Any person who files a false affidavit shall be guilty of false swearing and, upon conviction thereof, shall be punished as provided by law for such offense.

(g) The provisions of this section shall apply to support orders issued by a court or tribunal, as defined in section one hundred one, article one, chapter forty-eight-b of this code, of any other state.

§48A-5-4a. Enforcement by the child support enforcement division of lien on real property.

The child support enforcement division may enforce a lien upon real property pursuant to the provisions of article three, chapter thirty-eight of this code.

§48A-5-5. Enforcement of support orders by contempt proceedings; penalties.

(a) In addition to or in lieu of the other remedies provided by this article for the enforcement of support orders, the child support enforcement division may commence a civil or criminal contempt proceeding in accordance with the provisions of section twenty-two, article two, chapter forty-eight of this code against an obligor who is alleged to have willfully failed or refused to comply with the order of a court of competent jurisdiction requiring the payment of support. Such proceeding shall be instituted by filing with the circuit court a petition for an order to show cause why the obligor should not be held in contempt.

(b) If the court finds that the obligor willfully failed or refused to comply with an order requiring the payment of support, the court shall find the obligor in contempt and may do one or more of the following:

1. Require additional terms and conditions consistent with the court's support order.

2. After notice to both parties and a hearing, if requested by a party, on any proposed modification of the order, modify the order in the same manner and under the same requirements as an order requiring the payment of support may be modified under the provisions of
subsection (e), section fifteen, article two, chapter forty-eight of this code. A modification sought by an obligor, if otherwise justified, shall not be denied solely because the obligor is found to be in contempt.

(3) Order that all accrued support and interest thereon be paid under such terms and conditions as the court, in its discretion, may deem proper.

(4) Order the contemnor to pay support in accordance with a plan approved by the child support enforcement division or to participate in such work activities as the court deems appropriate.

(5) If appropriate under the provisions of section twenty-two, article two, chapter forty-eight of this code:

(A) Commit the contemnor to the county jail; or

(B) Commit the contemnor to the county jail with the privilege of leaving the jail, during such hours as the court determines and under such supervision as the court considers necessary, for the purpose of allowing the contemnor to go to and return from his or her place of employment.

(c) A commitment under subdivision (5) of subsection (b) shall not exceed forty-five days for the first adjudication of contempt or ninety days for any subsequent adjudication of contempt.

(d) An obligor committed under subdivision (5), subsection (b) of this section shall be released if the court has reasonable cause to believe that the obligor will comply with the court's orders.

(e) If an obligor is committed to jail under the provisions of paragraph (B), subdivision (5), subsection (b) of this section and violates the conditions of the court, the court may commit the person to the county jail without the privilege provided under said paragraph (B) for the balance of the period of commitment imposed by the court.

(f) If a person is committed to jail under the provisions of paragraph (B), subdivision (5), subsection

(a) For the purpose of securing overdue support, the child support enforcement division has the authority to increase the monthly support payments by as much as one hundred dollars per month to satisfy the arrearage where the obligor:

1. Owes an arrearage of not less than eight thousand dollars; or
2. Has not paid support for twelve consecutive months.

(b) This increase in monthly support will be in addition to any amounts withheld pursuant to section three, article five of this chapter.

(c) This increase in monthly support may be enforced through the withholding process.

(d) Notice of the increase shall be sent to the obligor at the time such increase is implemented. If the obligor disagrees with the increase in payments, he or she may file, within thirty days of the date of the notice, a motion with the circuit court in which the case is situated for a determination of whether there should be an increase in monthly payments and the amount of that increase, if any.

(e) The provisions of this section apply to support orders issued by a court or tribunal, as defined in section one hundred one, article one, chapter forty-eight-b of this code, of this or any other state.
(a) A civil action to establish the paternity of a child and to obtain an order of support for the child may be instituted, by verified complaint, in the circuit court of the county where the child resides: *Provided*, that if such venue creates a hardship for the parties, or either of them, or if judicial economy requires, the court may transfer the action to the county where either of the parties resides.

(b) A "paternity proceeding" is a summary proceeding, equitable in nature and within the domestic relations jurisdiction of the courts, wherein a circuit court upon the petition of the state or another proper party may intervene to determine and protect the respective personal rights of a child for whom paternity has not been lawfully established, of the mother of the child and of the putative father of the child. The parties to a paternity proceeding are not entitled to a trial by jury.

(c) The sufficiency of the statement of the material allegations in the complaint set forth as grounds for relief and the grant or denial of the relief prayed for in a particular case shall rest in the sound discretion of the court, to be exercised by the court according to the circumstances and exigencies of the case, having due regard for precedent and the provisions of the statutory law of this state.

(d) A decree or order made and entered by a court in a paternity proceeding shall include a determination of the filial relationship, if any, which exists between a child and his or her putative father, and, if such relationship is established, shall resolve dependent claims arising from family rights and obligations attendant to such filial relationship.

(e) A paternity proceeding may be brought by any of the following persons:

(1) An unmarried woman with physical or legal custody of a child to whom she gave birth;

(2) A married woman with physical or legal custody of a child to whom she gave birth, if the complaint alleges that:

(A) The married woman lived separate and apart from her husband preceding the birth of the child;
(B) The married woman did not cohabit with her husband at any time during such separation and that such separation has continued without interruption; and

(C) The defendant, rather than her husband, is the father of the child.

(3) The state of West Virginia, including the child support enforcement division defined in article two of this chapter;

(4) Any person who is not the mother of the child, but who has physical or legal custody of the child;

(5) The guardian or committee of the child;

(6) The next friend of the child when the child is a minor;

(7) By the child in his own right at any time after the child's eighteenth birthday but prior to the child's twenty-first birthday; or

(8) A man purporting to be the father of a child born out of wedlock, when there has been no prior judicial determination of paternity.

(f) Blood or tissue samples taken pursuant to the provisions of this article may be ordered to be taken in such locations as may be convenient for the parties so long as the integrity of the chain of custody of the samples can be preserved.

(g) A person who has sexual intercourse in this state submits to the jurisdiction of the courts of this state for a proceeding brought under this article with respect to a child who may have been conceived by that act of intercourse. Service of process may be perfected according to the rules of civil procedure.

(h) When the person against whom the proceeding is brought has failed to plead or otherwise defend the action after proper service has been obtained, judgment by default shall be issued by the court as provided by the rules of civil procedure.

§48A-6-4. Establishment of paternity and duty of support.

(a) When the defendant, by verified responsive pleading, admits that the man is the father of the child and
owes a duty of support, or if after a hearing on the merits, the court shall find, by clear and convincing evidence that the man is the father of the child, the court shall order support in accordance with the provisions of this section.

(b) Upon motion by a party, the court shall issue a temporary order for child support pending a judicial determination of parentage if there is clear and convincing evidence of paternity on the basis of genetic tests or other scientifically recognized evidence.

(c) The court shall give full faith and credit to a determination of paternity made by any other state, based on the laws of that state, whether established through voluntary acknowledgment or through administrative or judicial process.

(d) Bills for pregnancy, childbirth, and genetic testing are admissible as evidence of expenses incurred. Evidence so admitted shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 1. LEGISLATIVE ACTS AND RESOLUTIONS; PUBLIC RECORDS.

§57-1-12. Authentication of records and proceedings of courts of United States or other states; full faith and credit.

The records and judicial proceedings of any court of the United States, or of any state or territory, or of any country subject to the jurisdiction of the United States, shall be proved or admitted in any court in this state, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within this state as they have by law or usage in the courts of the state or jurisdiction from which they are taken. Full faith and credit for child support orders shall be accorded by this state in conformity with federal law.
CHAPTER 80
(S. B. 534—By Senators Bowman, Bailey, Ball, Jackson, Kessler, Plymale, Schoonover, White, Boley, Buckalew, Minear and Scott)

[Passed March 2, 1998; in effect ninety days from passage. Approved by the Governor.]

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, relating to continuing the child support enforcement division.

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, two
thousand.

CHAPTER 81

(S. B. 773—By Senators White, Wooton, Ball, Bowman, Dittmar, Fanning,
Hunter, Kessler, Oliverio, Ross, Schoonover,
Snyder, Buckalew, Kimble and Scott)

[Passed March 14, 1998; to take effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article
one, chapter forty-nine of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to amend
and reenact sections sixteen and seventeen, article two of said
chapter; to amend and reenact sections one, three, five and
eight, article six of said chapter; to further amend said article
by adding thereto two new sections, designated sections five­
a and five-b; and to amend and reenact section three, article
six-d of said chapter, all relating generally to enacting
legislation to comply with mandates of the federal Adoption
and Safe Families Act of 1997 regarding the permanent
placement of children in foster care.

Be it enacted by the Legislature of West Virginia:
That sections one and three, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections sixteen and seventeen, article two of said chapter be amended and reenacted; that sections one, three, five and eight, article six of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections five-a and five-b; and that section three, article six-d of said chapter be amended and reenacted, all to read as follows:

Article

1. Purposes; Definitions.
2. State Responsibilities for the Protection and Care of Children.
6. Procedure in Cases of Child Neglect or Abuse.
6D. West Virginia Child Protective Services Act.

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-1. Purpose.
§49-1-3. Definitions relating to abuse and neglect.

§49-1-1. Purpose.

1. (a) The purpose of this chapter is to provide a system of child welfare for the children of this state that has goals to:

2. (1) Assure each child care, safety and guidance;
3. (2) Serve the mental and physical welfare of the child;
4. (3) Preserve and strengthen the child's family ties;
5. (4) Recognize the fundamental rights of children and parents;
6. (5) Adopt procedures and establish programs that are family-focused rather than focused on specific family members, except where the best interests of the child or the safety of the community are at risk;
7. (6) Involve the child and his or her family or caregiver in the planning and delivery of programs and services;
(7) Provide services that are community-based, in the least restrictive settings that are consonant with the needs and potentials of the child and his or her family;

(8) Provide for early identification of the problems of children and their families, and respond appropriately with measures and services to prevent abuse and neglect or delinquency;

(9) Provide a system for the rehabilitation or detention of juvenile delinquents; and

(10) Protect the welfare of the general public.

In pursuit of these goals it is the intention of the Legislature to provide for removing the child from the custody of parents only when the child's welfare or the safety and protection of the public cannot be adequately safeguarded without removal; and, when the child has to be removed from his or her family, to secure for the child custody, care and discipline consistent with the child's best interests and other goals herein set out. It is further the intention of the Legislature to require that any reunification, permanency or preplacement preventative services address the safety of the child.

(b) The child welfare service of the state shall be administered by the state department of health and human resources and the division of juvenile services of the department of military affairs and public safety.

The state department of health and human resources is designated as the agency to cooperate with the United States department of health and human services and United States department of justice in extending and improving child welfare services, to comply with regulations thereof, and to receive and expend federal funds for these services. The division of juvenile services of the department of military affairs and public safety is designated as the agency to cooperate with the United States department of health and human services and United States department of justice in operating, maintaining and improving juvenile correction facilities and centers for the predispositional detention of children,
§49-1-3. Definitions relating to abuse and neglect.

(a) "Abused child" means a child whose health or welfare is harmed or threatened by:

(1) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home; or

(2) Sexual abuse or sexual exploitation; or

(3) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section sixteen, article four, chapter forty-eight of this code.

In addition to its broader meaning, physical injury may include an injury to the child as a result of excessive corporal punishment.

(b) "Abusing parent" means a parent, guardian or other custodian, regardless of his or her age, whose conduct, as alleged in the petition charging child abuse or neglect, has been adjudged by the court to constitute child abuse or neglect.

(c) "Child abuse and neglect" or "child abuse or neglect" means physical injury, mental or emotional injury, sexual abuse, sexual exploitation, sale or attempted sale or negligent treatment or maltreatment of a child by a parent, guardian or custodian who is responsible for the child's welfare, under circumstances which harm or threaten the health and welfare of the child.

(d) "Child abuse and neglect services" means social services which are directed toward:

(1) Protecting and promoting the welfare of children who are abused or neglected;

(2) Identifying, preventing and remedying conditions which cause child abuse and neglect;
(3) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(4) In cases where children have been removed from their families, providing services to the children and the families so as to reunify such children with their families;

(5) Placing children in suitable adoptive homes when reunifying the children with their families is not possible or appropriate; and

(6) Assuring the adequate care of children who have been placed in the custody of the department or third parties.

(e) "Imminent danger to the physical well-being of the child" means an emergency situation in which the welfare or the life of the child is threatened. Such emergency situation exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health or life of any child in the home:

(1) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker; or

(2) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome; or

(3) Nutritional deprivation; or

(4) Abandonment by the parent, guardian or custodian; or

(5) Inadequate treatment of serious illness or disease; or

(6) Substantial emotional injury inflicted by a parent, guardian or custodian; or
(7) Sale or attempted sale of the child by the parent, guardian or custodian.

(f) "Legal guardianship" means the relationship between a child and caretaker as established pursuant to the provisions of article ten, chapter forty-four of this code.

(g) "Multidisciplinary team" means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to, medical, educational, child care and law-enforcement personnel, social workers, psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and follow-up for both parents and children. "Community team" means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community and may consist of several multidisciplinary teams with different functions.

(h) (1) "Neglected child" means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or custodian;

(2) "Neglected child" does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

(i) "Parenting skills" means a parent's competencies in providing physical care, protection, supervision and
psychological support appropriate to a child's age and state of development.

(j) "Sexual abuse" means:

(A) As to a child who is less than sixteen years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse; or

(ii) Sexual intrusion; or

(iii) Sexual contact; or

(B) As to a child who is sixteen years of age or older, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse; or

(ii) Sexual intrusion; or

(iii) Sexual contact; or

(C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making such display, or of the child, or for the purpose of affronting or alarming the child.

(k) "Sexual contact" means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.
(l) "Sexual exploitation" means an act whereby:

1. A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code;

2. A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under circumstances in which the parent, guardian or custodian knows such display is likely to be observed by others who would be affronted or alarmed.

(m) "Sexual intercourse" means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(n) "Sexual intrusion" means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(o) "Parental rights" means any and all rights and duties regarding a parent to a minor child, including, but not limited to, custodial rights and visitational rights and rights to participate in the decisions affecting a minor child.

(p) "Placement" means any temporary or permanent placement of a child who is in the custody of the state in any foster home, group home or other facility or residence.

(q) "Serious physical abuse" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(r) "Siblings" means children who have at least one biological parent in common or who have been legally adopted by the same parents or parent.
(s) "Time-limited reunification services" means individual, group, and family counseling, inpatient, residential or outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care and therapeutic services for families, including crisis nurseries and transportation to or from any such services, provided during fifteen of the most recent twenty-two months a child has been in foster care, as determined by the earlier date of the first judicial finding that the child is subjected to abuse or neglect, or the date which is sixty days after the child is removed from home.

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.


§49-2-17. Subsidized adoption and legal guardianship.


The division of juvenile services of the department of military affairs and public safety is hereby authorized and empowered to operate and maintain centers for juveniles needing detention pending disposition by a court having juvenile jurisdiction or temporary care following such court action.

The department of health and human resources is hereby authorized and empowered to provide care, support and protective services for children who are handicapped by dependency, neglect, single parent status, mental or physical disability, or who for other reasons are in need of public service. Such department is also hereby authorized and empowered in its discretion to accept children for care from their parent or parents, guardian, custodian or relatives and to accept the custody of children committed to its care by courts. The department of health and human resources or any county office of such department is also hereby authorized and empowered in its discretion to accept temporary custody of children for care from any law-enforcement officer in an emergency situation.
Within ninety days of the date of the signatures to a voluntary placement agreement, after receipt of physical custody, the state department of health and human resources shall file with the court a petition for review of the placement, stating the child's situation and the circumstance that gives rise to the voluntary placement. If the department intends to extend the voluntary placement agreement, the department shall file with the court a copy of the child's case plan. The court shall appoint an attorney for the child, who shall also receive a copy of the case plan. The court shall schedule a hearing and shall give notice of the time and place and right to be present at such hearing to: The child's attorney; the child, if twelve years of age or older; the child's parents or guardians; the child's foster parents; any preadoptive parent or relative providing care for the child; and any other such persons as the court may in its discretion direct. The child's presence at such hearing may be waived by the child's attorney at the request of the child or if the child would suffer emotional harm. At the conclusion of the proceedings, but no later than ninety days after the date of the signatures to the voluntary placement agreement, the court shall enter an order determining whether or not continuation of the voluntary placement is in the best interests of the child; specifying under what conditions the child's placement shall continue; and specifying whether or not the department is required to and has made reasonable efforts to preserve and to reunify the family, as set forth in subsection (d), section three, article six of this chapter and/or provide a plan for the permanent placement of the child.

§49-2-17. Subsidized adoption and legal guardianship.

From funds appropriated to the department of health and human resources, the secretary shall establish a system of assistance for facilitating the adoption or legal guardianship of children who are dependents of the department or a child welfare agency licensed to place children for adoption, legally free for adoption and in special circumstances either because they:
(a) Have established emotional ties with prospective adoptive parents or prospective legal guardians while in their care; or

(b) Are not likely to be adopted or become a ward of a legal guardian by reason of one or more of the following conditions:

1. They have a physical or mental disability;
2. They are emotionally disturbed; or
3. They are older children; or
4. They are a part of a sibling group; or
5. They are a member of a racial or ethnic minority; or
6. They have any combination of these conditions.

The department shall provide assistance in the form of subsidies or other services to parents who are found and approved for adoption or legal guardianship of a child certified as eligible for subsidy by the department, but before the final decree of adoption or order of legal guardianship is entered, there must be a written agreement between the family entering into the subsidized adoption or legal guardianship and the department. Adoption or legal guardianship subsidies in individual cases may commence with the adoption or legal guardianship placement, and will vary with the needs of the child as well as the availability of other resources to meet the child's needs. The subsidy may be for special services only, or for money payments, and either for a limited period, or for a long term, or for any combination of the foregoing. The specific financial terms of the subsidy shall be included in the agreement between the department and the adoptive parents or legal guardians. The amount of the time-limited or long-term subsidy may in no case exceed that which would be allowable from time to time for such child under foster family care, or, in the case of a special service, the reasonable fee for the service rendered. In addition, the department shall provide either medicaid or other health insurance coverage for any special needs.
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45 child for whom there is an adoption or legal guardianship
46 assistance agreement between the department and the
47 adoptive parent or legal guardian and who the department
48 determines cannot be placed with an adoptive parent or
49 legal guardian without medical assistance because the
50 child has special needs for medical, mental health or
51 rehabilitative care.

52 Whenever significant emotional ties have been
53 established between a child and his foster parents, and the
54 foster parents seek to adopt the child or to become legal
55 guardians, the child shall be certified as eligible for a
56 subsidy conditioned upon his adoption or his becoming a
57 ward of a legal guardian under applicable procedures by
58 the foster parents.

59 In all other cases, after reasonable efforts have been
60 made without the use of subsidy and no appropriate
61 adoptive family or legal guardian has been found for the
62 child, the department shall certify the child as eligible for
63 a subsidy in the event of adoption or a legal guardianship.

64 If the child is the dependent of a voluntary licensed
65 child-placing agency, that agency shall present to the
66 department evidence of significant emotional ties between
67 the child and his foster parents or evidence of inability to
68 place the child for adoption. In no event shall the value of
69 the services and assistance provided by the department
70 under an agreement pursuant to this section exceed the
71 value of assistance available to foster families in similar
72 circumstances. All records regarding subsidized
73 adoptions or legal guardianships shall be held in
74 confidence, however, records regarding the payment of
75 public funds for subsidized adoptions or legal
76 guardianships shall be available for public inspection
77 provided they do not directly or indirectly identify any
78 child or persons receiving funds for such child.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR
ABUSE.

§49-6-1. Petition to court when child believed neglected or abused; notice.
§49-6-3. Petition to court when child believed neglected or abused —
Temporary custody.
§49-6-5. Disposition of neglected or abused children.

§49-6-5a. Permanency hearing when court determines reasonable efforts to preserve families not required.

§49-6-5b. When efforts to terminate parental rights required.

§49-6-8. Foster care review; annual reports to the court.

§49-6-1. Petition to court when child believed neglected or abused; notice.

(a) If the department or a reputable person believes that a child is neglected or abused, the department or the person may present a petition setting forth the facts to the circuit court in the county in which the child resides, or to the judge of such court in vacation. The petition shall be verified by the oath of some credible person having knowledge of the facts. The petition shall allege specific conduct including time and place, how such conduct comes within the statutory definition of neglect or abuse with references thereto, any supportive services provided by the department to remedy the alleged circumstances and the relief sought. Upon filing of the petition, the court shall set a time and place for a hearing and shall appoint counsel for the child. When there is an order for temporary custody pursuant to section three of this article, such hearing shall be held within thirty days of such order, unless a continuance for a reasonable time is granted to a date certain, for good cause shown.

(b) The petition and notice of the hearing shall be served upon both parents and any other custodian, giving to such parents or custodian at least ten days' notice. Notice shall also be given to the department, any foster or preadoptive parent, and any relative providing care for the child. In cases wherein personal service within West Virginia cannot be obtained after due diligence upon any parent or other custodian, a copy of the petition and notice of the hearing shall be mailed to such person by certified mail, addressee only, return receipt requested, to the last known address of such person. If said person signs the certificate, service shall be complete and said certificate shall be filed as proof of said service with the clerk of the circuit court. If service cannot be obtained by personal service or by certified mail, notice shall be by
publication as a Class II legal advertisement in compliance
with the provisions of article three, chapter fifty-nine of
this code. A notice of hearing shall specify the time and
place of the hearing, the right to counsel of the child and
parents or other custodians at every stage of the
proceedings and the fact that such proceedings can result
in the permanent termination of the parental rights.
Failure to object to defects in the petition and notice shall
not be construed as a waiver.

(c) At the time of the institution of any proceeding
under this article, the department shall provide supportive
services in an effort to remedy circumstances detrimental
to a child.

§49-6-3. Petition to court when child believed neglected or
abused — Temporary custody.

(a) Upon the filing of a petition, the court may order
that the child alleged to be an abused or neglected child
be delivered for not more than ten days into the custody
of the state department or a responsible person found by
the court to be a fit and proper person for the temporary
care of the child pending a preliminary hearing, if it finds
that: (1) There exists imminent danger to the physical
well-being of the child; and (2) there are no reasonably
available alternatives to removal of the child, including,
but not limited to, the provision of medical, psychiatric,
psychological or homemaking services in the child's
present custody: Provided, That where the alleged
abusing person, if known, is a member of a household, the
court shall not allow placement pursuant to this section of
the child or children in said home unless the alleged
abusing person is or has been precluded from visiting or
residing in said home by judicial order. In a case where
there is more than one child in the home, or in the
temporary care, custody or control of the alleged
offending parent, the petition shall so state, and
notwithstanding the fact that the allegations of abuse or
neglect may pertain to less than all of such children, each
child in the home for whom relief is sought shall be made
a party to the proceeding. Even though the acts of abuse
or neglect alleged in the petition were not directed against
a specific child who is named in the petition, the court shall order the removal of such child, pending final disposition, if it finds that there exists imminent danger to the physical well-being of the child and a lack of reasonable available alternatives to removal. The initial order directing such custody shall contain an order appointing counsel and scheduling the preliminary hearing, and upon its service shall require the immediate transfer of custody of such child or children to the department or a responsible relative which may include any parent, guardian, or other custodian. The court order shall state: (1) That continuation in the home is contrary to the best interests of the child and why; and (2) whether or not the department made reasonable efforts to preserve the family and prevent the placement or that the emergency situation made such efforts unreasonable or impossible. The order may also direct any party or the department to initiate or become involved in services to facilitate reunification of the family.

(b) Whether or not the court orders immediate transfer of custody as provided in subsection (a) of this section, if the facts alleged in the petition demonstrate to the court that there exists imminent danger to the child, the court may schedule a preliminary hearing giving the respondents at least five days' actual notice. If the court finds at the preliminary hearing that there are no alternatives less drastic than removal of the child and that a hearing on the petition cannot be scheduled in the interim period, the court may order that the child be delivered into the temporary custody of the department or a responsible person or agency found by the court to be a fit and proper person for the temporary care of the child for a period not exceeding sixty days: Provided, That the court order shall state: (1) That continuation in the home is contrary to the best interests of the child and set forth the reasons therefor; (2) whether or not the department made reasonable efforts to preserve the family and to prevent the child's removal from his or her home; (3) whether or not the department made reasonable efforts to preserve the family and to prevent the placement or that the emergency situation made such efforts unreasonable or impossible;
(c) If a child or children shall, in the presence of a child protective service worker, be in an emergency situation which constitutes an imminent danger to the physical well-being of the child or children, as that phrase is defined in section three, article one of this chapter, and if such worker has probable cause to believe that the child or children will suffer additional child abuse or neglect or will be removed from the county before a petition can be filed and temporary custody can be ordered, the worker may, prior to the filing of a petition, take the child or children into his or her custody without a court order: Provided, That after taking custody of such child or children prior to the filing of a petition, the worker shall forthwith appear before a circuit judge or a juvenile referee of the county wherein custody was taken, or if no such judge or referee be available, before a circuit judge or a juvenile referee of an adjoining county, and shall immediately apply for an order ratifying the emergency custody of the child pending the filing of a petition. The circuit court of every county in the state shall appoint at least one of the magistrates of the county to act as a juvenile referee, who shall serve at the will and pleasure of the appointing court, and who shall perform the functions prescribed for such position by the provisions of this subsection. The parents, guardians or custodians of the child or children may be present at the time and place of application for an order ratifying custody, and if at the time the child or children are taken into custody by the worker, the worker knows which judge or referee is to receive the application, the worker shall so inform the parents, guardians or custodians. The application for emergency custody may be on forms prescribed by the supreme court of appeals or prepared by the prosecuting attorney or the applicant, and shall set forth facts from which it may be determined that the probable cause described above in this subsection exists. Upon such
sworn testimony or other evidence as the judge or referee
deems sufficient, the judge or referee may order the
emergency taking by the worker to be ratified. If
appropriate under the circumstances, the order may
include authorization for an examination as provided for
in subsection (b), section four of this article. If a referee
issues such an order, the referee shall by telephonic
communication have such order orally confirmed by a
circuit judge of the circuit or an adjoining circuit who
shall on the next judicial day enter an order of
confirmation. If the emergency taking is ratified by the
judge or referee, emergency custody of the child or
children shall be vested in the department until the
expiration of the next two judicial days, at which time any
such child taken into emergency custody shall be returned
to the custody of his or her parent or guardian or
custodian unless a petition has been filed and custody of
the child has been transferred under the provisions of
section three of this article.

(d) For purposes of the court's consideration of
temporary custody pursuant to the provisions of
subsection (a) or (b) of this section, the department is not
required to make reasonable efforts to preserve the family
if the court determines:

(1) The parent has subjected the child to aggravated
circumstances which include, but are not limited to,
abandonment, torture, chronic abuse and sexual abuse;

(2) The parent has:

(A) Committed murder of another child of the parent;

(B) Committed voluntary manslaughter of another
child of the parent;

(C) Attempted or conspired to commit such a murder
or voluntary manslaughter or been an accessory before or
after the fact to either such crime; or

(D) Committed unlawful or malicious wounding that
results in serious bodily injury to the child or to another
child of the parent; or
§49-6-5. Disposition of neglected or abused children.

(a) Following a determination pursuant to section two of this article wherein the court finds a child to be abused or neglected, the department shall file with the court a copy of the child's case plan, including the permanency plan for the child. The term case plan means a written document that includes, where applicable, the requirements of the family case plan as provided for in section three, article six-d of this chapter and that also includes at least the following: A description of the type of home or institution in which the child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to assure that the child receives proper care and that services are provided to the parents, child and foster parents in order to improve the conditions in the parent(s) home, facilitate return of the child to his or her own home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child. The term permanency plan refers to that part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within approximate time lines for reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian may be made at the same time reasonable efforts are made to prevent removal or to make it possible for a child to safely return home. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative placement for the child to include approximate time lines for when such placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected children. Copies of the child's case plan shall be sent to the child's attorney and parent, guardian or custodian or their counsel at least five days
prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard. The court shall give precedence to dispositions in the following sequence:

(1) Dismiss the petition;

(2) Refer the child, the abusing parent, or other family members to a community agency for needed assistance and dismiss the petition;

(3) Return the child to his or her own home under supervision of the department;

(4) Order terms of supervision calculated to assist the child and any abusing parent or parents or custodian which prescribe the manner of supervision and care of the child and which are within the ability of any parent or parents or custodian to perform;

(5) Upon a finding that the abusing parent or parents are presently unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the custody of the state department, a licensed private child welfare agency or a suitable person who may be appointed guardian by the court. The court order shall state: (1) That continuation in the home is contrary to the best interests of the child and why; (2) whether or not the department has made reasonable efforts, with the child's health and safety being the paramount concern, to preserve the family and to prevent or eliminate the need for; removing the child from the child's home and to make it possible for the child to safely return home; what efforts were made or that the emergency situation made such efforts unreasonable or impossible; and (3) the specific circumstances of the situation which made such efforts unreasonable if services were not offered by the department. The court order shall also determine under what circumstances the child's commitment to the department shall continue. Considerations pertinent to the determination include whether the child should: (1) Be continued in foster care for a specified period; (2) be considered for adoption; (3) because of a child's special
needs or circumstances, be continued in foster care on a permanent or long-term basis; or (4) be continued in foster care until reunification is achieved. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with section five, article seven of this chapter; or

(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future, and when necessary for the welfare of the child, terminate the parental, custodial or guardianship rights and/or responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the department or a licensed child welfare agency. If the court shall so find, then in fixing its dispositional order, the court shall consider the following factors: (1) The child's need for continuity of care and caretakers; (2) the amount of time required for the child to be integrated into a stable and permanent home environment; and (3) other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the court shall give consideration to the wishes of a child fourteen years of age or older or otherwise of an age of discretion as determined by the court, regarding the permanent termination of parental rights. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final. In determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state: (1) That continuation in the home is not in the best interest of the child and why; (2) why reunification is not in the best interests of the child; (3) whether or not the department made reasonable efforts, with the child's health and safety being the paramount concern, to preserve the family and to prevent the placement or to eliminate the need for removing the
child from the child's home and to make it possible for the child to safely return home, or that the emergency situation made such efforts unreasonable or impossible; and (4) whether or not the department made reasonable efforts to preserve and reunify the family including a description of what efforts were made or that such efforts were unreasonable due to specific circumstances.

(7) For purposes of the court's consideration of the disposition custody of a child pursuant to the provisions of this subsection the department is not required to make reasonable efforts to preserve the family if the court determines:

(A) The parent has subjected the child to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(B) The parent has:

(i) Committed murder of another child of the parent;

(ii) Committed voluntary manslaughter of another child of the parent;

(iii) Attempted or conspired to commit such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime; or

(iv) Committed a felonious assault that results in serious bodily injury to the child or to another child of the parent; or

(C) The parental rights of the parent to a sibling have been terminated involuntarily.

(b) As used in this section, "no reasonable likelihood that conditions of neglect or abuse can be substantially corrected" shall mean that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect, on their own or with help. Such conditions shall be deemed to exist in the following circumstances, which shall not be exclusive:
(1) The abusing parent or parents have habitually abused or are addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and such person or persons have not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning;

(2) The abusing parent or parents have willfully refused or are presently unwilling to cooperate in the development of a reasonable family case plan designed to lead to the child's return to their care, custody and control;

(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare or life of the child;

(4) The abusing parent or parents have abandoned the child;

(5) The abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, or have sexually abused or sexually exploited the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems or assist the abusing parent or parents in fulfilling their responsibilities to the child; or

(6) The abusing parent or parents have incurred emotional illness, mental illness or mental deficiency of such duration or nature as to render such parent or parents incapable of exercising proper parenting skills or sufficiently improving the adequacy of such skills.

(c) The court may as an alternative disposition allow the parents or custodians an improvement period not to exceed six months. During this period the court shall require the parent to rectify the conditions upon which the
determination was based. The court may order the child
to be placed with the parents, or any person found to be a
fit and proper person for the temporary care of the child
during the period. At the end of the period the court shall
hold a hearing to determine whether the conditions have
been adequately improved, and at the conclusion of such
hearing, shall make a further dispositional order in
accordance with this section.

§49-6-5a. Permanency hearing when court determines
reasonable efforts to preserve families not
required.

(a) If the court finds, pursuant to the provisions of
subdivision (7), subsection (a), section five of this article
that the department is not required to make reasonable
efforts to preserve the family, then notwithstanding any
other provision, a permanency hearing must be held
within thirty days following the entry of the court order so
finding.

(b) The purpose of the permanency hearing is to
determine the permanency plan for the child that includes:
(1) When the child will be returned to the parent; (2) when
the child will be placed for adoption, in which event the
state will file a petition for termination of parental rights;
or (3) when the child will be referred for legal
guardianship. In cases where the department has
demonstrated a compelling reason for determining it
would not be in the best interests of the child to return
home, the court shall determine whether the child should
be referred for termination of parental rights, be placed
for adoption, be placed with a fit and willing relative, be
placed with a legal guardian or placed in another planned
permanent living arrangement.

(c) Any foster parent, preadoptive parent or relative
providing care for the child shall be given notice of and
the opportunity to be heard at the permanency hearing
provided for in this section.

§49-6-5b. When efforts to terminate parental rights required.
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(a) Except as provided in subsection (b) of this section, the department shall file or join in a petition or otherwise seek a ruling in any pending proceeding to terminate parental rights:

(1) If a child has been in foster care for fifteen of the most recent twenty-two months as determined by the earlier of the date of the first judicial finding that the child is subjected to abuse or neglect or the date which is sixty days after the child is removed from the home;

(2) If a court has determined the child is abandoned; or

(3) If a court has determined the parent has committed murder or voluntary manslaughter of another of his or her children; has attempted or conspired to commit such murder or voluntary manslaughter or has been an accessory before or after the fact of either crime; has committed unlawful or malicious wounding resulting in serious bodily injury to the child or to another of his or her children; or the parental rights of the parent to a sibling have been terminated involuntarily.

(b) The department may determine not to file a petition to terminate parental rights when:

(1) At the option of the department, the child has been placed with a relative;

(2) The department has documented in the case plan made available for court review a compelling reason, including, but not limited to, the child's age and preference regarding termination or the child's placement in custody of the department based on any proceedings initiated under article five of this chapter, that filing the petition would not be in the best interests of the child; or

(3) The department has not provided, when reasonable efforts to return a child to the family are required, the services to the child's family as the department deems necessary for the safe return of the child to the home.

§49-6-8. Foster care review; annual reports to the court.
(a) If, twelve months after receipt by the department or its authorized agent of physical custody of a child either by a court ordered placement or by a voluntary agreement, the department has not placed a child in permanent foster care or an adoptive home or placed the child with a natural parent, the department shall file with the court a petition for review of the case. The department shall also file with the court a report detailing the efforts that have been made to place the child in a permanent home and copies of the child's case plan including the permanency plan as defined in section five, article six of this chapter. Copies of the report shall be sent to the child's attorney and be made available to the child's parent(s) or guardian. "Permanent foster care" shall mean a written arrangement with an adult or adults following a six-month trial period whereby the state department places the care, custody and control of a child until the child's emancipation with such adult or adults. The court shall schedule a hearing in chambers, giving notice and the right to be present to: The child's attorney; the child, if twelve years of age or older; the child's parents; the child's guardians; the child's foster parents; any preadoptive parent or any relative providing care for the child; and such other persons as the court may in its discretion direct. The child's presence may be waived by the child's attorney at the request of the child or if the child would suffer emotional harm. The purpose of the hearing is to review the child's case, to determine whether and under what conditions the child's commitment to the department shall continue, and to determine what efforts are necessary to provide the child with a permanent home. At the conclusion of the hearing the court shall in accordance with the best interests of the child enter an appropriate order of disposition. The court order shall state: (1) Whether or not the department made reasonable efforts to preserve the family and to prevent out-of-home placement or that the specific situation made such effort unreasonable; (2) the permanency plan for the child; and (3) services required to meet the child's needs: Provided, That the department is not required to make reasonable efforts to preserve the family if the court determines any of the conditions set forth in subdivision (7), subsection
(a), section five of this article exist. The court shall possess continuing jurisdiction over cases reviewed under this section for so long as a child remains in temporary foster care, or, when a child is returned to his or her natural parents subject to conditions imposed by the court, for so long as the conditions are effective.

(b) The state department shall file a supplementary petition for review with the court within twelve months and every twelve months thereafter for every child that remains in the physical or legal custody of the state department until the child is placed in an adoptive home or permanent foster care or returned to his or her parents.

(c) The state department shall annually report to the court the current status of the placements of children in permanent care and custody of the state department who have not been adopted.

(d) The state department shall file a report with the court in any case where any child in the temporary or permanent custody of the state receives more than three placements in one year no later than thirty days after the third placement. This report shall be provided to all parties and their counsel. Upon motion by any party, the court shall review these placements and determine what efforts are necessary to provide the child with a stable foster or temporary home: Provided, That no report shall be provided to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

(e) The state department shall notify, in writing, the court, the child, if over the age of twelve, the child's attorney, the parents and the parents' attorney forty-eight hours prior to the move if this is a planned move, or within forty-eight hours of the next business day after the move if this is an emergency move, except where such notification would endanger the child or the foster family. This notice shall not be required in any case where the child is in imminent danger in the child's current placement. The location of the child need not be disclosed, but the purpose of the move should be. This requirement is not waived by placement of the child in a
home or other residence maintained by a private provider. No notice shall be provided pursuant to this provision to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

(f) Nothing in this article precludes any party from petitioning the court for review of the child's case at any time. The court shall grant such petition upon a showing that there is a change in circumstance or needs of the child that warrants court review.

ARTICLE 6D. WEST VIRGINIA CHILD PROTECTIVE SERVICES ACT.

§49-6D-3. Family case plans for parents of abused or neglected children.

(a) The department shall develop a family case plan for every family wherein a person has been referred to the department after being allowed an improvement period under the provisions of section twelve, article six of this chapter. The department may also prepare a family case plan for any person who voluntarily seeks child abuse and neglect services from the department, or who is referred to the department by another public agency or private organization. The family case plan is to clearly set forth an organized, realistic method of identifying family problems and the logical steps to be used in resolving or lessening those problems. Every family case plan prepared by the department shall contain the following:

(1) A listing of specific, measurable, realistic goals to be achieved;

(2) An arrangement of goals into an order of priority;

(3) A listing of the problems that will be addressed by each goal;

(4) A specific description of how the assigned caseworker or caseworkers and the abusing parent, guardian or custodian will achieve each goal;

(5) A description of the departmental and community resources to be used in implementing the proposed actions and services;
(6) A list of the services, including time-limited reunification services as defined in section three, article one of this chapter, which will be provided;

(7) Time targets for the achievement of goals or portions of goals;

(8) An assignment of tasks to the abusing or neglecting parent, guardian or custodian, to the caseworker or caseworkers and to other participants in the planning process;

(9) A designation of when and how often tasks will be performed; and

(10) The safety of the placement of the child and plans for returning the child safely home.

(b) In cases where the family has been referred to the department by a court under the provisions of this chapter, and further action before the court is pending, the family case plan described in subsection (a) of this section shall be furnished to the court within thirty days after the entry of the order referring the case to the department, and shall be available to counsel for the parent, guardian or custodian and counsel for the child or children. The department shall encourage participation in the development of the family case plan by the parent, guardian or custodian, and, if the child is above the age of twelve years and the child's participation is otherwise appropriate, by the child. It shall be the duty of counsel for the participants to participate in the development of the family case plan. The family case plan may be modified from time to time by the department to allow for flexibility in goal development, and in each such case the modifications shall be submitted to the court in writing. Reasonable efforts to place a child for adoption or with a legal guardian may be made at the same time as reasonable efforts are being made to prevent removal or to make it possible for a child to return safely home. The court shall examine the proposed family case plan or any modification thereof, and upon a finding by the court that the plan or modified plan can be easily communicated, explained and discussed so as to make the participants
accountable and able to understand the reasons for any success or failure under the plan, the court shall inform the participants of the probable action of the court if goals are met or not met.

(c) (1) In addition to the family case plan provided for under the provisions of subsection (b) of this section, the department shall prepare, as an appendix to the family case plan, an expanded "worker's case plan". As utilized by the department under the provisions of this section, the worker's case plan shall consist of the following:

(A) All of the information contained in the family case plan described in subsection (c) of this section;

(B) A prognosis for each of the goals projected in the family case plan, assessing the capacity of the parent, guardian or custodian to achieve the goal and whether available treatment services are likely to have the desired outcome;

(C) A listing of the criteria to be used to assess the degree to which each goal is attained;

(D) A description of when and how the department will decide when and how well each goal has been attained;

(E) If possible, a listing of alternative methods and specific services which the caseworker or caseworkers may consider using if the original plan does not work; and

(F) A listing of criteria to be used in determining when the family case plan should be terminated.

(2) Because the nature of the information contained in the worker's case plan described in subdivision (1) of this subsection may, in some cases, be construed to be negative with respect to the probability of change, or may be viewed as a caseworker's attempt to impose personal values into the situation, or may raise barriers of hostility and resistance between the caseworker and the family members, the worker's case plan shall not be made available to the court or to persons outside of the department, but shall be used by the department for the
101 purpose of confirming the effectiveness of the family case
102 plan or for determining that changes in the family case
103 plan need to be made.

104 (d) In furtherance of the provisions of this article, the
105 department shall, within the limits of available funds,
106 establish programs and services for the following
107 purposes:

108 (1) For the development and establishment of training
109 programs for professional and paraprofessional personnel
110 in the fields of medicine, law, education, social work and
111 other relevant fields who are engaged in, or intend to work
112 in, the field of the prevention, identification and treatment
113 of child abuse and neglect; and training programs for
114 children, and for persons responsible for the welfare of
115 children, in methods of protecting children from child
116 abuse and neglect;

117 (2) For the establishment and maintenance of centers,
118 serving defined geographic areas, staffed by
119 multidisciplinary teams and community teams of
120 personnel trained in the prevention, identification, and
121 treatment of child abuse and neglect cases, to provide a
122 broad range of services related to child abuse and neglect,
123 including direct support and supervision of satellite
124 centers and attention homes, as well as providing advice
125 and consultation to individuals, agencies and organizations
126 which request such services;

127 (3) For furnishing services of multidisciplinary teams
128 and community teams, trained in the prevention,
129 identification and treatment of child abuse and neglect
130 cases, on a consulting basis to small communities where
131 such services are not available;

132 (4) For other innovative programs and projects that
133 show promise of successfully identifying, preventing or
134 remedying the causes of child abuse and neglect,
135 including, but not limited to, programs and services
136 designed to improve and maintain parenting skills,
137 programs and projects for parent self-help, and for
138 prevention and treatment of drug-related child abuse and
139 neglect; and
(5) Assisting public agencies or nonprofit private organizations or combinations thereof in making applications for grants from, or in entering into contracts with, the secretary of the federal department of health and human services for demonstration programs and projects designed to identify, prevent and treat child abuse and neglect.

(e) Agencies, organizations and programs funded to carry out the purposes of this section shall be structured so as to comply with any applicable federal law, any regulation of the federal department of health and human services or the secretary thereof, and any final comprehensive plan of the federal advisory board on child abuse and neglect. In funding organizations, the department shall, to the extent feasible, ensure that parental organizations combating child abuse and neglect receive preferential treatment.

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**CHAPTER 82**

(H. B. 4560—By Delegates Givens, Douglas, Fleischauer, Mezzatesta, Staton, Facemyer and Trump)

[Passed March 14, 1998; in effect July 1, 1998. Approved by the Governor.]  

AN ACT to amend and reenact section four, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article two of said chapter, relating to reinserting homes for unmarried mothers into the definition of “child welfare agency” and providing that the department of health and human resources is responsible for the infant child of an unmarried juvenile who is in the department’s custody without requiring that parent to relinquish custody of the infant to the department.

*Be it enacted by the Legislature of West Virginia:*
That section four, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article two of said chapter be amended and reenacted to read as follows:

Article

1. Purposes; Definitions.
2. State Responsibilities for the Protection and Care of Children.

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-4. Other definitions.

1. As used in this chapter:

2. (1) "Child welfare agency" means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities, or any facility that provides care for unmarried mothers and their children;

3. (2) "Community based," when referring to a facility, program, or service, means located near the juvenile's home or family and involving community participation in planning, operation, and evaluation, and which may include, but is not limited to, medical, educational, vocational, social and psychological guidance, training, special education, counseling, alcoholism and any treatment, and other rehabilitation services;

4. (3) "Court" means the circuit court of the county with jurisdiction of the case or the judge thereof in vacation unless otherwise specifically provided;

5. (4) "Custodian" means a person who has or shares actual physical possession or care and custody of a child, regardless of whether such person has been granted custody of the child by any contract, agreement or legal proceedings;

6. (5) "Department" or "state department" means the state department of health and human resources;
(6) "Division of juvenile services" means the division within the department of military affairs and public safety pursuant to article five-e of this chapter;

(7) "Guardian" means a person who has care and custody of a child as a result of any contract, agreement or legal proceeding;

(8) "Juvenile delinquent" means a juvenile who has been adjudicated as one who commits an act which would be a crime under state law or a municipal ordinance if committed by an adult;

(9) "Nonsecure facility" means any public or private residential facility not characterized by construction fixtures designed to physically restrict the movements and activities of individuals held in lawful custody in such facility and which provides its residents access to the surrounding community with supervision;

(10) "Referee" means a juvenile referee appointed pursuant to section one, article five-a of this chapter, except that in any county which does not have a juvenile referee the judge or judges of the circuit court may designate one or more magistrates of the county to perform the functions and duties which may be performed by a referee under this chapter;

(11) "Secretary" means the secretary of health and human resources;

(12) "Secure facility" means any public or private residential facility which includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility;

(13) "Staff-secure facility" means any public or private residential facility characterized by staff restrictions of the movements and activities of individuals held in lawful custody in such facility and which limits its residents' access to the surrounding community, but is not characterized by construction fixtures designed to physically restrict the movements and activities of residents;

(14) "Status offender" means a juvenile who has been adjudicated as one:
(A) Who habitually and continually refuses to respond to the lawful supervision by his or her parents, guardian or legal custodian such that the child’s behavior substantially endangers the health, safety, or welfare of the juvenile or any other person;

(B) Who has left the care of his or her parents, guardian or custodian without the consent of such person or without good cause;

(C) Who is habitually absent from school without good cause; or

(D) Who violates any West Virginia municipal, county, or state law regarding use of alcoholic beverages by minors;

(15) "Valid court order" means a court order given to a juvenile who was brought before the court and made subject to such order, and who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the constitutions of the United States and the state of West Virginia.

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.

§49-2-1. Care for children committed to the state department.

It shall be the responsibility of the state department to provide care for neglected children who are committed to its care for custody or guardianship. For purposes of this chapter, the department of health and human resources is responsible for the care of the infant child of an unmarried mother who has been committed to the custody of the department while the infant is placed in the same licensed child welfare agency as his or her mother. The state department may provide care for such children in family homes meeting required standards, at board or otherwise, through a licensed child welfare agency, or in a state institution providing care for dependent or neglected children. The department in placing any child in the care of a family or a child welfare agency shall select as far as practicable a family holding the same religious belief as the parents or relatives of the child or a child welfare agency conducted under religious auspices of the same belief as the parents or relatives.
AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

The Legislature has duly considered the findings of fact and recommendations for awards reported to it by the court of claims in respect to the following named claimants who were innocent victims of crime within this state and entitled to compensation; and in respect to each of such named claimants the Legislature adopts those findings of fact as its own, hereby declares it to be the moral obligation of the state to pay each such claimant in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

Claims for crime victims compensation awards:

(To be paid from Crime Victims Compensation Fund)

1. (1) Brad A. Fallecker ............. $ 5,000.00
2. (2) Chad A. Fallecker ............. $ 5,000.00
3. (3) Deborajean Hudson, as guardian of John W. Fallecker, III ............. $ 5,000.00
4. TOTAL ................................ $15,000.00

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants herein.
AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of administration; division of corrections; and supreme court of appeals; to be moral obligations of the state and directing payments thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state, and agencies thereof, which have arisen due to overexpenditures of the departmental appropriations by officers of such state spending units, such claims having been previously considered by the court of claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the court of claims on the purely statutory grounds that to allow such claims would be condoning illegal acts contrary to the laws of the state. The Legislature pursuant to its findings of fact and also by the adoption of the findings of fact by the court of claims as its own, and, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below, and directs the auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as
required by section ten, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) *Claim against the Department of Administration:*

**(TO BE PAID FROM SPECIAL REVENUE FUND)**

<table>
<thead>
<tr>
<th>Claim</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Division of Highways</td>
<td>$337.09</td>
</tr>
</tbody>
</table>

(b) *Claims against the Division of Corrections:*

**(TO BE PAID FROM GENERAL REVENUE FUND)**

<table>
<thead>
<tr>
<th>Claim</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Braxton County Memorial Hospital</td>
<td>$254.25</td>
</tr>
<tr>
<td>Charleston Area Medical Center</td>
<td>$9,833.63</td>
</tr>
<tr>
<td>Correctional Medical Services, Inc.</td>
<td>$117,930.10</td>
</tr>
<tr>
<td>Robert J. Crisalli, M.D.</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>Davis Memorial Hospital</td>
<td>$92.00</td>
</tr>
<tr>
<td>Greenbrier Anesthesia Services, Inc.</td>
<td>$528.00</td>
</tr>
<tr>
<td>Greenbrier Valley Urology Associates</td>
<td>$311.00</td>
</tr>
<tr>
<td>Guardian Angel Ambulance Service</td>
<td>$503.00</td>
</tr>
<tr>
<td>John Henderson, M.D.</td>
<td>$1,626.00</td>
</tr>
<tr>
<td>Henshaw Orthopedics, Inc.</td>
<td>$6,188.00</td>
</tr>
<tr>
<td>Horizon Mobile Health Services</td>
<td>$5,630.67</td>
</tr>
<tr>
<td>Ray L. Jones, D.O.</td>
<td>$960.00</td>
</tr>
<tr>
<td>Kanawha County Emer. Ambulance Authority</td>
<td>$273.00</td>
</tr>
<tr>
<td>Stanley S. Masilamani, M.D.</td>
<td>$92.00</td>
</tr>
<tr>
<td>Mercer County Commission</td>
<td>$493.68</td>
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<tr>
<td>Joseph A. Noronha, M.D.</td>
<td>$2,640.00</td>
</tr>
<tr>
<td>Parkersburg Anesthesia, Inc.</td>
<td>$676.00</td>
</tr>
<tr>
<td>Preston Memorial Hospital</td>
<td>$438.50</td>
</tr>
</tbody>
</table>
An ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

Claims Against the State.

§1. Finding and declaring certain claims against the alcohol beverage control administration; board of directors of
the state college system; board of respiratory care; board of trustees of the university system of West Virginia; bureau of senior services; department of administration; department of tax and revenue; division of corrections; division of culture and history; division of environmental protection; division of forestry; division of health; division of highways; division of human services; division of labor; division of motor vehicles; division of natural resources; division of rehabilitation services; education and state employees grievance board; governor's office; human rights commission; public service commission; regional jail and correctional facility authority; state rail authority; state of West Virginia; and supreme court of appeals; to be moral obligations of the state and directing payment thereof.

The Legislature has considered the findings of fact and recommendations reported to it by the court of claims concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claim against the Alcohol Beverage Control Administration:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Global Petroleum Corporation ...... $ 3,955.29

(b) Claim against the Board of Directors of the State College System:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) George L. Heider, Inc., t/a Sportsmans ....................... $ 2,930.04
(c) Claim against the Board of Respiratory Care:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Anna Parkman $1,171.85

(d) Claim against the Board of Trustees of the University System of WV:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Matthew W. Wilson $740.00

(e) Claim against the Bureau of Senior Services:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) WV Graduate College $228.00

(f) Claims against the Department of Administration:

(TO BE PAID FROM SPECIAL REVENUE FUND — ACCOUNT NO. 2031)

(1) Archives Security, Inc. $179.31

(TO BE PAID FROM SPECIAL REVENUE FUND — ACCOUNT NO. 2241)

(2) Archives Security, Inc. $63.72

(TO BE PAID FROM SPECIAL REVENUE FUND — ACCOUNT NO. 2320)

(3) Bell Atlantic-West Virginia, Inc. $2,865.62

(TO BE PAID FROM SPECIAL REVENUE FUND — ACCOUNT NO. 2241)

(4) Tyler Mountain Water Company, Inc. $289.70

(5) West Virginia Association of Rehabilitation Facilities $303,595.91

(g) Claim against the Department of Tax and Revenue:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) American Decal & Manufacturing Company $22,657.50
(h) Claims against the Division of Corrections:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Barbara S. Bohrer .......................... $100,000.00
(2) Lane S. Bohrer ............................. $25,496.33
(3) Charleston Cash Register Company ... $ 315.00
(4) Marion County Commission ............. $44,700.00
(5) Janice B. Morgan .......................... $ 700.00
(6) Regional Jail and Correctional
    Facility Authority ....................... $543,900.80

(i) Claim against the Division of Culture and History:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) E & M Products, Inc. ....................... $ 120.00

(j) Claim against the Division of Environmental
Protection:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Division of Natural Resources ....... $ 1,064.49

(k) Claim against the Division of Forestry:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Division of Natural Resources ....... $ 1,900.80

(l) Claim against the Division of Health:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Owen Healthcare, Inc. .................... $25,298.42

(m) Claims against the Division of Highways:

(TO BE PAID FROM STATE ROAD FUND)

(1) Cornice and Charlene Adkins ............ $ 100.00
(2) Richard W. Armstrong, Jr. ............... $ 451.29
(3) Loretta L. Baldwin ........................ $ 194.03
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<td>Kimberly Lewis</td>
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CLAIMS

(31) Terry L. Mano .................. $  226.31
(32) John W. Marshall and
   Jessica A. Haden .................. $  1,612.00
(33) Linda McCord .................. $   250.00
(34) Gilbert R. McDaniel .......... $    100.00
(35) John F. Mele, Jr. ............ $   268.58
(36) Stormie D. Meloy ............. $    720.00
(37) Jennifer Myers ............... $ 26,590.25
(38) North Hill Coal Company ..... $    408.78
(39) Linda O’Connor ............... $    158.71
(40) Robert Palumbo ............... $    351.79
(41) Leonard Wayne Riggs .......... $    200.00
(42) Tina Roberts .................. $    655.56
(43) John and Glenda Robinson ... $    250.00
(44) Goldie Rogers ................ $    100.00
(45) Cathy B. Rorrer .............. $    102.81
(46) Bradley A. and Earl D. Sandy $    106.00
(47) Lonnie M. Skeens ............. $    452.61
(48) Linda L. Stanley ............. $     89.31
(49) David S. Stevens ............. $    377.77
(50) Arthur M. and Carol L. Stewart $    500.00
(51) Teddy and Linda Stull ....... $    100.00
(52) Linda Syslo .................. $     69.94
(53) Helen E. Tolley .............. $     26.18
(54) Shirley Trent ................. $    141.92
(55) Steven S. Voytek ............. $    204.42
(56) Dawn Widmeyer ............... $    114.36
Ch. 85] CLAIMS

(57) Rose Marie Wirtz ....................... $  132.48

(n) Claims against Division of Human Services:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Burke Funeral Home .................. $  325.00
(2) Frey Home for Funerals, Inc. ....... $  400.00
(3) Lambert-Tatman Funeral Home ....... $  400.00
(4) Robert M. Vincent Funeral Home ... $  400.00
(5) Shanklin Funeral Home, Inc. ....... $  400.00

(o) Claims against the Division of Labor:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Archives Security, Inc ............. $  176.53
(2) Bell Atlantic-West Virginia, Inc. ... $  696.72
(3) WV American Water Company ...... $  108.69

(p) Claims against Division of Motor Vehicles:

(TO BE PAID FROM STATE ROAD FUND)

(1) Patricia Goeddel .................... $  599.75
(2) James and Jane Hepner ............. $  975.00

(q) Claims against the Division of Natural Resources:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Jim Canada ......................... $  400.00
(2) Rebecca and David Jones .......... $ 1,992.80

(r) Claims against the Division of Rehabilitation Services:

(TO BE PAID FROM FEDERAL REVENUE FUND)

(1) M. Amrik Chattha, M.D. .......... $  150.00
(2) West Virginia Association of Rehabilitation Facilities ........ $ 19,197.41

(s) Claim against the Education and State Employees Grievance Board:

(TO BE PAID FROM GENERAL REVENUE FUND)
(1) Officemax, Inc. ....................... $ 155.83

(t) Claim against the Governor's Office:
(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Kroger Company ....................... $ 124.12

(u) Claim against the Human Rights Commission:
(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Tel-Tex Communications, Inc. .... $ 779.00

(v) Claims against the Public Service Commission:
(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Division of Highways .................. $ 159.91
(2) Elco Mechanical Contractors ........ $ 464.24
(3) Goodyear Tire and Rubber Company, Inc. ................. $ 253.72
(4) U.S. Diary Company .................. $ 102.02

(w) Claims against the Regional Jail and Correctional Facility Authority:
(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Leroy Buzzard .......................... $ 210.00
(2) Kenhill Construction Company, Inc. $ 489,519.39

(x) Claim against the State Rail Authority:
(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Charles E. Williams, Jr. .............. $ 425.00

(y) Claim against the State of West Virginia:
(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT & T ................................. $ 179,892.93

(z) Claims against the Supreme Court of Appeals:
(TO BE PAID FROM GENERAL REVENUE FUND)

(1) James M. Casey ....................... $ 341.00
(2) Randolph County Commission .... $ 1,463.31
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<td>(17) Norman D. Ferrari</td>
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<td>(34) Louis E. Longanacre</td>
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The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants, and that prior to the payments to any claimant provided for in this bill, the court of claims shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The court of claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.
CHAPTER 86
(S. B. 185—By Senators Wooton, Snyder, Ball, Kessler, Hunter, Oliverio, Ross, White, Dittmar, Scott and Kimble)

[Passed February 9, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and seven, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the court of claims; providing for the position of chief deputy clerk; expanding the locations in which the court of claims is authorized to meet; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

That sections five and seven, article two, chapter fourteen 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. CLAIMS AGAINST THE STATE.

§14-2-5. Court clerk and other personnel.

§14-2-7. Meeting place of the court.

§14-2-5. Court clerk and other personnel.

The court may appoint a clerk, chief deputy clerk and deputy clerks. The salaries of the clerk, the chief deputy clerk and the deputy clerks shall be fixed by the joint committee on government and finance, and shall be paid out of the regular appropriation for the court. The clerk shall have custody of and maintain all records and proceedings of the court, shall attend meetings and hearings of the court, shall administer oaths and affirmations and shall issue all official summonses, subpoenas, orders, statements and awards. The chief deputy clerk or another deputy clerk shall act in the place and stead of the clerk in the clerk's absence.

The joint committee on government and finance may employ other persons whose services are necessary to the orderly transaction of the business of the court and fix their compensation.
§14-2-7. Meeting place of the court.

The regular meeting place of the court shall be at the state capitol, and the joint committee on government and finance shall provide adequate quarters therefor. When deemed advisable, in order to facilitate the full hearing of claims arising elsewhere in the state, the court may convene at any county seat or other location in the state, including a correctional institution: Provided, That the court will make reasonable efforts to meet in appropriate public or private buildings in keeping with the dignity and decorum of the state.

CHAPTER 87

(Com. Sub. for H. B. 4564—By Mr. Speaker, Mr. Kiss, and Delegates Michael, Martin and Varner)

[Passed March 14, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to abolishing and recreating the coal and energy research bureau; abolishing the bureau's advisory committee; designating members of the bureau; and eliminating the expense reimbursement provision.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article eleven, 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 11. WEST VIRGINIA UNIVERSITY.

§18-11-9a. Coal and energy research bureau.

The coal and energy research bureau, heretofore established at West Virginia university shall be abolished and a new coal and energy research bureau is hereby
created. Subject to such rules as may be prescribed by
the university of West Virginia board of trustees and West
Virginia university, the bureau shall conduct investigations
and research into the development of new, safer and more
economical ways to mine, transport and use coal, consider
environmental problems created through the use and
production of coal, develop new uses and markets for coal,
other energy fuels and allied minerals, develop new
methods of combustion of coal and new uses of coal in
the chemical industry, develop greater efficiency and
conservation in the mining and mineral industries, and
make such tests and investigations as may be required by
the office of miner's health, safety and training in the
prosecution of its work. The bureau shall conduct such
experiments, tests and activities as will promote the
development of the mineral industries in the state, and
shall cooperate with the office of miner's health, safety
and training and other state and federal agencies dealing
with issues related to coal and its uses, in the investigation
of the causes of mine disasters and common mine
accidents. It shall also initiate and carry on a program of
research designed to discover and develop new uses and
new processes for the utilization of West Virginia coal and
other mineral resources.

The costs of financing the research program shall be
paid from any funds appropriated by the Legislature for
the bureau, from any grants or gifts received by the
university or the bureau, and from any income received
for research carried on under contract with any federal or
state agency, or with any private corporation, association
or individual. Within the limits of available funds,
research activities may be conducted by the bureau, or
under contract with some other research group,
corporation or individual.

In order to avoid wasteful duplication, the research
program shall be carried on in close cooperation with the
federal departments of energy and the interior, the federal
environmental protection agency, the federal energy
technology center, the national institute for occupational
safety and health, other appropriate federal agencies,
research organizations and establishments, the West
Virginia geological and economic survey, the West Virginia development office, the West Virginia division of environmental protection, and other appropriate state agencies, research organizations and establishments and industry and academic institutions. The university shall from time to time, but at least annually, publish and distribute to the governor, the Legislature, and to interested persons and agencies reports of the bureau's activities, findings and recommendations.

The "advisory committee on coal and energy research," heretofore existing, is abolished. The bureau shall advise and counsel with West Virginia university concerning the programs of the coal and energy research bureau and make recommendations to the university of West Virginia board of trustees, the governor and the Legislature concerning the support of the programs of the coal and energy research bureau.

The bureau shall consist of nine appointed members. The chairperson of the bureau shall be the chairperson of the department of mining engineering in the college of engineering and mineral resources at West Virginia university. The remaining members of the bureau shall include the director of the national research center for coal and energy; the director of the national mine land reclamation center; the president of West Virginia university or his or her designee; one member representing union labor and one member representing the coal industry, each to be appointed jointly by the president of the Senate and the speaker of the House of Delegates; one member appointed by the president of the Senate; one member appointed by the speaker of the House of Delegates; and one member appointed by the governor. For the purpose of the original appointments, the member appointed by the president of the Senate shall serve for a term of one year and until his or her successor has been appointed and qualified, the member appointed by the speaker of the House of Delegates shall serve for a term of two years and until his or her successor has been appointed and qualified, and the member appointed by the governor shall serve for a term of three years and until his or her successor has been appointed and qualified.
Except for the original appointments, those members who
are appointees shall serve for a term of three years and
until such members' respective successors have been
appointed and qualified. Members may be reappointed
for any number of terms. Vacancies shall be filled by
appointment for the unexpired term by the official who
appointed such member for the term vacated. To these
members may be added specialists as deemed desirable
and appropriate by a majority vote of the bureau.

CHAPTER 88

(H. B. 4330—By Delegates Johnson, Amores, Rowe,
Underwood, Mahan and Thomas)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twelve, article four, chapter fifty-one
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to examination of the clerk's
office of the supreme court of appeals and all circuit and
county courts.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of section requiring examination of offices of court
clerks.

Section twelve, article four, chapter fifty-one of the
code of West Virginia, one thousand nine hundred thirty-
one, as amended, is hereby repealed.
CHAPTER 89
(S. B. 734—By Senator Plymale)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to redefining the consolidated pension plan to include the wildlife endowment fund.

Be it enacted by the Legislature of West Virginia:

That section two, 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 INVESTMENT MANAGEMENT BOARD.

§12-6-2. Definitions.

1. As used in this article unless a different meaning clearly appears from the context:

2. (1) "Beneficiaries" means those individuals entitled to benefits from the consolidated pension plan;

3. (2) "Board" means the governing body for the West Virginia investment management board, and any reference elsewhere in this code to board of investments or West Virginia trust fund means the board as defined herein;

4. (3) "Consolidated fund" means the investment fund managed by the board and established pursuant to subsection (a), section eight of this article;

5. (4) "Consolidated pension plan" means the public employees retirement system established in article ten, chapter five of this code, the teachers retirement system established in article seven-a, chapter eighteen of this code, the West Virginia state police retirement system established...
in article two-a, chapter fifteen of this code, the death, disability and retirement fund of the state police established in article two, chapter fifteen of this code, the judges' retirement system established in article nine, chapter fifty-one of this code, the workers' compensation fund established in article three, chapter twenty-three of this code, the wildlife endowment fund established in article two-b, chapter twenty of this code, and the coal-workers' pneumoconiosis plan established in article four-b, chapter twenty-three of this code;

(5) "Local government funds" means the moneys of a political subdivision, including policemen's pension and relief funds, firemen's pension and relief funds and volunteer fire departments, transferred to the board for deposit;

(6) "Participant plan" means any component system, plan or fund of the consolidated pension plan within the definition set forth in subdivision (4) of this section;

(7) "Political subdivision" means and includes a county, municipality or any agency, authority, board, county board of education, commission or instrumentality of a county or municipality and regional councils created pursuant to the provisions of section five, article twenty-five, chapter eight of this code;

(8) "Trustee" means any member serving on the West Virginia investment management board: Provided, That in section nine-a of this article wherein the terms of the trust indenture are set forth, "trustee" means the West Virginia investment management board;

(9) "Securities" means all bonds, notes, debentures or other evidences of indebtedness, and other lawful investment instruments; and

(10) "State funds" means all moneys of the state which may be lawfully invested except the "school fund" established by section four, article XII of the state constitution.
CHAPTER 90

(Com. Sub. for H. B. 4529—By Delegates Rowe, Hutchins, Thompson, Kominar, Trump, Spencer and Miller)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred six, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to notice of a consumer's right to cure default in a consumer credit sale; and requiring notice from creditors to cosigners of consumer's default.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-106. Notice of consumer's right to cure default; cure; acceleration.

1. After a consumer has been in default on any installment obligation or any other secured obligation for five days for failure to make a scheduled payment or otherwise perform pursuant to such a consumer credit sale, consumer lease or consumer loan other than with respect to a covenant to provide insurance for or otherwise to protect and preserve the property covered by a security interest, the creditor may give him or her notice of such fact in the manner provided for herein. Actual delivery of such notice to a consumer or delivery or mailing of same to the last known address of the consumer is sufficient for the purpose of this section. If given by mail, notice is given when it is deposited in a mailbox properly addressed and postage prepaid. Notice shall be in writing and shall conspicuously state the name, address and telephone number of the creditor to whom payment or other performance is owed, a brief description of the transaction, the consumer's right to cure such default and the amount of payment and other required performance and date by which it must be paid or accomplished in order to cure the default. A copy of the notice required by this section
shall be: (i) Delivered or mailed to the last known address of any cosigner of the obligation in the manner set forth in this section unless the cosigner has waived in writing his or her right to receive copies of the notice: Provided, That a waiver of notice contained in the consumer credit sales agreement or consumer loan agreement does not constitute effective waiver of notice of the cosigner's right to receive notice of the consumer's default for purposes of this section; (ii) retained by the creditor; (iii) certified in the manner prescribed by this section by an officer or other authorized representative of such creditor; and (iv) notarized by a person licensed as a notary under the laws of the state of West Virginia or any other state or territory of the United States. The certification required by this section shall substantially conform to the following language:

"I, ______________________(name of person certifying),
the ______________________ (title of person certifying)
of ________________________ (creditor's name),
hereby certify that the notice of the consumer's right to cure default on which this certification appears (or to which this certification is attached) was on this _______ day of ________ , 19_______, mailed to the person(s) whose name(s) appear herein (therein) at the address(es) set forth herein (therein).

______________________________________________
(Signature)

Failure to send notice to a cosigner as required by this section does not, in and of itself, give rise to a cause of action against the creditor.

Except as hereinafter provided in this section, after a default on any installment obligation or any other secured obligation other than with respect to a covenant to provide insurance for or otherwise to protect and preserve the property covered by a security interest or lease, a creditor may not accelerate maturity of the unpaid balance of any such installment obligation or any other such secured obligation, commence any action or demand or take possession of collateral on account of default until ten days after notice has been given to the consumer of his or her right to cure such default. Until such period expires, the consumer shall have the right to cure any default by tendering the amount of all unpaid sums due at the time
of the tender, without acceleration, plus any unpaid
delinquency or deferral charges and by tendering any
other performance necessary to cure such default. Any
such cure shall restore a consumer to all his or her rights
under the agreement the same as if there had been no
default. A consumer who has been in default three or
more times on the same obligation and who has been
given notice of such fact three or more times shall not
have the right to cure a default under this section even
though previous defaults have been cured and his or her
creditor’s right to proceed against him or her and his or
her collateral shall not be impaired or limited in any way
by this section. There shall be no acceleration of the
maturity of all or part of any amount owing in such a
consumer credit sale, consumer lease or consumer loan,
except where nonperformance specified in the agreement
as constituting default has occurred.

CHAPTER 91
(H. B. 4285—By Delegates Azinger, Thompson, H. White,
L. White, Beane and Gillespie)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred nine, article
three, chapter forty-six-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
further amend said article by adding thereto a new section,
designated section one hundred nine-a, all relating to
allowing a secured lender to procure insurance covering
collateral, under the consumer protection act; and providing
related conditions and procedures.

Be it enacted by the Legislature of West Virginia:

That section one hundred nine, article three, chapter forty-
six-a 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 one hundred nine-a, all to read as follows:

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-109. Additional charges; credit life or health insurance; notice of cancellation; when refund required; obligations of creditor and insurer; civil penalty; rules relating to insurance.

§46A-3-109a. Collateral protection insurance.

§46A-3-109. Additional charges; credit life or health insurance; notice of cancellation; when refund required; obligations of creditor and insurer; civil penalty; rules relating to insurance.

(a) In addition to the sales finance charge or loan finance charge permitted by this chapter, a creditor may contract for and receive the following additional charges in connection with a consumer credit sale or a consumer loan:

1. Official fees and taxes;
2. Charges for insurance as described in subsection (b) of this section: Provided, That nothing contained in this section with respect to insurance in any way limits the power and jurisdiction of the insurance commissioner of this state in the premises;
3. Annual charges, payable in advance, for the privilege of using a lender credit card or similar arrangement which entitles the user to purchase goods or services from at least one hundred persons not related to the issuer of the lender credit card or similar arrangement, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer;
4. Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to him or her and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the sales finance charge or loan finance charge by rule adopted by the commissioner: Provided, That as to insurance, the policy as distinguished from a certificate of coverage
thereunder may only be issued by an individual licensed
under the laws of this state to sell the insurance and the
determination of whether the charges therefor are
reasonable in relation to the benefits shall be determined
by the insurance commissioner of this state;

(5) Reasonable closing costs with respect to a debt
secured by an interest in land; and

(6) Documentary charge or any other similar charge
for documentary services in relation to securing a title, so
long as said charge is applied equally to cash customers
and credit customers alike and so long as such
documentary charge does not exceed fifty dollars.

(b) A creditor may take, obtain or provide reasonable
insurance on the life and earning capacity of any
consumer obligated on the consumer credit sale or
consumer loan, reasonable insurance on any real or
personal property offered as security subject to the
provisions of this subsection and section one hundred
nine-a of this article, and vendor's or creditor's single
interest insurance with respect to which the insurer has no
right of subrogation. Only one policy of life insurance
and/or one policy of health and accident insurance and/or
one policy of accident insurance and/or one policy of loss
of income insurance on any one consumer may be in
force with respect to any one contract or agreement at any
one time, but one policy may cover both a consumer and
his or her spouse:

(1) The amount, terms and conditions of property
insurance shall have a reasonable relation to the existing
hazards or risk of loss, damage or destruction and be
reasonable in relation to the character and value of the
property insured or to be insured; and the term of the
insurance shall be reasonable in relation to the terms of
credit: Provided, That nothing may prohibit the
consumer from obtaining, at his or her option, greater
coverages for longer periods of time if he or she so
desires;

(2) Life insurance shall be in an initial amount not to
exceed the total amount repayable under the consumer
credit agreement, and where a consumer credit sale or consumer loan is repayable in installments, such insurance may at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. Life insurance authorized by this subdivision shall provide that the benefits be paid to the creditor to reduce or extinguish the unpaid indebtedness: Provided, That if a separate charge is made for the insurance and the amount of insurance exceeds the unpaid indebtedness, where not prohibited, then the excess is payable to the estate of the consumer.

The initial term of the life insurance in connection with a consumer credit sale, other than a sale pursuant to a revolving charge account, or in connection with a consumer loan, other than a loan pursuant to a revolving loan account, may not exceed the scheduled term of the consumer credit agreement by more than fifteen days.

The aggregate amount of periodic benefits payable by credit accident and health insurance in the event of disability, as defined in the policy, and loss of income insurance in the event of involuntary loss of employment, as defined in the policy, may not exceed the unpaid amount of such indebtedness; periodic benefits payable in connection with a consumer credit sale pursuant to a revolving charge account or of a consumer loan pursuant to a revolving loan account may be based upon the authorized credit limit;

(3) When the insurance is obtained or provided by or through a creditor, the creditor may collect from the consumer or include as part of the cash price of a consumer credit sale or as part of the principal of a consumer loan, or deduct from the proceeds of any consumer loan the premium, or in the case of group insurance, the identifiable charge. The premium or identifiable charge for the insurance required or obtained by a creditor may equal, but may not exceed the premium rate filed by the insurer with the insurance commissioner. In any case, when the creditor collects the entire premium for such insurance in advance, the premium shall be remitted by the creditor to the insurer or the insurance agent, as specified by the insurer, within ten days from or
after the end of the month in which the collection was made;

(4) With respect to insurance against loss of or damage to property, or against liability, the creditor shall furnish a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the debtor may choose the person through whom the insurance is to be obtained;

(5) With respect to consumer credit insurance providing life, accident, health or loss of income coverage, no creditor may require a consumer to purchase the insurance or to purchase the insurance from the creditor or any particular agent, broker or insurance company as a condition precedent to extending credit to or on behalf of such consumer;

(6) When a consumer credit sale or consumer loan, refinancing or consolidation is paid in full, the creditor receiving the payment shall inform the debtor of the cancellation of any consumer credit insurance providing life, accident, health or loss of income coverage and advise the debtor of the application of any unearned premiums to the loan balance. Notices required by this subdivision shall be made in the following manner:

(A) If the insurance was not sold or provided by the creditor, the creditor receiving the payment shall notify the debtor that he or she may have the right to receive a refund of unearned premiums from any other seller or provider of the insurance, and advise the debtor of his or her obligation to notify any other insurer of the payment of the loan balance and the cancellation of the consumer credit insurance, and request a refund or credit of unearned premiums, if applicable. Such notice shall be sent on a form as prescribed by the insurance commissioner as provided in chapter twenty-nine-a of this code and shall contain the name and address of the seller and the insurer; or

(B) If the creditor was the seller or provider of the consumer credit insurance, the creditor shall:
(i) Notify the insurer or shall cause the insurer to be notified of the cancellation of such insurance; and

(ii) Notify the debtor of the cancellation of the insurance and of the application of any unearned premiums to the loan balance, which notice may be on a form consistent with the general course of business of the creditor;

(7) Upon receipt by the insurer of notification of the cancellation of consumer credit insurance, the insurer shall cancel the insurance effective no later than thirty days from the date of receipt of the notice. Within forty-five days following the date of notification of cancellation of the insurance, the insurer shall pay any refund of unearned premiums to the debtor-insurer or such other person as directed by the debtor-insurer; and

(8) An insurer, seller or creditor who fails to refund any unused insurance premium or provide the proper notification of payoff is liable for civil damages up to three times the amount of the unused premium as well as other remedies as provided by section one hundred nine, article seven of this chapter.

(c) The insurance commissioner of this state shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to implement the provisions of this article relating to insurance, and the authority of the insurance commissioner to promulgate the rules is exclusive notwithstanding any other provisions of this code to the contrary.

§46A-3-109a. Collateral protection insurance.

(a) As used in this section:

(1) "Collateral" means any or all property pledged to secure payment, repayment or performance under a credit agreement, whether personal property, real property, fixtures, inventory, receivables, rights, privileges or otherwise.
"Collateral protection insurance" means insurance coverage that: (i) Is purchased unilaterally by a creditor subsequent to the date of a consumer credit agreement; (ii) provides monetary protection against loss of or damage to the collateral or against liability arising out of the ownership or use of the collateral; and (iii) is purchased according to the terms of a credit agreement as a result of a consumer's failure to provide evidence of insurance or failure to maintain adequate insurance covering the collateral, with the costs of the collateral protection insurance, including interest and any other charges imposed by the creditor in connection with the placement of the collateral protection insurance, payable by the consumer. Collateral protection insurance includes insurance coverage that is purchased to protect only the interest of the creditor and insurance coverage that is purchased to protect both the interest of the creditor and some or all of the interest of the consumer. The term of a collateral protection insurance policy may, but need not, extend to the full term of the credit transaction.

Collateral protection insurance does not include insurance coverage that is: (i) Purchased by the creditor for which the consumer is not charged; (ii) purchased at the inception of a credit transaction to which the consumer is a party or agrees, whether or not the costs are included in any payment plan under the credit transaction; (iii) purchased by the creditor following foreclosure, repossession, or a similar event wherein the creditor gains possession or control over the collateral; (iv) maintained by the creditor for the protection of any or all collateral which may come into the possession or control of the creditor through foreclosure, repossession or a similar event; (v) credit insurance, mortgage protection insurance, insurance issued to cover the life or health of the consumer or any other insurance maintained to cover the inability or failure of the consumer to make payment under the credit agreement; (vi) title insurance; or (vii) flood insurance required to be placed by creditors by 42 U.S.C. §4012(a), as amended, pursuant to the National Flood Insurance Reform Act of 1994.
(3) "Credit agreement" means the written document or documents that set forth the terms of the credit transaction.

(4) "Credit transaction" means any consumer credit transaction, the terms of which require the payment or repayment of money, goods, services, property, rights or privileges, which is to be made on one or more future dates, where the obligation is secured by collateral.

(5) "Creditor" shall mean, for purposes of this section only, an institution, the deposits of which are insured by the federal deposit insurance agency, the national credit union share insurance fund, or a subsidiary of such an institution, or a subsidiary of a holding company owning such an institution, and this section applies and is available only to such creditors.

(b) A creditor may place collateral protection insurance if the following conditions are met:

(1) The consumer has entered into a credit transaction with the creditor;

(2) The credit transaction has been reduced to a credit agreement and the credit agreement requires the consumer to maintain insurance on the collateral; and

(3) A notice substantially similar to the following has been included in the credit agreement or on a separate document provided to the consumer and to any cosigner, guarantor or other person liable with the consumer for the obligation, at the time the credit agreement is entered:

"Unless you provide us with evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the
costs of that insurance, including interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own."

(c) (1) Within thirty calendar days following the placement of collateral protection insurance, the creditor shall mail to the consumer and to any cosigner, guarantor or other person liable with the consumer for the obligation, at the last known address of the person, a notice entitled "Notice of Placement of Insurance" in a form substantially similar to the following:

"NOTICE OF PLACEMENT OF INSURANCE

Your credit agreement with us requires you to maintain adequate insurance on your collateral until you pay off your loan. You have not given us proof that you have adequate insurance on your collateral. Under the terms of your credit agreement, we have purchased insurance at your expense to protect our interests in your collateral.

The insurance we purchased will pay claims made by us as the creditor. The insurance we purchased may not pay any claims made by you or against you in connection with your collateral.

You are responsible for the costs of this insurance, including interest and any other charges we may impose in connection with the purchase of this insurance. The costs of this insurance may be more than insurance you can buy on your own.

You still may obtain insurance on your own choosing on the collateral. If you provide us with proof that you have obtained adequate insurance on your collateral, we will cancel the insurance that we purchased and refund or credit any unearned premiums to you.
If, within thirty days after the date this notice was sent to you, you provide us with proof that you had adequate insurance on your collateral as of the date we also purchased insurance and that you continue to have the insurance that you purchased yourself, we will cancel the insurance that we purchased without charging you any costs, interest or other charges in connection with the insurance that we purchased."

(2) The terms for repayment of the costs of the collateral protection insurance, which include interest and any other charges imposed by the creditor in connection with the placement of the collateral protection insurance, shall include one or more of the following:

(A) Full payment within thirty days after the date of the notice of placement of insurance;

(B) A final balloon payment within thirty days after the last scheduled payment required by the credit agreement; or

(C) Full amortization over the term of the credit transaction, the term of the collateral protection insurance policy, or the term for which amortization is used by the creditor.

(d) If any form of amortization is used by the creditor for the costs of collateral protection insurance and a coupon book was sent to the consumer at the inception of the credit transaction, the creditor shall send to the consumer either:

(1) Reprinted coupon book with revised calculations of the consumer's payments that includes the amortized costs of the collateral protection insurance; or

(2) Supplemental coupon book with calculations of the consumer's additional payments based upon the amortized costs of the collateral protection insurance, for use by the consumer in addition to the original coupon book.
(e) A consumer may at any time cancel the collateral protection insurance by providing proper evidence to the creditor that the consumer has obtained insurance as required by the credit agreement. If, within thirty days after notice is sent pursuant to subdivision (1), subsection (c) of this section, a consumer provides the creditor with proper evidence that the consumer had insurance on the collateral as required by the credit agreement on the date the creditor purchased insurance and that the consumer continues to have insurance on the collateral as required by the credit agreement, the creditor shall cancel the insurance that it purchased and may not charge the consumer any costs, interest or other charges in connection with the insurance.

(f) Upon cancellation or expiration of collateral protection insurance, the amount of unearned premiums, if any, as calculated in accordance with the policy, shall be refunded to the consumer. A refund of unearned premiums may be credited to the consumer's obligation under the credit agreement or distributed directly to the consumer by check or other means.

(g) Collateral protection insurance may be placed with any insurance carrier selected by the creditor that is licensed to underwrite the insurance by the division of insurance. The insurance shall be evidenced by an individual policy or a certificate of insurance.

(h) A creditor that places collateral protection insurance in substantial compliance with the terms of this section is not directly or indirectly liable in any manner to a consumer, cosignor, guarantor or any other person, in connection with the placement of the collateral protection insurance. Notices and coupon books required to be mailed to a consumer under this section are not required to be mailed to any person other than to the consumer and shall be mailed by United States mail, first class, postage prepaid, to the consumer's last known address on file with the creditor.
(i) This section does not impose a fiduciary relationship between the creditor and the consumer. Placement of collateral protection insurance is for the sole purpose of protecting the interest of the creditor when the consumer fails to insure collateral as required by the credit agreement.

(j) A creditor is not, by virtue of this section, required to purchase collateral protection insurance or to otherwise insure collateral. A creditor is not, by virtue of this section, liable to a consumer or to any other person for not purchasing collateral protection insurance, as a result of the amount or level of coverage of collateral protection insurance purchased by the creditor, or because the creditor purchased collateral protection insurance that protects only the interests of the creditor or less than all of the interests of the consumer. This section does not create a cause of action for damages on behalf of the consumer or any other person in connection with the placement of collateral protection insurance.

(k) The obligations and rights of the creditor and the consumer with respect to the collateral, as provided by the uniform commercial code, chapter forty-six of this code, are not affected by this section.

(l) Substantial compliance with the provisions of this section is mandatory for the placement of collateral protection insurance in this state by a creditor pursuant to a credit agreement entered into on or after the first day of July, one thousand nine hundred ninety-nine. No provision of this section may be held or applied against a creditor in connection with collateral protection insurance placed prior to the first day of July, one thousand nine hundred ninety-eight. A creditor that places collateral protection insurance pursuant to a credit agreement entered into prior to the first day of July, one thousand nine hundred ninety-eight, has available to it all of the rights provided by this section if the creditor is in substantial compliance with the provisions of this section, other than subdivision (3) of subsection (b).
CHAPTER 92
(Com. Sub. for H. B. 4429—By Delegates Miller, Compton, Underwood, Leach, Douglas, Capito and Thompson)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-e, relating to providing consumer protection regarding assistive devices; definitions; warranty requirements and remedies; lease enforcement; required disclosures; arbitration; and actions for damages.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6E. CONSUMER PROTECTION-ASSISTIVE DEVICES.

§46A-6E-1. Definitions.

(a) "Assistive device" means any device enabling a person with a disability to communicate, see, hear or maneuver, which a consumer purchases or accepts transfer of in this state. This definition includes a demonstrator. Examples of assistive devices include, but are not limited to, manual and motorized wheelchairs, motorized scooters, hearing aids, telephone communication devices for the
deaf (TTY), assistive listening devices, voice synthesized
computer modules, optical scanners, talking software and
braille printers.

(b) "Assistive device dealer" means a person who is in
the business of selling assistive devices.

(c) "Assistive device lessor" means a person who leases
an assistive device to a consumer, or who holds the lessor's
rights, under a written lease.

(d) "Collateral costs" means expenses incurred by a
consumer in connection with the repair of a
nonconformity, including the costs of obtaining an
alternative assistive device.

(e) "Consumer" means any of the following:

(1) The purchaser of an assistive device, if the assistive
device was purchased from an assistive device dealer or
manufacturer for purposes other than resale;

(2) A person to whom the assistive device is
transferred for purposes other than resale, if the transfer
occurs before the expiration of an express warranty
applicable to the assistive device;

(3) A person who may enforce the warranty; and

(4) A person who leases an assistive device from an
assistive device lessor under a written lease.

(f) "Current value of the written lease" means the total
amount for which that lease obligates the consumer during
the period of the lease remaining after its early
termination, plus the assistive device dealer's early
termination costs and the value of the assistive device at
the lease expiration date if the lease sets forth that value,
less the assistive device lessor's early termination savings.

(g) "Demonstrator" means an assistive device used
primarily for the purpose of demonstration to the public.

(h) "Early termination cost" means any expense or
obligation that an assistive device lessor incurs as a result
of both the termination of a written lease before the
termination date set forth in that lease and the return of an
assistive device to a manufacturer pursuant to this section.
Early termination cost includes a penalty for prepayment
under finance arrangement.

(i) "Early termination saving" means any expense or
obligation that an assistive device lessor avoids as a result
of both the termination of a written lease before that
termination date set forth in that lease and the return of an
assistive device to a manufacturer pursuant to this section.
Early termination saving includes an interest charge that
the assistive device lessor would have paid to finance the
assistive device or, if the assistive device lessor does not
finance the assistive device, the difference between the
total amount for which the lease obligates the consumer
during the period of the lease term remaining after the
early termination and the present value of that amount at
the date of the early termination.

(j) "Manufacturer" means a person who manufactures
or assembles assistive devices and agents of that person,
including an importer, a distributor, factory branch,
distributor branch and any warrantor of the
manufacturer's assistive device, but does not include an
assistive device dealer.

(k) "Nonconformity" means a condition or defect that
substantially impairs the use, value or safety of an assistive
device and is covered by a warranty applicable to the
assistive device or to a component of the assistive device.

(l) "Reasonable allowance for use" means an amount
obtained by multiplying the total amount for which the
lease obligates the consumer by a fraction, the
denominator of which is one thousand eight hundred
twenty-five and the numerator of which is the number of
days that the consumer used the assistive device before
first reporting the nonconformity to the manufacturer,
assistive device lessor or assistive device dealer.

(m) "Reasonable attempt to repair" means within the
terms of a warranty applicable to a new assistive device:
§46A-6E-2. Express warranty requirement; express warranty duration; implied warranty.

(a) A manufacturer who sells an assistive device to a consumer, either directly or through an assistive device dealer, shall furnish the consumer with an express warranty for the assistive device. The duration of the express warranty shall be not less than one year after first delivery of the assistive device to the consumer. In the absence of an express warranty from the manufacturer, the manufacturer shall be deemed to have expressly warranted to the consumer of an assistive device that, for a period of one year from the date of first delivery to the consumer, the assistive device will be free from any condition or defect which substantially impairs the value of the assistive device to the consumer.

(b) Notwithstanding any other provision of law to the contrary with respect to assistive devices subject to the provisions of this article, no manufacturer, assistive device dealer or assistive device lessor shall:

- Exclude, modify or otherwise attempt to limit any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose; or
- Exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express or implied.

Any such exclusion, modification or attempted limitation shall be void.

§46A-6E-3. Warranty remedies; procedures for obtaining remedies.

(a) Repair. — If a new assistive device does not conform to an express or implied warranty and the
consumer reports the nonconformity to the manufacturer, the assistive device lessor, or a manufacturer's authorized assistive device dealer and makes the assistive device available for repair on or before one year after return delivery of the assistive device to a consumer, the nonconformity shall be repaired at no charge to the consumer.

(b) Return, refund, reimbursement, replacement. — After a reasonable attempt to repair, if the nonconformity in an assistive device is not repaired, the consumer may request remedies within this section by offering to transfer possession of the assistive device to the manufacturer. No later than thirty days after the consumer’s offer, the manufacturer shall provide to the consumer as many of the following remedies as are applicable and elected by the consumer, whereupon the consumer shall return to the manufacturer the assistive device and any endorsements necessary to transfer its possession to the manufacturer:

(1) Accept return of the assistive device;

(2) Replace the assistive device with a comparable new assistive device;

(3) Refund collateral costs to the consumer;

(4) Refund to the consumer and to any holder of a perfected security interest in the assistive device the full purchase price, plus any finance charge paid by the consumer, plus collateral costs, less a reasonable allowance for use; or

(5) Refund to the lessor and to any holder of a perfected security interest in the assistive device the current value of the written lease, and refund to the consumer the amount paid by the consumer pursuant to the written lease, plus collateral costs, less a reasonable allowance for use.

§46A-6E-4. Lease enforcement.

No person may enforce the lease of an assistive device against the consumer after the consumer receives a refund pursuant to section three of this article.
§46A-6E-5. Disclosure upon further sale or lease.

No assistive device returned by a consumer or assistive device lessor in this state, or by a consumer or assistive device lessor in another state under a similar law of that state, may be sold or leased again in this state unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

§46A-6E-6. Arbitration.

(a) Each consumer shall have the option of submitting any dispute arising under this section upon the payment of a prescribed filing fee to an alternate arbitration mechanism established by the attorney general. Upon application of the consumer and payment of the filing fee, all manufacturers shall submit to such alternate arbitration.

(b) Such alternate arbitration shall be conducted by a professional arbitrator or arbitration firm appointed by the attorney general. The arbitration process shall ensure that personal objectivity of its arbitrators and the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut or refute such presentation.

(c) The attorney general shall propose a legislative rule or rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code to establish the arbitration mechanism provided for in this section.

§46A-6E-7. Limitations; waiver of rights; action for damages; punitive damages.

(a) This section does not limit rights or remedies available to a consumer under any other law.

(b) Any waiver by a consumer of rights under this article is void.

(c) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this section. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief that the court determines appropriate.
CHAPTER 93
(Com. Sub. for H. B. 2168—By Delegate Border)

[Passed February 10, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two hundred four, two hundred six, two hundred eight, two hundred ten and two hundred twelve, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to schedules of controlled substances; adding certain drugs thereto.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

§60A-2-206. Schedule II.

§60A-2-208. Schedule III.

§60A-2-210. Schedule IV.

§60A-2-212. Schedule V.

§60A-2-204. Schedule I.

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of subdivision
(34) of this subsection only, the term isomer includes the
optical and geometric isomers):

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-
phenethyl)-4-piperidinyl]-N-phenylacetamide);

(2) Acetylmethadol;

(3) Allylprodine;

(4) Alphacetylmethadol (except levoalphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

(5) Alphameprodine;

(6) Alphamethadol;

(7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-
phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-
phenylethyl)-4-(N-propanilido) piperidine);

(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-
 thiényl) ethyl-4-piperidinyl]-N-phenylpropanamide);

(9) Benzethidine;

(10) Betacetylmethadol;

(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-
phenethyl) -4-piperidinyl]-N-phenylpropanamide);

(12) Beta-hydroxy-3-methylfentanyl (other name: N-
[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-
phenylpropanamide);

(13) Betameprodine;

(14) Betamethadol;

(15) Betaprodine;

(16) Clonitazene;

(17) Dextromoramide;

(18) Diampromide;

(19) Diethylthiambutene;
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<thead>
<tr>
<th>No.</th>
<th>Substance</th>
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<tbody>
<tr>
<td>41</td>
<td>(20) Difenoxin</td>
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<tr>
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<td>(21) Dimenoxadol</td>
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<td>(22) Dimepheptanol</td>
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<td>(23) Dimethylthiambutene</td>
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<td>(24) Dioxaphetyl butyrate</td>
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<td>46</td>
<td>(25) Dipipanone</td>
</tr>
<tr>
<td>47</td>
<td>(26) Ethylmethylthiambutene</td>
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<td>48</td>
<td>(27) Etonitazene</td>
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<td>49</td>
<td>(28) Etoxeridine</td>
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<td>50</td>
<td>(29) Furethidine</td>
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<td>51</td>
<td>(30) Hydroxypethidine</td>
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<td>52</td>
<td>(31) Ketobemidone</td>
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<td>53</td>
<td>(32) Levomoramide</td>
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<tr>
<td>54</td>
<td>(33) Levophenacylmorphan</td>
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<tr>
<td>55</td>
<td>(34) 3-Methyfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);</td>
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<td>56</td>
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<tr>
<td>57</td>
<td>(35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);</td>
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<td>58</td>
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<td>59</td>
<td>(36) Morpheridine</td>
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<tr>
<td>60</td>
<td>(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);</td>
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<td>61</td>
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<tr>
<td>62</td>
<td>(38) Noracymethadol</td>
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<tr>
<td>63</td>
<td>(39) Norlevorphanol</td>
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<td>64</td>
<td>(40) Normethadone</td>
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<tr>
<td>65</td>
<td>(41) Norpipanone</td>
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<tr>
<td>66</td>
<td>(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);</td>
</tr>
</tbody>
</table>
68 (43) PEPAP(1-(2-phenethyl)-4-phenyl-4-acetoxy piperidine);
70  (44) Phenadoxone;
71  (45) Phenampromide;
72  (46) Phenomorphan;
73  (47) Phenoperidine;
74  (48) Piritramide;
75  (49) Proheptazine;
76  (50) Properidine;
77  (51) Propiram;
78  (52) Racemoramide;
79  (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
81  (54) Tilidine;
82  (55) Trimeperidine.
83  (c) Opium derivatives. — Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:
89  (1) Acetorphine;
90  (2) Acetyldihydrocodeine;
91  (3) Benzylmorphine;
92  (4) Codeine methylbromide;
93  (5) Codeine-N-Oxide;
94  (6) Cyprenorphine;
95  (7) Desomorphine;
96  (8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except HCl Salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methylidihydromorphine;
(15) Morphine methylbromide;
(16) Morphine methylsulfonate;
(17) Morphine-N-Oxide;
(18) Myrophone;
(19) Nicocodeine;
(20) Nicomorphine;
(21) Normorphine;
(22) Pholcodine;
(23) Thebacon.

(d) **Hallucinogenic substances.** — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical, position and geometric isomers):

(1) Alpha-ethyltryptamine; some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(2) 4-bromo-2, 5-dimethoxy-amphetamine; some trade or other names: 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA;
(3) 4-Bromo-2,5-dimethoxyphenethylamine; some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;

(4) 2,5-dimethoxyamphetamine; some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA;

(5) 2,5-dimethoxy-4-ethylamphetamine; some trade or other names: DOET;

(6) 4-methoxyamphetamine; some trade or other names: 4-methoxy-alpha-methylphenethylamine; para-methoxymphetamine; PMA;

(7) 5-methoxy-3, 4-methylenedioxyamphetamine;

(8) 4-methyl-2,5-dimethoxyamphetamine; some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP";

(9) 3,4-methylenedioxyamphetamine;

(10) 3,4-methylenedioxymethamphetamine (MDMA);

(11) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);

(12) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-hydroxy MDA);

(13) 3,4,5-trimethoxyamphetamine;

(14) Bufotenine; some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

(15) Diethyltryptamine; some trade and other names: N, N-Diethyltryptamine; DET;

(16) Dimethyltryptamine; some trade or other names: DMT;
(17) Ibogaine; some trade and other names: 7-ethyl-6, 6 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H-pyrido [1', 2': 1, 2] azepino [5,4-b] indole; Tabernanthe iboga;

(18) Lysergic acid diethylamide;

(19) Marihuana;

(20) Mescaline;

(21) Parahexyl-7374; some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl;

(22) Peyote; meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts;

(23) N-ethyl-3-piperidyl benzilate;

(24) N-methyl-3-piperidyl benzilate;

(25) Psilocybin;

(26) Psilocyn;

(27) Tetrahydrocannabinols; synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives and their isomers with similar chemical structure and pharmacological activity such as the following:

delta-1 Cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 Cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3,4 Cis or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these
structures, regardless of numerical designation of atomic positions covered.)

(28) Ethylamine analog of phencyclidine; some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(29) Pyrrolidine analog of phencyclidine; some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCpY, PHP;

(30) Thiophene analog of phencyclidine; some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine; TPCp, TCP;

(31) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other names: TCPy.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone;

(2) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Aminorex; some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(2) Cathinone; some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone;
(3) Fenethylline;

(4) Methcathinone, its salts, optical isomers and salts of optical isomers; some other names: (2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and URI432;

(5) (±) cis-4-methylaminorex; ((±)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

(6) N-ethylamphetamine;

(7) N,N-dimethylamphetamine; also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine.

(g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers.

(2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

§60A-2-206. Schedule II.

(a) Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
(1) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextorphan, nalbuphine, nalmefene, naloxone and naltrexone, and their respective salts, but including the following:

(A) Raw opium;
(B) Opium extracts;
(C) Opium fluid;
(D) Powdered opium;
(E) Granulated opium;
(F) Tincture of opium;
(G) Codeine;
(H) Ethylmorphine;
(I) Etorphine hydrochloride;
(J) Hydrocodone;
(K) Hydromorphone;
(L) Metopon;
(M) Morphine;
(N) Oxycodone;
(O) Oxymorphone;
(P) Thebaine;

(2) Any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (1) of this subsection, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves (including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound,
derivative, or preparation thereof which is chemically
equivalent or identical with any of these substances, except
that the substances shall not include decocainized coca
leaves or extractions of coca leaves, which extractions do
not contain cocaine or ecgonine;

(5) Concentrate of poppy straw (the crude extract of
poppys straw in either liquid, solid or powder form which
contains the phenanthrene alkaloids of the opium poppy).

(c) Opiates. — Unless specifically excepted or unless
in another schedule, any of the following opiates,
including its isomers, esters, ethers, salts and salts of
isomers, esters and ethers whenever the existence of such
isomers, esters, ethers and salts is possible within the
specific chemical designation, dextrorphan and
levopropoxyphene excepted:

(1) Alfentanil;
(2) Alphaprodine;
(3) Anileridine;
(4) Bezitramide;
(5) Bulk dextropropoxyphene (nondosage forms);
(6) Carfentanil;
(7) Dihydrocodeine;
(8) Diphenoxylate;
(9) Fentanyl;
(10) Isomethadone;
(11) Levo-alphacetylmethadol; some other names:
levo-alpha-acetylmethadol, levomethadyl acetate, LAAM;
(12) Levomethorphan;
(13) Levorphanol;
(14) Metazocine;
(15) Methadone;
(16) Methadone-Intermediate,
4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(17) Moramid-Intermediate, 2-methyl-3-
morpholino-1, 1-diphenylpropane-carboxylic acid;
(18) Pethidine; (meperidine);
(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-
phenylpiperidine;
(20) Pethidine-Intermediate-B, ethyl-4-
phenylpiperidine 4-carboxylate;
(21) Pethidine-Intermediate-C, 1-methyl-4-
phenylpiperidine-4-carboxylic acid;
(22) Phenazocine;
(23) Piminodine;
(24) Racemethorphan;
(25) Racemorphan;
(26) Remifentanil;
(27) Sufentanil.

(d) Stimulants. — Unless specifically excepted or
unless listed in another schedule, any material, compound,
mixture or preparation which contains any quantity of the
following substances having a stimulant effect on the
central nervous system:
(1) Amphetamine, its salts, optical isomers and salts of
its optical isomers;
(2) Methamphetamine, its salts, isomers and salts of its
isomers;
(3) Methylphenidate;
(4) Phenmetrazine and its salts.

(e) Depressants. — Unless specifically excepted or
unless listed in another schedule, any material, compound,
mixture or preparation which contains any quantity of the
following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

1. Amobarbital;
2. Glutethimide;
3. Pentobarbital;
4. Phencyclidine;
5. Secobarbital.

(f) Hallucinogenic substances:

1. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol);

2. Nabilone: [Another name for nabilone: (+)-trans-3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo [b,d] pyran-9-one].

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

1. Immediate precursor to amphetamine and methamphetamine:
   A. Phenylacetone;
   Some trade or other names: phenyl-2-propanone;
   P2P; benzyl methyl ketone; methyl benzyl ketone;

2. Immediate precursors to phencyclidine (PCP):
   A. 1-phenylcyclohexylamine;
   B. 1-piperidinocyclohexanecarbonitrile (PCC).
§60A-2-208. Schedule III.

(a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section.

(b) Stimulants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric), and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

1. Those compounds, mixtures or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures or preparations were listed on the twenty-fifth day of August, one thousand nine hundred seventy-one, as excepted compounds under §1308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

2. Benzphetamine;

3. Chlorphentermine;

4. Clortermine;

5. Phendimetrazine;

6. Hydrocodone.

(c) Depressants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

1. Any compound, mixture or preparation containing:
CONTROLLED SUBSTANCES

35 (A) Amobarbital;
36 (B) Secobarbital;
37 (C) Pentobarbital; or any salt thereof and one or more
38 other active medicinal ingredients which are not listed in
39 any schedule;
40 (2) Any suppository dosage form containing:
41 (A) Amobarbital;
42 (B) Secobarbital;
43 (C) Pentobarbital; or any salt of any of these drugs
44 and approved by the food and drug administration for
45 marketing only as a suppository;
46 (3) Any substance which contains any quantity of a
47 derivative of barbituric acid or any salt thereof;
48 (4) Chlorhexadol;
49 (5) Lysergic acid;
50 (6) Lysergic acid amide;
51 (7) Methyprylon;
52 (8) Sulfondiethylmethane;
53 (9) Sulfonethylmethane;
54 (10) Sulfonmethane;
55 (11) Tiletamine and zolazepam or any salt thereof;
56 some trade or other names for a tiletamine-zolazepam
57 combination product: Telazol; some trade or other names
58 for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohex-
59 anone; some trade or other names for zolazepam: 4-
60 (2-fluorophenyl)-6, 8-dihydro-1, 3, 8-trimethylpyrazolo-
61 [3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon;
62 (12) Human growth hormones or anabolic steroids.
63 (d) Nalorphine.
64 (e) Narcotic drugs. — Unless specifically excepted or
65 unless listed in another schedule, any material, compound,
mixture or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1.8 grams of codeine per 100 milliliters and not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters and not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active,
CONTROLLED SUBSTANCES

103 nonnarcotic ingredients in recognized therapeutic
104 amounts.

105 (f) Anabolic steroids. Unless specifically excepted or
106 unless listed in another schedule, any material, compound,
107 mixture, or preparation containing any quantity of the
108 following substances, including its salts, isomers, and salts
109 of isomers whenever the existence of such salts of isomers
110 is possible within the specific chemical designation:

111 (1) Anabolic Steroids.

§60A-2-210. Schedule IV.

1 (a) Schedule IV shall consist of the drugs and other
2 substances, by whatever official name, common or usual
3 name, chemical name, or brand name designated, listed in
4 this section.

5 (b) Narcotic drugs. Unless specifically excepted or
6 unless listed in another schedule, any material, compound,
7 mixture, or preparation containing any of the following
8 narcotic drugs, or their salts calculated as the free
9 anhydrous base or alkaloid, in limited quantities as set
10 forth below:

11 (1) Not more than 1 milligram of difenoxin and not
12 less than 25 micrograms of atropine sulfate per dosage
13 unit;

14 (2) Dextropropoxyphene (alpha-(+)-4-dimethylamino
15 -1,2-diphenyl-3-methyl-2-propionoxybutane).

16 (c) Depressants. Unless specifically excepted or unless
17 listed in another schedule, any material, compound,
18 mixture or preparation which contains any quantity of the
19 following substances, including its salts, isomers and salts
20 of isomers whenever the existence of such salts, isomers
21 and salts of isomers is possible within the specific chemical
22 designation:

23 (1) Alprazolam;
24 (2) Barbital;
25 (3) Bromazepam;
26  (4) Camazepam;
27  (5) Carisoprodol;
28  (6) Chloral betaine;
29  (7) Chloral hydrate;
30  (8) Chlordiazepoxide;
31  (9) Clobazam;
32  (10) Clonazepam;
33  (11) Clorazepate;
34  (12) Clotiazepam;
35  (13) Cloxazolam;
36  (14) Delorazepam;
37  (15) Diazepam;
38  (16) Estazolam;
39  (17) Ethchlorvynol;
40  (18) Ethinamate;
41  (19) Ethyl loflazepate;
42  (20) Fludiazepam;
43  (21) Flunitrazepam;
44  (22) Flurazepam;
45  (23) Halazepam;
46  (24) Haloxazolam;
47  (25) Ketazolam;
48  (26) Loprazolam;
49  (27) Lorazepam;
50  (28) Lormetazepam;
51  (29) Mebutamate;
52  (30) Medazepam;
CONTROLLED SUBSTANCES

(31) Meprobamate;
(32) Methohexital;
(33) Methylphenobarbital (mephobarbital);
(34) Midazolam;
(35) Nimetazepam;
(36) Nitrazepam;
(37) Nordiazepam;
(38) Oxazepam;
(39) Oxazolam;
(40) Paraldehyde;
(41) Petrichloral;
(42) Phenobarbital;
(43) Pinazepam;
(44) Prazepam;
(45) Quazepam;
(46) Temazepam;
(47) Tetrazepam;
(48) Triazolam;
(49) Zolpidem.

(d) Fenfluramine. Any material, compound, mixture or preparation which contains any quantity of the following substance, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible: Fenfluramine.

(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the
central nervous system, including its salts, isomers and salts of isomers:

(1) Cathine ((+)- norpseudoephedrine);
(2) Diethylpropion;
(3) Fencamfamin;
(4) Fenproporex;
(5) Mazindol;
(6) Mefenorex;
(7) Pemoline (including organometallic complexes and chelates thereof);
(8) Phentermine;
(9) Pipradrol;
(10) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(f) Other substances. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Pentazocine;
(2) Butorphanol.

Amyl nitrite, butyl nitrite, isobutyl nitrite and the other organic nitrites are controlled substances and no product containing these compounds as a significant component shall be possessed, bought or sold other than pursuant to a bona fide prescription or for industrial or manufacturing purposes.

§60A-2-212. Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
(b) Narcotic drugs. Unless specifically excepted or
unless listed in another schedule, any material, compound,
mixture or preparation containing any of the following
narcotic drugs and their salts, as set forth below:

(1) Buprenorphine.

(c) Narcotic drugs containing nonnarcotic active
medicinal ingredients. Any compound, mixture or
preparation containing any of the following narcotic
drugs or their salts calculated as the free anhydrous base
or alkaloid in limited quantities as set forth below, which
shall include one or more nonnarcotic active medicinal
ingredients in sufficient proportion to confer upon the
compound, mixture or preparation valuable medicinal
qualities other than those possessed by the narcotic drug
alone:

(1) Not more than 200 milligrams of codeine per 100
milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine
per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine
per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate
and not less than 25 micrograms of atropine sulfate per
dosage unit;

(5) Not more than 100 milligrams of opium per 100
milliliters or per 100 grams;

(6) Not more than 0.5 milligrams of difenoxin and
not less than 25 micrograms of atropine sulfate per dosage
unit.

(d) Stimulants. Unless specifically exempted or
excluded or unless listed in another schedule, any material,
compound, mixture, or preparation which contains any
quantity of the following substances having a stimulant
effect on the central nervous system, including its salts,
isomers and salts of isomers:

(1) Pyrovalerone.
AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen, relating to the safety of convenience food store employees; providing definitions; safety procedures to be followed by certain convenience food stores; civil penalties; and tax credit for owners of certain convenience food stores.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. CONVENIENCE FOOD STORES SAFETY ACT.

§21-13-1. Purpose.


§21-13-4. Penalties and enforcement.

§21-13-5. Tax credit.

§21-13-1. Purpose.

The Legislature finds that it is necessary to the safety, health, public interest and general welfare of the people of the state of West Virginia that convenience food stores operating in the state be regulated to prevent the ever-present danger to the safety, health, life and general welfare of its citizens and the employees of these stores.


As used in this article, except where a different meaning is provided in section five of this article:
(1) "Convenience food store" means a business establishment that:

(A) Derives fifty percent or more of its gross income from the sale of goods, merchandise or other articles of value in their original containers or gasoline and other petroleum products with gross annual sales of one million dollars or more; and

(B) Offers a limited quantity and variety of food, household and sundry items; and

(C) Operates at any time between the hours of twelve o’clock a.m. and five o’clock a.m.; and

(D) Does not sell or offer for sale prescription drug items.

(2) "Owner" means the person, corporation, partnership, joint venture or other group enterprise having an ownership or proprietary interest in a convenience food store.

(3) "Employee" means any person permitted to work by a person, corporation, partnership, joint venture or group enterprise legally responsible for the operation of the convenience food store.


All convenience food stores shall comply with the following provisions:

(1) If open for business after twelve o’clock a.m., the convenience food store must employ two persons who are continuously on duty on the premises from twelve o’clock a.m. until closing or five o’clock a.m., whichever occurs first, or employ one person during these hours and install the security camera system provided for in subdivision (3) of this section, or install a security booth for one person to occupy during these hours or lock their doors and allow customers to be served through a pass-through device.

(2) The entire area of the parking area used by customers of convenience food stores must be lighted during all hours of darkness when employees or
CONVENIENCE FOOD STORES SAFETY ACT

customers, or both employees and customers are on the premises. Minimum average maintained illuminance must be two footcandles or greater with a uniformity ratio (average to minimum) of no more than five to one unless such lighting violates applicable municipal lighting code requirements or creates a public or private nuisance.

(3) If only one person is employed on duty on the premises from twelve o'clock a.m. until closing or five o'clock a.m., the store shall install, by the first day of January, one thousand nine hundred ninety-nine, a security camera capable of producing a retrievable image on film or tape that can be enlarged through projection or other means. The cameras shall be maintained in proper working order at all times.

(4) Any owner or employee who works between the hours of twelve o'clock a.m. and five o'clock a.m. at a convenience food store shall be trained in robbery prevention by the owner. Owners shall develop a written robbery prevention program which shall be available for inspection during regular business hours at each convenience food store, and shall base the training on the program.

(5) Provide height markers at the door or doors exiting the premises which display measurements from the floor: Provided, That any owner who is in compliance with this section and certifies such compliance to the superintendent of state police or the superintendents designee, or the county sheriff's department or the municipal police department, on or before the first day of January, one thousand nine hundred ninety-nine, shall be exempt from the provisions of section four of this article.

§21-13-4. Penalties and enforcement.

Any owner who fails to comply with this article, upon the first violation, shall be assessed a civil fine of not less than one hundred dollars nor more than five hundred dollars; and, upon a second violation shall be fined not less than five hundred dollars nor more than one thousand dollars. For third and subsequent violations, an owner shall be fined not less than one thousand dollars nor more than five thousand dollars. If noncompliance is corrected within ten days after a violation, no fine may be assessed.
§21-3-5. Tax credit.

(a) For purposes of this section, an owner of a convenience food store means an owner, as defined in subdivision (2), section two of this article, of a convenience food store that meets all the requirements contained within the definition of a convenience food store set forth in subdivision (1), section two of this article except that the annual gross sales of the convenience food store is less than one million dollars.

(b) An owner of a convenience food store within the meaning prescribed in subsection (a) of this section is entitled to receive a tax credit against the owner’s tax liability on taxable income earned from conducting the business of the convenience food store for each convenience food store that meets the requirements of subdivision (3), section three of this article.

(c) The tax credit available under this section is an amount equal to the cost to the owner of meeting the requirements of subdivision (3), section three of this article, or five hundred dollars, whichever is less.

CHAPTER 95

(H. B. 4702—By Delegates Michael, Mezzatesta, Doyle, Clements, Leggett and Frederick)

[Passed March 21, 1998; in effect from passage. Approved by the Governor.]
thirty-three of said code, all relating to providing for the administrative structure and funding of juvenile and adult detention and corrections, construction, operations, maintenance and oversight; providing that the regional jail and correctional facility authority may finance certain costs through the investment management board; requiring the investment management board to invest certain funds available for investment from the public employees retirement system in the state's regional jail and correctional facility system; limiting the amount that may be transferred; loan repayment; requiring authority to certify a list of projects; rate of return on investments; creating funds; requiring lawsuit; specifying court where lawsuit shall be filed; providing that the authority may design, finance and construct or renovate and repair juvenile facilities; adding definitions; revising the composition, powers and duties of the authority; revising the composition and scope of authority of the jail and correctional facility standards commission; creating a separate standards commission for juvenile facilities and providing for the appointment of members; specifying powers and duties of the juvenile facilities standards commission; authorizing the regional jail and correctional facility authority to construct new facilities or renovate existing facilities to be used for secure predisposition detention of juveniles, for juvenile transfer facilities and for juvenile correctional facilities and allowing said facilities to be adjacent to regional jails under certain circumstance; redefining the regional jail and correctional facility development fund; including discretionary oversight of juvenile facilities under the jurisdiction of the legislative oversight committee on regional jails and correctional facilities; providing for the disposition of certain designated insurance tax revenues; eliminating obsolete and superfluous provisions; and providing a reasonable return on the investment by dedicating a portion of revenues generated from certain designated insurance taxes.

Be it enacted by the Legislature of West Virginia:

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

Chapter
  33. Insurance.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-21. Investment with regional jail and correctional facility authority.

(a) The Legislature finds and declares:

(1) That the supreme court of appeals has determined and ordered that the constitution of this state imposes a duty on behalf of the state to make significant improvements in the jail and correctional facility system, including the duty to make capital improvements to facilities and to pay for the cost of those improvements;

(2) That construction of capital improvements requires that the cost of the facilities be financed over time; that capital improvements cannot be funding out of the current year appropriations of the Legislature; and that section fifty-one, article six of the constitution prohibits the Legislature amending the budget bill so as to create a deficit;

(3) That while the supreme court of appeals is empowered to interpret the laws, including the constitution of the state, section one, article ten of the constitution grants to the Legislature the power of taxation; section fifty-one, article six of the constitution grants to the Legislature the power of appropriation; and section one, article five of the constitution prohibits any branch of government from exercising powers properly belonging to another;
24 (4) That the enacting of new taxes, or the diversion of
25 revenues from other essential departments and functions
26 of government, in order to support capital improvements
27 in jails and correctional facilities, is not in the interests of
28 the people of the state represented in the Legislature, and
29 is specifically rejected by the Legislature in its exercise of
30 its legitimate constitutional powers;

31 (5) That the decision of the supreme court of appeals,
32 imposing a duty on the state to construct and pay for
33 capital improvements to jails and correctional facilities
34 arising out of the Bill of Rights of the United States
35 constitution declared ratified in the year one thousand
36 seven hundred ninety-one, and the state constitution of the
37 year one thousand eight hundred sixty-three, constitutes a
38 prior liability of the state within the meaning of section
39 four, article ten of the constitution and an exception to the
40 constitutional limitation on contracting state debt;

41 (6) That the construction of capital improvements of
42 jail and correctional facilities may be funded through
43 funds available for investment through the West Virginia
44 investment management board, invested in such a manner
45 as to be assured as high a rate of return as would be
46 earned if these funds were otherwise invested, and repaid
47 by the state as provided in this article.

48 (b) The investment management board shall upon
49 request of the regional jail and correctional facility
50 authority transfer moneys as an investment, from funds
51 available for investment from the public employees
52 retirement system, to the regional jail and correctional
53 facility authority. The amount transferred may not exceed
54 one hundred fifty million dollars in the aggregate and
55 shall be used for the purposes of financing construction of
56 regional jails, correctional facilities, juvenile detention
57 facilities, juvenile correctional facilities, or extensions,
58 renovations, improvements or additions thereto, or for the
59 replacement or renovation of existing facilities. If the
60 board has loaned money to the state building commission
61 under subsection (b), section nineteen of this article, the
62 total amount loaned shall be repaid to the board from
63 funds made available under the investment made pursuant
to this section. Prior to the expenditure of any of the funds, the regional jail and correctional facility authority shall certify to the joint committee on government and finance a list of projects that are to be funded from the invested funds. This certified list may not thereafter be altered or amended other than by legislative enactment. Funds shall be invested with the regional jail and correctional facility authority as requested by the regional jail and correctional facility authority. The money invested shall earn a return at a rate equal to the annualized rate of return earned by the core fixed-income portfolio of the public employees retirement system over the previous five years, plus one tenth of one percent: Provided, That in all events this rate of return may not be less than five percent per annum. The monthly rate of return shall be calculated every quarter. The manner and timing of the investment shall be determined by the board. The total of the amounts invested may not exceed a total of one hundred fifty million dollars during fiscal year one thousand nine hundred ninety-eight, and fiscal year one thousand nine hundred ninety-nine, cumulatively. The authority to make the investment authorized by this section expires on the thirtieth day of June, one thousand ninety-nine.

(c) There is created in the state treasury a regional jail and correctional facility investment fund dedicated to the payment of investment earnings and the return of capital invested under this section. The treasurer shall administer the fund. The fund is an interest-bearing account with interest earned credited to and deposited back into the fund. The fund consists of amounts required to be deposited by section fourteen, article three, chapter thirty-three of this code.

(d) The treasurer shall, monthly, transfer amounts from the regional jail and correctional facility investment fund to the board that are sufficient to allow investment earnings to be paid and the capital invested returned in substantially equal amounts by the thirty-first day of August, two thousand twenty-three: Provided, That the amount of investment earnings paid and the capital invested returned during the fiscal year beginning the first
day of July, one thousand nine hundred ninety-eight, may not exceed ten million dollars. Payment representing investment earnings and the return of capital invested shall begin six months from the date the initial funds are invested, or by the tenth day of January, one thousand nine hundred ninety-nine, whichever is later.

(e) The board shall calculate the amount of the projected annual investment earnings to be paid and the capital invested to be returned and certify the amount to the treasurer on the first day of December of each year, until all investment earnings are paid and the total capital invested is returned.

(f) As a condition precedent to the transfer and investment of moneys by the investment management board pursuant to subsection (b) of this section, either the investment management board or the regional jail and correctional authority shall have first caused a judicial determination to be made by an appropriate action initiated in the West Virginia supreme court of appeals regarding the transfer of moneys by the investment management board to the regional jail and correctional facility authority as an investment from funds available for investment from the public employees retirement system, and to otherwise determine the constitutionality of the provisions of Enrolled House Bill 4702, as enacted by the Legislature in the year one thousand nine hundred ninety-eight. This judicial determination shall be brought as soon as practicable, but not later than thirty days following the effective date of the amendments to this section made by the Legislature in the year one thousand nine hundred ninety-eight.

(g) The Legislature recognizes the fiduciary liability and responsibility imposed on the board by this article and by article six, chapter forty-four of this code. The board, its trustees and employees, have no liability, either personally or corporately with respect to the investment provided for in this section and the loans made under section nineteen of this article, if the investment and loans are made in accordance with the respective provisions of this section and section nineteen of this article.
145  (h) The regional jail and correctional facility authority
146  shall expend the funds invested under the provisions of
147  this section to proceed with the projects identified
148  pursuant to subsection (b) of this section.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-1a. Legislative findings and purposes.
§31-20-2. Definitions.
§31-20-3. West Virginia regional jail and correctional facility authority; composition; appointment; terms; compensation and expenses.
§31-20-4. Governing body; organization and meetings; quorum; administrative expenses.
§31-20-5. Powers and duties of the authority; bidding procedures.
§31-20-5c. Additional powers and duties of the authority; juvenile detention facilities.
§31-20-8. Jail facilities standards commission; appointment; compensation; vacancies; quorum.
§31-20-8a. Juvenile facilities standards commission; appointment; compensation; vacancies; quorum.
§31-20-9a. Juvenile facilities standards commission: purpose; powers; and duties.
§31-20-10. Regional jail and correctional facility development fund.
§31-20-26. Legislative oversight committee.

§31-20-1a. Legislative findings and purposes.

1  (a) The Legislature finds as follows:

2     (1) That some existing jails, adult correctional facilities
3     and juvenile detention and correctional facilities in this
4     state serve neither the best interests of the incarcerated
5     populations of the jails and facilities nor the citizens of
6     West Virginia;

7     (2) That due to time constraints established and
8     imposed by judicial decisions, it is imperative that the
9     Legislature give immediate and diligent attention to the
10     improvement of existing facilities and the construction
11     and maintenance of new facilities, as well as to the
development and implementation of new, innovative and
effective programs dealing with incarcerated persons;

(3) That the physical condition of some existing jails,
adult correctional facilities and juvenile facilities
contribute to a frustration of efforts to provide
rehabilitation, education, vocational training, and social
and psychological adjustment and improvement for
incarcerated persons, with the result that those existing
facilities are utilized largely for the limited purposes of
confinement;

(4) That there is a need to examine, understand and
implement various new and innovative trends which are
being advanced in the area of correctional institution
design, and to explore the developing alternatives to
incarceration which are being experimented with in other
jurisdictions; and

(5) That the revenues of this state, insofar as they are
currently used to maintain a traditional penal system, are
not efficiently utilized to provide facilities or produce
programs which could direct an adult or juvenile inmate’s
or detainee’s time and effort to prepare him or her for life
outside of confinement; nor do the revenues provide
corrections officials with the resources necessary to
address the issues and problems with which they are
confronted.

(b) The purposes of this article are as follows:

(1) To provide a cost-efficient system within this state
for the construction, maintenance and operation of adult
jails and correctional facilities;

(2) To develop and implement plans for the
renovation and improvement of existing facilities and the
design and construction of new facilities to better serve the
incarcerated and detained juvenile and adult populations
and the citizens of this state;

(3) To provide an environment in which new and
innovative corrections programs may be considered and
undertaken, and in which opportunities may be offered to
incarcerated persons to overcome personal deficiencies
which are educational, vocational, social or psychological in nature; and

(4) To investigate the feasibility of individualizing and classifying adult inmates according to their psychological and physical conditions at the time they are incarcerated, and the feasibility of designing for each such inmate a plan for self-improvement and rehabilitation.

§31-20-2. Definitions.

Unless the context indicates clearly otherwise, as used in this article:

(a) "Adjacent regional juvenile detention facility" means a facility constructed or maintained on property owned or controlled by the regional jail authority and designed for the short term preadjudicatory detention of juveniles, for the confinement of juveniles who are awaiting transportation to or placement at another juvenile detention facility or juvenile correctional facility and for juveniles who are awaiting trial as an adult pursuant to section ten, article five, chapter forty-nine of this code.

(b) "Authority" or "West Virginia Regional Jail Authority" means the West Virginia regional jail and correctional facility authority created by this article.

(c) "Board" means the governing body of the authority.

(d) "Bonds" means bonds of the authority issued under this article.

(e) "Cost of construction or renovation of a local jail facility, regional jail facility or juvenile facility" means the cost of all lands, water areas, property rights and easements, financing charges, interest prior to and during construction and for a period not exceeding six months following the completion of construction, equipment, engineering and legal services, plans, specifications and surveys, estimates of costs and other expenses necessary or incidental to determining the feasibility or practicability of any project, together with any other expenses as may be necessary or incidental to the financing and the
construction or renovation of the facilities and the placing
of the facilities in operation.

(f) "County" means any county of this state.

(g) "Federal agency" means the United States of
America and any department, corporation, agency or
instrumentality created, designated or established by the
United States of America.

(h) "Fund" means the regional jail and correctional
facility development fund provided in section ten of this
article, including those accounts that may be established
by the authority for accurate accounting of the
expenditure of public funds by that agency.

(i) "Government" means state and federal
government, and any political subdivision, agency or
instrumentality of the state or federal government,
corporate or otherwise.

(j) "Inmate" means any adult person properly
committed to a local or regional jail facility or a
 correctional facility.

(k) "Local jail facility" means any county facility for
the confinement, custody, supervision or control of adult
persons convicted of misdemeanors, awaiting trial or
awaiting transportation to a state correctional facility.

(l) "Municipality" means any city, town or village in
this state.

(m) "Notes" means any notes as defined in section
one hundred four, article three, chapter forty-six of this
code issued under this article by the authority.

(n) "Correctional facility" means any correctional
facility, penitentiary or other correctional institution
operated by the division of corrections for the
incarceration of adults.

(o) "Regional jail facility" or "regional jail" means
any facility operated by the authority and used jointly by
two or more counties for the confinement, custody,
supervision or control of adult persons convicted of
misdemeanors or awaiting trial or awaiting transportation to a state correctional facility.

(p) "Regional jail commission" means the commission established in section eight of this article.

(q) "Revenues" means all fees, charges, moneys, profits, payments of principal of, or interest on, loans and other investments, grants, contributions and all other income received by the authority.

(r) "Security interest" means an interest in the loan portfolio of the authority which is secured by an underlying loan or loans and is evidenced by a note issued by the authority.

(s) "Work farm" has the same meaning as that term is used in section twelve, article eight, chapter seven of this code authorizing work farms for individual counties.

(t) "Juvenile detention facility" or "juvenile detention center" means a facility operated by the division of juvenile services for the short term preadjudicatory detention of juveniles, for the confinement of juveniles who are awaiting transportation to or placement at another juvenile detention facility or juvenile correctional facility and for juveniles who are awaiting trial as an adult pursuant to section ten, article five, chapter forty-nine of this code.

(u) "Juvenile correctional facility" means a facility operated by the division of juvenile services for the post-dispositional confinement of juveniles adjudicated of offenses that would be criminal offenses if committed by an adult.

§31-20-3. West Virginia regional jail and correctional facility authority; composition; appointment; terms; compensation and expenses.

There is hereby created the West Virginia regional jail and correctional facility authority which shall be a body corporate and a government instrumentality. The authority shall have and is hereby granted all of the powers and authority and shall perform all of the
functions and services heretofore vested in and performed
by the West Virginia regional jail and prison authority.
The West Virginia regional jail and prison authority is
hereby abolished. Wherever in this chapter and elsewhere
in law reference is made to the West Virginia regional jail
and prison authority, such reference shall henceforth be
construed and understood to mean the West Virginia
regional jail and correctional facility authority.

The authority shall be governed by a board of nine
members, seven of whom are entitled to vote on matters
coming before the authority. The complete governing
board shall consist of the commissioner of the division of
corrections; the director of the division of juvenile
services; the secretary of the department of military affairs
and public safety; the secretary of the department of
administration, or his or her designated representative;
three county officials appointed by the governor, no more
than two of which may be of the same political party; and
two citizens appointed by the governor to represent the
areas of law and medicine. The commissioner of the
division of corrections and the director of the division of
juvenile services shall serve in an advisory capacity and are
not entitled to vote on matters coming before the
authority. Members of the Legislature are not eligible to
serve on the board.

The governor shall nominate and, by and with the
advice and consent of the Senate, appoint the five
appointed members of the authority for staggered terms
of four years beginning the first day of July, one thousand
nine hundred eighty-nine. Of the members of the board
first appointed, one shall be appointed for a term ending
the thirtieth day of June, one thousand nine hundred
ninety-one, two shall be appointed for terms ending the
thirtieth day of June, one thousand nine hundred
ninety-two, and two shall be appointed for terms ending
the thirtieth day of June, one thousand nine hundred
ninety-three. As these original appointments expire, each
subsequent appointment shall be for a full four-year term.

Any appointed 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 appointed
member is eligible for reappointment. Members of the
authority 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.

All members of the board of the authority shall
execute an official bond in a penalty of ten thousand
dollars, conditioned as required by law. Premiums on
such bond shall be paid from funds accruing to the
authority. Such bond shall be approved as to form by the
attorney general and as to sufficiency by the governor
and, when fully executed and approved, shall be filed in
the office of the secretary of state.

§31-20-4. Governing body; organization and meetings;
quorum; administrative expenses.

The governing body of the authority shall consist of
the voting members of the board as provided for in
section three of this article and shall exercise all the
powers given to the authority in this article. On the
second Monday of July of each odd-numbered year, the
board shall meet to elect a chairman and a secretary from
among its own members. The secretary of the department
of administration or his or her designated representative
shall serve as treasurer of the board. The board shall
otherwise meet quarterly, unless a special meeting is called
by its chairman.

A majority of the members of the board constitute a
quorum, and a quorum must be present for the board to
conduct business. Unless the bylaws require a larger
number, action may be taken by majority vote of the
members present.

The board shall prescribe, amend and repeal bylaws
and rules governing the manner in which the business of
the authority is conducted and shall review and approve
the budget prepared by the executive director annually.
The governor shall, with the advice and consent of the Senate, appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the governor. The executive director is empowered to employ any other personnel he or she determines necessary and may appoint counsel and legal staff for the authority and retain such temporary engineering, financial and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article. The executive director is further empowered to engage in negotiations and carry out plans to implement the provisions of this article and to exercise those powers listed in section five of this article on behalf of the authority. The executive director shall prepare annually a budget to be submitted to the board for its review and approval.

All costs incidental to the administration of the authority, including office expense, personal services expense and current expense, shall be paid from the regional jail and correctional facility development fund in accordance with guidelines issued by the board of the authority.

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

Public hearings pursuant to this section shall be held by the authority in convenient locations for public comment on the establishment of regional jails. The authority shall cause to be published at least two weeks in advance of a hearing a Class II-0 legal advertisement, as provided in section two, article three, chapter fifty-nine of this code, setting forth the reason for the hearing and the time, place and date thereof. The publication area shall be each county which may be included in a region for the purposes of a regional jail with the county in which the public hearing is held.

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

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

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

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

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

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

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

(f) To apply to the circuit court having venue of the
offense to have punished for contempt any witness who
refuses to obey a subpoena, refuses to be sworn or
affirmed, or refuses to testify, or who commits any
contempt after being summoned to appear.
(g) To sue and be sued, implead and be impleaded, and complain and defend in any court.

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

(i) To make rules for the management and regulation of its affairs pursuant to article three, chapter twenty-nine-a of this code.

(j) To appoint officers, agents and employees.

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

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

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

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

(o) To issue its bonds, security interests and notes payable solely from the revenues or other funds available to the authority therefor; and the authority may issue its bonds, security interests or notes in such principal amounts as it considers necessary to provide funds for any purposes under this article, including:
(1) The payment, funding or refunding of the principal of, interest on or redemption premiums on, any bonds, security interests or notes issued by it whether the bonds, security interests, notes or interest to be funded or refunded have or have not become due.

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

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

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

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

(s) To the extent permitted under its contracts with the holders of bonds, security interests or notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or
interest, security or any other term of any bond, security
interest, note or contract or agreement of any kind to
which the authority is a party.

(t) To sell security interests in the loan portfolio of the
authority. The security interests shall be evidenced by
instruments issued by the authority. Proceeds from the
sale of security interests may be issued in the same manner
and for the same purposes as bond and note revenues.

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

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

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

(x) To exercise all power and authority provided in
this article necessary and convenient to plan, finance,
construct, renovate, repair and replace juvenile detention
facilities and juvenile correctional facilities.

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

§31-20-5c. Additional powers and duties of the authority;
juvenile detention facilities.
(a) The regional jail and correctional facility authority shall complete a comprehensive study of all existing juvenile detention facilities in the state of West Virginia no later than the first day of October, one thousand ninety-eight. During the conduct of this study, all state agencies shall provide the authority with any relevant information and materials that the authority requests. This study shall include an assessment of the physical conditions of confinement within the existing juvenile detention facilities and the relative need for facilities of that type, taking into account the broad range of alternatives that are available for juveniles who are in the custody of the division of juvenile services.

(b) After completing this study, the authority shall submit a report to the governor proposing a plan for the establishment of regional juvenile detention facilities.

(c) The authority shall consider, but is not limited to, the following when in developing the regional juvenile detention facilities plan:

(1) All federal statutes and mandates concerning the location, construction, operation, administration and staffing of juvenile detention facilities;

(2) The relative physical condition of the juvenile detention facilities located within the state;

(3) The transportation costs associated with the establishment of centralized and regional juvenile detention facilities, including, but not limited to, the costs of transporting detained juveniles to court appearances and for other necessary absences from the facility;

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

(5) Information received from public hearings;

(6) The relative savings in cost and efficiency of providing regional juvenile detention services at facilities located adjacent to existing regional jail facilities, including moneys saved by the sharing of certain staff and services, including food services, to the extent that such
sharing of resources is permitted by federal law and
guidelines;

(7) Available facilities located adjacent to existing
regional jails which may be used as regional juvenile
detention facilities, including, but not limited to, existing
county and state owned properties: Provided, That if the
authority determines that an existing facility meets
applicable standards, including all federal standards, or
could reasonably be made to meet the standards for a
regional juvenile detention facility, the authority may
proceed to acquire that existing facility and compensate
the owner thereof in an amount that may not exceed fair
market value.

§31-20-8. Jail facilities standards commission; appointment;
compensation; vacancies; quorum.

(a) A jail facilities standards commission of twelve
members is hereby created. The superintendent of the
state police or his or her designee shall serve as
chairperson of the commission and is eligible to vote on
matters before the commission. The governor shall
appoint two county sheriffs, to be chosen from a list of
three names provided by the president of the West
Virginia sheriffs' association, three county commissioners,
to be chosen from a list of five names provided by the
president of the West Virginia county commissioners'
association, and one chief of police, to be chosen from a
list of three names provided by the president of the West
Virginia police chiefs' association. Each of the
appointed members shall serve for a term of three years, is
eligible for reappointment and may vote on matters before
the commission. The executive director of the regional
jail and correctional facility authority, the commissioner
of the division of corrections, the commissioner of the
bureau of public health, the state fire marshal, and the
superintendent of schools or their designees shall be
members ex officio in an advisory capacity.

(b) Members of the commission shall serve without
compensation, but may be reimbursed by the regional jail
and correctional facility authority for reasonable and
necessary expenses incurred in the performance of their
duties. The regional jail and correctional facility authority shall provide the commission with secretarial and other necessary services.

(c) A vacancy among the appointed members of the commission shall be filled, within thirty days, in the same manner as the original appointment. A quorum consists of four of the seven voting members.

§31-20-8a. Juvenile facilities standards commission; appointment; compensation; vacancies; quorum.

(a) A juvenile facilities standards commission consisting of nine members is hereby created. The governor shall appoint two citizen members who are experienced and knowledgeable in the field of law enforcement; one citizen member who is experienced and knowledgeable in the field of juvenile development; and one lay member. Each of these appointed members shall serve for a term of three years and be eligible for reappointment. The secretary of the department of military affairs and public safety shall be a member ex officio and shall serve as the commission's chairman. The state fire marshal and the chairman of the juvenile justice subcommittee of the governor's committee on crime, delinquency and correction shall be members ex officio. The director of the division of juvenile services and the executive director of the regional jail and correctional facility authority shall be members ex officio but shall serve in an advisory capacity and are not entitled to vote on matters coming before the commission.

(b) Members of the commission shall serve without compensation, but may be reimbursed by the division of juvenile services for reasonable and necessary expenses incurred in the performance of their duties. The division of juvenile services shall provide the commission with secretarial and other necessary services.

(c) A vacancy among the appointed members of the commission shall be filled, within thirty days, in the same manner as the original appointment. A quorum consists of four of the seven voting members.
§31-20-9. Jail facilities standards commission; purpose, powers and duties.

(a) The purpose of the jail facilities standards commission is to assure that proper minimum standards and procedures are developed for jail facility operation, maintenance and management of inmates for regional jails and local jail facilities used as temporary holding facilities. In order to accomplish this purpose, the commission shall:

(1) Prescribe standards for the maintenance and operation of county and regional jails. The standards shall include, but not be limited to, requirements assuring adequate space, lighting and ventilation; fire protection equipment and procedures; provision of specific personal hygiene articles; bedding, furnishings and clothing; food services; appropriate staffing and training; sanitation, safety and hygiene; isolation and suicide prevention; appropriate medical, dental and other health services; indoor and outdoor exercise; appropriate vocational and educational opportunities; classification; inmate rules and discipline; inmate money and property; religious services; inmate work programs; library services; visitation, mail and telephone privileges; and other standards necessary to assure proper operation: Provided, That the standards developed for the construction, operation and maintenance of jails apply only to jail facilities completed after the fifth day of April, one thousand nine hundred eighty-eight, and that the standards serve only as guidelines for any jail facility in operation prior to that date: Provided, however, That the commission shall establish standards and procedures permitting and implementing in those facilities the double bunking of inmates in all appropriate cases to the extent that this practice does not violate federal law;

(2) Propose legislative rules for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code that are necessary to implement the provisions of this article relating to jail facilities, including, without limitation, minimum jail and work farm standards which shall be proposed for promulgation on or before the first day of July, one thousand nine hundred
ninety-nine: Provided, That rules filed by the jail and correctional facilities standards commission and authorized by the Legislature to be promulgated before the amendment to this section enacted in the regular session of the Legislature in the year one thousand nine hundred ninety-eight remain in force except that such previously promulgated rules no longer apply to: (i) Correctional facilities; and (ii) jail facilities that were originally constructed for use as a jail which were completed and placed in operation before the fifth day of April, one thousand nine hundred ninety-eight: Provided, however, That such previously promulgated rules shall serve as guidelines for those facilities that fall within the specifications of (ii) herein;

(3) Develop a process for reviewing and updating the jail and work farm standards pursuant to the provisions of article three, chapter twenty-nine-a of this code as necessary to assure that they conform to current law; and

(4) Report periodically to the regional jail and correctional facility authority and the appropriate county and municipal authorities to advise, recommend, and direct actions to be taken by the authority, the county or the municipality to implement proper minimum jail and work farm standards.

(b) Notwithstanding any other provision of this code to the contrary, any county commission providing and maintaining a jail on the effective date of this article may not be required to provide and maintain a jail after a regional jail becomes available pursuant to the provisions of article twenty, chapter thirty-one of this code, unless the county commission determines that a facility is necessary: Provided, That the county commission may provide and maintain a holding facility which complies with the standards set forth for holding facilities in legislative rules promulgated by the jail facilities standards commission or its predecessor, the jail and correctional facilities standards commission.

§31-20-9a. Juvenile facilities standards commission; purpose; powers; and duties.
The purpose of the commission is to assure that proper minimum standards and procedures are developed for juvenile detention and juvenile correctional facility operation, maintenance and management. To this end, the commission shall:

(1) Develop standards for the maintenance and operation of juvenile detention and correctional facilities. These standards shall include, but not be limited to, requirements assuring adequate space, lighting and ventilation; fire protection equipment and procedures; provision of specific personal hygiene articles; bedding, furnishings and clothing; food services; appropriate staffing and training; sanitation, safety and hygiene; isolation and suicide prevention; appropriate medical, dental and other health services; indoor and outdoor exercise; appropriate vocational and educational opportunities; rules and discipline; religious services; vocational programs; library services; visitation, mail and telephone privileges; and other standards necessary to assure proper operation.

(2) Propose legislative rules for promulgation pursuant to article three, chapter twenty-nine-a of this code, including, without limitation, the minimum standards for juvenile detention and correctional facilities as provided in subdivision (1) of this section not later than the first day of January, one thousand nine hundred ninety-nine.

(3) Develop a process for reviewing and updating these standards as necessary to assure that they conform to current law.

(4) Report periodically to the authority to advise and recommend actions to be taken by the authority, if necessary, to implement proper standards in the state's juvenile detention and correctional facilities.

§31-20-10. Regional jail and correctional facility development fund.

(a) The regional jail and correctional facility development fund is hereby created and shall be
composed of special accounts in the state treasury. The
fund shall operate as a revolving fund whereby all
appropriations and payments to the fund may be applied
and reapplied by the authority for the purposes of this
article. Separate accounts may be established within the
fund for the purpose of identification of various revenue
resources and payment of specific obligations. These
separate accounts may be used for purposes that include,
but are not limited to, the construction, renovation or
repair of specific facilities, cash control, facility
maintenance and for the individual operating accounts of
facilities operated by the authority. The authority may
create other separate accounts within the fund that it
determines are necessary for the efficient operation of the
authority.

(b) Revenues deposited into the fund shall be used to
make payments of interest and shall be pledged as security
for bonds, security interests or notes issued or
lease-purchase obligations entered into with another state
entity by the authority pursuant to this article.

(c) Whenever the authority determines that the balance
in the fund is in excess of the immediate requirements of
this article, it may request that the excess be invested until
needed. In this case the excess shall be invested in a
manner consistent with the investment of temporary state
funds. Interest earned on any money invested pursuant to
this section shall be credited to the fund.

(d) If the authority determines that funds held in the
fund are in excess of the amount needed to carry out the
purposes of this article, it shall take any action that is
necessary to release the excess and transfer it to the
general revenue fund of the state treasury.

(e) The fund shall consist of the following:

(1) Amounts raised by the authority by the sale of
bonds or other borrowing authorized by this article;

(2) Moneys collected and deposited in the state
treasury which are specifically designated by acts of the
Legislature for inclusion into the fund;
(3) Contributions, grants and gifts from any source, both public and private, which may be used by the authority for any project or projects;

(4) All sums paid by the counties pursuant to subsection (h) of this section; and

(5) All interest earned on investments made by the state from moneys deposited in this fund.

(f) The amounts deposited in the fund shall be accounted for and expended in the following manner:

(1) Amounts raised by the sale of bonds or other borrowing authorized by this article shall be deposited in a separate account within the fund and expended for the purpose of construction, renovation and repair of correctional facilities, regional jails and juvenile detention and correctional facilities for which need has been determined by the authority;

(2) Amounts deposited from all other sources shall be pledged first to the debt service on any bonded indebtedness, including lease-purchase obligations entered into by the authority with another state entity or other obligation incurred by borrowing of the authority;

(3) After any requirements of debt service have been satisfied, the authority shall requisition from the fund the amounts that are necessary to provide for payment of the administrative expenses of this article;

(4) The authority shall requisition from the fund after any requirements of debt service have been satisfied the amounts that are necessary for the maintenance and operation of the correctional facilities or regional jails or both that are constructed pursuant to the provisions of this article and shall expend those amounts for that purpose. The fund shall make an accounting of all amounts received from each county by virtue of any filing fees, court costs or fines required by law to be deposited in the fund and amounts from the jail improvement funds of the various counties. After the expenses of administration have been deducted, the amounts expended in the respective regions from those sources shall be in
proportion to the percentage the amount contributed to
the fund by the counties in each region bears to the total
amount received by the fund from those sources;

(5) Notwithstanding any other provisions of this
article, sums paid into the fund by each county pursuant
to subsection (h) of this section for each inmate shall be
placed in a separate account and shall be requisitioned
from the fund to pay for costs incurred at the regional jail
facility at which each inmate was incarcerated; and

(6) Any amounts deposited in the fund from other
sources permitted by this article shall be expended in the
respective regions based on particular needs to be
determined by the authority.

(g) After a regional jail facility becomes available
pursuant to this article for the incarceration of inmates,
each county within the region shall incarcerate all persons
whom the county would have incarcerated in any jail prior
to the availability of the regional jail facility in the
regional jail facility except those whose incarceration in a
local jail facility used as a local holding facility is
specified as appropriate under the standards and
procedures developed pursuant to section nine of this
article and who the sheriff or the circuit court elects to
incarcerate therein.

(h) When inmates are placed in a regional jail facility
pursuant to subsection (g) of this section, the county shall
pay into the regional jail and correctional facility
development fund a cost per day for each incarcerated
inmate to be determined by the regional jail and
correctional facility authority according to criteria and by
procedures established by legislative rules proposed for
promulgation pursuant to article three, chapter
twenty-nine-a of this code to cover the costs of operating
the regional jail facilities of this state to maintain each
inmate. The per diem costs for incarcerating inmates may
not include the cost of construction, acquisition or
renovation of the regional jail facilities: Provided, That
each regional jail facility operating in this state shall keep
a record of the date and time that an inmate is
incarcerated, and a county may not be charged for a
119 second day of incarceration for an individual inmate until
120 that inmate has remained incarcerated for more than
121 twenty-four hours. Thereafter, in cases of continuous
122 incarceration, subsequent per diem charges shall be made
123 upon a county only as subsequent intervals of twenty-four
124 hours pass from the original time of incarceration.

§31-20-26. Legislative oversight committee.

The president of the Senate and the speaker of the
House of Delegates shall each designate five members of
their respective houses, at least one of whom shall be a
member of the minority party, to serve on a legislative
oversight committee charged with immediate and ongoing
oversight of the authority and the commissions, and
functions and duties of the authority and the commissions
created by this article. This committee shall report
regularly at each legislative session on the implementation
of the purposes set forth in section one-a of this article. It
shall regularly investigate all matters relating to integrity,
probity and foresight in funding, operating and planning
the correctional system on state, regional and county
levels, and may include the planning, funding,
constructing and operating of juvenile detention and
correctional facilities. Specifically, the committee shall
study and make recommendations to the Legislature as to
the revision of the system of classifying adult inmates, with
a view variously to decreasing the prison population
confined in “maximum security” facilities and to
designating and meeting the needs of inmates classified as
elderly, disabled or otherwise handicapped. In addition,
the committee may study and make recommendations to
the Legislature relating to the system of juvenile detention
and juvenile corrections.

The committee shall further study and inform the state
judiciary of the impact of sentencing on the composition
of the prison population in proportion to the use of
facilities. It shall recommend alternatives to long-term
sentencing, and shall recommend measures to improve the
quality of correctional staff and facilitate
nonconfrontational contacts with inmates. The committee
shall investigate means to structure inmates’ time to ensure
genuine and willing reaccommodations to societal norms; shall probe and coordinate all available means for funding state, regional and county correctional facilities; and shall contract with penal experts to study these issues in appropriate depth and perspective. Annually, to predict a prudent use of available funds, the committee shall study the profile of the inmate population with regard to its age and social background and needs.

The committee shall recommend to the Legislature the funding required to execute these functions. It shall meet regularly with the governing body of the authority established in this article to determine what may be required for full and timely compliance with all federal mandates and court-ordered changes in the correctional system and shall recommend funding for these changes.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.

§33-3-15. Annuity tax.

§33-3-17. Minimum tax payable.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.

(a) Every insurer transacting insurance in West Virginia shall file with the commissioner, on or before the first day of March, each year, a financial statement made under oath of its president or secretary and on a form prescribed by the commissioner. The insurer shall also, on or before the first day of March of each year subject to the provisions of section fourteen-c of this article, under the oath of its president or secretary, make a premium tax return for the previous calendar year, on a form prescribed by the commissioner showing the gross amount of direct premiums, whether designated as a premium or by some other name, collected and received by it during the previous calendar year on policies covering risks resident, located or to be performed in this state and
compute the amount of premium tax chargeable to it in accordance with the provisions of this article, deducting the amount of quarterly payments as required to be made pursuant to the provisions of section fourteen-c of this article, if any, less any adjustments to the gross amount of the direct premiums made during such calendar year, if any, and transmit with the return to the commissioner a remittance in full for the tax due. The tax is the sum equal to two percent of the gross direct premiums, including dividends, by whatever name called, on participating policies applied in reduction of premiums, less premiums returned to policyholders because of cancellation of policies, and also includes any additional tax due under section fourteen-a of this article. All taxes received by the commissioner shall be paid into the insurance tax fund created in subsection (b) of this section.

(b) There is created a special revenue fund in the state treasury which is designated the “insurance tax fund.” This fund is not part of the general revenue fund of the state. It consists of all amounts deposited in the fund pursuant to subsection (a) of this section, sections fifteen and seventeen of this article, any appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. The treasurer shall administer the fund.

(c) The treasurer shall dedicate and transfer from the insurance tax fund to the regional jail and correctional facility investment fund created under the provisions of section twenty, article six, chapter twelve of this code, on or before the tenth day of each month, an amount equal to one twelfth of the projected annual investment earnings to be paid and the capital invested to be returned, as certified to the treasurer by the investment management board: Provided, That the amount dedicated and transferred may not exceed twenty million dollars in any fiscal year. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the regional jail and correctional facility investment fund, the deficiency shall be added to the amount transferred in the next succeeding month in which
revenues are available to transfer the deficiency. Each month a lien on the revenues generated from the insurance premium tax, the annuity tax and the minimum tax, provided in this section and sections fifteen and seventeen of this article, up to a maximum amount equal to one twelfth of the projected annual principal and return is granted to the investment management board to secure the investment made with the regional jail and correctional facility authority pursuant to section twenty, article six, chapter twelve of this code. The treasurer shall, no later than the last business day of each month, transfer amounts the treasurer determines are not necessary for making refunds under this article to meet the requirements of subsection (d), section twenty, article six, chapter twelve of this code, to the credit of the general revenue fund.

(d) The amendment to this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-eight is effective on the first day of July, one thousand nine hundred ninety-eight.

§33-3-15. Annuity tax.

(a) Every life insurer transacting insurance in West Virginia shall make a return to the commissioner annually on a form prescribed by the commissioner, on or before the first day of March, under the oath of its president or secretary, of the gross amount of annuity considerations collected and received by it during the previous calendar year on business transacted in this state and stating the amount of tax due under this section, together with payment in full for the tax due. The tax is the sum equal to one per centum of the gross amount of the annuity considerations, less annuity considerations returned and less termination allowances on group annuity contracts. All the taxes received by the commissioner shall be paid into the insurance tax fund created in subsection (b), section fourteen of this article.

(b) The amendment to this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-eight is effective on the first day of July, one thousand nine hundred ninety-eight.
§33-3-17. Minimum tax payable.

(a) The minimum amount of tax payable by any insurer licensed in the state of West Virginia when considering the aggregate payments due from all of the taxes imposed by this article is two hundred dollars for any calendar year. This minimum tax is payable annually on or before the first day of March and shall be calculated on a form prescribed by the commissioner. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular premium tax are applicable to the levy, imposition and collection of this minimum tax. All moneys received by the commissioner from this minimum tax shall be paid into the insurance tax fund created in subsection (b), section fourteen of this article.

(b) The amendment to this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-eight is effective on the first day of July, one thousand nine hundred ninety-eight.

CHAPTER 96

(S. B. 548—By Senators Wooton, Ball, Bowman, Ditmar, Kessler, Ross, Schoonover, Snyder, Buckalew, Deem and Kimble)

[Passed March 5, 1998; to take effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the list of facilities under the direction of the commissioner of corrections.

Be it enacted by the Legislature of West Virginia:

That section three, 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.

§25-1-3. Institutions managed by commissioner of corrections; certain institutions transferred to department of health and human resources and state board of health; establishment of work and study release units; civil service coverage.

The commissioner of corrections shall manage, direct, control and govern the following penal or correctional institutions and any others placed under his or her jurisdiction or control:

Mount Olive correctional complex;
Huttonsville correctional center;
Anthony correctional center;
Denmar correctional center;
Pruntytown correctional center;
Northern West Virginia correctional center; and
St. Marys correctional center.

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

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

The commissioner is hereby authorized to serve as a member of the commission for distribution of surplus
AN ACT to amend and reenact section five, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the treatment of mentally ill persons in correctional facilities; authorizing the commissioner of corrections to establish policies relating to treatment and providing that certain rules and policies are not applicable to correctional facilities.

Be it enacted by the Legislature of West Virginia:

That section five, 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.

§25-1-5. Rules and regulations.
The commissioner of corrections is authorized to make rules for the proper execution of his or her duties and powers; adopt rules for the government of the institutions named or referred to in section three of this article; adopt rules for the administration of the financial and business affairs of the institutions named or referred to in section four of this article; and establish policies regarding the treatment of mentally ill inmates, which reflect the safety and security concerns specific to correctional facilities. Notwithstanding any provisions of law to the contrary, the division of corrections is not subject to the rules promulgated by the board of health for the treatment of mentally ill patients nor the mandates developed pursuant to E. H. v. Matin.

Consistent with the provisions of this article, the commissioner shall prescribe the duties of the persons connected with the management of institutions. When any of the guards, attendants, or other employees are uniformed, the commissioner shall prescribe the design, or designs, of the uniforms, which shall be dissimilar to the design of the uniform worn by the members of the state police. When the institution is located in, or in close proximity to, a municipality, no guard, attendant or other employee may wear the cap or caps designed by the commissioner as part of the uniform, when not actually on duty connected with his or her employment, nor shall the municipality adopt for its police officers or other employees a uniform which is similar in design to the uniform adopted by the commissioner.

Any person violating the provisions of this article is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than ten dollars, or by imprisonment for ten days, or both.
AN ACT to amend article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight, relating to authorizing the commissioner of the division of corrections to assess inmates in state penal and correctional facilities reasonable charges for health care and treatment services provided to them by the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-8. Charges assessed against inmates for services provided by state.

(a) The commissioner is authorized to assess inmates serving a sentence in any state penal or correctional facility reasonable charges for health care and treatment services provided to them by the state. The charges assessed against an inmate may be deducted directly from the inmate's trustee account without the inmate's consent. The inmate shall be notified of the amount deducted and the charges to which it has been applied.

(b) As used in this section, a “reasonable charge” may not exceed the sum of five dollars for any billable service. Inmates shall be notified of the fee schedule, billable services, and exempt services. Services initiated by the inmate shall be assessed a fee, except that no charge may be assessed for: (1) A specific health care service required under the law of this state, including, by way of illustration, tuberculin testing; (2) an emergency service following a traumatic injury other than a self-induced...
injury, or necessary to prevent death or severe or permanent disability; (3) diagnosis and treatment of communicable diseases, including, by way of illustration, tuberculosis or hepatitis; (4) treatment of diagnosed severe mental illness; (5) treatment of specific chronic conditions identified by the commissioner, including heart disease and diabetes; (6) staff-initiated care, including follow-up and referral visits; (7) preventive services that the commissioner determines are to be provided or made available to all inmates, including services related to disease prevention and promotion of proper health habits; or (8) such other services as may be exempted by rule of the commissioner. No inmate may be denied any necessary billable medical service because of inability to pay the charge.

(c) Each inmate shall be afforded an opportunity at least quarterly to review all deposits into, withdrawals from and balance remaining in the inmate's trustee account during the preceding three months.

(d) The commissioner shall promulgate interpretive rules implementing this section pursuant to article three, chapter twenty-nine-a of this code prior to making any assessment under this section. The rules may establish the fee schedule and list of billable services and further define services to be exempted.

CHAPTER 99

(H. B. 2698—By Delegates Ashley and Staton)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That section ten, article five, 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 5. PRIVATE PRISONS.

§25-5-10. Site selection.

1 The regional jail authority shall approve the site for the proposed facility. Approval shall be in accordance with legislative rules promulgated in accordance with chapter twenty-nine-a of this code. One such legislative rule shall establish criteria for identifying and evaluating potential sites for private prisons and shall provide for a public hearing or hearings to allow reasonable participation in the selection process by the citizens of the area to be affected by the construction and operation of a private prison.

CHAPTER 100

(S. B. 757—By Senators Wooton, Ball, Bowman, Hunter, Kessler, Oliverio, Ross, Snyder, White, Buckalew and Deem)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections one and twenty-two, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to repealing sections of the code dealing with continuation and the management of property of West Virginia penitentiary at Moundsville; and dealing with qualifications of officers and employees at the West Virginia penitentiary at Moundsville.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. THE PENITENTIARY.

§1. Repeal of section relating to continuation; management; property.
Section one, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

§2. Repeal of section relating to qualifications of officers and employees.

Section twenty-two, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 101

(S. B. 581—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter, Kessler, Oliverio, Ross, Schoonover, Snyder, White, Buckalew, Kimble and Scott)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying that authority to issue parole violator warrants rests in the commissioner of corrections; and authorizing division of corrections to assess costs for returning violators where parolee is able to pay.

Be it enacted by the Legislature of West Virginia:

That section nineteen, 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.


(a) If at any time during the period of parole, there shall be reasonable cause to believe that the parolee has violated any of the conditions of his release on parole, the parole officer may arrest him with or without an order or
warrant, or the commissioner of corrections may issue its written order or warrant for his arrest, which written order or warrant shall be sufficient for his arrest by any officer charged with the duty of executing an ordinary criminal process. The commissioner's written order or warrant delivered to the sheriff against the paroled prisoner shall be a command to keep custody of the parolee for the jurisdiction of the division of corrections, and during the period of custody, the parolee may be admitted to bail by the court before which the parolee was sentenced. If the parolee is not released on a bond, the costs of confining such paroled prisoner shall be paid out of the funds appropriated for the division of corrections.

(b) When a parolee is under arrest for violation of the conditions of his parole, he shall be given a prompt and summary hearing, at which the parolee and his counsel shall be given an opportunity to attend. If at the hearing, it shall appear to the satisfaction of the board that the parolee has violated any condition of his release on parole, or any rules and regulations for his supervision, the board may revoke his parole and may require him to serve in prison the remainder or any portion of his maximum sentence for which, at the time of his release, he was subject to imprisonment: Provided, That if the violation of the conditions of parole or rules and regulations for his supervision is not a felony as set out in section eighteen of this article, the board may, if in its judgment the best interests of justice do not require that the parole be revoked, release him from custody and continue him on parole.

(c) When a parolee has violated the conditions of his release on parole by confession to, or being convicted of any of the crimes set forth in section eighteen of this article, he shall be returned to the custody of the division of corrections to serve the remainder of his maximum sentence, during which remaining part of his sentence he shall be ineligible for further parole.

(d) Whenever the parole of a paroled prisoner has
been revoked, the commissioner shall upon receipt of the board's written order of revocation, convey and transport the paroled prisoner to a state penal institution from which he was granted a release on parole. A paroled prisoner whose parole has been revoked shall remain in custody of the sheriff until delivery to a corrections officer sent and duly authorized by the commissioner for the removal of the paroled prisoner to a state penal institution; the cost of confining such paroled prisoner shall be paid out of the funds appropriated for the penitentiary from which he was paroled.

(e) When a paroled prisoner is convicted of, or confesses to, any one of the crimes enumerated in section eighteen of this article, it shall be the duty of the board to cause him to be returned to this state for a summary hearing as provided by this article. A warrant filed by the commissioner shall stop the running of his sentence until the paroled prisoner is returned to custody. Whenever a paroled prisoner has absconded supervision, the commissioner shall issue a warrant for his apprehension and return to this state for the hearing provided for in this article: Provided, That the board may, if it be of opinion the best interests of justice do not require such hearing, cause the paroled absconder to be released to continue on parole.

(f) Whenever a parolee, who has absconded supervision or has been transferred out of this state for supervision pursuant to section one, article six, chapter twenty-eight of this code is returned to West Virginia due to a violation of parole and costs are incurred by the division of corrections, the commissioner may assess reasonable costs from the parolee's inmate funds as reimbursement to the division of corrections for the costs of returning him to the state of West Virginia.
AN ACT to amend and reenact section ten, article two, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the bonding of deputy sheriffs; and providing that bonding not required when liability insurance is in place.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. OFFICIAL AND OTHER BONDS.

§6-2-10. Bonds of county officers; required for deputy sheriffs.

Every commissioner of a county commission and every clerk of a circuit court shall give bond with good security, to be approved by the circuit court, or the judge thereof in vacation; and every sheriff, deputy sheriff, surveyor of lands, clerk of a county commission, assessor, county superintendent of schools, notary public and magistrate shall give bond with good security, to be approved, unless otherwise provided by law, by the county commission of the county in which such officer is to act. The penalty of the bond of each commissioner of a county commission shall be not less than twenty thousand dollars and not more than two hundred thousand dollars, the amount to be fixed by the circuit court of the county, or the judge thereof in vacation, by order entered of record on the proper order books of both the county and circuit courts; of the clerk of the circuit court, not less than ten thousand nor more than fifty thousand dollars; of the sheriff, not less than one hundred thousand dollars nor more than the aggregate amount of all state, county, district, school, municipal and other moneys which will probably come into his hands during any one year of his term of office; of the deputy sheriff, not less than thirty-
five thousand nor more than one hundred thousand dollars; of the surveyor of lands, not less than one thousand nor more than three thousand dollars; of the clerk of the county commission, not less than ten thousand nor more than fifty thousand dollars; of the assessor, not less than two thousand nor more than five thousand dollars; of the county superintendent of schools, not less than ten thousand nor more than fifty thousand dollars; of a notary public, not less than two hundred fifty nor more than one thousand dollars. Any public body required to pay the premiums on official bonds may provide a blanket bond policy for two or more such official bonds: Provided, That the bond herein required to be given by a notary public may be given before the clerk of the county commission, in the vacation of said commission, and approved by it at its next regular session.

For the purposes of this section, "deputy sheriff" shall mean a person appointed by a sheriff as his deputy whose primary duty as such deputy is within the scope of active, general law enforcement and as such is authorized to carry deadly weapons, patrol the highways, perform police functions, make arrests or safeguard prisoners.

The bond described in this section is not required for deputy sheriffs if a county purchases professional liability insurance pursuant to the provisions of section three, article fourteen-a, chapter seven of this code.

CHAPTER 103

(Com. Sub. for S. B. 228—By Senators Love, Snyder, Hunter and Buckalew)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]
closing, removal or demolition of structures and the removal or cleanup of refuse, debris, overgrown vegetation, toxic spillage or seepage on private lands representing a health or safety hazard to the public; creating an agency to enforce such ordinances; providing for promulgation of rules governing investigation and hearing of complaints; establishing a procedure for complaints; requiring the owner of such property to perform the ordered repairs, alterations or clean-up; authorizing imposition of daily civil monetary penalties on an owner who refuses to comply with such order; authorizing the county commission to contract with private individuals for the ordered repairs, alterations or clean-up; permitting the county commission to institute a civil action for imposition of a lien against the property to recover the costs of such services, any civil penalties imposed, attorney fees and court costs and for the sale of the property to satisfy the lien; authorizing the county commission to institute a civil action for damages to recover such costs from the landowner; authorizing entry on the private land for purposes of conducting designated repairs or alterations and for purposes of satisfying the lien; and allowing the county commission to receive grants and subsidies for the purposes of this section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Authority of county commission to enact ordinances regulating the repair, alteration, improvement, vacating, closing, removal or demolition of unsafe or unsanitary structures and the clearance and removal of refuse, debris, overgrown vegetation, toxic spills or toxic seepage on private land; authority to create enforcement agency; procedure for complaints; promulgation of rules governing
investigation and hearing of complaints; remedies for failure to comply with commission-ordered repairs or alterations; lien and sale of land to recover costs; entry on land to perform repairs and alterations or to satisfy lien; receipt of grants and subsidies.

(a) Plenary power and authority are hereby conferred upon every county commission to adopt ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any dwellings or other buildings, except for buildings utilized for farm purposes on land actually being used for farming, unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

(b) Plenary power and authority are hereby conferred upon every county commission to adopt ordinances regulating the removal and clean up of any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage located on private lands which is deemed to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare whether the result of natural or manmade force or effect.

(c) The county commission in formally adopting such ordinances shall designate an enforcement agency, which shall consist of the county engineer (or other technically qualified county employee or consulting engineer), county health officer or his or her designee, a fire chief from a county fire company, and two members at large selected by the county commission to serve two-year terms. The county sheriff shall serve as an ex officio
member of such enforcement agency and the county officer charged with enforcing the orders of the county commission under this section.

(d) Any ordinance adopted pursuant to the provisions of this section shall provide fair and equitable rules of procedure and any other standards deemed necessary to guide the enforcement agency, or its agents, in the investigation of dwelling or building conditions, accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage, and shall provide for fair and equitable rules of procedure for instituting and conducting hearings in such matters before the county commission. Any entrance upon premises for the purpose of making examinations shall be made in such manner as to cause the least possible inconvenience to the persons in possession.

(e) Any county commission adopting ordinances authorized by this section shall hear and determine complaints of the enforcement agency. Complaints shall be initiated by petition of the county engineer (or other technically qualified county employee or consulting engineer) on behalf of and at the direction of the enforcement agency, but only after that agency has investigated and determined that any dwelling, building, accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare and should be repaired, altered, improved, vacated, removed, closed, cleaned or demolished. The county commission shall cause the owner or owners of the private land in question to be served with a copy of the complaint. Service shall be accomplished in the manner provided in rule four of the West Virginia rules of civil procedure. The complaint shall state the findings and recommendations of the enforcement agency and that unless the owner or owners of the property file with the clerk of the county commission a written request for a hearing within ten days
of receipt of the complaint, an order will be issued by the county commission implementing the recommendations of the enforcement agency. If the owner or owners of the property file a request for a hearing, the county commission shall issue an order setting this matter down for hearing within twenty days. Hearings shall be recorded by electronic device or by court reporter. The West Virginia rules of evidence do not apply to such proceedings, but each party has the right to present evidence and examine and cross examine all witnesses. The enforcement agency has the burden of proving its allegation by a preponderance of the evidence and has the duty to go forward with the evidence. At the conclusion of the hearing the county commission shall make findings of fact, determinations and conclusions of law as to whether the dwelling or building: Is unfit for human habitation due to dilapidation; has defects that increase the hazard of fire, accidents or other calamities, lacks ventilation, light or sanitary facilities; or any other conditions prevailing in the dwelling or building, whether used for human habitation or not, and whether the result of natural or manmade force or effect, which would cause such dwelling or other building to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; or whether there is an accumulation of refuse or debris; overgrown vegetation; toxic spillage or toxic seepage on private lands which is deemed to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect. The county commission has authority to order the owner or owners thereof to repair, alter, improve, vacate, remove, close, clean up or demolish the dwelling or building in question or to remove or clean up any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage within a reasonable time and to impose daily civil monetary penalties on the owner or owners who fail to obey such an order. Appeals from the county commission to the circuit court shall be in accordance with
the provisions of article three, chapter fifty-eight of this code.

(f) Upon the failure of the owner or owners of the private land to perform the ordered duties and obligations as set forth in the order of the county commission, the county commission may advertise for and seek contractors to make the ordered repairs, alterations or improvements, or the ordered demolition, removal or clean up. The county commission may enter into any contract with any such contractor to accomplish the ordered repairs, alterations or improvements, or the ordered demolition, removal or clean up.

(g) A civil proceeding may be brought in circuit court by the county commission against the owner or owners of the private land which is the subject matter of the order of the county commission to subject the private land in question to a lien for the amount of the contractor's costs in making these ordered repairs, alterations or improvements, or ordered demolition, removal or clean up together with any daily civil monetary penalty imposed and reasonable attorney fees and court costs and to order and decree the sale of the private land in question to satisfy the lien, and to order and decree that the contractor may enter upon the private land in question at any and all times necessary to make improvements, or ordered repairs, alterations or improvements, or ordered demolition, removal or clean up. In addition, the county commission shall have the authority to institute a civil action in a court of competent jurisdiction against the landowner or other responsible party for all costs incurred by the county with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.

(h) County commissions have the power and authority to receive and accept grants, subsidies, donations and services in kind consistent with the objectives of this section.
AN ACT to amend and reenact section one, article six, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to counties selecting depositories for their moneys to provide nondiscriminatory treatment of out-of-state banks as required by changes in federal law; and to delete and correct obsolete references.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-1. Designation of depositories.

On or before the thirtieth day of June, of each year, the county commission of every county shall, by order of record, designate all of the banking institutions, as defined in section two, article one, chapter thirty-one-a of this code, situated in the county and duly incorporated under the laws of any state, or organized under the laws of the United States, as depositories of public moneys: Provided, That in any county where no such banking institutions exist, or where such banking institutions fail, refuse or neglect to comply with all the provisions and conditions of this article, the county commission shall designate some qualified banking institution in some other county of this state convenient to the county seat. Risk and expense of making deposits in county depositories located outside of the county seat shall be borne by the banking institution in which the deposits are made. When any banking institution, designated by the county commission as provided by this section, has complied with all of the requirements and provisions of this article, the commission shall declare it a county depository.
AN ACT to amend and reenact sections seven and thirteen, article twelve, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to allowing county and municipal development authorities to sell, lease or otherwise dispose of real or personal property which they may own either by contract or at public auction; clarifying legislative intent; retroactive provisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

§7-12-7. Powers generally.

§7-12-13. Sale or lease of property; reversion of assets upon dissolution.
including, without limiting any of the foregoing, the
construction of any building or structure for lease to the
federal government or any of its agencies or departments,
and in connection therewith to prepare and submit bids
and negotiate with the federal government or such
agencies or departments in accordance with plans and
specifications and in the manner and on the terms and
conditions and subject to any requirements, regulations,
rules and laws of the United States of America for the
construction of said buildings or structures and the leasing
thereof to the federal government or such agencies or
departments; (4) to amend or supplement any contracts or
leases or to enter into new, additional or further contracts
or leases upon such terms and conditions, for such
consideration and for such term of duration, with or
without option of renewal, as may be agreed upon by the
authority and such person, agency, governmental
department, firm or corporation; (5) unless otherwise
provided for in, and subject to the provisions of, such
contracts, or leases, to operate, repair, manage, and
maintain such buildings and structures and provide
adequate insurance of all types, and in connection with the
primary use thereof and incidental thereto to provide such
services, such as barber shops, newsstands, drugstores and
restaurants, and to effectuate such incidental purposes,
grant leases, permits, concessions or other authorizations
to any person or persons, upon such terms and conditions,
for such consideration and for such term of duration as
may be agreed upon by the authority and such person,
agency, governmental department, firm or corporation;
(6) to delegate any authority given to it by law to any of
its officers, committees, agents or employees; (7) to apply
for, receive and use grants-in-aid, donations and
contributions from any source or sources, and to accept
and use bequests, devises, gifts and donations from any
person, firm or corporation; (8) to acquire real property
by gift, purchase, or construction, or in any other lawful
manner, and hold title thereto in its own name and to sell,
lease or otherwise dispose of all or part of such real
property which it may own, either by contract or at public
auction, upon the approval by the board of directors of
the development authority; (9) to purchase or otherwise
acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction; (10) pursuant to a determination by the board that there exists a continuing need for programs to alleviate and prevent unemployment within the county in which the authority is intended to operate or aid in the rehabilitation of areas in said county which are underdeveloped, decaying or otherwise economically depressed, and that moneys or funds of the authority are necessary therefor, to borrow money and execute and deliver the authority's negotiable notes, mortgage bonds, other bonds, debentures, and other evidences of indebtedness therefor, on such terms as the authority shall determine, and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its real or personal property and facilities in connection with the issuance of mortgage bonds; (11) to raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article sixteen, chapter eight of this code, it being hereby expressly provided that a development authority created under this article is a "governing body" within the definition of that term as used in said article sixteen, chapter eight of this code; and (12) to expend its funds in the execution of the powers and authority herein given, which expenditures, by the means authorized herein, are hereby determined and declared as a matter of legislative finding to be for a public purpose and use, in the public interest, and for the general welfare of the people of West Virginia, to alleviate and prevent economic deterioration and to relieve the existing critical condition of unemployment existing within the state.

The amendment of this section enacted in the year one thousand nine hundred ninety-eight, is intended to clarify the intent of the Legislature as to the manner in which an authority may sell, lease or otherwise dispose of real and personal property owned by an authority, and shall be retroactive to the date of the prior enactment of this section.

§7-12-13. Sale or lease of property; reversion of assets upon dissolution.
In the event the board of the authority shall so determine, the authority may lease or sell all of its property and equipment, either by contract or at public auction, on such terms and conditions as the authority may fix and determine. Upon the dissolution of the authority, all of its assets and property shall revert to and become the property of the county or municipality for which said authority was created.

The amendment of this section in the year one thousand nine hundred ninety-eight, is intended to clarify the intent of the Legislature as to the manner in which an authority may sell, lease or otherwise dispose of real and personal property owned by an authority, and shall be retroactive to the date of the prior enactment of this section.

CHAPTER 106

(H. B. 4254—By Delegates Mahan, Dalton, Tomblin, Stemple, Smirl and L. White)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and three, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the computation of time within which a proceeding is to take place or an act is to be done; and designating days as weather or other emergency days when weather or emergency conditions prevent the general transaction of court business in a county.

Be it enacted by the Legislature of West Virginia:

That sections one, two and three, article two, chapter 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 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.
§2-2-1. Legal holidays; official acts or court proceedings.
§2-2-2. When acts to be done fall on Saturday, Sunday or legal holiday; adjournments from day to day.

§2-2-1. Legal holidays; official acts or court proceedings.

(a) The following days are legal holidays:

1. The first day of January is "New Year's Day";
2. The third Monday of January is "Martin Luther King's Birthday";
3. The twelfth day of February is "Lincoln's Birthday";
4. The third Monday of February is "Washington's Birthday";
5. The last Monday in May is "Memorial Day";
6. The twentieth day of June is "West Virginia Day";
7. The fourth day of July is "Independence Day";
8. The first Monday of September is "Labor Day";
9. The second Monday of October is "Columbus Day";
10. The eleventh day of November is "Veterans' Day";
11. The fourth Thursday of November is "Thanksgiving Day";
12. The twenty-fifth day of December is "Christmas Day";
13. Any day on which a general, primary or special election is held is a holiday throughout the state, a political subdivision of the state, a district or an incorporated city, town or village in which the election is conducted; and
14. Any day proclaimed or ordered by the governor or the president of the United States as a day of special observance or Thanksgiving, or a day for the general cessation of business, is a holiday.
29 (b) If a holiday otherwise described in subsection (a) of this section falls on a Sunday, then the following Monday is the legal holiday. If a holiday otherwise described in subsection (a) of this section falls on a Saturday, then the preceding Friday is the legal holiday: Provided, That this subsection (b) shall not apply to subdivision (13), subsection (a) of this section.

36 (c) Any day or part thereof designated by the governor as time off, without charge against accrued annual leave, for state employees statewide may also be time off for county employees if the county commission elects to designate the day or part thereof as time off, without charge against accrued annual leave for county employees. Any entire or part statewide day off designated by the governor may, for all courts, be treated as if it were a legal holiday.

45 (d) In computing any period of time prescribed by any applicable provision of this code or any legislative rule or other administrative rule or regulation promulgated pursuant to the provisions of this code, the day of the act, event, default or omission from which the applicable period begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, a Sunday, a legal holiday or a designated day off in which event the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, legal holiday or designated day off.

56 (e) If any applicable provision of this code or any legislative rule or other administrative rule or regulation promulgated pursuant to the provisions of this code designates a particular date on, before or after which an act, event, default or omission is required or allowed to occur, and if the particular date designated falls on a Saturday, Sunday, legal holiday or designated day off, then the date on which the act, event, default or omission is required or allowed to occur is the next day that is not a Saturday, Sunday, legal holiday or designated day off.

66 (f) With regard to the courts of this state, the
computation of periods of time, the specific dates or days when an act, event, default or omission is required or allowed to occur and the relationship of those time periods and dates to Saturdays, Sundays, legal holidays, or days designated as weather or other emergency days pursuant to section two of this article are governed by rules promulgated by the supreme court of appeals.

(g) The provisions of this section do not increase or diminish the legal school holidays provided for in section two, article five, chapter eighteen-a of this code.

§2-2-2. When acts to be done fall on Saturday, Sunday or legal holiday; adjournments from day to day.

(a) When a proceeding is directed to take place or any act to be done on any particular day of the month or within any period of time prescribed or allowed, including those provided by article two, chapter fifty-five, of this code, if that day or the last day falls on a Saturday, Sunday, legal holiday, or a weather or other emergency day, the next day that is not a Saturday, Sunday, legal holiday, or a weather or other emergency day shall be deemed to be the one intended, and when the day upon which a term of court is directed by law to commence, falls on a Saturday, Sunday, legal holiday, or a weather or other emergency day, the following day that is not a Saturday, Sunday, legal holiday, or a weather or other emergency day shall be deemed to be the day intended. When an adjournment is authorized from day to day, an adjournment from Friday to Monday will be legal.

(b)(1) For purposes of this section, "weather or other emergency day" means a day designated for a county in accordance with the provisions of subdivision (2) of this subsection as a day upon which weather or other emergency conditions in that county prevent the general transaction of court business in that county.

(2) A weather or other emergency day is designated by order of the chief justice of the supreme court of appeals or by order of the chief judge of the circuit court of the county in which the proceeding is directed to take place or in which the act is to be done.
1 The provisions of sections one and two of this article
2 relating to the time or period prescribed or allowed within
3 which an act is to be done shall not be deemed to change
4 any rule of law applicable to bills of exchange or
5 negotiable notes.

CHAPTER 107
(S. B. 239—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter,
Kessler, Oliverio, Ross, Schoonover, Snyder, White, Buckalew, Deem,
Kimble and Scott )

[Passed February 20, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishment of the prosecuting attorneys institute; establishing the executive counsel; creating the position of executive director; establishing duties of institute and personnel; establishing dues structure for counties; and limitations on scope of lobbying activities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-6. West Virginia prosecuting attorneys institute.
1 (a) There is hereby created the West Virginia
2 prosecuting attorneys institute, a public body whose
3 membership shall consist of the fifty-five elected county
4 prosecuting attorneys in the state. The institute shall meet
5 at least once each calendar year and the presence of
6 twenty-eight of the fifty-five prosecutors at any meeting
(b) There is hereby created the executive council of the West Virginia prosecuting attorneys institute which shall consist of five prosecuting attorneys elected by the membership of the West Virginia prosecuting attorneys institute at its annual meeting and two persons appointed annually by the county commissioner's association of West Virginia. The executive council shall elect one member of the council to serve as chairman of the institute for a term of one year without compensation. The executive council shall serve as the regular executive body of the institute.

(c) There is hereby created the position of executive director of the West Virginia prosecuting attorneys institute to be employed by the executive council of the institute. The executive director of the West Virginia prosecuting attorneys institute shall serve at the will and pleasure of the executive council of the institute at an annual salary of fifty thousand dollars per year. The executive director shall be licensed to practice law in the state of West Virginia and shall devote full time to his or her official duties and may not engage in the private practice of law.

(d) The duties and responsibilities of the institute, as implemented by and through its executive council and its executive director, shall include the following:

1. To provide for special prosecuting attorneys to pursue a criminal matter in any county upon the request of a circuit court judge of that county and upon the approval of the executive council;

2. To establish and to implement general and specialized training programs for prosecuting attorneys and their professional staffs;

3. To provide materials for prosecuting attorneys and their professional staffs, including legal research, technical assistance and technical and professional publications;

4. To compile and disseminate information on behalf of prosecuting attorneys and their professional staffs on
current developments and changes in the law and the
administration of criminal justice;

(5) To establish and to implement uniform reporting
procedures for prosecuting attorneys and their
professional staffs in order to maintain and to provide
accurate and timely data and information relative to
criminal prosecutorial matters;

(6) To accept and expend funds, grants and gifts and
accept services from any public or private source;

(7) To enter into agreements and contracts with public
or private agencies or educational institutions;

(8) To identify experts and other resources for use by
prosecutors in criminal matters;

(9) To make recommendations to the Legislature or
the supreme court of appeals of the state of West Virginia
on measures required, or procedural rules to be
promulgated, to make uniform the processing of juvenile
cases in the fifty-five counties of the state; and

(10) To develop a written handbook for prosecutors
and their assistants to use which delineates relevant
information concerning the elements of various crimes in
West Virginia and other information as the institute deems
appropriate.

(e) Each prosecuting attorney is subject to
appointment by the institute to serve as a special
prosecuting attorney in any county where the prosecutor
for that county or his or her office has been disqualified
from participating in a particular criminal case. The
circuit judge of any county of this state, who disqualifies
the prosecutor or his or her office from participating in a
particular criminal case in that county, shall seek the
appointment by the institute of a special prosecuting
attorney to substitute for the disqualified prosecutor. The
executive director of the institute shall, upon written
request to the institute by any circuit judge as a result of
disqualification of the prosecutor or for other good cause
shown, and upon approval of the executive council,
appoint a prosecuting attorney to serve as a special
prosecuting attorney. The special prosecuting attorney appointed shall serve without any further compensation other than that paid to him or her by his or her county, except that he or she is entitled to be reimbursed for his or her legitimate expenses associated with travel, mileage and room and board from the county to which he or she is appointed as a prosecutor. The county commission in which county he or she is special prosecutor is responsible for all expenses associated with the prosecution of the criminal action.

(f) The executive director of the institute shall maintain an appointment list that shall include the names of all fifty-five prosecuting attorneys and that shall also include the names of any assistant prosecuting attorney who wishes to serve as a special prosecuting attorney upon the same terms and conditions as set forth in this section. The executive director of the institute, with the approval of the executive council, shall appoint special prosecuting attorneys from the appointment list for any particular matter giving due consideration to the proximity of the proposed special prosecuting attorney's home county to the county requesting a special prosecutor and giving due consideration to the expertise of the special prosecuting attorney.

(g) Commencing on the first day of July, one thousand nine hundred ninety-six, each county commission shall pay, on a monthly basis, a special prosecution premium to the treasurer of the state for the funding of the West Virginia prosecuting attorneys institute. The monthly premiums shall be paid according to the following schedule:

**MONTHLY PREMIUMS**

<table>
<thead>
<tr>
<th>Category</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>$1,500,000,000</td>
<td>Unlimited</td>
<td>$400</td>
</tr>
<tr>
<td>B</td>
<td>$1,000,000,000</td>
<td>$1,499,999,000</td>
<td>$375</td>
</tr>
</tbody>
</table>
Upon receipt of a premium, the treasurer shall deposit the premium into a special revenue fund to be known as the "West Virginia Prosecuting Attorneys Institute Fund". All costs of operating the West Virginia prosecuting attorneys institute shall be paid from the West Virginia prosecuting attorneys institute fund upon proper authorization by the executive council or by the executive director of the institute and subject to annual appropriation by the Legislature of the amounts contained within the fund.

(h) The West Virginia prosecuting attorneys institute shall continue to exist until the first day of July, two thousand one, unless continued by an act of the Legislature. The institute shall annually by the first day of the regular legislative session provide the joint committee on government and finance with a report setting forth the activities of the institute and suggestions for legislative action.

(i) Neither the institute nor its employees acting in their employment capacity shall engage in activities before governmental bodies which advocate positions on issues other than those issues consistent with the duties of the institute set forth in subsection (d) of this section.
CHAPTER 108

(S. B. 398—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter, Kessler, Oliverio, Ross, Schoonover, Snyder, Buckalew and Deem)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and four, article six-a, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the commitment of certain persons found incompetent to stand trial; determination of mental competency to stand trial; hearings procedure; findings required; jurisdiction of court; release; and disclosure from court jurisdiction.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. COMMITMENT OF PERSONS CHARGED OR CONVICTED OF A CRIME.

§27-6A-2. Hearing on competency to stand trial; findings.

§27-6A-4. Release from jurisdiction of the court; discharge.

§27-6A-2. Hearing on competency to stand trial; findings.

1 (a) At a hearing to determine a defendant's competency to stand trial, the defendant shall be present and he or she shall have the right to be represented by counsel and introduce evidence and cross-examine witnesses. The defendant shall be afforded timely and adequate notice of the issues at the hearing and shall have access to a summary of the medical evidence to be presented by the state. The defendant shall have the right to an examination by an independent expert of his or her choice and testimony from such expert as a medical
witness on his or her behalf. All rights generally afforded a defendant in criminal proceedings shall be afforded to a defendant in such competency proceedings except trial by jury.

(b) At the termination of such hearing the court of record shall make a finding of fact upon a preponderance of the evidence as to the defendant's competency to stand trial based on whether or not the defendant is capable of participating substantially in his or her defense and understanding the nature and consequences of a criminal trial. If the defendant is found competent, the court of record shall forthwith proceed with the criminal proceedings. If the defendant is found incompetent to stand trial, the court of record shall upon the evidence make further findings as to whether or not there is a substantial likelihood that the defendant will attain competency within the next ensuing six months, and if the court of record so finds, the defendant may be committed to a mental health facility for an improvement period not to exceed six months. If requested by the chief medical officer of the mental health facility on the grounds that additional time is necessary for the defendant to attain competency, the court of record may, prior to the termination of the six-month period, extend the period for an additional three months. Within ten days of the termination of such period, the court of record shall ascertain by hearing in accordance with subsection (a) of this section whether or not the defendant has attained competency to stand trial.

(c) If the defendant has been indicted or charged with a misdemeanor or felony in which the misdemeanor or felony does not involve an act of violence against a person and is found to be incompetent to stand trial with no substantial likelihood of obtaining competency, or if after such improvement period the defendant is found to be incompetent to stand trial, the criminal charges shall be dismissed. The dismissal order may be stayed for ten days
(d) If the defendant has been indicted or charged with a misdemeanor or felony in which the misdemeanor or felony does involve an act of violence against a person and upon hearing: (1) The defendant is found initially to be incompetent to stand trial with no substantial likelihood of obtaining competency and is found not to be a danger to self or others; or (2) after an improvement period pursuant to subsection (b) of this section, the defendant is found to be incompetent to stand trial and is found not to be a danger to self or others, then the court shall maintain jurisdiction over the defendant.

(e) If the defendant has been indicted or charged with a misdemeanor or felony in which the misdemeanor or felony does involve an act of violence against a person and, upon hearing: (1) The defendant is found initially to be incompetent to stand trial with no substantial likelihood of obtaining competency and is found to be a danger to self or others; or (2) after an improvement period pursuant to subsection (b) of this section, the defendant is found to be incompetent to stand trial and is found to be a danger to self or others, then the court shall maintain jurisdiction over the defendant and shall commit the defendant to a mental health facility under the authority of the department of health and human resources. The defendant's supervising physician or psychologist shall cause the defendant's competency to stand trial and dangerousness to self or others to be reviewed every six months during the period of his or her inpatient hospitalization.

(f) If the defendant has been indicted or charged with a misdemeanor or felony in which the misdemeanor or felony does involve an act of violence against a person, upon notice from the medical director of the mental health facility that the defendant no longer constitutes a danger to self or others along with an alternative
disposition plan which sets forth in detail a treatment plan for the defendant designed to allow his or her release without endangering the public, the court shall promptly conduct a hearing. The clerk shall give notice of the hearing to the prosecuting attorney and the victim or next of kin of the victim of the offense for which the person was committed. The burden shall be on the victim or next of kin of the victim to keep the court apprised of that person's current mailing address.

After hearing, the court may order the release from hospitalization of a defendant found incompetent to stand trial due to mental illness, addiction or retardation prior to the expiration of the court's jurisdiction only when the court finds that the defendant is no longer a danger to self or others: Provided, That a defendant may be released from inpatient hospitalization by the court when the defendant's mental illness is in remission solely as a result of medication or hospitalization or other mode of treatment only if it can be determined by clear and convincing evidence that with continued outpatient therapy or other mode of outpatient treatment, the defendant's mental illness does not make him or her a danger to self or others. When a defendant's mental illness is in remission solely as a result of medication or hospitalization or other mode of treatment, the court in its discretion, may make the continuance of the medication or other mode of treatment a condition of the defendant's release. Upon notice that a defendant who is released on the condition that he or she continues medication or other mode of treatment does not continue his medication or other mode of treatment, the prosecuting attorney shall, by motion, cause the court to reconsider the defendant's release. Upon a showing that defendant is in violation of the conditions of his or her release, the court shall recommit the defendant to the mental health facility.

(g) The prosecuting attorney shall, by motion, cause the competency to stand trial of a defendant subject to the
court's jurisdiction pursuant to subsection (d) of this section or released pursuant to subsection (f) of this section to be determined at least every six months while the defendant remains under the jurisdiction of the court. A defendant placed under the jurisdiction of the court pursuant to the provisions of subsections (d) or (e) of this section shall remain under the court's jurisdiction until the expiration of the maximum possible sentence the defendant could have received if convicted unless the defendant regains competency and the criminal charges reach resolution or the court, upon motion of the prosecuting attorney, dismisses the indictment or charge.

§27-6A-4. Release from jurisdiction of the court; discharge.

(a) No later than thirty days prior to the release of a defendant because of the expiration of the court's jurisdiction, if the defendant's supervising physician or psychologist believes that the defendant's mental illness or mental retardation or addiction causes the defendant to be dangerous to self or others, the supervising physician or psychologist shall notify the prosecuting attorney in the county of the court having jurisdiction of such opinion and the basis therefor. Following this notification, the prosecuting attorney shall file a civil commitment application against the defendant, pursuant to article five of this chapter.

(b) Except as provided in subsection (g), section two of this article, the court may discharge a mentally ill or addicted defendant from the court's jurisdiction prior to the expiration of the period specified in this section only when the court finds that the person is no longer mentally ill or addicted and that the person is no longer a danger to self or others: Provided, That a defendant may not be released from the court's jurisdiction when the defendant's mental illness is in remission solely as a result of medication or hospitalization or other mode of treatment only if it can be determined by clear and convincing evidence that with continued outpatient...
therapy or other mode of outpatient treatment, the
defendant's mental illness does not make him or her a
danger to self or others. When a defendant's mental
illness is in remission solely as a result of medication or
hospitalization or other mode of treatment, the court in its
discretion, may make the continuance of the medication
or other mode of treatment a condition of the defendant's
release. Upon notice that a defendant who is released on
the condition that he or she continues medication or other
mode of treatment does not continue his medication or
other mode of treatment, the prosecuting attorney shall, by
motion, cause the court to reconsider the defendant's
release. Upon a showing that defendant is in violation of
the conditions of his or her release, the court shall reinstate
its jurisdiction over the defendant. The court may
discharge a mentally retarded defendant from the court's
jurisdiction prior to the expiration of the period specified
in this section only when the court finds that the person is
no longer a danger to self or others.

(c) Those persons committed under the provisions of
this article may be released or discharged from the
inpatient mental health facility only upon entry of an
order from the court of record which committed the
defendant, finding that the defendant will not be a danger
to self or others if so released, based upon the evidence
admitted at the hearing.

(d) The court shall promptly conduct a hearing after
receipt of the physician's or psychologist's notification
referred to in subsection (a) of this section. The clerk
shall notify the prosecuting attorney and the victim or
next of kin of the victim of the offense for which the
defendant was committed of the hearing. The burden
shall be on the victim or next of kin of the victim to keep
the court apprised of the defendant's current mailing
address.
AN ACT to amend and reenact chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen, relating to creating a commission to study the implementation of alternative dispute resolution programs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. ALTERNATIVE DISPUTE RESOLUTION COMMISSION.

§55-15-1. Legislative findings and purpose.

§55-15-2. Alternative dispute resolution commission created; composition; appointment of members; chairman.


§55-15-5. Meetings of the commission; quorum.

§55-15-6. Interpretation of article; termination of commission.

§55-15-1. Legislative findings and purpose.

(a) The Legislature hereby finds and declares:

(1) That due to growing concern with limits on access to justice arising from court case backlog, delays and costs, that it has been beneficial to implement an alternative dispute resolution program in various circuit courts of our state and in certain administrative proceedings;
(2) That since implementation, these procedures have proven to be a highly-effective method for resolving disputes without resorting to adjudicatory measures, thereby easing the burden of cases pending in the judicial system;

(3) That alternative dispute resolution is continually changing the perceptions regarding the appropriateness and effectiveness of court procedures, and that the continuation and growth of these procedures is important in enhancing the quality of life for the citizens of this state;

(4) That the effectiveness of the alternative dispute resolution programs implemented in the state and in other states has increased but more definition and synthesis is necessary to better serve the citizens; and

(5) That the purpose of this article is to create a commission, as hereinafter constituted and appointed, to study various facets of alternative dispute resolution including, but not limited to, defining the objectives and goals of the programs, the types of disputes to be resolved, the promulgation of a system to ensure appropriate uniformity of alternative dispute resolution programs statewide, certification or licensure of persons engaged in providing services in alternative methods of resolving disputes and the structuring and funding of such programs.

(b) The Legislature further declares that it recognizes that the provisions of section 1, article V of the constitution of West Virginia prohibit any person from exercising the powers of more than one branch or department of government at the same time; however, it is the express purpose, intent and finding of the Legislature that those members of the commission who are members of the Legislature are acting as such while serving on the commission and in the furtherance of the Legislature's inherent right and power to investigate and inquire into and report on those matters which are legitimately within its powers, and that since the commission's role and duties
are investigative and reportive in nature, the service upon
the commission by its legislative members is not violative
of nor inimical to the constitutional mandate with respect
to the separation of governmental powers.

§55-15-2. Alternative dispute resolution commission created;
composition; appointment of members; chairman.

The West Virginia alternative dispute resolution
commission is hereby created. The commission shall
consist of eleven members, who are designated or to be
appointed as follows:

(a) The chief justice of the supreme court of appeals
of West Virginia, or his or her designee, shall serve as the
chair of the commission, and shall appoint two additional
members, one of whom is currently serving as a circuit
court judge;

(b) The speaker of the House of Delegates and the
president of the Senate, or their respective designee, shall
be members, and the speaker of the House of Delegates
and the president of the Senate shall appoint one
additional member;

(c) Two members shall be appointed by the governor
who shall be representative private citizens;

(d) The dean of the West Virginia university college of
law shall appoint one faculty member to the commission
who possesses knowledge and experience unique in
alternative dispute resolution processes; and

(e) The executive director of the West Virginia state
bar.

§55-15-3. Compensation and expenses of commission
members; expenses of commission.

(a) Members of the commission shall be reimbursed
for their reasonable and necessary travel and other
expenses actually incurred in connection with the
performance of their duties as members of the
commission including, but not limited to, their attendance at meetings thereof.

(b) The expenses of the members of the commission shall be paid from legislative appropriations.

(c) Members of the commission shall receive no other compensation for their services on or with the commission other than the reimbursement of expenses as provided in this section.

(d) The president of the Senate and the speaker of the House of Delegates shall designate a member of the legislative staff to serve as counsel and reporter to the commission.


The commission shall have the following powers, duties and responsibilities:

(a) To conduct a thorough and comprehensive study into the various ways and means of financing and structuring the alternative dispute resolution programs, define the goals and objectives of alternative methods of resolving disputes in the state, determine types of disputes to be included within any alternative dispute resolution programs, evaluate the advantages of establishing certification or licensure of persons engaged in providing services in alternative methods of resolving disputes and propose a system to ensure appropriate uniformity of alternative dispute resolution programs statewide;

(b) To request such information and data from any state officer or agency or from any political subdivision of the state as the commission may deem necessary to assist it in the performance of its duties and it shall be the duty of all such officers and agencies to cooperate with and assist the commission in and about the completion of its studies and deliberations;

(c) To confer with representative citizens, the judiciary, the legal profession and other groups of the private and
business sectors with respect to all matters deemed relevant to the duties of the commission;

(d) To notify the chair of the commission on the future of the judiciary so that the commission established herein may share information with such commission on the future of the judiciary;

(e) To perform every other act necessary or desirable to carry out any of the other powers, duties or responsibilities enumerated in this article; and

(f) To file its final report with respect to its findings and conclusions, together with any legislation it deems appropriate to recommend and as it deems necessary to carry its findings and conclusions into effect with the president of the Senate and the speaker of the House of Delegates not later than the thirtieth day of November, one thousand nine hundred ninety-eight.

§55-15-5. Meetings of the commission; quorum.

The commission shall meet at such times and places as its chair shall deem to be proper and expedient. Such meetings shall be coordinated with and be in conjunction with the monthly meeting of the joint committee on government and finance insofar as the same may be practicable. Nothing herein shall preclude the commission from meeting with such frequency or at such times and places as it may determine. The presence of no less than six members of the commission shall constitute a quorum for the purposes of conducting any business.

§55-15-6. Interpretation of article; termination of commission.

(a) The provisions of this article shall be liberally construed in order to permit the commission sufficient latitude for the orderly completion of its studies and duties.

(b) The commission shall cease its existence on the thirty-first day of December, one thousand nine hundred ninety-eight.
AN ACT to repeal articles one and two, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty-one, article five of said chapter; to amend and reenact section twenty-seven, article seven, chapter twenty-one-a of said code; to amend and reenact section four, article five, chapter twenty-nine-a of said code; and to amend and reenact sections one, two, three, four, five, six, seven, fourteen and thirty, article five, chapter fifty-eight of said code, all relating generally to appellate procedure; repealing provisions of law relating to appellate relief in the supreme court of appeals which are outdated, archaic, or not in conformity with rules of appellate procedure promulgated by the supreme court of appeals; providing for appeal from circuit court in an unemployment compensation case to be made in accordance with the provisions of the state administrative procedures act; prescribing when an appeal will lie to the supreme court of appeals; providing for the certification of questions of law to the supreme court of appeals; providing for a petition for appeal to be filed in accordance with rules of appellate procedure promulgated by the supreme court of appeals; prescribing the time for filing a petition for appeal to the supreme court of appeals; providing for the suspension of the execution of a judgment at the instance of a person desiring to present a petition for appeal; providing that a petition for appeal shall be filed and processed filed in accordance with rules of appellate procedure promulgated by the supreme court of appeals; providing that the contents of the transcript of record shall be governed by rules of appellate procedure promulgated by
the supreme court of appeals; providing for an appeal to be
given before an appeal takes effect; and providing for an
appeal by the state of a judgment quashing an indictment.

Be it enacted by the Legislature of West Virginia:

That articles one and two, chapter fifty-eight of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, be repealed; that sections eight, nine, ten, eleven,
twelve, thirteen, fifteen, sixteen, seventeen, eighteen, nineteen,
twenty, twenty-one, twenty-two, twenty-three, twenty-four,
twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine
and thirty-one, article five of said chapter be repealed; that
section twenty-seven, article seven, chapter twenty-one-a of said
code be amended and reenacted; that section four, article five,
chapter twenty-nine-a of said code be amended and reenacted;
and that sections one, two, three, four, five, six, seven, fourteen
and thirty, article five, chapter fifty-eight of said code be
amended and reenacted, all to read as follows:

Chapter
21A. Unemployment Compensation.
29A. State Administrative Procedures Act.
58. Appeal and Error.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 7. CLAIM PROCEDURE.

§21A-7-27. Appeal to supreme court of appeals.

1 The judgment of the circuit court shall be final unless
2 reversed, vacated or modified on appeal to the supreme
3 court of appeals in accordance with the provisions of
4 section one, article six, chapter twenty-nine-a of this code.

CHAPTER 29A. STATE ADMINISTRATIVE
PROCEDURES ACT.

ARTICLE 5. CONTESTED CASES.


1 (a) Any party adversely affected by a final order or
decision in a contested case is entitled to judicial review
thereof under this chapter, but nothing in this chapter shall
be deemed to prevent other means of review, redress or relief provided by law.

(b) Proceedings for review shall be instituted by filing a petition, at the election of the petitioner, in either the circuit court of Kanawha County, West Virginia or in the circuit court of the county in which the petitioner or any one of the petitioners resides or does business, or with the judge thereof in vacation, within thirty days after the date upon which such party received notice of the final order or decision of the agency. A copy of the petition shall be served upon the agency and all other parties of record by registered or certified mail. The petition shall state whether the appeal is taken on questions of law or questions of fact, or both. No appeal bond shall be required to effect any such appeal.

(c) The filing of the petition shall not stay enforcement of the agency order or decision or act as a supersedeas thereto, but the agency may stay such enforcement, and the appellant, at any time after the filing of his petition, may apply to such circuit court for a stay of or supersedeas to such final order or decision. Pending the appeal, the court may grant a stay or supersedeas upon such terms as it deems proper.

(d) Within fifteen days after receipt of a copy of the petition by the agency, or within such further time as the court may allow, the agency shall transmit to such circuit court the original or a certified copy of the entire record of the proceeding under review, including a transcript of all testimony and all papers, motions, documents, evidence and records as were before the agency, all agency staff memoranda submitted in connection with the case, and a statement of matters officially noted; but, by stipulation of all parties to the review proceeding, the record may be shortened. The expense of preparing such record shall be taxed as a part of the costs of the appeal. The appellant shall provide security for costs satisfactory to the court. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs involved. Upon demand by any party to the appeal, the agency shall furnish, at the cost of the party requesting
same, a copy of such record. In the event the complete record is not filed with the court within the time provided for in this section, the appellant may apply to the court to have the case docketed, and the court shall order such record filed.

(e) Appeals taken on questions of law, fact or both, shall be heard upon assignments of error filed in the cause or set out in the briefs of the appellant. Errors not argued by brief may be disregarded, but the court may consider and decide errors which are not assigned or argued. The court or judge shall fix a date and time for the hearing on the petition, but such hearing, unless by agreement of the parties, shall not be held sooner than ten days after the filing of the petition, and notice of such date and time shall be forthwith given to the agency.

(f) The review shall be conducted by the court without a jury and shall be upon the record made before the agency, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken before the court. The court may hear oral arguments and require written briefs.

(g) The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision or order are:

(1) In violation of constitutional or statutory provisions; or

(2) In excess of the statutory authority or jurisdiction of the agency; or

(3) Made upon unlawful procedures; or

(4) Affected by other error of law; or

(5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
ARBITRARY OR CAPRICIOUS OR CHARACTERIZED BY ABUSE OF DISCRETION OR CLEARLY UNWARRANTED EXERCISE OF DISCRETION.

(h) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals of this state in accordance with the provisions of section one, article six of this chapter.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF APPEALS.

§58-5-1. When appeal lies.
A party to a civil action may appeal to the supreme court of appeals from a final judgment of any circuit court or from an order of any circuit court constituting a final judgment as to one or more but fewer than all claims or parties upon an express determination by the circuit court that there is no just reason for delay and upon an express direction for the entry of judgment as to such claims or parties. The defendant in a criminal action may appeal to the supreme court of appeals from a final judgment of any circuit court in which there has been a conviction or which affirms a conviction obtained in an inferior court.

§58-5-2. Certification to supreme court of appeals.
Any question of law, including, but not limited to, questions arising upon the sufficiency of a summons or return of service, upon a challenge of the sufficiency of a pleading or the venue of the circuit court, upon the
sufficiency of a motion for summary judgment where such motion is denied, or a motion for judgment on the pleadings, upon the jurisdiction of the circuit court of a person or subject matter, or upon failure to join an indispensable party, may, in the discretion of the circuit court in which it arises, be certified by it to the supreme court of appeals for its decision, and further proceedings in the case stayed until such question shall have been decided and the decision thereof certified back. The procedure for processing questions certified pursuant to this section shall be governed by rules of appellate procedure promulgated by the supreme court of appeals.

§58-5-3. Presentation of petition.

A party desiring to appeal, seeking the original jurisdiction of the supreme court of appeals, or seeking an opinion of the court on certified questions may file a petition in accordance with rules of appellate procedure promulgated by the supreme court of appeals.

§58-5-4. Time for appeal.

No petition shall be presented for an appeal from any judgment rendered more than four months before such petition is filed with the clerk of the court where the judgment being appealed was entered: Provided, That the judge of the circuit court may, prior to the expiration of such period of four months, by order entered of record extend and reextend such period for such additional period or periods, not to exceed a total extension of two months, for good cause shown, if the request for preparation of the transcript was made by the party seeking such appellate review within thirty days of the entry of such judgment, decree or order.

§58-5-5. Stay of proceedings pending appeal; supersedeas bond; post-conviction bail.

A petition for stay of proceedings pending appeal, supersedeas bond or post-conviction bail relief shall be filed and processed in accordance with rules of appellate procedure promulgated by the supreme court of appeals.

§58-5-6. Filing of petition.
Petitions for appeal shall be filed and processed in accordance with rules of appellate procedure promulgated by the supreme court of appeals.


The contents of the transcript of record shall be governed in accordance with rules of appellate procedure promulgated by the supreme court of appeals.


When required by the court, an appeal shall not take effect until bond is given by the appellants or petitioners, or one of them, or some other person, in a penalty to be fixed by the court or judge by or in which the appeal is allowed or entered with condition: If a supersedeas be awarded, to abide by and perform the judgment and to pay to the opposite party, and to any person injured all such costs and damages as they, or either of them, may incur or sustain by reason of said appeal, in case such judgment, or such part, be affirmed, or the appeal be dismissed, and also, to pay all damages, costs and fees, which may be awarded against or incurred by the appellant or petitioners; and if it is an appeal from a judgment dissolving an injunction, or dismissing a bill of injunction, with a further condition, to indemnify and save harmless the surety in the injunction bond against loss or damage in consequence of his suretyship; and with condition when no supersedeas is awarded to pay such specific damages, and such costs and fees as may be awarded or incurred: Provided, That whenever an appeal is awarded in any action or suit wherein a judgment for the payment of money has been entered against an insured in an action which is defended by an insurance corporation, or other insurer, on behalf of the insured under a policy of insurance, the limit of liability of which is less than the amount of said judgment, execution on the judgment to the extent of the policy coverage shall be stayed until final determination of such appeal, and no execution shall be issued, or action brought, maintained or continued against such insured, insurance corporation, or other insurer, for the amount of such judgment so stayed, by either the injured party, the insured, or the legal
representative, heir or assigns of any of them, during the
pendency of such proceeding, provided such insurance
corporation, or other insurer, shall:

(1) File with the clerk of the court in which the
judgment was entered, a sworn statement of one of its
officers, describing the nature of the policy and the
amount of coverage thereof;

(2) Give or cause to be given by the judgment debtor
or some other person for him a bond in a penalty to be
fixed by the court or judge by or in which the appeal is
allowed or entered, not to exceed the amount of such
insurance coverage set out in the sworn statement above
required, with condition to pay the amount of such
coverage upon said judgment if the judgment or such part
is affirmed or the appeal is dismissed, plus interest on said
sum and cost;

(3) Serve a copy of such sworn statement and bond
upon the judgment creditor or his attorney;

(4) Deliver or mail to the insured at the latest address
of the insured appealing upon the records of such
insurance corporation, or other insurer, written notice that
execution on such judgment to the extent that it is not
covered by such insurance is not stayed in respect to the
insured: Provided, That the filing of a bond by the
insured or someone for him, conditioned upon the
payment of the balance of the judgment and interest not
stayed by the insured as aforesaid if the judgment is
affirmed or the appeal is dismissed, shall stay execution on
the balance of said judgment not covered by such
insurance: Provided, however, That the filing of such
statement and bond hereunder by an insurance
corporation or other insurer shall not thereby make such
insurance corporation or other insurer a party to such
action, either in the trial court or in the appellate court.

§58-5-30. Appeal by state of judgment quashing indictment.

Whenever in any criminal case an indictment is held
bad or insufficient by the judgment of a circuit court, the
state, on the application of the attorney general or the
prosecuting attorney, may appeal such judgment to the
supreme court of appeals. No such appeal shall be allowed
unless the state presents its petition therefor to the supreme
court of appeals within thirty days after the entry of such
judgment. No such judgment shall finally discharge, or
have the effect of finally discharging, the accused from
further proceedings on the indictment unless the state fails,
within such period of thirty days, to file a petition for
appeal with the clerk of the court in which judgment was
entered; but after the entry of such judgment or order the
accused shall not be kept in custody or required to give
bail pending the hearing and determination of the case by
the supreme court of appeals.

Except as herein otherwise provided, all the provisions
of the other sections of this article shall, so far as
appropriate, be applicable to a petition for an appeal
under this section, and to all subsequent proceedings
thereon in the supreme court of appeals in case such
appeal is granted.

CHAPTER 111
(Com. Sub. for H. B. 4098—By Delegates Leach, Pino and Clements)

[Passed March 11, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten-b, article two, chapter
sixty-one of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to crimes against
the person; assaults and batteries on enumerated persons;
extending protections of section to humane officers,
emergency medical personnel, firefighters, state fire marshal
or employee, state and county correctional employees and
special police; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.
§61-2-10b. Malicious assault; unlawful assault; battery and recidivism of battery; assault on police officers, conservation officers, humane officers, emergency medical service personnel, firefighters, fire marshal and county or state correctional employees; penalties.

(a) **Malicious assault.** — Any person who maliciously shoots, stabs, cuts or wounds or by any means causes bodily injury with intent to maim, disfigure, disable or kill a police officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee or state correctional employee acting in his or her official capacity and the person committing the malicious assault knows or has reason to know that the victim is a police officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee, or state correctional employee acting in his or her official capacity, is guilty of a felony and, upon conviction, shall be confined in a correctional facility for not less than three nor more than fifteen years.

(b) **Unlawful assault.** — Any person who unlawfully but not maliciously shoots, stabs, cuts or wounds or by any means causes a police officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee or state correctional employee acting in his or her official capacity, bodily injury with intent to maim, disfigure, disable or kill said person and the person committing the unlawful assault knows or has reason to know that the victim is a police officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee or state correctional employee acting in his or her official capacity, is guilty of a felony and, upon conviction, shall be confined in a correctional facility for not less than two years nor more than five years.

(c) **Battery.** — Any person who unlawfully, knowingly and intentionally makes physical contact of an insulting or provoking nature with a police officer, conservation officer, humane officer, emergency medical service
personnel, firefighter, state fire marshal or employee, county correctional employee or state correctional employee acting in his or her official capacity, or unlawfully and intentionally causes physical harm to a police officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee, or state correctional employee acting in such capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one month nor more than twelve months, fined the sum of five hundred dollars, or both. If any person commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one year nor more than three years or fined the sum of one thousand dollars or both fined and confined. Any person who commits a third violation of this subsection is guilty of a felony and, upon conviction, shall be confined in a correctional facility not less than two years nor more than five years or fined not more than two thousand dollars or both fined and confined.

(d) Assault. — Any person who unlawfully attempts to commit a violent injury to the person of a police officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee, or state correctional employee unlawfully commits an act which places a police officer, conservation officer, humane officer, emergency medical service personnel, firefighter, county correctional employee, or state correctional employee acting in his or her official capacity in reasonable apprehension of immediately receiving a violent injury, is guilty of a misdemeanor and, upon conviction, shall be confined in the county or regional jail for not less than twenty-four hours nor more than six months, fined not more than two hundred dollars, or both.

(e) For purposes of this section,"police officer" means any person employed by the state police, any person employed by the state to perform law-enforcement duties, any person employed by a political subdivision of this state who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of this state or employed as a special police officer as such is defined in section forty-one, article three, chapter sixty-one of this code.
AN ACT to amend and reenact sections thirty-nine-e, thirty-nine-f and thirty-nine-g, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to procedures for recovering on dishonored checks, drafts and orders in magistrate court; authorizing payees or holders of such checks, drafts or orders to provide notice to the drawer; permitting the filing of a complaint in magistrate court for the issuance of a warrant for the drawer's arrest; providing the form of the complaint, including information on the bank service charges imposed on the payee as a result of the dishonored check, draft or order; requiring the magistrate court to issue a notice to the drawer of his opportunity to avoid arrest by making payment to the court; and including bank service charges incurred by the payee or holder and magistrate court cost in the amount recoverable after the complaint is delivered to the magistrate court.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39e. Notice of dishonor by payee; service charge.
§61-3-39f. Manner of filing complaint for warrant; form.
§61-3-39g. Complaint; notice of complaint; issuance of warrant; payment procedures; costs.

§61-3-39e. Notice of dishonor by payee; service charge.
1 The payee or holder of a check, draft or order which
2 has been dishonored because of insufficient funds or
3 credit may send notice thereof to the drawer of the check,
draft or order. The payee or holder of any dishonored check may impose a fee of up to fifteen dollars. This fee may not be imposed or collected after a complaint for warrant has been delivered to magistrate court. No payee or holder of a check, draft or order which has been dishonored because of insufficient funds or credit shall incur any civil or criminal liability for the sending of a notice substantially in the form provided herein, other provisions of law notwithstanding. The form of the notice shall be substantially as follows:

"You are hereby notified that a check, number ............... , issued by you on (date of check), drawn upon (name of bank), and payable to ........................., has been dishonored. Pursuant to West Virginia law, you have ten days from the date of this notice to tender payment of the full amount of the check plus a fee of $............... (not to exceed fifteen dollars) to the undersigned at .................................. You are further notified that in the event the above amount is timely paid in full you will not be subject to legal proceedings, civil or criminal.

Dated .................................., 19....

......................................
(Signed)."

The provisions of this section do not authorize the making of any other written or oral threats of prosecution to enforce or enhance the collection or honoring of the dishonored check, draft or order.

The holder or payee of any check, draft or order shall relinquish the check, draft or order to the maker upon tender of the full amount due at any time before a complaint for warrant has been presented to magistrate court. In the event complaint for warrant has been presented to magistrate court, payment may be made only through the court and any holder or payee unlawfully accepting payment after that time shall be liable for all costs which may be imposed by the magistrate court in the matter, including all costs which may have accrued by the time the magistrate court is notified of the payment.

§61-3-39f. Manner of filing complaint for warrant; form.
Notwithstanding the provisions of section one, article one, chapter sixty-two of this code, a complaint for warrant for violations of section thirty-nine-a of this article need not be made upon oath before a magistrate but may be made upon oath before any magistrate court clerk or other court officer authorized to administer oaths or before a notary public in any county of the state and may be delivered by mail or otherwise to the magistrate court of the county wherein venue lies.

A complaint for warrant for violations of section thirty-nine-a of this article shall be deemed sufficient if it is in form substantially as follows:

"State of West Virginia

County of ................................., to wit:

............................................., upon oath complains that:

(a) Within one year past, on the ...... day of .........., 19..., in the county stated above, ......................... ('the maker') unlawfully issued and delivered to ......................... a check, draft or order with the following words and figures:

............................................. 19... No...................

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

(Name of Bank)

Pay to the Order of ......................... $......... Dollars

For................................................................. when the maker did not have funds on deposit in or credit with this bank with which to pay the check, draft or order upon presentation against the peace and dignity of the State of West Virginia. The complainant therefore prays a warrant issue and that the maker be apprehended and held to answer the warrant and dealt with in relation thereto according to the law.

(b) At the time the check, draft or order was delivered and before it was accepted there was either on the check or on a record in the possession of the complainant the following information regarding the identity of the maker:

(1) Name .................................................
(2) Residence address

(3) Business address

(4) Mailing address

(5) Motor vehicle operator's number

(6) Home phone

(7) Work phone

(8) Place of employment

That since the time the check, draft or order was delivered the complainant has ascertained to the best of his or her knowledge and belief the following facts concerning the maker:

Full name

Home address

Home phone no. Business phone no.

Place of employment

Race Sex Height

Date of birth

Day Month Year

Complainant

Address Phone No.

(c) The complainant’s bank or financial institution has imposed on or collected from the complainant a service charge in the amount of $ in connection with the check, draft or order described above.

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

My commission expires the day of , 19..."
The failure to supply information indicated in parts (b) or (c) of the foregoing complaint for warrant shall not affect the sufficiency thereof.

§61-3-39g. Complaint; notice of complaint; issuance of warrant; payment procedures; costs.

After receipt of a complaint for warrant for a violation of section thirty-nine or thirty-nine-a of this article the magistrate court shall proceed with the issuance of the warrant as is provided by law: Provided, That no warrant may issue for an offense under section thirty-nine or thirty-nine-a of this article which, upon conviction, would be punishable as a misdemeanor, unless the payee or holder of the check, draft or order which has been dishonored has sent notice thereof to the drawer of the check, draft or order in accordance with the provisions of section thirty-nine-e of this article, or unless notice has been sent by the magistrate as hereinafter provided. Proof that the notice was sent by the payee or holder may be evidenced by presentation of a return receipt indicating that the notice was mailed to the drawer by certified mail, or, in the event the mailed notice was not received or was refused by the drawer, by presentation of the mailed notice itself. The magistrate court shall receive and hold the check, draft or order.

Upon receipt of a complaint for a misdemeanor warrant unaccompanied by proof that notice was sent by the payee or holder, the magistrate court shall immediately prepare and mail to the drawer of the check, draft or order a notice in form substantially as follows. The magistrate court shall impose any service charge reflected in the complaint as having been imposed on the payee or holder by the payee's or holder's bank or financial institution in connection with the check, draft or order and additional court costs in the amount of ten dollars. This notice shall be mailed to the drawer by United States mail, first class and postpaid, at the address provided at the time of presenting the check, draft or order. Service of this notice is complete upon mailing. The notice shall be in form substantially as follows:

"You are hereby notified that a complaint for a warrant for your arrest has been filed with this office to
the following effect and purpose by ................ who upon
oath complains that on the ...... day of ................., 19....,
you did unlawfully issue and deliver unto him a certain
check, draft or order in the amount of ..................
drawn on ........................................... (name of
bank or financial institution) ............... where you did
not have funds on deposit in or credit with the bank or
financial institution with which to pay the check, draft or
order upon presentation and pray that a warrant issue and
that you be apprehended wherever you may be found by
an officer authorized to make an arrest and dealt with in
accordance with the laws of the state of West Virginia.

“A warrant for arrest will be issued on or after the
........ day of ................., 19....

“You can nullify the effect of this complaint and
avoid arrest by paying to the magistrate court clerk at
...................... the amount due on the check, draft or
order; service charges imposed on the payee or holder by
the payee’s or holder’s bank or financial institution in
connection with the check, draft or order in the amount of
...........; and the costs of this proceeding in the amount of
ten dollars on or before the .......... day of .................,
19....., at which time you will be given a receipt with
which you can obtain the check, draft or order from the
magistrate court. The complainant is forbidden by law to
accept payment after the complaint is filed.

Magistrate Court of .............................. County

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

Date: .............................................."

This notice shall give the drawer of any such check,
draft or order ten days within which to make payment to
magistrate court. In the event the drawer pays the total
amount set forth in the notice to the magistrate court
within the ten-day period, no warrant may issue. The
payment may be made to the magistrate court in person or
by mail by cash, certified check, bank draft or money
order and, in the event the payment is made by mail, the
magistrate court clerk shall immediately mail to the maker
of the check, draft or order the receipt required by this
section. In the event the total amount is not so paid the
court shall proceed with the issuance of the warrant as is
provided by law.

Upon receipt of payment of the total amount the
magistrate court clerk shall issue to the drawer a receipt
sufficiently describing the check, draft or order with which
receipt the drawer is entitled to receive the dishonored
check, draft or order from the magistrate court holding it.
The magistrate court clerk shall forward the amount of the
check, draft or order, together with any service charge
reflected on the complaint as having been imposed on the
payee or holder by the payee’s or holder’s bank or
financial institution in connection with the check, draft or
order, to the payee or holder thereof, along with a
description of the check, draft or order sufficient to enable
the person filing the complaint to identify it and the
transaction involved. Costs collected shall be dealt with as
is provided by law for other criminal proceedings.

The drawer of a check, draft or order against whom a
warrant has been issued may at any time prior to trial pay
to the court the amount of the check, draft or order; any
service charge reflected in the complaint as having been
imposed on the payee or holder by the payee’s or
holder’s bank or financial institution in connection with
the check, draft or order; and the court costs which would
be assessed if the person were found guilty of the offense
charged. These costs shall be imposed in accordance with
the provisions of section two, article three, chapter fifty of
this code.

CHAPTER 113

(Com. Sub. for H. B. 2726—By Delegates C. White, Proudfoot, Underwood,
Shelton, Campbell and Coleman)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]
amended, by adding thereto a new section, designated section fifty-three, relating to establishing a misdemeanor offense of unauthorized use of a dumpster or solid waste container; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-53. Unauthorized use of dumpsters.

(a) Any person who without authorization dumps garbage or trash, or assists in the unauthorized dumping of garbage or trash, in a dumpster or other solid waste container which is located on the property of another person and leased or otherwise owned or maintained by another person is guilty of a misdemeanor and, upon conviction thereof, shall be punished in accordance with subsection (b) of this section. The act of throwing isolated objects into a dumpster or other solid waste container in the prevention or elimination of litter is specifically excepted from any penalties under this section.

(b) Any person convicted of a misdemeanor under subsection (a) of this section shall be subject to the following penalties:

(1) Upon a first conviction under this section, the defendant shall be fined not less than fifty dollars nor more than two hundred fifty dollars.

(2) Upon a second conviction under this section, the defendant shall be fined not less than two hundred fifty dollars nor more than five hundred dollars.

(3) Upon any subsequent conviction in excess of a second conviction under this section, the defendant shall be fined not less than five hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not less than thirty days nor more than sixty days, or both fined and imprisoned.
Notwithstanding the provisions of section four, article eleven-a of this chapter or section two-a, article three, chapter fifty of this code, the magistrate or court may order restitution not to exceed the value of unauthorized solid waste services received.

CHAPTER 114
(Com. Sub. for H. B. 4234—By Delegates L. White, Staton, Hunt, Trump, Beane, Smirl and Manuel)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifty-four, relating to creating a felony offense for taking another person’s name for the purpose of conducting financial or credit transactions in that person’s name; and excepting certain persons therefrom.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.
§61-3-54. Taking identity of another person; penalty.

Any person who knowingly takes the name, birth date, social security number or other identifying information of another person, without the consent of that other person, with the intent to fraudulently represent that he or she is the other person for the purpose of making financial or credit transactions in the other person’s name, is guilty of a felony, and upon conviction, shall be punished by confinement in the penitentiary not more than five years, or fined not more than one thousand dollars, or both: Provided, That the provisions of this section do not apply to any person who obtains another person’s drivers license or other form of identification for the sole purpose of misrepresenting his or her age.
AN ACT to amend article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three, relating to limitation of nuisance actions for shooting ranges; prohibiting nuisance actions when property purchased near an existing shooting range, establishing limitations of actions when a shooting range is established or undergoes substantial change.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-23. Shooting range; limitations on nuisance actions.

(a) As used in this section:

(1) "Person" means an individual, proprietorship, partnership, corporation, club or other legal entity;

(2) "Shooting range" or "range" means an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder or any other similar shooting.

(b) Except as provided in this section, a person may not maintain a nuisance action for noise against a shooting range located in the vicinity of that person's property if the range was established as of the date of the person acquiring the property. If there is a substantial change in use of the range after the person acquires the property, the person may maintain a nuisance action if the action is brought within two years from the beginning of the substantial change in use of the range.
(c) A person who owned property in the vicinity of a shooting range that was established after the person acquired the property may maintain a nuisance action for noise against that range only if the action is brought within four years after establishment of the range or two years after a substantial change in use of the range.

(d) If there has been no shooting activity at a range for a period of two years, resumption of shooting is considered establishment of a new range for the purposes of this section.

CHAPTER 116

(H. B. 4296—By Delegates Smirl, Trump, Thomas, Staton, Kominar and Martin)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing individuals from other states to carry a concealed weapon in this state and authorizing the governor to execute reciprocity agreements with other states and political subdivisions regarding the carrying of concealed weapons.

Be it enacted by the Legislature of West Virginia:

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

§61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.

The licensure provisions set forth in this article shall not apply to:
(1) Any person carrying a deadly weapon upon his own premises; nor shall anything herein prevent a person from carrying any firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business, nor shall anything herein prohibit a person from possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site, and returning to his or her home, residence or place of business;

(2) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this state, or from the United States for the purpose of target practice, from carrying any pistol, as defined in this article, unloaded, from his home, residence or place of business to a place of target practice, and from any such place of target practice back to his home, residence or place of business, for using any such weapon at such place of target practice in training and improving his skill in the use of such weapons;

(3) Any law-enforcement officer or law-enforcement official as such are defined in section one, article twenty-nine, chapter thirty of this code;

(4) Any employee of the West Virginia department of corrections duly appointed pursuant to the provisions of section five, article five, chapter twenty-eight of this code while such employee is on duty;

(5) Any member of the armed forces of the United States or the militia of this state while such member is on duty;

(6) Any circuit judge, including any retired circuit judge designated senior status by the supreme court of appeals of West Virginia, prosecuting attorney, assistant prosecuting attorney or a duly appointed investigator employed by a prosecuting attorney;
(7) Any resident of another state, who has been issued a license to carry a concealed weapon by a state or a political subdivision which has entered into a reciprocity agreement with this state, shall be exempt from the licensing requirements of section four of this article. The governor may execute reciprocity agreements on behalf of the state of West Virginia with states or political subdivisions which have similar gun permitting laws and which recognize and honor West Virginia licenses issued pursuant to section four of this article.

CHAPTER 117

(Com. Sub. for S. B. 148—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]
(a) In addition to any other offenses set forth in this code, the Legislature hereby declares a separate and distinct offense under this subsection, as follows: If any parent, guardian or custodian of a child under his or her care, custody or control, shall engage in or attempt to engage in sexual exploitation of, or in sexual intercourse, sexual intrusion or sexual contact with, a child under his or her care, custody or control, notwithstanding the fact that the child may have willingly participated in such conduct, or the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian or custodian shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten nor more than twenty years, or fined not less than five hundred nor more than five thousand dollars and imprisoned in the penitentiary not less than ten years nor more than twenty years.

(b) If any parent, guardian or custodian shall knowingly procure another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian or custodian when such child is less than sixteen years of age, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, such parent, guardian or custodian shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than five years nor more than fifteen years, or fined not less than one thousand nor more than ten thousand dollars and imprisoned in the penitentiary not less than five years nor more than fifteen years.

(c) If any parent, guardian or custodian shall knowingly procure another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian or custodian when such child is sixteen years of age or older,
notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian or custodian shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than five years.

(d) The provisions of this section shall not apply to a custodian whose age exceeds the age of the child by less than four years.

CHAPTER 118

(Com. Sub. for S. B. 158—By Senators Tomblin, Mr. President, and Buckalew) [By Request of the Executive]

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eight-f, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto three new sections, designated sections one-a, two-a and two-b; to amend and reenact sections two, three, four, five, seven, eight, nine and ten of said article; and to amend and reenact section two, article twelve, chapter sixty-two of said code, all relating to the registration of sex offenders; legislative intent; expansion of persons required to be registered; notification requirements for sex offenders who leave prison or move in or out of the state; changing the definition of mental abnormality; establishment of a judicial process to determine whether a person is a sexually violent person; establishment of sex offender registration advisory board; requiring registration within ten days of change in address; expansion of the duration certain persons must register; notification distribution; creation of disclosure exemptions; criminal penalties for failing to provide information and registering; parole officers providing information to the state police; and establishment of a verification process.
Be it enacted by the Legislature of West Virginia:

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

Chapter
61. Crimes and Their Punishment.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8F. SEX OFFENDER REGISTRATION ACT.

§61-8F-1a. Intent.
§61-8F-2. Registration.
§61-8F-2b. Creation of sex offender registration advisory board.
§61-8F-3. Change of address.
§61-8F-4. Duration.
§61-8F-5. Distribution and disclosure of information; community information programs by prosecuting attorney and state police; petition to circuit court.
§61-8F-7. Information shall be released when person moves out of state.
§61-8F-8. Failure to register; penalty.
§61-8F-10. Address verification.

§61-8F-1a. Intent.

It is the intent of this article to provide a law-enforcement tool to protect the public from child molesters and violent sexual offenders by registration of persons who have demonstrated by their criminal conduct that they may constitute a continuing threat to the public safety.

§61-8F-2. Registration.

(a) Any person who has been convicted of a violation of the provisions of article eight-b, eight-c, or sections five and six, article eight-d of this chapter, or of section fourteen, article two, or of sections twelve and thirteen,
article eight of this chapter, or of a felony violation involving a minor of sections six or seven, article eight, chapter sixty-one of this code, or of a similar provision in another state, federal or military jurisdiction shall be required to be registered as set forth in this article. Any person who has been convicted of an attempt to commit any of the offenses set forth in this section shall also be required to register as set forth in this article.

(b) On the date that any person convicted of any of the crimes listed herein, including those persons continuing under some post conviction supervisory status for crimes committed prior to the date of this law, is released, is granted probation, is granted a suspended sentence, is released on parole, probation, home detention, work release or any other release from incarceration, the commissioner of corrections, regional jail administrator or city or sheriff operating a jail which releases such person and any parole or probation officer who releases such person or supervises such person following the release shall obtain all information required by this subsection prior to the release of the person, inform the person that he or she must register within three days of release with the state police detachment in the county where he or she shall reside, and shall send written notice of the release of the person to the state police within three days of receiving the information. The notice shall include:

1. The full name of the person;
2. The address where the person shall reside;
3. The person's social security number;
4. A recent photograph of the person;
5. A brief description of the crime for which the person was convicted;
6. Fingerprints; and
7. For any person determined to be a sexually violent predator, the notice shall also include:
   (i) Identifying factors, including physical characteristics;
   (ii) History of the offense; and
CRIMES AND THEIR PUNISHMENT

(iii) Documentation of any treatment received for the mental abnormality or personality disorder.

Persons who have been convicted for any of the offenses contained in subsection (a) of this section and released from incarceration or correctional supervision shall be required to register as provided herein if that person is arrested on any new criminal charge within a period of ten years from release from correctional supervision of the original sexual offense. The arresting agency shall inform the person of his or her duty to register and shall send written notice of the person's arrest and of this notification to the state police.

(c) At the time the person is convicted of the crimes set forth in subsection (a) of this section, the person shall sign in open court, a statement acknowledging that he or she understands the requirements imposed by this article. The court shall inform the person so convicted of the requirements to register imposed by this article and shall further satisfy itself by interrogation of the defendant or his or her counsel that the defendant has received notice of the provisions of this article and that the defendant understands such provisions. Such statement, when signed and witnessed, shall constitute prima facie evidence that the person had knowledge of the requirements of this article.

(d) When a person required to register under this article is released following incarceration, the commissioner of corrections, the regional jail supervisor or the city or sheriff or any other person supervising the operation of the place of confinement shall, within three days, inform the state police of such release and provide such further information as is required by this article.

(e) The state police shall maintain a central registry of all persons who register under this article and shall release information only as provided in this article. The information required to be made public by the state police by subdivision (2), subsection (b), section five of this article shall be accessible through the internet.

(f) For the purposes of this article, sexually violent offenses shall be defined as any criminal offenses set forth in article eight-b of this chapter which include forcible compulsion, bodily injury or the use of deadly weapons.
(g) The term "sexually violent predator" means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(h) The term "mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(i) The term "predatory act" means an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.


(a) The circuit court that has sentenced a person for having committed a sexually violent offense shall make a determination whether:

(1) A person is a sexually violent predator; or

(2) A person is no longer a sexually violent predator.

(b) A hearing to make a determination as provided for in subsection (a) of this section is a summary proceeding, triable before the court without a jury.

(c) A proceeding seeking to establish that a person is a sexually violent predator is initiated by the filing of a written information by the prosecuting attorney. The information shall describe the record of the judgment of the court on the person's conviction of a sexually violent offense, and shall set forth a short and plain statement of the prosecutor's claim that the person suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(d) A proceeding seeking to establish that a person is no longer a sexually violent predator is initiated by the filing of a petition by the person who has been determined to be a sexually violent predator.
(e) Prior to making a determination pursuant to the provisions of this section, the sentencing court may order a psychiatric or other clinical examination and, after such examination, may further order a period of observation in an appropriate facility within this state designated by the court after consultation with the director of the division of health.

(f) Prior to making a determination pursuant to the provisions of this section, the sentencing court shall request and receive a report by the board established pursuant to section two-b of this article. The report shall set forth the findings and recommendation of the board on the issue of whether the person is a sexually violent predator.

(g) At a hearing to determine whether a person is a sexually violent predator, the person shall be present and shall have the right to be represented by counsel and introduce evidence and cross-examine witnesses. The offender shall have access to a summary of the medical evidence to be presented by the state. The offender shall have the right to an examination by an independent expert of his choice and testimony from such expert as a medical witness on his behalf. At the termination of such hearing the court shall make a finding of fact upon a preponderance of the evidence as to whether the person is a sexually violent predator.

(h) If a person is determined by the circuit court to be a sexually violent predator, the clerk of the court shall forward a copy of the order to the state police in the manner prescribed by the superintendent of state police in procedural rules promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§61-8F-2b. Creation of sex offender registration advisory board.

(a) There is hereby created within the department of military affairs and public safety a sex offender registration advisory board consisting of a minimum of five members appointed by the secretary of the department of military affairs and public safety. At least two of the members shall be experts in the field of the
behavior and treatment of sexual offenders, and each shall
be a physician, psychologist or social worker in the
employ of this state appointed by the secretary in
consultation with the director of the division of health.
The remaining members shall be victims rights advocates
and representatives of law-enforcement agencies.
Members of the board shall be reimbursed their
reasonable expenses pursuant to the rules promulgated by
the department of administration for the reimbursement of
expenses of state officials and employees, and shall receive
no other compensation for their services. The board shall
utilize the staff of the division or office within the
department of military affairs and public safety designated
by the secretary thereof in carrying out its duties and
responsibilities as set forth in this article.

(b) The board shall assist the circuit courts of this state
in determining whether persons convicted of sexually
violent offenses are sexually violent predators.

§61-8F-3. Change of address.

When any person required to register under this article
changes his or her residence or address, he or she shall,
within ten days, inform the West Virginia state police of
his or her new address in the manner prescribed by the
superintendent of state police in procedural rules
promulgated in accordance with the provisions of article
three, chapter twenty-nine-a of this code.

§61-8F-4. Duration.

(a) A person required to register under terms of this
article shall continue to comply with this section, except
during ensuing periods of incarceration, until:

(1) Ten years have elapsed since the person was
released from prison or jail, or from the time the person
was placed upon probation, parole or supervised release;
or

(2) For the life of that person if that person: (A) Has
one or more prior convictions for any qualifying offense
described in this article; or (B) has been convicted of a
sexually violent offense; or (C) has been determined to be
a sexually violent predator as defined above.
13 (b) A person whose conviction is overturned for the
14 offense which required them to register under this article
15 shall, upon petition to the court, have their name removed
16 from the registry.

§61-8F-5. Distribution and disclosure of information; com-
1 munity information programs by prosecuting
2 attorney and state police; petition to circuit
3 court.

1 (a) Within five working days after receiving any
2 notification as described in this article, the state police
3 shall distribute a copy of the notification statement to:

4 (1) The supervisor of each county and municipal law-
5 enforcement office in the city and county where the
6 person will reside;

7 (2) The county superintendent of schools where the
8 person will reside;

9 (3) The child protective services office charged with
10 investigating allegations of child abuse or neglect in the
11 county where the person will reside;

12 (4) All community organizations or religious
13 organizations which regularly provide services to youths
14 in the county where the person will reside;

15 (5) Individuals and organizations which provide day
16 care services for youths or day care, residential or respite
17 care, or other supportive services for incapacitated, infirm
18 or mentally incapacitated or infirm persons in the county
19 where the registered person will reside; and

20 (6) The federal bureau of investigation (FBI).

21 (b) Information concerning persons whose names are
22 contained on the list of the sexual offender registry shall
23 be disseminated only in the following manner, and not be
24 subject to the requirements of the West Virginia freedom
25 of information act of this code:

26 (1) When a person has been determined to be a
27 sexually violent predator under terms of section two-a of
28 this article, the state police shall notify the prosecuting
29 attorney of the county in which the person intends to
30 reside. The prosecuting attorney shall in cooperation with
the state police conduct a community notification program which shall include publication of the offender's name and place of residence, and information concerning the legal rights and obligations of both the offender and the community. The prosecuting attorney and state police may conduct a community notification program in the county of residence of any person who is required to register for life under the terms of subdivision (2), subsection (a), section four of this article. Community notification may be repeated when determined appropriate by the prosecuting attorney;

(2) The state police shall maintain and make available to the public at least quarterly the list of all persons who are required to register for life according to the terms of subdivision (2), subsection (a), section four of this article. The method of publication and access to this list shall be determined by the superintendent; and

(3) A resident of a county may petition the circuit court for an order requiring the state police to release information about persons residing in that county who are required to register under section two of this article. The court shall determine whether information contained on the list and relevant to public safety outweighs the importance of confidentiality, and if the court orders information to be released, it may further order limitations upon secondary dissemination by the resident seeking the information.

In no event shall information concerning the identity of a victim of an offense requiring registration be released.

(c) The state police may furnish information and documentation required in connection with the registration to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the state of West Virginia upon proper request stating that the records will be used solely for law-enforcement related purposes. The state police may disclose information collected under this article to federal, state and local
governmental agencies responsible for conducting pre-
employment checks.

(d) An elected public official, public employee or
public agency is immune from civil liability for damages
arising out of any action relating to the provisions of this
section except when the official, employee or agency
acted with gross negligence or in bad faith.

§61-SF-7. Information shall be released when person moves
out of state.

A person who is required to register pursuant to the
provisions of this article, who intends to move to another
state or country shall at least ten days prior to such move
notify the state police of his or her intent to move and of
the location to which he or she intends to move, or if that
person is incarcerated he or she shall notify correctional
officials of his or her intent to reside in some other state or
country upon his or her release, and of the location to
which he or she intends to move. Upon such notification,
the state police shall notify law-enforcement officials of
the jurisdiction where the person indicates he or she
intends to reside of the information provided by the
person under the provisions of this article.

§61-SF-8. Failure to register; penalty.

(a) Except as outlined below, any person required to
register under this article who knowingly provides false
identity or address information or who refuses to provide
such accurate information when so required by terms of
this article, or who knowingly fails to register or
knowingly fails to provide a change of address as required
by this article, is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not less than two
hundred fifty dollars nor more than ten thousand dollars,
or imprisoned in the county jail not more than one year,
or both fined and imprisoned: Provided, That each time
such person changes residence and fails to register, such
failure shall constitute a separate offense.

(b) Any person required to register under this article
who is convicted of a second or subsequent offense of
failing to register or provide a change of address as
required, or any person who has one or more prior
convictions for qualifying sexual offenses under this article and who fails to register or has any conviction for a sexually violent offense and who fails to register is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state penal facility for not less than one year nor more than five years.

(c) Any person required to register as a sexual predator as defined by section two of this article, who fails to register or provide a change of address as required by this article is guilty of a felony and, upon conviction thereof, shall, for a first offense, be imprisoned in a state correctional facility not less than two years nor more than ten years, and for a second or subsequent offense, be imprisoned in a state correctional facility not less than five years nor more than twenty years.

(d) In addition to any other penalty specified for failure to register under this article, any person under the supervision of a probation officer, parole officer or any other sanction short of confinement in jail or prison, who knowingly refuses to register, or who knowingly gives false information concerning his or her residence, or who knowingly fails to provide a change of address as required by this article, shall be subject to immediate revocation of probation or parole and returned to confinement for the remainder of any suspended or unserved portion of his or her original sentence.


(a) When any probation or parole officer accepts supervision of and has legal authority over any person required to register under this article from another state under the terms and conditions of the uniform act for out-of-state parolee supervision established under article six, chapter twenty-eight of this code, such officer shall give the person written notice of the registration requirements of this section and obtain a signed statement from the person required to register acknowledging the receipt of the notice. The officer shall obtain and submit to the state police the identical information required of persons convicted in this state under subsection (b), section two of this article.

(b) Any person:
(1) Who resides in another state;

(2) Who is employed, carries on a vocation or is a student in this state; and

(3) Who is required by the state in which he or she resides to register in that state under provisions of the law of that state that are similar to the provisions of this article, shall register in this state and otherwise comply with the provisions of this article.

§61-8F-10. Address verification.

The state police shall verify addresses of those persons registered as sexually violent predators every ninety days and all other registered persons once a year. The state police may require registrants to periodically submit to new fingerprints and photographs as part of the verification process. The method of verification shall be in accordance with internal management rules and regulations pertaining thereto promulgated by the superintendent under authority of section twenty-five, article two, chapter fifteen of this code.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Eligibility for probation.

(a) All persons who are found guilty of or plead guilty to any felony, the maximum penalty for which is less than life imprisonment, and all persons who are found guilty of or plead guilty to any misdemeanor, shall be eligible for probation, notwithstanding the provisions of sections eighteen and nineteen, article eleven, chapter sixty-one of this code.

(b) The provisions of subsection (a) of this section to the contrary notwithstanding, any person who commits or attempts to commit a felony with the use, presentment or brandishing of a firearm shall be ineligible for probation. Nothing in this section shall apply to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted
commission of the felony, only the principal in the first
degree used, presented or brandished a firearm.

(c) (1) The existence of any fact which would make
any person ineligible for probation under subsection (b)
of this section because of the commission or attempted
commission of a felony with the use, presentment or
brandishing of a firearm shall not be applicable unless
such fact is clearly stated and included in the indictment
or presentment by which such person is charged and is
either: (i) Found by the court upon a plea of guilty or
nolo contendere; or (ii) found by the jury, if the matter be
tried before a jury, upon submitting to such jury a special
interrogatory for such purpose; or (iii) found by the court,
if the matter be tried by the court, without a jury.

(2) The amendments to this subsection adopted in the
year one thousand nine hundred eighty-one:

(A) Shall apply to all applicable offenses occurring on
or after the first day of August of that year;

(B) Shall apply with respect to the contents of any
indictment or presentment returned on or after the first
day of August of that year irrespective of when the
offense occurred;

(C) Shall apply with respect to the submission of a
special interrogatory to the jury and the finding to be
made thereon in any case submitted to such jury on or
after the first day of August of that year or to the requisite
findings of the court upon a plea of guilty or in any case
tried without a jury: Provided, That the state shall give
notice in writing of its intent to seek such finding by the
jury or court, as the case may be, which notice shall state
with particularity the grounds upon which such finding
shall be sought as fully as such grounds are otherwise
required to be stated in an indictment, unless the grounds
therefor are alleged in the indictment or presentment upon
which the matter is being tried;

(D) Shall not apply with respect to cases not affected
by such amendment and in such cases the prior provisions
of this section shall apply and be construed without
reference to such amendment; and
Insofar as such amendments relate to mandatory sentences without probation, all such matters requiring such sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(d) For the purpose of this section, the term "firearm" shall mean any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder, or any other similar means.

(e) In the case of any person who has been found guilty of, or pleaded guilty to, a felony or misdemeanor under the provisions of section twelve or twenty-four, article eight, chapter sixty-one of this code, or under the provisions of article eight-c or eight-b of said chapter, such person shall only be eligible for probation after undergoing a physical, mental and psychiatric study and diagnosis which shall include an on-going treatment plan requiring active participation in sexual abuse counseling at a mental health facility or through some other approved program: Provided, That nothing disclosed by the person during such study or diagnosis shall be made available to any law-enforcement agency, or other party without that person's consent, or admissible in any court of this state, unless such information disclosed shall indicate the intention or plans of the probationer to do harm to any person, animal, institution or property, in which case such information may be released only to such persons as might be necessary for protection of the said person, animal, institution or property.

(f) Any person who has been convicted of a violation of the provisions of article eight-b, eight-c or sections five and six, article eight-d, chapter sixty-one of this code, or of section fourteen, article two, or of sections twelve and thirteen, article eight, chapter sixty-one of this code, or of a felony violation involving a minor of section six or seven, article eight, chapter sixty-one of this code, or of a similar provision in another jurisdiction shall be required to be registered upon release on probation. Any person who has been convicted of an attempt to commit any of the offenses set forth in this subsection shall also be registered upon release on probation.
(g) The probation officer shall within three days of release of the offender, send written notice to the state police of the release of the offender. The notice shall include:

1. The full name of the person;
2. The address where the person shall reside;
3. The person's social security number;
4. A recent photograph of the person;
5. A brief description of the crime for which the person was convicted;
6. Fingerprints; and
7. For any person determined to be a sexually violent predator as defined in section two, article eight-f, chapter sixty-one of this code, the notice shall also include:
   i. Identifying factors, including physical characteristics;
   ii. History of the offense; and
   iii. Documentation of any treatment received for the mental abnormality or personality disorder.

CHAPTER 119

(Com. Sub. for S. B. 105—Senators Jackson, Kessler and Sharpe)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article four, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one-a, article eleven-a of said chapter, all relating to community service being credited against criminal fine or confinement; limitations; provisions for punishing willful failure to perform community service; approval of entities for which work may be performed; and standards of proof.

Be it enacted by the Legislature of West Virginia:
That section sixteen, article four, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one-a, article eleven-a of said chapter be amended and reenacted, all to read as follows:

Article


11A. Release for Work and Other Purposes.

ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.

§62-4-16. Community service work may be substituted in lieu of a fine in municipal court.

(a) Notwithstanding any provision of this code to the contrary, a municipal judge may substitute in lieu of the imposition of a sentence of incarceration or imposition of a fine, substitute community service work for such incarceration or fine. Where community service work is ordered as a substitute on a sentence of incarceration an eight hour work day shall extinguish one day of any sentence of incarceration. The minimum wage established by the prevailing federal minimum wage in effect at the time of sentencing is imposed shall be used to compute the amount of community service work necessary to extinguish the fine. In the discretion of the court, the sentence credits may run concurrently or consecutively.

(b) Any community service ordered pursuant to the provisions of this section shall be performed for government entities or charitable or nonprofit entities and be supervised by the chief of police of the municipality or his or her designee.

(c) Persons sentenced under the provisions of this section remain under the jurisdiction of the municipal court. The court may withdraw the community service sentence at any time by order entered with or without notice and order a person previously sentenced to community service to serve the term of incarceration or to pay the fine available to the court upon the person’s conviction: Provided, That any community service work performed before the community service sentence is
28 withdrawn shall be credited against any term of 
29 incarceration or fine imposed.

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.


(a) Any person who has been convicted in a circuit 
2 court or in a magistrate court under any criminal 
3 provision of this code of a misdemeanor or felony, which 
4 is punishable by imposition of a fine or confinement in 
5 the county or regional jail or the state penitentiary, or both 
6 fine and confinement, may, in the discretion of the 
7 sentencing judge or magistrate, as an alternative to the 
8 sentence imposed by statute for the crime, be sentenced 
9 under one of the following programs:

10 (1) The weekend jail program under which persons 
11 would be required to spend weekends or other days 
12 normally off from work in jail;

13 (2) The work program under which sentenced persons 
14 would be required to spend the first two or more days of 
15 their sentence in jail and then, in the discretion of the 
16 court, would be assigned to a county agency to perform 
17 labor within the jail, or in and upon the buildings, 
18 grounds, institutions, bridges, roads, including orphaned 
19 roads used by the general public and public works within 
20 the county. Eight hours of labor shall be credited as one 
21 day of the sentence imposed. Persons sentenced under 
22 this program may be required to provide their own 
23 transportation to and from the work site, lunch and work 
24 clothes; or

25 (3) The community service program under which 
26 persons sentenced would spend no time in jail but would 
27 be sentenced to a number of hours or days of community 
28 service work with government entities or charitable or 
29 nonprofit entities approved by the circuit court. 
30 Regarding any portion of the sentence designated as 
31 confinement, eight hours of community service work shall 
32 be credited as one day of the sentence imposed. 
33 Regarding any portion of the sentence designated as a 
34 fine, the fine shall be credited at an hourly rate equal to
the prevailing federal minimum wage at the time the sentence was imposed. In the discretion of the court, the sentence credits may run concurrently or consecutively. Persons sentenced under this program may be required to provide their own transportation to and from the work site, lunch and work clothes.

(b) In no event may the duration of the alternate sentence exceed the maximum period of incarceration otherwise allowed.

(c) In imposing a sentence under the provisions of this section, the court shall first make the following findings of fact and incorporate them into the court's sentencing order:

(1) The person sentenced was not convicted of an offense for which a mandatory period of confinement is imposed by statute;

(2) In circuit court cases, that the person sentenced is not a habitual criminal within the meaning of sections eighteen and nineteen, article eleven, chapter sixty-one of this code;

(3) In circuit court cases, that the offense underlying the sentence is not a felony offense for which violence or the threat of violence to the person is an element of the offense;

(4) In circuit court cases, that adequate facilities for the administration and supervision of alternative sentencing programs are available through the court's probation officers or the county sheriff or, in magistrate court cases, that adequate facilities for the administration and supervision of alternative sentencing programs are available through the county sheriff; and

(5) That an alternative sentence under provisions of this article will best serve the interests of justice.

(d) Persons sentenced by the circuit court under the provisions of this article shall remain under the administrative custody and supervision of the court's probation officers or the county sheriff. Persons
sentenced by a magistrate shall remain under the administrative custody and supervision of the county sheriff.

(e) Persons sentenced under the provisions of this section may be required to pay the costs of their incarceration, including meal costs, at the discretion of the court.

(f) Persons sentenced under the provisions of this section remain under the jurisdiction of the court. The court may withdraw any alternative sentence at any time by order entered with or without notice and require that the remainder of the sentence be served in the county jail, regional jail or penitentiary: Provided, That no alternative sentence directed by the sentencing judge or magistrate or administered under the supervision of the sheriff, his or her deputies, a jailer or a guard, shall require the convicted person to perform duties which would be considered detrimental to the convicted person's health as attested by a physician.

CHAPTER 120
(H. B. 4121—By Delegates Douglas, Mahan and Manuel)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three and four, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of culture and history; and changing the name of the arts and humanities section to the arts section.

Be it enacted by the Legislature of West Virginia:

That sections one, three and four, 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.

§29-1-1. Division of culture and history continued; sections and commissions; purposes; definitions; effective date.

§29-1-3. Commission on the arts.

§29-1-4. Arts section; director.

§29-1-1. Division of culture and history continued; sections and commissions; purposes; definitions; effective date.

(a) The division of culture and history and the office of commissioner of culture and history heretofore created are hereby continued. The governor shall nominate, and by and with the advice and consent of the Senate, appoint the commissioner, who shall be the chief executive officer of the division and shall be paid an annual salary of forty-five thousand dollars per year, notwithstanding the provisions of section two-a, article seven, chapter six of this code. The commissioner so appointed shall have: (1) A bachelor's degree in one of the fine arts, social sciences, library science or a related field; or (2) four years' experience in the administration of museum management, public administration, arts, history or a related field.

(b) The division shall consist of five sections as follows:

(1) The arts section;
(2) The archives and history section;
(3) The museums section;
(4) The historic preservation section; and
(5) The administrative section.

(c) The division shall also consist of two citizens commissions as follows:

(1) A commission on the arts; and
(2) A commission on archives and history.

(d) The commissioner shall exercise control and supervision of the division and shall be responsible for the
projects, programs and actions of each of its sections. The
purpose and duty of the division is to advance, foster and
promote the creative and performing arts and crafts,
including both indoor and outdoor exhibits and
performances; to advance, foster, promote, identify,
register, acquire, mark and care for historical, prehistorical,
archaeological and significant architectural sites, structures
and objects in the state; to encourage the promotion,
preservation and development of significant sites,
structures and objects through the use of economic
development activities such as loans, subsidies, grants and
other incentives; to coordinate all cultural, historical and
artistic activities in state government and at state-owned
facilities; to acquire, preserve and classify books,
documents, records and memorabilia of historical interest
or importance; and, in general, to do all things necessary
or convenient to preserve and advance the culture of the
state.

(e) The division shall have jurisdiction and control and
may set and collect fees for the use of all space in the
building presently known as the West Virginia science and
culture center, including the deck and courtyards forming
an integral part thereof; the building presently known as
West Virginia Independence Hall in Wheeling, including
all the grounds and appurtenances thereof; "Camp
Washington Carver" in Fayette County, as provided for in
section fourteen of this article; and any other sites as may
be transferred to or acquired by the division.

Notwithstanding any provision of this code to the
contrary, including the provisions of article one of chapter
five-b of this code, beginning on and after the first day of
July, one thousand nine hundred ninety-three, the division
shall have responsibility for, and control of, all visitor
touring and visitor tour guide activities within the state
capitol building at Charleston.

(f) For the purposes of this article, "commissioner"
means the commissioner of culture and history, and
"division" means the division of culture and history.

§29-1-3. Commission on the arts.
The commission on the arts heretofore created is hereby continued and shall be composed of fifteen appointed members.

The governor shall appoint, by and with the advice and consent of the Senate, the members of the commission for staggered terms of three years. A person appointed to fill a vacancy shall be appointed only for the remainder of that term.

No more than eight members may be of the same political party. Members of the commission shall be appointed so as to fairly represent both sexes, the ethnic and cultural diversity of the state and the geographic regions of the state.

The commission shall elect one of its members as chair. It shall meet at such times as shall be specified by the chair. Notice of each meeting shall be given to each member by the chair in compliance with the open meetings laws of the state. A majority of the members shall constitute a quorum for the transaction of business. The director of the arts section shall be an ex officio nonvoting member of the commission and shall serve as secretary. The director or a majority of the members may also call a meeting upon such notice as provided in this section.

Each member or ex officio member of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of the duties of the office; except that in the event the expenses are paid, or are to be paid, by a third party, the member or ex officio member, as the case may be, shall not be reimbursed by the state.

Upon recommendation of the commissioner, the governor may also appoint such officers of the state as may be appropriate to serve on the commission as ex officio nonvoting members.

The commission shall have the following powers:
(1) To advise the commissioner and the director of the arts section concerning the accomplishment of the purposes of that section and to establish a state plan with respect thereto;

(2) To approve and distribute grants-in-aid and awards from federal and state funds relating to the purposes of the arts section;

(3) To request, accept or expend federal funds to accomplish the purposes of the arts section when federal law or regulations would prohibit the same by the commissioner or section director, but would permit the same to be done by the commission on the arts;

(4) To otherwise encourage and promote the purposes of the arts section;

(5) To approve rules and regulations concerning the professional policies and functions of the section as promulgated by the director of the arts section; and

(6) To advise and consent to the appointment of the director by the commissioner.

§29-1-4. Arts section; director.

The purposes and duties of the arts section are to stimulate, encourage, assist, promote, foster and develop the performing and creative arts and crafts in the state; and in furtherance thereof to make awards, prizes and grants to individual performers, artists or craftsmen and to public or private corporations or associations in the field of either the performing or creative arts and crafts that would tend to encourage and foster the advancement of such arts and crafts; to support cultural, artistic or craft exhibits or performances at the division's facilities or on tour; and to perform such other duties as may be assigned to said section by the commissioner.

With the advice and consent of the commission on the arts, the commissioner shall appoint a director of the arts section, who shall have: (1) A bachelor's degree in the fine arts or related field or equivalent training and experience; or (2) three years' experience in administration of the fine arts or a related field.
With the approval of the commissioner, the director shall establish professional positions within the section. The director shall employ the personnel within these professional positions for the section.

The director may propose rules for legislative promulgation, in accordance with the provisions of chapter twenty-nine-a of this code, concerning the professional policies and functions of the arts section, subject to the approval of the commission on the arts.

CHAPTER 121

(Com. Sub. for H. B. 2823—By Delegates Laird and Campbell)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen-a, relating to special reports by spending units; requiring reports to be filed with the secretary of administration within ninety days of the end of each fiscal year; providing that reports detail pending activities that result in substantial unbudgeted contingent liabilities, which may have a substantial and material impact on future spending obligations; requiring secretary to file copies of reports with the legislative auditor; and authorizing the secretary of administration to prescribe forms and propose rules for implementing these requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. FINANCE DIVISION.
§5A-2-19a. Special reports by spending units; notification of pending matters having impact on future expenditure requirements.

(a) Within ninety days following the end of each fiscal year, each spending unit within state government shall submit a detailed report and accounting of all substantial unbudgeted contingent liabilities that may have a substantial and material impact on spending obligations in subsequent fiscal years. Each report is to include, but not be limited to, pending legal actions, unresolved audit findings and any other activities that are reasonably predicted to have an impact on future expenditures by the state.

(b) All reports are to be submitted to the secretary on forms and in the manner prescribed by the secretary. Within thirty days of receipt of each final report, the secretary shall forward a copy to the joint committee on government and finance.

(c) The secretary shall propose for promulgation all rules required for the implementation of this section in accordance with the provisions of article three, chapter twenty-nine-a of this code. The rules are to include, but not be limited to, definitions of the types of substantial unbudgeted contingent liabilities that are reportable under the provisions of this section.

CHAPTER 122

(S. B. 248—By Senators Bowman, Bailey, Ball, Kessler, Plymale, White, Boley, Buckalew, Minear and Scott)

[Passed February 16, 1998; in effect ninety days from passage. Approved by the Governor.]

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.
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 either house thereof requests the director to render specific services under the provisions of this chapter, nor to purchases of stock made by the alcohol beverage control commissioner, nor to purchases of textbooks for the state board of education.

Pursuant to the provisions of article ten, chapter four of this code, the purchasing division within the department of administration shall continue to exist until the first day of July, one thousand nine hundred ninety-nine.
AN ACT to amend article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-b, relating generally to parent education classes for parents of minor children when the parents are involved in actions for divorce, paternity, custody or separate maintenance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-10b. Parent education classes.

(a) A circuit court, or a judge thereof, may, by administrative rule or order, and with the approval of the supreme court of appeals, designate an organization or agency to establish and operate education programs designed for parents who have filed an action for divorce, paternity, support or separate maintenance and who have minor children. The education programs shall be designed to instruct and educate parents about the effects of divorce and custody disputes on their children and to teach parents ways to help their children and minimize their trauma.

(b) The circuit court may issue an order requiring parties to an action for divorce, paternity, custody or separate maintenance to attend parental education classes established pursuant to subsection (a) of this section and may, by order, establish sanctions for failure to attend.
(c) The circuit court may require that each person attending a parental education class pay a fee, not to exceed twenty-five dollars, to the clerk of such court to defray the cost of materials and of hiring teachers: 

Provided, That where it is determined that a party is indigent and unable to pay for such classes, the court shall waive the payment of the fee for such party. The clerk of the circuit court shall, on or before the tenth day of each month, transmit all fees collected under this subsection to the state treasurer for deposit in the state treasury to the credit of special revenue fund to be known as the "parental education fund", which is hereby created. All moneys collected and received under this subsection and paid into the state treasury and credited to the "parental education fund" shall be used by the administrative office of the supreme court of appeals solely for reimbursing the provider of parental education classes for the costs of materials and of providing such classes. Such moneys shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(d) The administrative office of the supreme court of appeals shall submit a report to the joint committee on government and finance summarizing the effectiveness of any program of parent education no later than two years from the initiation of the program.
seven; to amend and reenact sections two, three, four and ten, article two-c of said chapter; to further amend said article by adding thereto eleven new sections, designated sections four-a, four-b, ten-a, thirteen-a, thirteen-b, thirteen-c, sixteen, seventeen, eighteen, nineteen and twenty, all relating generally to domestic or family violence and its treatment and prevention; setting forth legislative findings and purposes; defining certain terms; establishing the venue of proceedings; clarifying provisions relating to full faith and credit; requiring verified petition; authorizing petition to be filed by person who reported or was a witness to domestic or family violence; issuance of protective order; describing terms that may be included in a protective order; prescribing the length of time a protective order may remain in effect; amendment of a protective order; prohibition against mutual protective orders; safety of the child as a factor in determining visitation; prescribing the conditions for visitation in cases involving domestic or family violence; law enforcement response to domestic or family violence; filing of orders with law-enforcement agency; civil contempt alleging violation of an order; registration of protective order; conditions under which arrest is made; defining certain terms used in domestic violence act; establishing the family protection services board; prescribing the duties of the family protection services board; establishing local councils on domestic or family violence; providing for a state public health plan for reducing domestic or family violence; referral of victims by law-enforcement officers to available shelters; notice of victims' rights and remedies and services available; publishing of model standards, procedure and curricula concerning domestic or family violence; regulating intervention programs for perpetrators of domestic or family violence; licensing providers of intervention programs for perpetrators of domestic or family violence; providing for training and continuing education in matters involving domestic or family violence for certain state employees, law-enforcement officers, judicial officers and court personnel, and school personnel who are required to report child abuse and neglect; development of curricula for public education.

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

Article
2A. Prevention and Treatment of Domestic and Family Violence.
2C. Domestic Violence Act.

ARTICLE 2A. PREVENTION AND TREATMENT OF DOMESTIC AND FAMILY VIOLENCE.

§48-2A-1. Findings and purposes.
§48-2A-3. Jurisdiction; venue; effect of petitioner's leaving residence; priority of petitions filed under this article; who may file; full faith and credit; process.
§48-2A-4. Commencement of proceeding; forms; counterclaim; accompanying persons.
§48-2A-5. Temporary orders of court; hearings; persons present.
§48-2A-7. Conditions of visitation in cases involving domestic or family violence.
§48-2A-10a. Civil contempt; violation of protective orders; order to show cause.
§48-2A-12. Registration of order.

§48-2A-1. Findings and purposes.

1 (a) The Legislature of this state finds that:

2 (1) No one should be a victim of domestic or family violence. All people have a right to be safe in their homes and in their families;
(2) Children are often physically assaulted or witness violence against one of their parents or other family or household members, violence which too often ultimately results in death. These children may suffer deep and lasting emotional harm from victimization and from exposure to domestic or family violence;

(3) Domestic or family violence is a major health and law-enforcement problem in this state with enormous costs to the state in both dollars and human lives. It affects people of all racial and ethnic backgrounds and all socioeconomic classes; and

(4) Domestic or family violence can be deterred, prevented or reduced by legal intervention that treats this problem with the seriousness that it deserves.

(b) This article shall be liberally construed and applied to promote the following purposes:

(1) To assure victims of domestic or family violence the maximum protection from abuse that the law can provide;

(2) To create a speedy remedy to discourage violence against family or household members with whom the perpetrator of domestic or family violence has continuing contact;

(3) To expand the ability of law-enforcement officers to assist victims, to enforce the domestic or family violence law more effectively, and to prevent further abuse;

(4) To facilitate equal enforcement of criminal law by deterring and punishing violence against family and household members as diligently as violence committed against strangers;

(5) To recognize that domestic or family violence constitutes serious criminal behavior with potentially tragic results and that it will no longer be excused or tolerated; and

(6) To recognize that the existence of a former or on-going familial or other relationship should not serve to excuse, explain or mitigate acts of domestic or family violence.
As used in this article, unless the context clearly requires otherwise:

(a) "Family violence", "domestic violence", "domestic or family violence" or "abuse" means the occurrence of one or more of the following acts between family or household members, as that term is defined in subsection (b) of this section:

(1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;

(2) Placing another in reasonable apprehension of physical harm;

(3) Creating fear of physical harm by harassment, psychological abuse or threatening acts;

(4) Committing either sexual assault or sexual abuse as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code; and

(5) Holding, confining, detaining or abducting another person against that person's will.

(b) "Family or household member" means current or former spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and stepchildren, current or former sexual or intimate partners, persons who are dating or who have dated, persons who are presently residing or cohabiting together or in the past have resided or cohabited together or a person with whom the victim has a child in common.

(c) "Program for victims of domestic or family violence" means a licensed program for victims of domestic or family violence and their children, which program provides advocacy, shelter, crisis intervention, social services, treatment, counseling, education or training.
(d) "Program of intervention for perpetrators" means a licensed program, where available, or if no licensed program is available, a program that:

(1) Accepts perpetrators of domestic or family violence into educational intervention groups or counseling pursuant to a court order; or

(2) Offers educational intervention groups to perpetrators of domestic or family violence.

§48-2A-3. Jurisdiction; venue; effect of petitioner's leaving residence; priority of petitions filed under this article; who may file; full faith and credit; process.

(a) Jurisdiction. — Circuit courts and magistrate courts, as constituted under chapter fifty of this code, have concurrent jurisdiction over proceedings under this article.

(b) Venue. — The action may be heard in the county in which the domestic or family violence occurred, in the county in which the respondent is living or in the county in which the petitioner is living, either temporarily or permanently. If the parties are married to each other, the action may also be brought in the county in which an action for divorce between the parties may be brought as provided by section eight, article two of this chapter.

(c) Petitioner's rights. — The petitioner's right to relief under this article shall not be affected by his or her leaving a residence or household to avoid further abuse.

(d) Priority of petitions. — Any petition filed under the provisions of this article shall be given priority over any other civil action before the court, except actions in which trial is in progress, and shall be docketed immediately upon filing. Any appeal to the circuit court of a magistrate's judgment on a petition for relief under this article shall be heard within ten working days of the filing of the appeal.

(e) Full faith and credit. — Any temporary or final protective order issued pursuant to this article shall be effective throughout the state in every county.
protective order issued by any other state, territory or possession of the United States, Puerto Rico, the District of Columbia or Indian tribe shall be accorded full faith and credit and enforced as if it were an order of this state whether or not such relief is available in this state. A protective order from another jurisdiction is presumed to be valid if the order appears authentic on its face and shall be enforced in this state. If the validity of the order is contested, the court or law enforcement to which the order is presented shall, prior to the final hearing, determine the existence, validity and terms of such order in the issuing jurisdiction. A protective order from another jurisdiction may be enforced even if the order is not entered into the state law-enforcement information system described by section twelve of this article.

(f) Service by publication. — A protective order may be served on the respondent by means of a Class I legal advertisement published notice, with the publication area being the county in which the respondent resides, published in accordance with the provisions of section two, article three, chapter fifty-nine of this code if: (i) The petitioner files an affidavit with the court stating that an attempt at personal service pursuant to rule four of the West Virginia rules of civil procedure has been unsuccessful or evidence is adduced at the hearing for the protective order that the respondent has left the state of West Virginia; and (ii) a copy of the order is mailed by certified or registered mail to the respondent at the respondent's last known residence and returned undelivered.

§48-2A-4. Commencement of proceeding; forms; counterclaim; accompanying persons.

(a) No person shall be refused the right to file a petition under the provisions of this article. No person shall be denied relief under the provisions of this article if she or he presents facts sufficient under the provisions of this article for the relief sought. The petition shall be verified.

A petition for a protective order may be filed by:
(1) A person seeking relief under this article for
herself or himself;

(2) An adult family or household member for the
protection of the victim or for any family or household
member who is a minor child or physically or mentally
incapacitated to the extent that he or she cannot file on his
or her own behalf, or

(3) A person who reported or was a witness to
domestic or family violence and who, as a result, has been
abused, threatened, harassed or who has been the subject
of other actions intended to intimidate the person.

(b) The West Virginia supreme court of appeals shall
prescribe forms which are necessary and convenient for
proceedings pursuant to this article, and the court shall
distribute such forms to the clerk of the circuit court and
magistrate court of each county within the state.

(c) The respondent named in any petition alleging
domestic or family violence may file a counterclaim or
raise any affirmative defenses.

(d) No person accompanying a person who is seeking
to file a petition under the provisions of this article is
precluded from being present if his or her presence is
desired by the person seeking a petition unless the
person's behavior is disruptive to the proceeding.

(e) No fees shall be charged for the filing of petitions
or other papers, service of petitions or orders, copies of
orders, or other costs for services provided by, or
associated with, any proceedings under this article until the
matter is brought before the court for final resolution.

§48-2A-5. Temporary orders of court; hearings; persons
present.

(a) Upon filing of a verified petition under this article,
the court may enter such temporary orders as it may deem
necessary to protect the petitioner or minor children from
domestic or family violence and, upon good cause shown,
may do so ex parte without the necessity of bond being
given by the petitioner. Clear and convincing evidence of
immediate and present danger of abuse to the petitioner or
minor children shall constitute good cause for the issuance
of an ex parte order pursuant to this section. If the
respondent is not present at the proceeding, the petitioner
or the petitioner's legal representative shall certify to the
court, in writing, the efforts which have been made to give
notice to the respondent or just cause why notice should
not be required. Copies of medical reports or records
may be admitted into evidence to the same extent as
though the original thereof. The custodian of such
records shall not be required to be present to authenticate
such records for any proceeding held pursuant to this
subsection. Following such proceeding, the court shall
order a copy of the petition to be served immediately
upon the respondent, together with a copy of any
temporary order issued pursuant to the proceedings,
notice setting forth the time and place of the full hearing
and a statement of the right of the respondent to be
present and to be represented by counsel. Copies of any
order made under the provisions of this section shall also
be issued to the petitioner and any law-enforcement
agency having jurisdiction to enforce the order, including
the city police, the county sheriff's office and local office
of the state police within twenty-four hours of the entry of
the order. A temporary protective order shall remain
effective until such time as a hearing is held and shall be
in full force and effect in every county in this state.

(b) Within five days following the issuance of the
court's temporary order, a full hearing shall be held at
which the petitioner must prove the allegation of domestic
or family violence, or that he or she reported or witnessed
domestic violence against another and has, as a result, been
abused, threatened, harassed or has been the subject of
other actions to attempt to intimidate him or her, by a
preponderance of the evidence, or such petition shall be
dismissed. If the respondent has not been served with
notice of the temporary order, the hearing may be
continued in order to permit service to be effected. The
failure to obtain service upon the respondent does not
constitute a basis for dismissing the petition. Copies of
medical reports may be admitted into evidence to the same
extent as though the original thereof, upon proper authentication, by the custodian of such records.

(c) No person requested by a party to be present during a hearing held under the provisions of this article shall be precluded from being present unless such person is to be a witness in the proceeding and a motion for sequestration has been made and such motion has been granted. A person found by the court to be disruptive may be precluded from being present.

(d) If a hearing is continued, the court may make or extend such temporary orders as it deems necessary.


(a) At the conclusion of the hearing, if the petitioner has proven the allegations of domestic or family violence, or that he or she reported or witnessed domestic or family violence against another and has, as a result, been abused, threatened, harassed or has been the subject of other actions to attempt to intimidate him or her, by a preponderance of the evidence, the court shall issue a protective order directing the respondent to refrain from abusing, harassing, stalking, threatening or otherwise intimidating the petitioner, the person who reported or witnessed family or domestic violence or the minor children, or engaging in other conduct that would place the petitioner, the person who reported or witnessed family or domestic violence or the minor children in reasonable fear of bodily injury. Where the respondent is present at the hearing and elects not to contest the allegations of domestic or family violence or does not contest the relief sought, the petitioner is not required to adduce evidence and prove the allegations of domestic or family violence and the court may directly address the issues of the relief requested.

(b) Where the petitioner is the victim of domestic or family violence, the terms of a protective order may include:
(1) Granting possession to the petitioner of the residence or household jointly resided in at the time the abuse occurred;

(2) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children named in the order;

(3) Establishing terms of temporary visitation with regard to the minor children named in the order including, but not limited to, requiring third party supervision of visitations if necessary to protect the petitioner and/or the minor children;

(4) Ordering the noncustodial parent to pay to the custodial parent a sum for temporary support and maintenance of the petitioner and children, if any;

(5) Ordering the respondent to pay to the petitioner a sum for temporary support and maintenance of the petitioner, where appropriate;

(6) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household or family members for the purpose of violating the protective order;

(7) Ordering the respondent to participate in an intervention program for perpetrators;

(8) Ordering the respondent to refrain from contacting, telephoning, communicating, harassing or verbally abusing the petitioner;

(9) Providing for either party to obtain personal property or other items from a location, including granting temporary possession of motor vehicles owned by either or both of the parties, and providing for the safety of the parties while this occurs, including ordering a law-enforcement officer to accompany one or both of the parties;

(10) Prohibiting the respondent from using or possessing a firearm or other weapon, notwithstanding the fact that the respondent has a valid license to possess such firearm or other weapon;
(11) Informing the respondent that possession of a firearm while subject to a protective order is a violation of federal law;

(12) Ordering the respondent to reimburse the petitioner or other person for any expenses incurred as a result of the domestic or family violence, including, but not limited to, medical expenses, transportation and shelter; and

(13) Ordering the petitioner and respondent to refrain from transferring, conveying, alienating, encumbering, or otherwise dealing with property which could otherwise be subject to the jurisdiction of the court or another court in an action for divorce or support, partition or in any other action affecting their interests in property.

(c) Where the petitioner or other person to be protected reported or was a witness to the family or domestic violence, the terms of a protective order may include:

(1) Ordering the respondent to refrain from abusing, contacting, telephoning, communicating, harassing, verbally abusing or otherwise intimidating the petitioner or other person to be protected;

(2) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or other person to be protected, for the purpose of violating the protective order.

(d) Except as otherwise provided by subsection (d), section three-a of this article, a final protective order issued by a magistrate, family law master or circuit judge pursuant to this article or subdivision (13), subsection (a), article two of this chapter, is effective for either ninety days or one hundred eighty days, in the discretion of the court. If the court enters an order for a period of ninety days, upon receipt of a written request from the petitioner prior to the expiration of the ninety-day period, the court shall extend its order for an additional ninety-day period.

(e) To be effective, a written request to extend an order from ninety days to one hundred eighty days must
be submitted to the court prior to the expiration of the original ninety-day period. A notice of the extension shall be sent by the clerk of the court to the respondent by first class mail, addressed to the last known address of the respondent as indicated by the court's case filings. The extension of time is effective upon mailing of the notice.

(f) The court may amend the terms of a protective order at any time upon subsequent petition filed by either party. The protective order shall be in full force and effect in every county of this state and shall so state.

(g) No order under this article shall in any manner affect title to any real property.

(h) Certified copies of any order or extension notice made under the provisions of this section shall be issued to the petitioner, the respondent and any law-enforcement agency having jurisdiction to enforce the order, including the city police, the county sheriff's office or local office of the West Virginia state police within twenty-four hours of the entry of the order.

(i) Mutual protective orders are prohibited unless both parties have filed a petition under section four of this article and have proven the allegations of domestic or family violence by a preponderance of the evidence. This shall not prevent other persons, including the respondent, from filing a separate petition. The court may consolidate two or more petitions if he or she determines that consolidation will further the interests of justice and judicial economy. The court shall enter a separate order for each petition filed.

(j) Any protective order issued pursuant to this article shall contain on its face the following statement, printed in bold faced type or in capital letters:

"VIOLATION OF THIS ORDER MAY BE PUNISHED BY CONFINEMENT IN A REGIONAL OR COUNTY JAIL FOR AS LONG AS ONE YEAR AND BY A FINE OF AS MUCH AS TWO THOUSAND DOLLARS".
§48-2A-7. Conditions of visitation in cases involving domestic or family violence.

(a) A court may award visitation of a child by a parent who has committed domestic or family violence only if the court finds that adequate provision for the safety of the child and the petitioner can be made.

(b) In a visitation order, a court may:

(1) Order an exchange of a child to occur in a protected setting;

(2) Order that supervision be provided by another person or agency;

(3) Order the perpetrator of domestic or family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators as a condition of the visitation;

(4) Order the perpetrator of domestic or family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for the twelve hours that precede the visitation;

(5) Order the perpetrator of domestic or family violence to pay the costs of supervised visitation, if any;

(6) Prohibit overnight visitation;

(7) Impose any other condition that the court considers necessary to provide for the safety of the child, the petitioner or any other family or household member.

(c) Regardless of whether visitation is allowed, the court may order that the address of the child and the petitioner be kept confidential.

(d) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation.

(a) Notwithstanding any other provision of this code to the contrary, all law-enforcement officers are hereby authorized to serve all pleadings and orders filed or entered pursuant to this article on Sundays and legal holidays. No law-enforcement officer shall refuse to serve any pleadings or orders entered pursuant to this article.

(b) Any law-enforcement officer responding to an alleged incident of domestic or family violence shall inform the parties thereto of the availability of the possible remedies provided by this article and the possible applicability of the criminal laws of this state. Any law-enforcement officer investigating an alleged incident of domestic or family violence shall advise the victim of such violence of the availability of the family protection shelter to which such person may be admitted.

(c) Any law-enforcement officer responding to an alleged incident of domestic or family violence shall, in addition to providing the information required in subsection (a) of this section, provide transportation for or facilitate transportation of the victim or victims, upon the request of such victim or victims, to a shelter or the appropriate court where there is reasonable cause to believe that such victim or victims have suffered or are likely to suffer physical injury.

(d) Each law-enforcement agency shall maintain records on all incidents of domestic or family violence reported to it and shall monthly make and deliver to the West Virginia state police a report on a form prescribed by the state police, listing all such incidents of domestic or family violence. Such reports shall include:

(1) The age and sex of the victim and the perpetrator of domestic or family violence;

(2) The relationship between the parties;

(3) The type and extent of abuse;

(4) The number and type of weapons involved;

(5) Whether the law-enforcement agency responded to the complaint and if so, the time involved, the action taken
and the time lapse between the agency's action and the victim's request for assistance;

(6) Whether any prior reports have been made, received or filed regarding domestic or family violence on any prior occasion and if so, the number of such prior reports; and

(7) The effective dates and terms of any protective order issued prior to or following the incident to protect the victim: Provided, That no information which will permit the identification of the parties involved in any incident of domestic or family violence shall be included in such report.

(e) The West Virginia state police shall tabulate and analyze any statistical data derived from the reports made by law-enforcement agencies pursuant to this section and publish a statistical compilation in its annual uniform crime report, as provided for in section twenty-four, article two, chapter fifteen of this code. The statistical compilation shall include, but is not limited to, the following:

(1) The number of domestic or family violence complaints received;

(2) The number of complaints investigated;

(3) The number of complaints received from alleged victims of each sex;

(4) The average time lapse in responding to such complaints;

(5) The number of complaints received from alleged victims who have filed such complaints on prior occasions;

(6) The number of aggravated assaults and homicides resulting from such repeat incidents;

(7) The type of police action taken in disposition of the cases; and

(8) The number of alleged violations of protective orders.
(f) As used in this section, the terms "abuse", "family violence" and "family or household members" shall have the meanings given them in section two of this article; and the term "law-enforcement agency" shall include the West Virginia department of health and human resources in those instances of child abuse reported to the department which are not otherwise reported to any other law-enforcement agency.

(g) The governor's committee on crime, delinquency and correction shall develop and promulgate rules for state, county and municipal law-enforcement officers and law-enforcement agencies with regard to domestic violence. The notice of the public hearing on the rules shall be published before the first day of July, one thousand nine hundred ninety-one. Prior to the publication of the proposed rules, the governor's committee on crime, delinquency and correction shall convene a meeting or meetings of an advisory committee to assist in the development of the rules. The advisory committee shall be composed of persons invited by the committee to represent state, county and local law-enforcement agencies and officers, to represent magistrates and court officials, to represent victims of domestic or family violence, to represent shelters receiving funding pursuant to article two-c of this chapter and to represent other persons or organizations who, in the discretion of the committee, have an interest in the rules. The rules and the revisions thereof as provided in this section shall be promulgated as legislative rules in accordance with chapter twenty-nine-a of this code. Following the promulgation of said rules, the committee shall meet at least annually to review the rules and to propose revisions as a result of changes in law or policy.

(h) Nothing in this section shall be construed to authorize the inclusion of information contained in a report of an incident of abuse in any local, state, interstate, national or international systems of criminal identification pursuant to section twenty-four, article two, chapter fifteen of this code: Provided, That nothing in this section shall prohibit the West Virginia state police from processing
information through its criminal identification bureau with respect to any actual charge or conviction of a crime.

(i) All law-enforcement officers shall receive training relating to response to calls involving domestic or family violence by the first day of October, one thousand nine hundred ninety-three.

(j) Two years after the entry of a final protective order, the circuit court, may, upon motion, order that the protective order and references to the order be purged from the file maintained by any law-enforcement agency and may further order that the file maintained by the court be sealed and not opened except upon order of the court when such is in the interest of justice.


Upon entry of an order pursuant to section five or six of this article, or an order entered pursuant to section thirteen, article two of this chapter granting relief provided for by this article, a copy of the order shall, no later than the close of the next business day, be transmitted by the court or the clerk of the court to a local office of the city police, the county sheriff and the West Virginia state police, where it shall be placed in a confidential file, with access provided only to the law-enforcement agency and the respondent named on the order. A sworn affidavit may be executed by a party who has been awarded exclusive possession of the residence or household, pursuant to an order entered under subsection (b), section six of this article, and shall be delivered to such law-enforcement agencies simultaneously with any order, giving his or her consent for a law-enforcement officer to enter the residence or household, without a warrant, to enforce the protective order or temporary order. Orders shall be promptly served upon the respondent. Failure to serve a protective order does not stay the effect of a valid order if the respondent has actual notice of the existence and contents of the order.

§48-2A-10a. Civil contempt; violation of protective orders; order to show cause.
(a) Any party to a protective order or a legal guardian or guardian ad litem may file a petition for civil contempt alleging a violation of an order issued pursuant to the provisions of this article. Such petition shall be filed in a court in the county in which the violation occurred or the county in which the order was issued.

(b) When a petition for an order to show cause is filed, a hearing on the petition shall be held within five days from the filing of the petition. Any order to show cause which is issued shall be served upon the alleged violator.

(c) Upon a finding of contempt, the court may order the violator to comply with specific provisions of the protective order and post a bond as surety for faithful compliance with such order.

§48-2A-12. Registration of order.

(a) The West Virginia state police shall maintain a registry in which it shall enter certified copies of orders entered by courts from every county in this state pursuant to the provisions of this article, or from other jurisdictions pursuant to their laws: Provided, That the provisions of this subsection are not effective until a central automated record system is developed.

(b) A petitioner who obtains a protective order pursuant to this article, or from another jurisdiction pursuant to its law, may register that order in any county within this state where the petitioner believes enforcement may be necessary.

(c) A protective order may be registered by the petitioner in a county other than the issuing county by obtaining a copy of the order of the issuing court, certified by the clerk of that court, and presenting that certified order to the local office of the West Virginia state police where the order is to be registered.

(d) Upon receipt of a certified order for registration, the local office of the state police shall provide certified copies to any law-enforcement agency within its jurisdiction, including the city police and the county sheriff's office.
(e) Nothing in this section precludes the enforcement of an order in a county other than the county or jurisdiction in which the order was issued, if the petitioner has not registered the order in the county in which an alleged violation of the order occurs.


(a) Notwithstanding any provision of this code to the contrary, if a person is alleged to have committed a violation of the provisions of subsection (a) or (b), section twenty-eight, article two, chapter sixty-one of this code against a family or household member, in addition to any other authority to arrest granted by this code, a law-enforcement officer has authority to arrest that person without first obtaining a warrant if:

(1) The law-enforcement officer has observed credible corroborative evidence that an offense has occurred; and either:

(2) The law-enforcement officer has received, from the victim or a witness, an oral or written allegation of facts constituting a violation of section twenty-eight, article two, chapter sixty-one of this code; or

(3) The law-enforcement officer has observed credible evidence that the accused committed the offense.

(b) For purposes of this section, credible corroborative evidence means evidence that is worthy of belief and corresponds to the allegations of one or more elements of the offense and may include, but is not limited to, the following:

(1) Condition of the alleged victim. — One or more contusions, scratches, cuts, abrasions, or swellings; missing hair; torn clothing or clothing in disarray consistent with a struggle; observable difficulty in breathing or breathlessness consistent with the effects of choking or a body blow; observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact.
(2) Condition of the accused. — Physical injury or other conditions similar to those set out for the condition of the victim which are consistent with the alleged offense or alleged acts of self-defense by the victim.

(3) Condition of the scene. — Damaged premises or furnishings; disarray or misplaced objects consistent with the effects of a struggle.

(4) Other conditions. — Statements by the accused admitting one or more elements of the offense; threats made by the accused in the presence of an officer; audible evidence of a disturbance heard by the dispatcher or other agent receiving the request for police assistance; written statements by witnesses.

(c) Whenever any person is arrested pursuant to subsection (a) of this section, the arrested person shall be taken before a magistrate within the county in which the offense charged is alleged to have been committed in a manner consistent with the provisions of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia.

(d) If an arrest for a violation of subsection (c), section twenty-eight, article two, chapter sixty-one of this code is authorized pursuant to this section, that fact constitutes prima facie evidence that the accused constitutes a threat or danger to the victim or other family or household members for the purpose of setting conditions of bail pursuant to section seventeen-c, article one-c, chapter sixty-two of this code.

(e) Whenever any person is arrested pursuant to the provisions of this article or for a violation of an order issued pursuant to subdivision (12), subsection (a), section thirteen, article two of this chapter, the arresting officer:

(1) Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of domestic or family violence; and

(2) May seize a weapon that is in plain view of the officer or was discovered pursuant to a consensual search,
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68 as necessary for the protection of the officer or other
69 persons.

ARTICLE 2C. DOMESTIC VIOLENCE ACT.

§48-2C-3. Family protection services board; members; purposes.
§48-2C-4. Duties of board.
§48-2C-4a. Establishment of local councils authorized.
§48-2C-4b. State public health plan for reducing domestic or family
violence.
§48-2C-10. Referral to shelters by officers.
§48-2C-10a. Notice of victims' rights, remedies and available services;
required information.
§48-2C-13b. Regulation of intervention programs for perpetrators; required
provisions; duties of providers.
§48-2C-13c. Licensing providers of intervention programs for perpetrators.
§48-2C-17. Continuing education for law-enforcement officers concerning
domestic or family violence.
§48-2C-18. Judicial education on domestic or family violence.
§48-2C-20. Continuing education for school personnel who are required to
report child abuse and neglect.


As used in this article, unless the context clearly
requires otherwise:

(a) "Board" means the family protection services board
created pursuant to section three of this article;

(b) "Department" means the department of health and
human resources or any successor agency however so
named;

(c) "Shelter" or "family protection shelter" means a
licensed domestic or family violence shelter created for
the purpose of receiving, on a temporary basis, persons
who are victims of domestic violence, abuse or rape as well
as the children of such victims;
§48-2C-3. Family protection services board; members; purposes.

(a) There is hereby created a family protection services board to consist of five persons. The governor, with the advice and consent of the Senate, shall appoint three members of the board. One such member shall be a director of a shelter. One member shall be a member of a major trade association which represents shelters across the state. The final gubernatorial appointee shall be a member of the public. The other two members shall be the secretary of the department of health and human resources, or his or her designee, and the chair of the governor's committee on crime, delinquency and correction, or his or her designee.

(b) The terms of the three members appointed by the governor shall be staggered terms of three years. In the case of the initial appointments, the director of the shelter shall serve a one-year term, the representative of the trade association shall serve a two-year term and the appointed member of the public shall serve a three-year term.

(c) In the event that a member of the board ceases to be qualified for appointment, then his or her appointment shall terminate.

§48-2C-4. Duties of board.

It is the duty of the board to:

(a) Regulate its procedural practice;

(b) Receive and consider applications for the development of shelters;

(c) Facilitate the formation and operation of shelters;
(d) Promulgate rules to implement the provisions of this article and any applicable federal guidelines;

(e) Advise the secretary on matters of concern relative to his or her responsibilities under this article;

(f) Study issues pertinent to family protection shelters, programs for domestic violence victims, and report the results to the governor and the Legislature;

(g) Conduct hearings as necessary under this article;

(h) Delegate to the secretary such powers and duties of the board as the board may deem appropriate to delegate, including, but not limited to, the authority to approve, disapprove, revoke or suspend licenses;

(i) Deliver funds to shelters within forty-five days of the approval of a proposal for such shelters;

(j) Establish a system of peer review which will ensure the safety, well-being and health of the clients of all shelters operating in the state;

(k) Evaluate annually each funded shelter to determine its compliance with the goals and objectives set out in its original application for funding or subsequent revisions;

(l) To award to shelters, for each fiscal year, ninety-five percent of the total funds collected and paid over during the fiscal year to the special revenue account established pursuant to section twenty-four, article one of this chapter and to expend, during said period a sum not in excess of five percent of said funds for cost of administering provisions of this article;

(m) Establish and enforce system of standards for annual licensure for all shelters and programs in the state;

(n) Enforce standards; and

(o) Review its rules biannually.

§48-2C-4a. Establishment of local councils authorized.
(a) A local government, a county or a combination thereof may establish an advisory council on domestic or family violence.

(b) The purpose of a local advisory council is to increase the awareness and understanding of domestic or family violence and its consequences and to reduce the incidence of domestic or family violence within the locality by:

1. Promoting effective strategies for identification of the existence of domestic or family violence and intervention by public and private agencies serving persons who are victims of domestic or family violence;

2. Providing for public education;

3. Facilitating communication among public and private agencies that provide programs to assist victims and programs of intervention for perpetrators;

4. Providing assistance to public and private agencies and providers of services to develop statewide procedures and community and staff education, including procedures to review fatalities; and

5. Developing a comprehensive plan of data collection concerning domestic or family violence in cooperation with courts, prosecutors, law-enforcement officers, health care practitioners and other local agencies, in a manner that protects the identity of victims of domestic or family violence. Nothing contained in this subdivision shall be construed to modify or diminish any existing law relating to the confidentiality of records.

§48-2C-4b. State public health plan for reducing domestic or family violence.

(a) The bureau for public health of the department of health and human resources, in consultation with the family protection services board, shall:

1. Assess the impact of domestic or family violence on public health; and
(2) Write a state public health plan for reducing the incidence of domestic or family violence in this state.

(b) The state public health plan shall:

(1) Include, but not be limited to, public education, including the use of the various communication media to set forth the public health perspective on domestic or family violence;

(2) Be developed in consultation with public and private agencies that provide programs for victims of domestic or family violence, advocates for victims, organizations representing the interests of shelters, and persons who have demonstrated expertise and experience in providing health care to victims of domestic or family violence and their children; and

(3) Be completed on or before the first day of January, two thousand.

(c) The bureau for public health of the department of health and human resources shall:

(1) Transmit a copy of the state public health plan to the governor and the Legislature; and

(2) Review and update the state public health plan annually.

§48-2C-10. Referral to shelters by officers.

Where shelters are available, the law-enforcement officer or other public authority investigating an alleged incident of domestic or family violence shall advise the victim of the availability of the family protection shelter to which that person may be admitted.

§48-2C-10a. Notice of victims' rights, remedies and available services; required information.

(a) The bureau for public health of the department of health and human resources shall make available to health care facilities and practitioners a written form notice of the rights of victims and the remedies and services available to victims of domestic or family violence.
(b) A health care practitioner whose patient has injuries or conditions consistent with domestic violence shall provide to the patient, and every health care facility shall make available to all patients, a written form notice of the rights of victims and the remedies and services available to victims of domestic or family violence.


(a) The bureau for public health of the department of health and human resources shall publish model standards, including specialized procedures and curricula, concerning domestic or family violence for health care facilities, practitioners and personnel.

(b) The procedures and curricula shall be developed in consultation with public and private agencies that provide programs for victims of domestic or family violence, advocates for victims, organizations representing the interests of shelters and personnel who have demonstrated expertise and experience in providing health care to victims of domestic or family violence and their children.

§48-2C-13b. Regulation of intervention programs for perpetrators; required provisions; duties of providers.

(a) The family protection services board shall propose legislative rules governing the minimum level of responsibility, service and accountability expected from providers of programs of intervention for perpetrators of domestic and family violence. These rules shall be proposed for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code. These rules shall be developed in consultation with public and private agencies that provide programs for victims of domestic or family violence and programs of intervention for perpetrators, with advocates for victims, with organizations that represent the interests of shelters, and with persons who have demonstrated expertise and experience in providing services to victims and perpetrators of domestic and family violence and their children. If a program of intervention for perpetrators receives funds from the state or is licensed by the state, the
board shall review the program’s compliance with the rules promulgated pursuant to this subsection.

(b) The rules for programs for intervention for perpetrators of domestic or family violence shall include:

(1) Criteria concerning a perpetrator's appropriateness for the program;

(2) Systems for communication and evaluation among the referring court, the public and private agencies that provide programs for victims of domestic or family violence and the programs of intervention for perpetrators; and

(3) Required qualifications concerning education, training and experience for providers of intervention programs.

(c) The standards shall be based upon and incorporate the following principles:

(1) The focus of a program is to end the acts of violence and ensure the safety of the victim and any children or other family or household members;

(2) Domestic or family violence constitutes behavior for which the perpetrator is accountable; and

(3) Although alcohol and substance abuse often exacerbate domestic or family violence, it is a separate problem which requires specialized intervention or treatment.

(d) Providers of perpetrator intervention programs:

(1) Shall require participants to sign the following releases:

(A) Allowing the provider to inform the victim and the victim's advocates that the perpetrator is participating in a batterers' intervention prevention program with the provider and to provide information to the victim and the victim's advocates, if necessary, for the victim's safety;
(B) Allowing prior and current treating agencies to provide information about the perpetrator to the provider; and

(C) Allowing the provider, for good cause, to provide information about the perpetrator to relevant legal entities, including courts, parole officers, probation officers and child protective services;

(2) Shall report to the court, if the participation was court ordered, and to the victim, if the victim requests and provides a method of notification, any assault, failure to comply with program requirements, failure to attend the program and threat of harm by the perpetrator;

(3) Shall report to the victim, without the participant's authorization, all threats of harm;

(4) May report to the victim, without the participant's authorization, the participant's failure to attend.

§48-2C-13c. Licensing providers of intervention programs for perpetrators.

(a) The board shall establish an application for licensure for all providers of programs of intervention for perpetrators in accordance with section thirteen-b of this article.

(b) Licenses may be renewed on an annual basis with all such licenses having a term of one year commencing on the first day of July and terminating on the thirtieth day of June on the next year.

(c) The board shall grant or deny any license within forty-five days of the receipt of the application.

(d) The license granted by the board shall be conspicuously displayed by the licensees.

(e) The board may grant a provisional license or grant a waiver of licensure if the board deems such waiver or provisional license necessary for the operation of a program. All such waivers or provisional licenses shall be reviewed semiannually.

(a)(1) Subject to the provisions of subdivision (2) of this subsection, the department of health and human resources shall provide or require continuing education concerning domestic or family violence for child protective services workers, adult protective services workers, social services workers, family support workers and workers in the child support enforcement division.

(2) Funding for the continuing education provided or required under subdivision (1) of this section may not exceed the amounts allocated for that purpose by the spending unit from existing appropriations. No provision of this section may be construed to require the Legislature to make any appropriation.

(b) The courses or requirements shall be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic or family violence or programs of intervention for perpetrators, advocates for victims, organizations representing the interests of shelters and the family protection services board.

§48-2C-17. Continuing education for law-enforcement officers concerning domestic or family violence.

(a)(1) Subject to the provisions of subdivision (2) of this subsection, as a part of the initial law-enforcement officer training required before a person may be employed as a law-enforcement officer pursuant to article twenty-nine, chapter thirty of this code, all law-enforcement officers shall receive training concerning domestic or family violence.

(2) Funding for the training required under subdivision (1) of this section may not exceed the amounts allocated by the spending unit for that purpose from existing appropriations. No provision of this section may be construed to require the Legislature to make any appropriation.

(b) The course of instruction and the objectives in learning and performance for the education of law-
§48-2C-18. Judicial education on domestic or family violence.

(a)(1) Subject to the provisions of subdivision (2) of this subsection, as a part of existing training for court personnel, the supreme court of appeals shall develop and present courses of continuing education concerning domestic or family violence for magistrates assistants, and juvenile and adult probation officers.

(2) Funding for the continuing education required under subdivision (1) of this section may not exceed the amounts allocated for that purpose by the supreme court of appeals from existing appropriations. No provision of this section may be construed to require the Legislature to make any appropriation.

(b) The course of instruction shall be prepared and may be presented in consultation with public and private agencies that provide programs for victims of domestic or family violence and programs of intervention for perpetrators, advocates for victims, persons who have demonstrated expertise in training and education concerning domestic or family violence, organizations representing the interests of shelters and the family protection services board.


(a)(1) Subject to the provisions of subdivision (2) of this subsection, the state board of education shall select or develop:

(A) Curricula that are appropriate for various ages for pupils concerning the dynamics of violence, prevention of violence, including domestic or family violence; and
(B) Curricula for school counselors, health care personnel, administrators and teachers concerning domestic or family violence.

(2) Funding for selecting or developing the curricula required under subdivision (1) of this section may not exceed the amounts allocated for that purpose by the spending unit from existing appropriations. No provision of this section may be construed to require the Legislature to make any appropriation.

(b) The curricula shall be selected or developed by the state board of education in consultation with public and private agencies that provide programs for conflict resolution, violence prevention, victims of domestic or family violence and programs of intervention for perpetrators of domestic or family violence, advocates for victims, organizations representing the interests of shelters, persons who have demonstrated expertise and experience in education and domestic or family violence and the family protection services board.

§48-2C-20. Continuing education for school personnel who are required to report child abuse and neglect.

(a)(1) Subject to the provisions of subdivision (2) of this subsection, the state department of education shall provide or require courses of continuing education concerning domestic or family violence for employees who are required by law to report child abuse or neglect.

(2) Funding for the continuing education provided or required under subdivision (1) of this section may not exceed the amounts allocated for that purpose by the spending unit from existing appropriations. No provision of this section may be construed to require the Legislature to make any appropriation.

(b) The courses or requirements shall be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic or family violence, persons who have demonstrated expertise in education and domestic or family violence, advocates for victims, organizations representing the interests of shelters and the family protection services board.
CHAPTER 125

(Com. Sub. for S. B. 533—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 14, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section ten, article nine-a, chapter eighteen of said code; to amend and reenact section fifteen, article nine-d of said chapter; and to amend and reenact section eighteen, article twenty-two, chapter twenty-nine of said code, all relating to a funding plan for continuing public school construction; deleting outdated language; continuing monthly state sales tax payments into the school major improvement fund by eliminating the termination date for such payments; continuing monthly state sales tax payments into the school construction fund by eliminating the termination date for such payments; providing for the payment of the annual difference between the allocation made in the one thousand nine hundred ninety-seven fiscal year and the amount of funds required for debt service on school improvement bonds under the better school building amendment for any succeeding current year to be deposited into the school construction fund; authorizing use of certain moneys for study and implementation of a charter school pilot program; providing that, upon retirement of school construction bonds secured through allocations from the school building capital improvements fund, certain moneys allocated for that purpose are to be deposited into the school construction fund; school building authority generally; distribution of funds; submission of construction designs for school building authority approval; and providing that, upon the retirement of the school improvement bonds secured by profits from the lottery and deposited in the school debt service fund, an annual amount of eighteen million dollars of such funds shall be deposited into the school construction fund.
Be it enacted by the Legislature of West Virginia:

That section thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section ten, article nine-a, chapter eighteen of said code be amended and reenacted; that section fifteen, article nine-d of said chapter be amended and reenacted; and that section eighteen, article twenty-two, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

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

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.


(a) The proceeds of the tax imposed by this article shall be deposited in the general revenue fund of the state except as otherwise expressly provided in this article.

(b) School major improvement fund. —

After the payment or commitment of the proceeds or collections of this tax for the purposes set forth in sections sixteen and eighteen of this article, on the first day of each month, there shall be dedicated monthly from the collections of this tax, the amount of four hundred sixteen thousand six hundred sixty-seven dollars and the amount dedicated shall be deposited on a monthly basis into the school major improvement fund created pursuant to section six, article nine-d, chapter eighteen of this code.

(c) School construction fund. —

After the payment or commitment of the proceeds or collections of this tax for the purposes set forth in sections sixteen and eighteen of this article:

(1) On the first day of each month, there shall be dedicated monthly from the collections of this tax, the amount of one million four hundred sixteen thousand six hundred sixty-seven dollars and the amount dedicated shall be deposited into the school construction fund
created pursuant to section six, article nine-d, chapter eighteen of this code.

(2) Effective the first day of July, one thousand nine hundred ninety-eight, there shall be dedicated from the collections of this tax, an amount equal to any annual difference that may occur between the debt service payment for the one thousand nine hundred ninety-seven fiscal year for school improvement bonds issued under the better school building amendment under the provisions of article nine-c, chapter eighteen of this code and the amount of funds required for debt service on these school improvement bonds in any current fiscal year thereafter. This annual difference shall be prorated monthly, added to the monthly deposit in subdivision (1) of this subsection and deposited into the school construction fund created pursuant to section six, article nine-d, chapter eighteen of this code.

CHAPTER 18. EDUCATION.

Article
9A. Public School Support.
9D. School Building Authority.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

*§18-9A-10. Foundation allowance to improve instructional programs.

(a) For each school year beginning on the first day of July, one thousand nine hundred ninety-eight, and thereafter, the sum of the allocations shall be the amount appropriated by the Legislature for those purposes:

(1) One hundred fifty thousand dollars shall be allocated to each county;

(2) Distribution to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

*Clerk's Note: This section was also amended by HB 4306 (Chapter 126), which passed prior to this act.
Moneys allocated by provision of this section shall be used to improve instructional programs according to a plan for instructional improvement which the affected county board shall file with the state board by the first day of August of each year, to be approved by the state board by the first day of September of that year if the plan substantially complies with standards to be adopted by the state board: Provided, That notwithstanding any other provision of this code to the contrary, moneys allocated by provision of this section may also be used in the implementation and maintenance of the uniform integrated regional computer information system.

(3) Up to twenty-five percent of this allocation may be used to employ professional educators and service personnel in counties after all applicable provisions of sections four and five of this article have been fully utilized.

Prior to the use of any funds from this section for personnel costs, the county board must receive authorization from the state superintendent of schools. The state superintendent shall require the district board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; and (3) the sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget. District boards shall make application for available funds for the next fiscal year by the first day of May of each year. On or before the first day of June, the state superintendent shall review all applications and notify applying district boards of the distribution of the allocation. The funds shall be distributed during the fiscal year as appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county's inability to meet the requirements of state law or state board policy: Provided, That the funds available for personnel under this section may not be used to increase the total number of professional noninstructional personnel in the central office beyond four. The instructional improvement plan shall be made
available for distribution to the public at the office of each
affected county board.

(b) An amount not less than the amount required to
meet debt service requirements on any revenue bonds
issued prior to the first day of January, one thousand nine
hundred ninety-four, and the debt service requirements on
any revenue bonds issued for the purpose of refunding
revenue bonds issued prior to the first day of January, one
thousand nine hundred ninety-four, shall be paid into the
school building capital improvements fund created by
section six, article nine-d of this chapter, and shall be used
solely for the purposes of that article. The school
building capital improvements fund shall not be utilized to
meet the debt services requirement on any revenue bonds
or revenue refunding bonds for which moneys contained
within the school building debt service fund have been
pledged for repayment pursuant to that section.

When the school improvement bonds secured by
funds from the school building capital improvements fund
mature, the state board of education shall annually deposit
an amount equal to twenty-four million dollars from the
funds allocated in this section into the school construction
fund created pursuant to the provisions of section six,
article nine-d, chapter eighteen of this code to continue
funding school facility construction and improvements.

(c) Any project funded by the school building
authority shall be in accordance with a comprehensive
educational facility plan which must be approved by the
state board and the school building authority.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-15. Legislative intent; distribution of money.

(a) It is the intent of the Legislature to empower the
school building authority to facilitate and provide state
funds and to administer all federal funds provided for the
construction and major improvement of school facilities
so as to meet the educational needs of the people of this
state in an efficient and economical manner. The
authority shall make funding determinations in
accordance with the provisions of this article and shall assess existing school facilities and each facility's school major improvement plan in relation to the needs of the individual student, the general school population, the communities served by the facilities and facility needs statewide.

(b) An amount that is no more than three percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys paid into the school major improvement fund pursuant to section six of this article, may be allocated and may be expended by the authority for projects that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to article two-b of this chapter, the authority may allocate and expend under this section moneys for school major improvement projects proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively: Provided, That the authority may not expend any moneys for a school major improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a ten-year school major improvement plan, to be updated annually, pursuant to section sixteen of this article: Provided, however, That the authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.
(c) An amount that is no more than two percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys deposited into the school major improvement fund, shall be set aside by the authority as an emergency fund to be distributed in accordance with the guidelines adopted by the authority.

(d) The remaining moneys determined by the authority to be available for distribution during the then current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys deposited into the school major improvement fund, shall be allocated and expended on the basis of need and efficient use of resources, the basis to be determined by the authority in accordance with the provisions of section sixteen of this article.

(e) If a county board of education proposes to finance a project that is approved pursuant to section sixteen of this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may allocate no moneys to the county board in connection with the project: Provided, That the authority may transfer moneys to the state board of education, which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:
90 (1) The loan shall be secured in the manner required
by the authority, in consultation with the state board, and
shall be repaid in a period and bear interest at a rate as
determined by the state board and the authority and shall
have such terms and conditions as are required by the
authority, all of which shall be set forth in a loan
agreement among the authority, the state board and the
county board;

98 (2) The loan agreement shall provide for the state
board and the authority to defer the payment of principal
and interest upon any loan made to the county board
during the term of the investment contract, and annual
renewals of the investment contract, among the state board,
the authority, the county board and a lessor: Provided,
That in the event a county board, which has received a
loan from the authority for a one-time payment at the
beginning of the lease term, does not renew the subject
lease annually until performance of the investment
contract in its entirety is completed, the county board is in
default and the principal of the loan, together with all
unpaid interest accrued to the date of the default, shall at
the option of the authority, in consultation with the state
board, become due and payable immediately or subject to
renegotiation among the state board, the authority and the
county board: Provided, however, That if a county board
renews the lease annually through the performance of the
investment contract in its entirety, the county board shall
exercise its option to purchase the leased premises:
Provided further, That the failure of the county board to
make a scheduled payment pursuant to the investment
contract constitutes an event of default under the loan
agreement: And provided further, That upon a default by
a county board, the principal of the loan, together with all
unpaid interest accrued to the date of the default, shall at
the option of the authority, in consultation with the state
board, become due and payable immediately or subject to
renegotiation among the state board, the authority and the
county board: And provided further, That if the loan
becomes due and payable immediately, the authority, in
consultation with the state board, shall use all means
available under the loan agreement and law to collect the
outstanding principal balance of the loan, together with all
unpaid interest accrued to the date of payment of the
outstanding principal balance; and

(3) The loan agreement shall provide for the state
board and the authority to forgive all principal and
interest of the loan upon the county board purchasing the
leased premises pursuant to the investment contract and
performance of the investment contract in its entirety.

(f) To encourage county boards to proceed promptly
with facilities planning and to prepare for the expenditure
of any state moneys derived from the sources described in
this subsection, any county board failing to expend
money within three years of the allocation to the county
board shall forfeit the allocation and thereafter is
ineligible for further allocations pursuant to this
subsection until the county board is ready to expend
funds in accordance with an approved facilities plan:
Provided, That the authority may authorize an extension
beyond the three-year forfeiture period not to exceed an
additional two years. Any amount forfeited shall be
added to the total funds available in the school
construction fund of the authority for future allocation
and distribution.

(g) The remaining moneys that are determined by the
authority to be available for distribution during the then
current fiscal year from moneys paid into the school
major improvement fund pursuant to section six of this
article shall be allocated and distributed on the basis of
need and efficient use of resources, the basis to be
determined by the authority in accordance with the
provisions of section sixteen of this article: Provided,
That the moneys may not be distributed to any county
board that does not have an approved school major
improvement plan or to any county board that is not
prepared to commence expenditures of the funds during
the fiscal year in which the moneys are distributed:
Provided, however, That any moneys allocated to a
county board and not distributed to that county board
shall be deposited in an account to the credit of that
county board, the principal amount to remain to the credit
of and available to the county board for a period of two years. Any moneys which are unexpended after a two-year period shall be redistributed on the basis of need from the school major improvement fund in that fiscal year.

(h) No local matching funds may be required under the provisions of this section. However, the responsibilities of the county boards of education to maintain school facilities are not negated by the provisions of this article. To be eligible to receive an allocation of school major improvement funds from the authority, a county board must have expended in the previous fiscal year an amount of county moneys equal to or exceeding the lowest average amount of money included in the county board's maintenance budget over any three of the previous five years and must have budgeted an amount equal to or greater than the average in the current fiscal year: Provided, That the state board of education shall promulgate rules relating to county boards' maintenance budgets, including items which shall be included in the budgets.

(i) Any county board may use moneys provided by the authority under this article in conjunction with local funds derived from bonding, special levy or other sources. Distribution to a county board, or to the state board or the administrative council of an area vocational educational center pursuant to subsection (b) of this section, may be in a lump sum or in accordance with a schedule of payments adopted by the authority pursuant to guidelines adopted by the authority.

(j) Funds in the school construction fund shall first be transferred and expended as follows:

Any funds deposited in the school construction fund shall be expended first in accordance with an appropriation by the Legislature. To the extent that funds are available in the school construction fund in excess of that amount appropriated in any fiscal year, the excess funds may be expended in accordance with the provisions of this article. Any projects which the authority identified and announced for funding on or before the first day of
August, one thousand nine hundred ninety-five, or
identified and announced for funding on or before the
thirty-first day of December, one thousand nine hundred
ninety-five, shall be funded by the authority in an amount
which is not less than the amount specified when the
project was identified and announced.

(k) It is the intent of the Legislature to encourage
county boards to explore and consider arrangements with
other counties that may facilitate the highest and best use
of all available funds, which may result in improved
transportation arrangements for students, or which
otherwise may create efficiencies for county boards and
the students. In order to address the intent of the
Legislature contained in this subsection, the authority shall
grant preference to those projects which involve multi-
county arrangements as the authority shall determine
reasonable and proper.

(l) County boards shall submit all designs for
construction of new school buildings to the school
building authority for review and approval prior to
preparation of final bid documents.

CHAPTER 29. MISCELLANEOUS BOARDS AND
OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State lottery fund; appropriations and deposits; not
part of general revenue; no transfer of state
funds after initial appropriation; use and
repayment of initial appropriation; allocation of
fund for prizes, net profit and expenses; surplus;
state lottery education fund; state lottery senior
citizens fund; allocation and appropriation of net
profits.

(a) There is hereby continued a special revenue fund
in the state treasury which shall be designated and known
as the "state lottery fund". The fund shall consist of all
appropriations to the fund and all interest earned from
investment of the fund and any gifts, grants or
contributions received by the fund. All revenues received
from the sale of lottery tickets, materials and games shall be deposited with the state treasurer and placed into the "state lottery fund". The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(b) No appropriation, loan or other transfer of state funds may be made to the commission or lottery fund after the initial appropriation.

(c) A minimum annual average of forty-five percent of the gross amount received from each lottery shall be allocated and disbursed as prizes.

(d) Not more than fifteen percent of the gross amount received from each lottery shall be allocated to and may be disbursed as necessary for fund operation and administration expenses.

(e) The excess of the aggregate of the gross amount received from all lotteries over the sum of the amounts allocated by subsections (c) and (d) of this section shall be allocated as net profit. In the event that the percentage allotted for operations and administration generates a surplus, the surplus shall be allowed to accumulate to an amount not to exceed two hundred fifty thousand dollars. On a monthly basis, the director shall report to the joint committee on government and finance of the Legislature any surplus in excess of two hundred fifty thousand dollars and remit to the state treasurer the entire amount of those surplus funds in excess of two hundred fifty thousand dollars which shall be allocated as net profit.

(f) After first satisfying the requirements for funds dedicated to the school building debt service fund in subsection (h) of this section to retire the ten-year bonds authorized to be issued pursuant to section eight, article nine-d, chapter eighteen of this code, and then satisfying the requirements for funds dedicated to the education, arts, sciences and tourism debt service fund in subsection (i) of this section to retire the bonds authorized to be issued pursuant to section eleven-a, article six, chapter five of this code, the Legislature shall annually appropriate all of the remaining amounts allocated as net profits in subsection (e) of this section, in such proportions as it considers
beneficial to the citizens of this state, to: (1) The lottery 
education fund created in subsection (g) of this section; 
(2) the school construction fund created in section six, 
article nine-d, chapter eighteen of this code; (3) the lottery 
Senior Citizens fund created in subsection (j) of this 
section; and (4) the division of natural resources created in 
section four, article five, chapter twenty of this code and 
the West Virginia development office as created in section 
one, article two, chapter five-b of this code, in accordance 
with subsection (k) of this section. No transfer to any 
count other than the school building debt service 
account and the education, arts, sciences and tourism debt 
service fund may be made in any period of time in which 
a default exists in respect to debt service on bonds issued 
by the school building authority and the state building 
commission which are secured by lottery proceeds. No 
additional transfer shall be made to any account other 
than the school building debt service account and the 
education, arts, sciences and tourism debt service fund 
when net profits for the preceding twelve months are not 
at least equal to one hundred fifty percent of debt service 
on bonds issued by the school building authority and the 
state building commission which are secured by net 
profits.

(g) There is hereby continued a special revenue fund 
in the state treasury which shall be designated and known 
as the "lottery education fund". The fund shall consist of 
the amounts allocated pursuant to subsection (f) of this 
section, which shall be deposited into the lottery education 
fund by the state treasurer. The lottery education fund 
shall also consist of all interest earned from investment of 
the lottery education fund and any other appropriations, 
gifts, grants, contributions or moneys received by the 
lottery education fund from any source. The revenues 
received or earned by the lottery education fund shall be 
disbursed in the manner provided below and shall not be 
treated by the auditor and treasurer as part of the general 
revenue of the state. Annually, the Legislature shall 
appropriate the revenues received or earned by the lottery 
education fund to the state system of public and higher 
education for these educational programs it considers 
beneficial to the citizens of this state.
(h) On or before the twenty-eighth day of each month through the twentieth day of June, two thousand five, the lottery director shall allocate to the school building debt service fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code, as a first priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of April, one thousand nine hundred ninety-four, as certified to the lottery director in accordance with the provisions of section six, article nine-d, chapter eighteen of this code. In no event shall the monthly amount allocated exceed one million eight hundred thousand dollars, nor shall the total allocation of the net profits to be paid into the school building debt service fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or eighteen million dollars. In the event there are insufficient funds available in any month to transfer the amount required to be transferred pursuant to this subsection to the school debt service fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A lien on the proceeds of the state lottery fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed twenty-seven million dollars annually, may be granted by the school building authority in favor of the bonds it issues which are secured by the net lottery profits.

When the school improvement bonds, secured by profits from the lottery and deposited in the school debt service fund, mature, the lottery director shall allocate monthly, from the net profits of the lottery for the preceding month, an amount equal to one million five hundred thousand dollars into the school construction fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code.

(i) On or before the twenty-eighth day of each month through the twenty-eighth day of June, two thousand twenty-one, the lottery director shall allocate to the education, arts, sciences and tourism debt service fund
created pursuant to the provisions of section eleven-a, article six, chapter five of this code, as a second priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of April, one thousand nine hundred ninety-six, as certified to the lottery director in accordance with the provisions of that section. In no event shall the monthly amount allocated exceed one million dollars nor shall the total allocation paid into the education, arts, sciences and tourism debt service fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or ten million dollars. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the education, arts, sciences and tourism debt service fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A second-in-priority lien on the proceeds of the state lottery fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed fifteen million dollars annually, may be granted by the state building commission in favor of the bonds it issues which are secured by the net lottery profits.

(j) There is hereby continued a special revenue fund in the state treasury which shall be designated and known as the "lottery senior citizens fund". The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which shall be deposited into the lottery senior citizens fund by the state treasurer. The lottery senior citizens fund shall also consist of all interest earned from investment of the lottery senior citizens fund and any other appropriations, gifts, grants, contributions or moneys received by the lottery senior citizens fund from any source. The revenues received or earned by the lottery senior citizens fund shall not be treated by the auditor or treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the lottery senior citizens fund to such senior citizens medical care and other programs as it considers beneficial to the citizens of this state.
The division of natural resources and the West Virginia development office, as appropriated by the Legislature, may use the amounts allocated to them pursuant to subsection (f) of this section for one or more of the following purposes: (1) The payment of any or all of the costs incurred in the development, construction, reconstruction, maintenance or repair of any project or recreational facility, as these terms are defined in section four, article five, chapter twenty of this code, pursuant to the authority granted to it under article five, chapter twenty of this code; (2) the payment, funding or refunding of the principal of, interest on or redemption premiums on any bonds, security interests or notes issued by the parks and recreation section of the division of natural resources under article five, chapter twenty of this code; or (3) the payment of any advertising and marketing expenses for the promotion and development of tourism or any tourist facility or attraction in this state.

CHAPTER 126

(Com. Sub. for H. B. 4306—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 13, 1998; in effect from passage. Approved by the Governor.]
eighteen-a; and to amend and reenact sections one, two, two-
a, two-b and three, article three-a of said chapter, all relating
to requiring the state board to establish goals for professional
development and providing a process to coordinate program
delivery through the state department of education, regional
educational service agencies and the center for professional
development; creating the strategic staff development fund
with funds that accrue in the general revenue fund; requiring
the state board to develop an assessment program and an
accountability program; requiring the state board to establish
the reading excellence accelerates deserving students
program; establishing a process for improving education;
establishing a system of education performance audits;
creating the office of education performance audits;
designating certain school systems with more than a casual
deficit as having nonapproval status; requiring the
appointment of a team of improvement consultants before
the state board may intervene in the operation of a county
school system; providing for the targeting of resources to
improve the teaching and learning process; creating the West
Virginia staff development advisory council; creating
regional staff development councils in each regional
educational service agency; and increasing the allowance for
transportation costs.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter eighteen of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted; that article two of said
chapter be amended by adding thereto a new section, designated
section twenty-three-a; that section twenty-six of said article be
amended and reenacted; that article two of said chapter be
amended by adding thereto a new section, designated section
thirty-two; that sections one-a and five, article two-e of said
chapter be amended and reenacted; that said article be further
amended by adding thereto a new section, designated section
three-c; that said chapter be amended by adding thereto a new
article, designated article two-i; that sections seven and ten, article
nine-a of said chapter be amended and reenacted; that section
two-c, article three, chapter eighteen-a be amended and
reenacted; and that sections one, two, two-a, two-b and three,
article three-a of said chapter, be amended and reenacted, all to
read as follows:
Chapter 18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

Article

1. Definitions; Limitations of Chapter; Goals for Education.
2. State Board of Education.
   2E. High Quality Educational Programs.
21. Staff Development Councils.
9A. Public School Support.

ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.

§18-1-1. Definitions.

The following words used in this chapter and in any proceedings pursuant thereto shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) “School” means the pupils and teacher or teachers assembled in one or more buildings, organized as a unit;

(b) “District” means county school district;

(c) “State board” means the West Virginia board of education;

(d) “Board” means the county board of education;

(e) “State superintendent” means the state superintendent of free schools;

(f) “Superintendent” means the county superintendent of schools;

(g) “Teacher” means teacher, supervisor, principal, superintendent, public school librarian; registered professional nurse, licensed by the West Virginia board of examiners for registered professional nurses and employed by a county board of education, who has a baccalaureate degree; or any other person regularly
employed for instructional purposes in a public school in this state;

(h) "Service personnel" means all nonteaching school employees not included in the above definition of "teacher";

(i) "Regular full-time employee" means any person employed by a county board of education who has a regular position or job throughout his employment term, without regard to hours or method of pay;

(j) "Career clusters" means broad groupings of related occupations;

(k) "Work-based learning" means a structured activity that correlates with and is mutually supportive of the school-based learning of the student and includes specific objectives to be learned by the student as a result of the activity;

(l) "School-age juveniles" means any individual who is entitled to attend or who, if not placed in a residential facility, would be entitled to attend public schools, in accordance with: (1) Section five, article two of this chapter; (2) sections fifteen and eighteen, article five of this chapter; or (3) section one, article twenty of this chapter;

(m) "Student with a disability" means an exceptional child, other than gifted, pursuant to section one, article twenty of this chapter;

(n) "Low density county" means a county whose ratio of student population to square miles is less than or equal to the state average ratio as computed by the state department of education;

(o) "High density county" means a county whose ratio of student population to square miles is greater than the state average ratio as computed by the state department of education; and

(p) "Casual deficit" means a deficit of not more than three percent of the approved levy estimate or a deficit that is nonrecurring from year to year.
ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-23a. Annual professional development goals established by state board; coordination of professional development programs; program development, approval and evaluation.

§18-2-26. Establishment of multicounty regional educational service agencies; purposes; authority to implement regional services.

§18-2-32. Strategic staff development fund.

§18-2-23a. Annual professional development goals established by state board; coordination of professional development programs; program development, approval and evaluation.

(a) The intent of this section is to provide for the coordination of professional development programs by the state board to promote high quality instructional delivery and management practices for a thorough and efficient system of schools. The state board annually shall establish goals for professional development in the public schools of the state. The state board shall submit the goals to the state department of education, the center for professional development, the regional educational service agencies, the state college and university systems and the legislative oversight commission on education accountability on or before the first day of October, each year. The goals shall include measures by which the effectiveness of professional development programs will be evaluated. The professional development goals may include separate goals for teachers, principals, service personnel and others in the public schools. In establishing the goals, the state board shall review reports that may indicate a need for staff development. At a minimum in establishing the goals for professional development, the state board shall consider the report of the staff development advisory council set forth in section four, article two-i, chapter eighteen of this code, student test scores on the statewide student assessment program, the measures of student and school performance for accreditation purposes, school and school district report cards, and its plans for the use of funds in the strategic staff development fund pursuant to section thirty-two, article two, chapter eighteen of this code.
(b) The center for professional development and the regional educational service agencies shall each design a proposed professional development program plan to achieve the goals of the state board which are within their purview pursuant to provisions set forth in this code and rules of the state board: Provided, That the state board may establish as a goal for the center for professional development, the delivery of a localized professional development program to address school, county or regional problems. The center for professional development and the regional educational service agencies shall each submit their respective proposed plans to the state board on or before the fifteenth day of November, each year. The proposed plans shall include a plan for evaluating the effectiveness of the professional development delivered through the program and a cost estimate. A copy of each proposed plan shall also be submitted by the respective agencies to the legislative oversight commission on education accountability. The state board shall review the proposed plans and shall return the proposed plans to the respective agencies on or before the first day of January, each year, noting whether the proposed plan is approved or is not approved in whole or in part. If a proposed plan is not approved in whole, the state board shall note its objections to the proposed plan or to the parts of the proposed plan not approved and may suggest improvements or specific modifications, additions or deletions to more fully address the goals or eliminate duplication. An agency whose proposed plan is not wholly approved shall revise the plan to satisfy the objections of the state board or state the reasons why revisions cannot be made to satisfy any or all of the objections and resubmit the proposal to the state board as soon as possible. State board approval of the professional development plans of the center for professional development and the regional educational service agencies is required prior to implementation of the plans.

(c) The state board shall submit a proposed master plan for professional development to the legislative oversight commission on education accountability on the first day of February, each year. The proposed master
plan shall include the state board approved plans of the state department of education, the center for professional development and the regional educational service agencies to meet the professional development goals of the state board. The proposed master plan also shall include a plan for evaluating the effectiveness of the professional development delivered through the programs, a cost estimate, a description of any proposals pending approval of the state board and any reasons why a goal or goals of the state board will not be met.

(d) An approved master plan for professional development shall be established by the state board not later than the fifteenth day of March, each year. The approved master plan shall include the state board approved professional development plans of the state department of education, the center for professional development and the regional educational service agencies. The approved master plan shall serve as a guide for the delivery of coordinated professional development programs by the state department of education, the center for professional development and the regional educational service agencies beginning on the first day of June in the year in which the master plan was approved through the thirtieth day of May in the following year.

§18-2-26. Establishment of multicounty regional educational service agencies; purposes; authority to implement regional services.

(a) In order to consolidate and administer more effectively existing educational programs and services so individual districts will have more discretionary moneys for educational improvement and in order to equalize and extend educational opportunities, the state board of education shall establish multicounty regional educational service agencies for the purpose of providing high quality, cost effective educational programs and services to the county school systems, and shall make such rules as may be necessary for the effective administration and operation of such agencies: Provided, That the legislative oversight commission on education accountability shall commission a comprehensive feasibility study of the regional
(b) In furtherance of these purposes, it is the duty of the board of directors of each regional educational service agency to continually explore possibilities for the delivery of services on a regional basis which will facilitate equality in the educational offerings among counties in its service area, permit the delivery of high quality educational programs at a lower per student cost, strengthen the cost effectiveness of education funding resources, reduce administrative and/or operational costs, including the consolidation of administrative, coordinating and other county level functions into region level functions, and promote the efficient administration and operation of the public school systems generally.

Technical, operational, programmatic or professional services would be among the types of services appropriate for delivery on a regional basis.

(c) In addition to performing the services and functions required by the provisions of this or any other section of this code, a regional educational service agency may implement regional programs and services by a majority vote of its board of directors. When said vote is not unanimous, the board of directors shall file a plan for the service or program delivery with the state board describing the program or service, the manner of delivery and the projected savings and/or the improved quality of the program or service. The state board shall promulgate rules requiring a county board that declines to participate in such programs or services to show just cause for not participating and the estimated savings accruing to the county therefrom. If a county board fails to show that savings will accrue to the county or that the quality of the program will be significantly and positively affected as a result of its decision not to participate, the state board shall withhold from the county's foundation allowance for administrative cost the lesser of the amount of the
estimated savings or the allocation for the county's foundation allowance for administrative cost.

(d) The state board, in conjunction with the various regional educational service agencies, shall develop an effective model for the regional delivery of instruction in subjects where there exists low student enrollment or a shortage of certified teachers or where such delivery method substantially improves the quality of an instructional program. Such model shall incorporate an interactive electronic classroom approach to instruction. To the extent funds are appropriated or otherwise available, county boards or regional educational service agencies may adopt and utilize the model for the delivery of such instruction.

(e) Each regional educational service agency shall conduct a study setting forth how the following services and functions may be performed by the agency for public schools and school districts within the region without terminating the employment of personnel employed by school districts prior to the effective date of this subsection: Accounting, purchasing, food service, transportation, delivery of high cost services to low incidence student populations, audiovisual material distribution, facilities planning, federal program coordination, personnel recruiting and an integrated regional computer information system. On or before the tenth day of January, one thousand nine hundred ninety, each regional educational service agency shall submit the study to the state board, to the standing committees on education and finance of the West Virginia Senate and House of Delegates and to the secretary of education and the arts: Provided, That in the event such study is implemented those individuals employed prior to the effective date thereof shall not have their employment terminated as a result of the study.

(f) Each regional educational service agency shall commence implementation of a uniform integrated regional computer information system as recommended by the state board of education on or before the first day of January, one thousand nine hundred ninety-one. Each
county board of education shall use the computer
information system for data collection and reporting to
the state department of education beginning no later than
the first day of July, one thousand nine hundred ninety-
four. County boards of education shall bear the cost of
and fully participate in the implementation of the system
by: (1) Acquiring necessary, compatible equipment to
participate in the regional computer information system;
or (2) following receipt of a waiver from the state
superintendent, operating a comparable management
information system at a lower cost which provides at least
all uniform integrated regional computer information
system software modules and allows on-line, interactive
access for schools and the county board of education
office onto the statewide communications network. All
data formats shall be the same as for the uniform
integrated regional information system and will reside at
the regional computer. Any county granted a waiver shall
receive periodic notification of any incompatibility or
deficiency in its system. Continued inability of any
county to meet the above criteria shall, upon notification
to the county no later than the first day of April, one
thousand nine hundred ninety-five, require the county to
use the uniform integrated regional computer information
system no later than the first day of July, one thousand
nine hundred ninety-five. No county shall expand any
system either through the purchase of additional software
or hardware that does not advance the goals and
implementation of the uniform integrated regional
computer information system as recommended by the
state board: Provided, That nothing contained herein
shall prevent the state superintendent from granting a
one-year extension to those counties projected to have
budget deficits for the school year beginning on the first
day of July, one thousand nine hundred ninety-four.

(g) Each regional educational service agency shall
submit a report and evaluation of the services provided
and utilized by the schools within each respective region.
Furthermore, each school shall submit an evaluation of the
services provided by the regional educational service
agency, which shall include an evaluation of the regional
educational service agency program, suggestions as to how
to improve utilization and the individual school’s plan as
to development of new programs and enhancement of
existing programs. The reports shall be due by the first
day of January of each year commencing with the year
one thousand nine hundred ninety-one and shall be made
available to the state board of education, standing
committees on education of the West Virginia Senate and
House of Delegates and to the secretary of education and
the arts.

(h) A regional board shall be empowered to receive
and disburse funds from the state and federal
governments, member counties, gifts and grants.

(i) Notwithstanding any other provision of the code to
the contrary, employees of regional educational service
agencies shall be reimbursed for travel, meals and lodging
at the same rate as state employees under the travel
management office of the department of administration.

(j) Regional educational service agencies shall hold at
least one half of their regular meetings during hours other
than those of a regular school day.

(k) Regional educational service agencies shall serve as
the lead agency for computer installation, maintenance
and repair for the basic skills computer program. By the
first day of October, one thousand nine hundred ninety-
five, and quarterly thereafter, each regional educational
service agency shall submit a status report on turn around
time for computer installation, maintenance and repair to
the state superintendent of schools who shall then submit a
report to the legislative oversight commission on
education accountability. The above-mentioned status
report for turn around time for computer installation,
maintenance and repair shall be based on the following
suggested time schedules:

Network File Servers ............... forty-eight hours
Local Area Networks ............... forty-eight hours
West Virginia Education
   Information System ............... twenty-four hours
Regional educational service agencies shall also submit an audit report to the legislative oversight commission on education accountability each year.

(1) Pursuant to the processes and provisions of section twenty-three-a, article two, chapter eighteen of this code, each regional educational service agency shall provide coordinated professional development programs within its region to meet the professional development goals established by the state board.

§18-2-32. Strategic staff development fund.

(a) There is hereby created an account within the state board titled the strategic staff development fund. The allocation of balances which accrue in the general school fund shall be transferred to the strategic staff development fund each year when the balances become available. Any remaining funds transferred to the strategic staff development fund during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the transfer of funds from the general school fund for the next fiscal year.

(b) The money in the strategic staff development fund shall be used by the state board to provide staff development in schools, counties or both that the state board determines need additional resources. Additionally, the state board shall use a reasonable amount of the money from the strategic staff development fund to contract with an independent evaluator chosen by the state board to evaluate the effectiveness with which the money was used for staff development. The state board is required to report to the legislative oversight commission on education accountability before the first day of December of each year:

(1) The amount of each expenditure;
(2) The purpose of each expenditure; and

(3) The effectiveness of the staff development resulting from each expenditure.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-1a. Assessment and accountability programs; duties of the state board.

§18-2E-3c. Summer school READS grant program created; legislative findings and purpose of section.

§18-2E-5. Process for improving education; office of education performance audits; education standards; school accreditation and school system approval; intervention to correct impairments.

§18-2E-1a. Assessment and accountability programs; duties of the state board.

(a) In order to further the purposes of this article, on or before the first day of January, one thousand nine hundred ninety-nine, the state board shall develop and recommend to the legislative oversight commission on education accountability an assessment program to measure the progress of public school students in attaining a high quality education. In addition, to further the purposes of this article, on or before the first day of January, one thousand nine hundred ninety-nine, the state board shall develop and recommend to the legislative oversight commission on education accountability an accountability program to help ensure a thorough and efficient system of schools. In developing the assessment program and the accountability program, the state board shall take into consideration recommendations arising from any legislative interim study undertaken at the direction of the joint committee on government and finance and also shall take into consideration any recommendations made by the legislative oversight commission on education accountability.

(b) As part of their on-going responsibility for developing and implementing a program of assessments and a program of accountability, the state board shall perform the following functions:
(1) Review assessment tools, including tests of student performance and measures of school and school system performance, and determine when any improvements or additions are necessary;

(2) Consider multiple assessments, including, but not limited to, a state testing program developed in conjunction with the state’s professional educators with assistance from such knowledgeable consultants as may be necessary, which may include criterion referenced tests;

(3) Review all accountability measures, such as the accreditation and personnel evaluation systems and consider any improvements or additions deemed necessary; and

(4) Ensure that all statewide assessments of student performance are secure.

§18-2E-3c. Summer school READS grant program created; legislative findings and purpose of section.

(a) The Legislature hereby finds and acknowledges that, if remediation is necessary, it should be provided when students are younger and before patterns of failure are established. The Legislature further acknowledges that the people of West Virginia would be better served if the state acted to ensure that all public school students were able to read at or above grade level upon exiting grade four, that county boards are in the best position to determine if remediation is necessary for students in kindergarten through grade four and that the counties should have the option of providing summer school for students and may consider student attendance as a factor in determining whether a child is eligible to be promoted to the next grade.

The Legislature further finds that not all students are financially able to pay for summer school, nor do all county schools hold summer school. It is, therefore, the purpose of this section to help the county boards to provide, either individually or cooperatively, free summer school and summer school transportation for those students in kindergarten through grade four who did not
perform at grade level during the regular school year. It also is the purpose of this section to help students in kindergarten through grade four who are identified as being in danger of failing to read at grade level by the end of the school year to receive intensive reading instruction during their regularly scheduled reading time throughout the regular school year.

(b) Subject to appropriation by the Legislature therefor, the state board shall establish a competitive grant program as set forth in this section to provide reading programs for students in kindergarten through grade four who are not performing at grade level. The program shall be designated and known as the “Reading Excellence Accelerates Deserving Students” program and, along with such designation, may be referred to as “West Virginia READS”.

Priorities for awarding the grants shall include, but are not limited to:

(1) Schools that have test scores below the state standards; and

(2) Schools that receive federal funds for the improvement of reading.

Competitive grant applications must be submitted by the county boards, or by a community collaborative with the county board as a partner with leadership responsibility, and shall describe how the program will:

(1) Employ strategies and proven methods for student learning, teaching and school management that are based on reliable research and effective practices and can be replicated in other schools to improve the reading skills of students;

(2) Contain measurable goals for the improvement of student reading skills and benchmarks for meeting those goals;

(3) Include a plan for the evaluation of student progress toward achieving the state’s high standards;
(4) Identify how other federal, state, local and private
resources, including volunteers, will be utilized to further
the intent of this section;

(5) Link summer reading improvement programs with
reading instruction and remediation throughout the school
year;

(6) Determine feasibility of collaborating with colleges
of education for the purpose of providing educational
experiences for prospective teachers; and

(7) Accomplish other objectives as deemed necessary
by the state board.

c) Any county receiving a grant should encourage
students in kindergarten through grade four who did not
perform at grade level during the regular school year to
attend summer school and may consider summer school
attendance as a factor in determining whether a child is
eligible to be promoted to the next grade. The county
board shall provide intensive reading instruction during
regularly scheduled reading time throughout the regular
school year to students in kindergarten through grade
four who are identified by the classroom teacher as being
in danger of failing to read at grade level by the end of
the school year. Nothing in this section shall prohibit
county boards from permitting students to participate in
reading programs on a student fee basis.

d) The state board shall approve procedures for the
implementation of this section. To assist the state board in
developing procedures for the implementation of this
section, including the grant application and the grant
review and selection process, the state board shall appoint
an advisory board consisting of the federal programs
director and the title I reading coordinator/specialist, both
from the state department of education, a representative
from the department of education and the arts
representing the library commission and the community
schools initiative, a college or university professor of
reading, two or more representatives from local school
systems, the West Virginia coordinator of the read aloud
program, the energy express project director, and a
representative of mission West Virginia, or representatives of like successor organizations should these named organizations cease to exist. The procedures shall provide for:

1. The appointment of a grant review and selection panel by the state board consisting of persons with expertise and practical experience in delivering programs to increase the reading skills of young students, not more than one half of whom may be employees of the state department of education, or the state board may designate the advisory board as the grant review and selection panel;

2. Notice to all schools of the grant competition and the availability of applications on or before the thirtieth day of September, in each fiscal year for which grant funds are available;

3. A grant application deadline postmarked on or before the fifteenth day of December, in each fiscal year for which grant funds are available;

4. Notice of grant awards on or before the first day of March, in each fiscal year for which grant funds are available; and

5. Other such requirements as deemed necessary by the state board.

The state board may fund, from any other funds available for such purposes, the programs required by this section for students in kindergarten through grade four and any programs required by state board rules such as, but not limited to, the following:

1. Tutoring;

2. Summer school educational services;

3. Additional certified personnel to provide intensive instruction in reading throughout the school year;

4. Staff development for teachers; and

5. Hot meal programs.
Nothing in this section shall supersede the individualized education program (IEP) of any student.

Nothing in this section may be construed to require any specific level of funding by the Legislature.

§18-2E-5. Process for improving education; office of education performance audits; education standards; school accreditation and school system approval; intervention to correct impairments.

(a) Legislative intent. — The purpose of this section is to establish a process for improving education that includes standards, assessment, accountability and capacity building to provide assurances that a thorough and efficient system of schools is being provided for all West Virginia public school students on an equal education opportunity basis and that the high quality standards are, at a minimum, being met.

(b) State board rules. — The state board shall promulgate rules in accordance with article three-b, chapter twenty-nine-a of this code establishing a unified county improvement plan for each county board and a unified school improvement plan for each public school in this state. The state board is not required to promulgate new rules if legislative rules meeting the requirements of article three-b, chapter twenty-nine-a of this code have been filed with the office of the secretary of state before the effective date of this section.

(c) High quality education standards. — The state board shall, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, adopt and periodically review and update high quality education standards for student, school and school system performance and processes in the following areas:

(1) Curriculum;

(2) Workplace readiness skills;

(3) Finance;

(4) Transportation;
(5) Special education;
(6) Facilities;
(7) Administrative practices;
(8) Training of county board members and administrators;
(9) Personnel qualifications;
(10) Professional development and evaluation;
(11) Student and school performance;
(12) A code of conduct for students and employees;
and
(13) Any other such areas as determined by the state board.

(d) Performance measures. — The standards shall assure that all graduates are prepared for gainful employment or for continuing post secondary education and training and that schools and school districts are making progress in achieving the education goals of the state.

The standards shall include measures of student performance to indicate when a thorough and efficient system of schools is being provided and of school and school system performance and processes that enable student performance. The measures of student performance and school and school system performance and processes shall include, but are not limited to, the following:

(1) The acquisition of student proficiencies as indicated by student performance by grade level measured, where possible, by a uniform statewide assessment program;
(2) School attendance rates;
(3) Student dropout rate;
(4) Percent of students promoted to next grade;
(5) Graduation rate;
(6) Average class size;
(7) Pupil-teacher ratio and number of exceptions to ratio requested by county boards and number granted;
(8) Number of split-grade classrooms;
(9) Percentage of graduates who enrolled in college; the percentage of graduates who enrolled in other post-secondary education; and the percentage of graduates who become fully employed within one year of high school graduation all as reported by the graduates on the assessment form attached to their individualized student transition plan, pursuant to section eight of this article and the percentage of graduates reporting;
(10) Pupil-administrator ratio;
(11) Parent involvement;
(12) Parent, teacher and student satisfaction;
(13) Operating expenditures per pupil;
(14) Percentage of graduates who attain the minimum level of performance in the basic skills recognized by the state board as laying the foundation for further learning and skill development for success in college, other post-secondary education and gainful employment and the grade level distribution in which the minimum level of performance was met;
(15) Percentage of graduates who received additional certification of their skills, competence and readiness for college, other post secondary education or employment above the minimum foundation level of basic skills; and
(16) Effective school system participation with their assigned regional education service agency.

(e) Assessment and accountability of school and school system performance and processes. — The state board shall establish by rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, a system of education performance audits which
the quality of education and the preparation of students based on the standards and measures of student, school and school system performance and processes, including, but not limited to, the standards and measures set forth in subsections (c) and (d) of this section. The system of education performance audits shall assist the state board in ensuring that the standards and measures established pursuant to this section are, at a minimum, being met and that a thorough and efficient system of schools is being provided. The system of education performance audits shall include: (1) The assessment of student, school and school system performance and the processes in place in schools and school systems which enable student performance; (2) the review of school and school system unified improvement plans; and (3) the periodic, random unannounced on-site review of school and school system performance and compliance with the standards.

(f) Uses of school and school system assessment information. — The state board shall use information from the system of education performance audits to assist it in ensuring that a thorough and efficient system of schools is being provided and to improve student, school and school system performance, including, but not limited to, the following: (1) Determining school accreditation and school system approval status; (2) holding schools and school systems accountable for the efficient use of existing resources to meet or exceed the standards; and (3) targeting additional resources when necessary to improve performance. Primary emphasis in determining school accreditation and school system approval status will be based on student, school and school system performance on measures selected by the state board. The state board shall make accreditation information available to the Legislature; the governor; and to the general public and any individuals who request such information, subject to the provisions of any act, rule or regulation restricting the release of information. Based on the assessment of student, school and school system performance, the state board shall establish early detection and intervention programs to assist underachieving schools and school
systems in improving performance before conditions become so grave as to warrant more substantive state intervention, including, but not limited to, making additional technical assistance, programmatic, monetary and staffing resources available where appropriate.

(g) **Office of education performance audits.** — To assist the state board in the operation of the system of education performance audits and in making determinations regarding the accreditation status of schools and the approval status of school systems, the state board shall establish an office of education performance audits which shall be operated under the direction of the state board independently of the functions and supervision of the state department of education and state superintendent. The office of education performance audits shall report directly to and be responsible to the state board in carrying out its duties under the provisions of this section. The office shall be headed by a director who shall be appointed by the state board and shall serve at the will and pleasure of the state board. The salary of the director shall not exceed the salary of the state superintendent of schools. The state board shall organize and sufficiently staff the office to fulfill the duties assigned to it by this section and the state board. Employees of the state department of education who are transferred to the office of education performance audits shall retain their benefit and seniority status with the department of education. Under the direction of the state board, the office of education performance audits shall receive from the West Virginia education information system staff research and analysis data on the performance of students, schools and school systems, and shall receive assistance from staff at the state department of education and the state school building authority to carry out the duties assigned to the office. In addition to other duties which may be assigned to it by the state board or by statute, the office of education performance audits also shall:

(1) Assure that all statewide assessments of student performance are secure as required in section one-a, article two-e of this chapter;
(2) Administer all accountability measures as assigned by the state board, including, but not limited to, processes for the accreditation of schools and the approval of school systems, and recommend to the state board appropriate action, including, but not limited to, accreditation and approval action;

(3) Determine, in conjunction with the assessment and accountability processes, what capacity may be needed by schools and school systems to meet the standards established by the Legislature and the state board, and recommend to the school, school system and state board, plans to establish those needed capacities;

(4) Determine, in conjunction with the assessment and accountability processes, whether statewide system deficiencies exist in the capacity to establish and maintain a thorough and efficient system of schools, including the identification of trends and the need for continuing improvements in education, and report those deficiencies and trends to the state board;

(5) Determine, in conjunction with the assessment and accountability processes, staff development needs of schools and school systems to meet the standards established by the Legislature and the state board, and make recommendations to the state board, the center for professional development, regional education service agencies, higher education governing boards and county boards; and

(6) Identify, in conjunction with the assessment and accountability processes, exemplary schools and school systems and best practices that improve student, school and school system performance, and make recommendations to the state board for recognizing and rewarding exemplary schools and school systems and promoting the use of best practices. The state board shall provide information on best practices to county school systems and shall use information identified through the assessment and accountability processes to select schools of excellence.
(h) **On-site reviews.** — At the direction of the state board or by weighted, random selection by the office of education performance audits, an unannounced on-site review shall be conducted by the office of education performance audits of any school or school system for purposes, including, but not limited to, the following: (1) Verifying data reported by the school or county board; (2) documenting compliance with policies and laws; (3) evaluating the effectiveness and implementation status of school and school system unified improvement plans; (4) investigating official complaints submitted to the state board that allege serious impairments in the quality of education in schools or school systems; and (5) investigating official complaints submitted to the state board that allege that a school or county board is in violation of policies or laws under which schools and county boards operate. The random selection of schools and school systems for an on-site review shall use a weighted random sample so that those with lower performance indicators and those that have not had a recent on-site review have a greater likelihood of being selected. Under the direction of the state board, the office of education performance audits shall appoint an education standards compliance review team to assist it in conducting on-site reviews. The teams shall be composed of an adequate number of persons who possess the necessary knowledge, skills and experience to make an accurate assessment of education programs and who are drawn from a trained cadre established by the office of education performance audits. The state board shall have discretion in determining the number of persons to serve on a standards compliance review team based on the size of the school or school system as applicable. The teams shall be led by a member of the office of education performance audits. County boards shall be reimbursed for the costs of substitutes required to replace county board employees while they are serving on an education standards compliance review team. The office of education performance audits shall report the findings of the on-site reviews to the state board for inclusion in the evaluation and determination of a school’s or county board’s accreditation or approval status as applicable.
(i) **School accreditation.** — The state board annually shall review the information from the system of education performance audits submitted for each school and shall issue to every school: Full accreditation status, temporary accreditation status, conditional accreditation status, or shall declare the education programs at the school to be seriously impaired.

(1) Full accreditation status shall be given to a school when the school’s performance on the standards adopted by the state board pursuant to subsections (c) and (d) of this section is at a level which would be expected when all of the high quality education standards are being met.

(2) Temporary accreditation status shall be given to a school when the measure of the school’s performance is below the level required for full accreditation status. Whenever a school is given temporary accreditation status, the county board shall ensure that the school’s unified improvement plan is revised to increase the performance of the school to a full accreditation status level. The revised unified school improvement plan shall include objectives, a time line, a plan for evaluation of the success of the improvements, cost estimates, and a date certain for achieving full accreditation. The revised plan shall be submitted to the state board for approval.

(3) Conditional accreditation status shall be given to a school when the school’s performance on the standards adopted by the state board is below the level required for full accreditation, but the school’s unified improvement plan has been revised to achieve full accreditation status by a date certain, the plan has been approved by the state board and the school is meeting the objectives and time line specified in the revised plan.

(4) The state board shall establish and adopt standards of performance to identify seriously impaired schools and the state board may declare a school seriously impaired whenever extraordinary circumstances exist as defined by the state board. These circumstances shall include, but are not limited to, the failure of a school on temporary accreditation status to obtain approval of its revised unified school improvement plan within a reasonable time.
period as defined by the state board and the failure of a school on conditional accreditation status to meet the objectives and time line of its revised unified school improvement plan or to achieve full accreditation by the date specified in the revised plan. Whenever the state board determines that the quality of education in a school is seriously impaired, the state board, shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correction of the impairment. Upon approval of the recommendations by the state board, the recommendations shall be made to the county board. If progress in correcting the impairment as determined by the state board is not made within six months from the time the county board receives the recommendations, the state board shall place the county board on temporary approval status and provide consultation and assistance to the county board to: (i) Improve personnel management; (ii) establish more efficient financial management practices; (iii) improve instructional programs and rules; or (iv) make such other improvements as may be necessary to correct the impairment. If the impairment is not corrected by a date certain set by the state board, the county board shall be given nonapproval status.

(j) Transfers from seriously impaired schools. — Whenever a school is determined to be seriously impaired and fails to improve its status within one year, any student attending such school may transfer once to the nearest fully accredited school, subject to approval of the fully accredited school and at the expense of the school from which the student transferred.

(k) School system approval. — The state board annually shall review the information submitted for each school system from the system of education performance audits and issue one of the following approval levels to each county board: Full approval, temporary approval, conditional approval, or nonapproval.

(1) Full approval shall be given to a county board whose education system meets or exceeds all of the high quality standards for student, school and school system
performance and processes adopted by the state board and
whose schools have all been given full, temporary or
conditional accreditation status.

(2) Temporary approval shall be given to a county
board whose education system is below the level required
for full approval. Whenever a county board is given
temporary approval status, the county board shall revise its
unified county improvement plan to increase the
performance of the school system to a full approval status
level. The revised plan shall include objectives, a time line,
a plan for evaluation of the success of the improvements, a
cost estimate, and a date certain for achieving full
approval. The revised plan shall be submitted to the state
board for approval.

(3) Conditional approval shall be given to a county
board whose education system is below the level required
for full approval, but whose unified county improvement
plan meets the following criteria: (i) The plan has been
revised to achieve full approval status by a date certain; (ii)
the plan has been approved by the state board; and (iii)
the county board is meeting the objectives and time line
specified in the revised plan.

(4) Nonapproval status shall be given to a county
board which fails to submit and gain approval for its
unified county improvement plan or revised unified
county improvement plan within a reasonable time period
as defined by the state board or fails to meet the objectives
and time line of its revised unified county improvement
plan or fails to achieve full approval by the date specified
in the revised plan. The state board shall establish and
adopt additional standards to identify school systems in
which the program may be nonapproved and the state
board may issue nonapproval status whenever
extraordinary circumstances exist as defined by the state
board. Furthermore, whenever a county board has more
than a casual deficit, as defined in section one, article one
of this chapter, the county board shall submit a plan to the
state board specifying the county board’s strategy for
eliminating the casual deficit. The state board either shall
approve or reject the plan. If the plan is rejected, the state
board shall communicate to the county board the reason or reasons for the rejection of the plan. The county board may resubmit the plan any number of times. However, any county board that fails to submit a plan and gain approval for the plan from the state board before the end of the fiscal year after a deficit greater than a casual deficit occurred or any county board which, in the opinion of the state board, fails to comply with an approved plan may be designated as having nonapproval status. Whenever nonapproval status is given to a school system, the state board shall declare a state of emergency in the school system and shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correcting the emergency. Upon approval of the recommendations by the state board, the recommendations shall be made to the county board. If progress in correcting the emergency, as determined by the state board, is not made within six months from the time the county board receives the recommendations, the state board shall intervene in the operation of the school system to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to, the following: (i) Limiting the authority of the county superintendent and county board as to the expenditure of funds, the employment and dismissal of personnel, the establishment and operation of the school calendar, the establishment of instructional programs and rules and such other areas as may be designated by the state board by rule; (ii) taking such direct action as may be necessary to correct the emergency; and (iii) declaring that the office of the county superintendent is vacant.

(1) Capacity. — The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of unified school and school system improvement plans, pursuant to subsection (b) of this section, is intended, in part, to provide mechanisms to target resources strategically to the teaching and learning process to improve student, school and school system performance. When deficiencies are detected through the assessment and
accountability processes, the revision and approval of school and school system unified improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the deficiencies. When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall work with the county board to develop or secure the resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the governor.

The state board shall recommend to the appropriate body including, but not limited to, the Legislature, county boards, schools and communities methods for targeting resources strategically to eliminate deficiencies identified in the assessment and accountability processes by:

(1) Examining reports and unified improvement plans regarding the performance of students, schools and school systems relative to the standards and identifying the areas in which improvement is needed;

(2) Determining the areas of weakness that appear to have contributed to the substandard performance of students or the deficiencies of the school or school system;

(3) Determining the areas of strength that appear to have contributed to exceptional student, school and school system performance and promoting their emulation throughout the system;

(4) Requesting technical assistance from the school building authority in assessing or designing comprehensive educational facilities plans;

(5) Recommending priority funding from the school building authority based on identified needs;

(6) Requesting special staff development programs from the center for professional development, higher education, regional education service agencies and county boards based on identified needs;
(7) Submitting requests to the Legislature for appropriations to meet the identified needs for improving education;

(8) Directing county boards to target their funds strategically toward alleviating deficiencies;

(9) Ensuring that the need for facilities in counties with increased enrollment are appropriately reflected and recommended for funding;

(10) Ensuring that the appropriate person or entity is held accountable for eliminating deficiencies; and

(11) Ensuring that the needed capacity is available from the state and local level to assist the school or school system in achieving the standards and alleviating the deficiencies.

Amendments to this section adopted by the Legislature in regular session in the year one thousand nine hundred ninety-eight shall be effective on the first day of July, one thousand nine hundred ninety-eight.

ARTICLE 21. STAFF DEVELOPMENT COUNCILS.

§18-21-1. Legislative purpose.
§18-21-2. Legislative findings.
§18-21-3. Creation of West Virginia staff development advisory council; members; and functions.
§18-21-4. Functions of the West Virginia staff development advisory council.
§18-21-5. Creation of regional staff development councils; members; and functions.
§18-21-6. Functions of the regional staff development councils.
§18-21-7. Limitations on funding of councils.

§18-21-1. Legislative purpose.

The purpose of this article is to create the West Virginia staff development advisory council and eight regional staff development councils to coordinate the delivery of staff development programs for professional education in West Virginia.

§18-21-2. Legislative findings.
The Legislature finds that there is presently an inadequate and inefficient delivery of staff development programs for professional education in West Virginia. The Legislature further finds that the creation of a West Virginia staff development advisory council and regional staff development councils will assure the efficient delivery of high quality staff training programs and will further assure that duplication of efforts will be minimized. The Legislature further finds that the functions of the West Virginia staff development advisory council and regional staff development councils will assure that key personnel will be fully aware of identified needs and programmatic services, that all stakeholders will be appropriately involved in planning and implementing programs to meet requisite needs and that high quality staff development programs will be provided to public school educators of West Virginia in the most efficient manner.

§18-21-3. Creation of West Virginia staff development advisory council; members; and functions.

(a) There shall be a West Virginia staff development advisory council which shall consist of the following members:

(1) The chairpersons of each of the eight regional staff development councils established in section five of this article;

(2) The coordinators of each of the eight regional educational service agency staff development councils;

(3) The associate superintendent for the division of research, technology and professional services of the state department of education;

(4) The assistant superintendent for the division of instructional and student services of the state department of education;

(5) The assistant superintendent for the division of technical and adult education services of the state department of education;
(6) The assistant superintendent for the division of administrative services of the state department of education;

(7) The secretary of education and the arts or his or her designee;

(8) The chancellor of the university system of West Virginia or his or her designee;

(9) The chancellor of the state college system of West Virginia or his or her designee;

(10) The executive director of the West Virginia education fund or his or her designee;

(11) The executive director of the West Virginia center for professional development or his or her designee;

(12) The president of the West Virginia education association or his or her designee;

(13) The president of the West Virginia federation of teachers or his or her designee;

(14) The president of the West Virginia professional educators or his or her designee;

(15) The president of the West Virginia association of school administrators or his or her designee;

(16) The president of the West Virginia association of elementary and middle school principals or his or her designee; and

(17) The president of the West Virginia association of secondary school principals or his or her designee.

(b) Any member of the advisory council may be reimbursed by his or her employing agency for the cost of reasonable and necessary expenses actually incurred in the performance of their duties under this article as determined by the employing agency.

§18-21-4. Functions of the West Virginia staff development advisory council.

The council shall:
(a) Identify and prioritize statewide staff development needs;
(b) Identify effective staff development programs to meet identified needs;
(c) Communicate staff development information and findings to the regional staff development councils, the state board and the legislative oversight commission on education accountability by the first day of September of each year;
(d) Convene regular meetings on a semiannual basis to effectuate the requirements in subsections (a), (b) and (c) of this section; and
(e) Elect a chairman who shall serve two years.

§18-21-5. Creation of regional staff development councils; members; and functions.
(a) There shall be a regional staff development council in each of the eight regional educational service agencies located within the state. Each regional staff development council shall consist of the following members:
(1) The chairperson of each of the county professional staff development councils located in each county contained in the applicable region;
(2) The county staff development coordinator from each of the counties located within the region: Provided, That if the county does not have a staff development coordinator, then the superintendent shall designate a person to serve on the regional staff development council;
(3) The regional educational service agencies staff development coordinator who shall serve as an ex officio member;
(4) The executive director of the regional educational service agencies who shall serve as an ex officio member;
(5) The designee of the chancellor of the university system of West Virginia who shall serve as an ex officio member; and
(6) The designee of the chancellor of the state college system of West Virginia who shall serve as an ex officio member.

(b) Any member of the regional staff development council may be reimbursed by his or her employing agency for the cost of reasonable and necessary expenses actually incurred in the performance of their duties under this article as determined by the employing agency.

§18-21-6. Functions of the regional staff development councils.

The regional councils shall:

(a) Identify and prioritize regional staff development needs;

(b) Identify effective staff development programs;

(c) Where requested by the regional educational service agency, establish the budget for multicounty staff development programs and oversee effective use of the budget;

(d) Where requested by the regional educational service agency, coordinate staff development at the regional level;

(e) Facilitate communications among and between personnel responsible for staff development at the state, local and regional levels;

(f) Convene regular meetings on a quarterly basis to effectuate the requirements in subsections (a), (b), (c), (d) and (e) of this section;

(g) Elect a chairman who shall serve two years; and

(h) Report information and findings related to staff development to the West Virginia staff development advisory council.

§18-21-7. Limitations on funding of councils.

Nothing in this article may be construed to require any specific level of funding by the Legislature.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10. Foundation allowance to improve instructional programs.


1. The allowance in the foundation school program for each county for transportation shall be the sum of the following computations:

2. (1) Eighty-five percent of the transportation cost within each high density county and ninety percent of the transportation cost within each low density county for maintenance, operation and related costs, exclusive of all salaries: Provided, That for the school year beginning the first day of July, one thousand nine hundred ninety-eight, and thereafter, in the event a county uses an alternative fuel such as compressed natural gas or other acceptable alternative fuel for the operation of all or any portion of its school bus system, then the allowance in the foundation school program for each such county for that portion of its school bus system shall be ninety-five percent of the transportation cost for maintenance, operation and related costs, exclusive of all salaries, incurred by the use of the alternatively fueled school buses: Provided, however, That any county using an alternative fuel and qualifying for the additional allowance shall submit a plan regarding the intended future use of alternatively fueled school buses;

3. (2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation: Provided, That such premiums were procured through competitive bidding;

4. (3) For the school year beginning the first day of July, one thousand nine hundred eighty-nine, and thereafter, an amount equal to ten percent of the current replacement value of the bus fleet within each county as determined by the state board, such amount to be used only for the replacement of buses. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the state superintendent for funding for an additional bus. The state superintendent shall make
a decision regarding each application based upon an
analysis of the individual school district’s net enrollment
history and transportation needs: Provided, That the
superintendent shall not consider any application which
fails to document that the county has applied for federal
funding for additional buses. If the state superintendent
finds that a need exists, a request for funding shall be
included in the budget request submitted by the state
board for the upcoming fiscal year;

(4) Eighty-five percent of the cost of contracted
transportation services and public utility transportation
within each high density county and ninety percent of the
cost of contracted transportation services and public utility
transportation within each low density county;

(5) Aid in lieu of transportation equal to the state
average amount per pupil for each pupil receiving such
aid within each county; and

(6) Ninety-five percent of the transportation cost for
maintenance, operation and related costs, exclusive of all
salaries, for transporting students to and from classes at a
multicounty vocational center.

The total state share for this purpose shall be the sum
of the county shares: Provided, That no county shall
receive an allowance which is greater than one third above
the computed state average allowance per transportation
mile multiplied by the total transportation mileage in the
county: Provided, however, That one half of one percent
of the transportation allowance distributed to each county
shall be for the purpose of trips related to academic
classroom curriculum and not related to any
extracurricular activity: Provided further, That any
remaining funds credited to a county for the purpose of
trips related to academic classroom curriculum during the
fiscal year shall be carried over for use in the same
manner the next fiscal year and shall be separate and apart
from, and in addition to, the appropriation for the next
fiscal year: And provided further, That the state board may
request a county to document the use of funds for trips
related to academic classroom curriculum if the board
deems it necessary.
The state department of education shall cause a comprehensive study to be made relating to student transportation. The study shall examine, but is not limited to, the issues of funding, timeliness of data used for formula distribution, service personnel needed, inter-county service, regionalization of services, bus routes, amount of time students spend on buses, maintenance, safety training, and alternative transportation systems. The state department of education shall submit a report of the study to the legislative oversight commission on education accountability by the fifteenth day of January, one thousand nine hundred ninety-nine.

*§18-9A-10. Foundation allowance to improve instructional programs.*

(a) For the school year beginning on the first day of July, one thousand nine hundred ninety-eight, and thereafter, the sum of the allocations shall be the amount appropriated by the Legislature for such purposes:

1. One hundred fifty thousand dollars shall be allocated to each county;

2. Distribution to the counties of the remainder of these funds shall be made proportional to the average of each county’s average daily attendance for the preceding year and the county’s second month net enrollment. Moneys allocated by provision of this section shall be used to improve instructional programs according to a plan for instructional improvement which the affected county board shall file with the state board by the first day of August of each year, to be approved by the state board by the first day of September of that year if such plan substantially complies with standards to be adopted by the state board: Provided, That notwithstanding any other provision of this code to the contrary, moneys allocated by provision of this section may also be used in the implementation and maintenance of the uniform integrated regional computer information system; and

*Clerk’s Note: This section was also amended by SB 533 (Chapter 125), which passed subsequent to this act.*
(3) Up to twenty-five percent of this allocation may be used to employ professional educators and/or service personnel in counties after all applicable provisions of sections four and five of this article have been fully utilized: Provided, That for the school year beginning on the first day of July, one thousand nine hundred ninety-six, only, up to an additional twenty-five percent of this allocation may be used to employ classroom teachers, as defined in section one, article one, chapter eighteen-a of this code, and/or service personnel in counties after all applicable provisions of sections four and five of this article have been fully utilized: Provided, however, That service personnel employed with the additional twenty-five percent for the school year beginning on the first day of July, one thousand nine hundred ninety-six, only, may not include directors, coordinators or supervisors.

Prior to the use of any funds from this section for personnel costs, the county board must receive authorization from the state superintendent of schools. The state superintendent shall require the district board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; and (3) sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget. District boards shall make application for available funds for the next fiscal year by the first day of May of each year. On or before the first day of June, the state superintendent shall review all applications and notify applying district boards of the distribution of the allocation: Provided, That for the school year beginning on the first day of July, one thousand nine hundred ninety-three, only, the state superintendent shall review all applications and notify applying district boards of the distribution of the allocation on or before the first day of July, one thousand nine hundred ninety-three. Such funds shall be distributed during the fiscal year as appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county’s inability to meet the requirements of state law or state board policy: Provided,
however, That the funds available for personnel under this section may not be used to increase the total number of professional noninstructional personnel in the central office beyond four. Such instructional improvement plan shall be made available for distribution to the public at the office of each affected county board.

(b) Commencing with the school year beginning on the first day of July, one thousand nine hundred ninety-three, an amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, shall be paid into the school building capital improvements fund created by section six, article nine-d of this chapter, and shall be used solely for the purposes of said article. The school building capital improvements fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the school building debt service fund have been pledged for repayment pursuant to said section.

CHAPTER 18A. SCHOOL PERSONNEL.

Article.

3. Training, Certification, Licensing, Professional Development.

3A. Center for Professional Development.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-2c. Training through the principals academy.

(a) Principal training required. — After the first day of January, one thousand nine hundred ninety-seven, and subject to the provisions of subsection (c) of this section, every principal shall complete a training program through the principals academy at least once every four years.
(b) Admission to academy. — The academy and the persons attending such academy shall adhere to the following guidelines for admission to the academy:

(1) All persons assigned as a principal for the first time in a West Virginia school after the first day of March, one thousand nine hundred ninety-six, shall complete training through the academy: Provided, That if training through the academy is scheduled to begin within ninety days from the date of assignment, such person may complete the next scheduled training through the academy;

(2) All principals of schools which have received from the state board temporary or conditional accreditation status or whose schools have been designated as seriously impaired, in accordance with section five, article two-e, chapter eighteen of this code, shall complete the next regularly scheduled training through the academy following the date of such designation: Provided, That if training through the academy is scheduled to begin within thirty days from the date of such designation, such principal may complete the next scheduled training through the academy: Provided, however, That principals whose schools have received conditional accreditation status, whose plan for correcting the deficiency which resulted in conditional accreditation status exceeds one year and whose schools are meeting the requirements of the plan, shall not be required to attend the academy in each successive year;

(3) All principals who are subject to an improvement plan, in accordance with section twelve, article two of this chapter, shall complete the next regularly scheduled training through the academy: Provided, That if training through the academy is scheduled to begin within thirty days from the date the principal is first subject to the improvement plan, then such principal may complete the next scheduled training through the academy;

(4) All principals who transfer to a school with a significantly different grade configuration shall complete the next regularly scheduled training through the academy: Provided, That if training through the academy
is scheduled to begin within ninety days from the date such principal is transferred, then such principal may complete the next scheduled training through the academy; and

(5) All persons serving as school principals who are not described in subdivisions (1) through (4) of this subsection shall complete training through the academy at least once every four years from and after the first day of January, one thousand nine hundred ninety-seven.

(c) Academy and attendance subject to funding. — The requirement that principals attend the academy shall be subject to the availability of funds for the principals academy from legislative appropriation or from other sources. If such funds are insufficient to provide for the total cost of admission to the academy for those required to complete training, then the academy shall admit the persons described in subdivisions (1) through (5), subsection (b) of this section according to the priority in which the subdivisions appear in said subsection. If such funds are insufficient to provide for the admission of all the persons described in one or more of subdivisions (1) through (5), subsection (b) of this section, the academy is authorized to determine which persons described within the said subdivision or subdivisions shall be admitted and which shall not be admitted: Provided, That the principals academy shall make every effort to ensure that all principals attend once every four years from and after the first day of January, one thousand nine hundred ninety-seven: Provided, however, That nothing in this section shall be construed to require any specific level of funding by the Legislature.

(d) Principals standards advisory council. — To assist the state board in the performance of the duties described in subsection (e) of this section, there is hereby created a “Principals Standards Advisory Council”, which shall consist of nine persons, as follows: The executive director, or designee, of the center for professional development, who shall serve as the ex officio chair; three principals, one from an elementary school, one from a middle school or a junior high school, and one from a high school, and
one county school superintendent, nominated by the state
board and appointed by the governor; two representatives
from higher education who teach in principal preparation
programs, nominated by the chancellor of the state
university system and appointed by the governor; and two
citizen representatives who are knowledgeable on issues
addressed in this section, appointed by the governor. Of
the initial appointments, three of the members appointed
shall serve for a term of three years, three members shall
serve for a term of two years, and two members shall serve
for a term of one year. All successive appointments shall
be for a term of three years. Members of the council who
are public employees shall be granted release time from
their employment for attending meetings of the council.
Members may be reimbursed for reasonable and
necessary expenses actually incurred in the performance
of their official duties by the center for professional
development.

(e) Establishment of standards. — On or before the
first day of October, one thousand nine hundred ninety-six, the state board shall approve and promulgate rules
regarding the minimum qualities, proficiencies and skills
that will be required of principals after the first day of
January, one thousand nine hundred ninety-seven. The
state board shall promulgate such rules after consultation
with the principals standards advisory council created in
subsection (d) of this section. The rule developed by the
state board shall address at least the following:

(1) Staff relations, including, but not limited to, the
development and use of skills necessary to make a positive
use of faculty senates, to manage faculty and staff with
courtesy and mutual respect, coach and motivate
employees and to build consensus as a means of
management;

(2) School community leadership qualities, including,
but not limited to, the ability to organize and leverage
community initiative, communicate effectively, work
effectively with local school improvement councils,
manage change, resolve conflict and reflect the highest
personal values;
(3) Educational proficiencies, including, but not limited to, knowledge of curriculum, instructional techniques, student learning styles, student assessment criteria, school personnel performance, evaluation skills and family issues; and

(4) Administrative skills, including, but not limited to, organizational, fiscal, public policy and total quality management skills and techniques.

(f) Waivers. — Any person desiring to be relieved of the requirements of all or any part of this section may apply in writing to the state board for a waiver. Upon a showing of reasonable cause why relief should be granted, the state board may grant a waiver, upon such terms and conditions as the state board shall determine proper, as to all or any part of this section.

(g) Failure to comply. — Any person who fails or refuses to complete training through the academy, as required by the provisions of this section, and who fails to obtain a waiver, as described in subsection (f) of this section, shall be ineligible to be employed as, or serve in the capacity of, a principal.

(h) Tracking of requirement. — On or before the first day of January, one thousand nine hundred ninety-seven, the state board shall establish a system to track the progress of each person required to complete training through the academy and shall regularly advise such persons of their progress.

(i) Payment of reasonable and necessary expenses and stipends. — The center for professional development may reimburse persons attending the academy for reasonable and necessary expenses. Additionally, any person whose attendance occurs outside his or her employment term, as defined in section fifteen, article five, chapter eighteen of this code, may be entitled to a stipend to be determined by and paid by the center for professional development: Provided, That nothing in this section shall be construed to require any specific level of funding by the Legislature.

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.
§18A-3A-1. Center for professional development continued; intent; advisory council.

(a) Teaching is a profession that directly correlates to the social and economic well-being of a society and its citizens. Superior teaching is essential to a well educated and productive populace. Strong academic leadership provided by principals and administrators skilled in modern management principles is also essential. The intent of this article is to recognize the value of professional involvement by experienced educators, principals and administrators in building and maintaining a superior force of professional educators and to establish avenues for applying such involvement.

The general mission of the center is to study matters relating to the quality of teaching and management in the schools of West Virginia and to promote the implementation primarily of statewide programs and practices as recommended by the state board to assure the highest quality in teaching and management. The center also may implement local programs if the state board, in its agenda set pursuant to section twenty-three-a, article two, chapter eighteen of this code, determines that there is a specific local need for the programs. Additionally, the center shall perform such duties as are assigned to it by law.

Nothing in this article shall be construed to require any specific level of funding by the Legislature.

(b) The center board shall consist of eleven persons as follows: The secretary of education and the arts, ex officio, and the state superintendent of schools, ex officio, both of whom shall be entitled to vote; three members of the state board, elected by the state board; three experienced educators, of whom two shall be working...
classroom teachers and one of whom shall be a school or county administrator, appointed by the governor by and with the advice and consent of the Senate; and three citizens of the state who are knowledgeable in matters relevant to the issues addressed by the center, including, but not limited to, professional development and management principles, appointed by the governor by and with the advice and consent of the Senate. Not more than two appointees shall be residents within the same congressional district. The center board shall elect a board chair.

Of the initial members from the state board, one shall be elected for a term of one year and two shall be elected for terms of two years. All successive elections shall be for two-year terms. The state board shall elect another member to fill the unexpired term of any person so elected who subsequently vacates state board membership. Of the initial appointed members, three shall be appointed for one-year terms and three shall be appointed for two-year terms. All successive appointments shall be for two-year terms. The governor shall appoint a new member to fill the unexpired term of any vacancy in the appointed membership.

The center for professional development board shall meet at least quarterly and the appointed members shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of their official duties from funds appropriated or otherwise made available for such purposes upon submission of an itemized statement therefor.

The board chair, with the advice of the center board, from appropriations to the center for professional development, may employ and fix the compensation of an executive director with knowledge and experience in professional development and management principles and such other persons as may be necessary to carry out the mission and duties of the center. When practical, personnel employed by state higher education agencies and state, regional and county public education agencies
shall be made available to the center to assist in the
operation of projects of limited duration.

The center shall assist in the delivery of programs and
activities pursuant to this article to meet statewide, and if
needed as determined by the goals set by the state board
pursuant to section twenty-three-a, article two, chapter
eighteen of this code, the local professional development
needs of teachers, principals and administrators and may
contract with existing agencies or agencies created after
the effective date of this section or others to provide
training programs in the most efficient manner. Existing
programs currently based in agencies of the state shall be
continued in the agency of their origin unless the center
establishes a compelling need to transfer or cancel the
existing program. The center shall recommend to the
governor the transfer of funds to the providing agency, if
needed, to provide programs approved by the center.

Pursuant to the provisions of article ten, chapter four
of this code, the center for professional development
board shall continue to exist until the first day of July, two
thousand one.

(c) On or before the first day of January, one
thousand nine hundred ninety-eight, the center for
professional development shall develop and communicate
to the state board a curriculum for the principals academy.
The curriculum shall be based upon the minimum
qualities, proficiencies and skills necessary for principals
and recommended by the state board, pursuant to the
terms of section two-c, article three of this chapter.

(d) In accordance with section two-c, article three of
this chapter, the center shall be responsible for paying
reasonable and necessary expenses for persons attending
the principals academy: Provided, That nothing in this
section shall be construed to require any specific level of
funding by the Legislature.

(e) Persons attending the professional development
offerings of the center and such other courses as shall be
offered by the center for professional development, except
the principals academy, shall be assessed fees which shall
be less than the full cost of attendance. There is hereby
created in the state treasury a special revenue account
known as the "center for professional development
fund". All moneys collected by the center shall be
deposited in the fund for expenditure by the center board
for the purposes specified in this section. Moneys
remaining in the fund at the end of the fiscal year are
subject to reappropriation by the Legislature.

§18A-3A-2. Professional development project.

Subject to the provisions of section twenty-three-a,
article two, chapter eighteen of this code, through this
project the center shall:

(1) Identify, coordinate, arrange and otherwise assist in
the delivery of professional development programs and
activities that help professional educators acquire the
knowledge, skills, attitudes, practices and other such
pertinent complements deemed essential for an individual
to demonstrate appropriate performance as a professional
personnel in the public schools of West Virginia. The
basis for such performance shall be the laws, policies and
regulations adopted for the public schools of West
Virginia, and amendments thereto. The center also may
permit and encourage school personnel such as classroom
aides, higher education teacher education faculty and
higher education faculty in programs such as articulated
tech prep associate degree and other programs to
participate in appropriate professional development
programs and activities with public school professional
educators;

(2) Identify, coordinate, arrange and otherwise assist in
the delivery of professional development programs and
activities that help principals and administrators acquire
knowledge, skills, attitudes and practices in academic
leadership and management principles for principals and
administrators and such other pertinent complements
deemed essential for principals and administrators to
demonstrate appropriate performance in the public
schools of West Virginia. The basis for such performance
shall be the laws, policies and regulations adopted for the
public schools of West Virginia, and amendments thereto;
(3) Serve in a coordinating capacity to assure that the knowledge, skills, attitude and other pertinent complements of appropriate professional performance which evolve over time in the public school environment are appropriately reflected in the programs approved for the education of professional personnel, including, but not limited to, advising the teacher education programs of major statutory and policy changes in the public schools which affect the job performance requirements of professional educators, including principals and administrators;

(4) Provide for the routine updating of professional skills of professional educators, including principals and administrators, through in-service and other programs. Such routine updating may be provided by the center through statewide or regional institutes which may require a registration fee; and

(5) Provide consultation and assistance to county staff development councils established under the provisions of section eight, article three of this chapter in planning, designing, coordinating, arranging for and delivering professional development programs to meet the needs of the professional educators of their district. From legislative appropriations to the center for professional development, exclusive of such amounts required for the expenses of the principals academy, the center shall, unless otherwise directed by the Legislature, provide assistance in the delivery of programs and activities to meet the expressed needs of the school districts for professional development to help teachers, principals and administrators demonstrate appropriate performance based on the laws, policies and regulations adopted for the public schools of West Virginia.


Subject to the provisions of section twenty-three-a, article two, chapter eighteen of this code, through this project the center shall develop training in the area of developmental instruction with an emphasis in grades kindergarten through grade four.

There is hereby established within the center for professional development the "Principals Academy". Training through the principals academy shall include at least the following:

(a) Training designed to build within principals the minimum qualities, proficiencies and skills that will be required of all principals pursuant to the rules of the state board;

(b) Intensive summer training institutes; and

(c) Specialized training and professional development programs for all principals, with special programs for the following principals:

(1) Newly appointed principals;

(2) Principals of schools which have received from the state board temporary or conditional accreditation status or whose schools have been designated as seriously impaired;

(3) Principals subject to improvement plans; and

(4) Principals of schools with significantly different grade level configurations.

§18A-3A-3. Professional personnel evaluation project.

Subject to the provisions of section twenty-three-a, article two, chapter eighteen of this code, through this project the center shall:

(1) Establish programs that provide education and training in evaluation skills to administrative personnel who will evaluate the employment performance of professional personnel pursuant to the provisions of section twelve, article two of this chapter; and

(2) Establish programs that provide instruction to classroom teachers who will serve as beginning teacher mentors in accordance with the provisions of section two-b, article three of this chapter.
CHAPTER 127
(H. B. 4697—By Delegates Manuel, Beach, Williams, Anderson, Stemple, Osborne and Hubbard)

[Passed March 13, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine-e, relating to air quality in new school construction; short title; definitions; standards; tests; and school building authority guidelines and report to legislative oversight commission on education accountability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9E. AIR QUALITY IN NEW SCHOOLS ACT.

§18-9E-1. Short title.
§18-9E-2. Definitions.
§18-9E-3. Air quality in new schools.

§18-9E-1. Short title.

This article is titled and may be cited as the “Air Quality in New Schools Act of 1998.”

§18-9E-2. Definitions.

For the purposes of this article, “new school building” means any public school in the state for which design and construction begin after the first day of July, one thousand nine hundred ninety-eight, for the education of students in grades kindergarten through twelfth.

§18-9E-3. Air quality in new schools.
(a) In an effort to create well ventilated school environments, and notwithstanding any other provision of this code to the contrary, any new school building designed and constructed in the state by a county board after the first day of July, one thousand nine hundred ninety-eight, regardless of the funding source, shall be designed and constructed in compliance with the current standards of the American society of heating, refrigerating and air conditioning engineers handbook (ASHRAE), the national fire protection association code (NFPA) and the code of the building officials and code administrators (BOCA).

Prior to construction of any new school building in this state, tests, as required by the school building authority rules promulgated under the provisions of subsection (b) of this section, shall be conducted to determine if radon is present at the proposed construction site. If radon is detected, additional tests shall be performed within thirty days to confirm the results. If it is determined that radon is present in amounts greater than the amount determined to be acceptable by the rules promulgated by the school building authority, pursuant to subsection (b) of this section, during both tests, any new school building constructed on that site shall incorporate an active soil depressurization system to divert radon from the building site, or utilize any other industry accepted mitigation technique to minimize exposure to radon.

(b) The school building authority shall promulgate rules pursuant to article three-a, chapter twenty-nine-a of this code to assure that any new school building designed after the effective date of this article is designed and constructed in accordance with the ASHRAE, NFPA and BOCA standards. The school building authority shall promulgate rules, pursuant to article three-a, chapter twenty-nine-a of this code that establish standards for safe levels of radon for public school buildings. The school building authority shall submit the rules for approval to the legislative oversight commission on education accountability on or before the first day of July, one thousand nine hundred ninety-eight. The rules shall include the requirement that county boards submit all designs to the school building authority for review and approval prior to preparation of final bid documents.
CHAPTER 128

(Com. Sub. for S. B. 409—By Senators Hunter, Helmick and Ross)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-j, relating to requiring that the individualized education program of each blind or visually impaired child include provisions for instruction in braille and the use of braille appropriate to the child's current and future literacy needs; establishing standards of proficiency and instruction; providing materials in a computer-accessible format capable of braille reproduction; and requiring the certification of teachers in accordance with braille literacy standards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10J. BLIND PERSONS' LITERACY RIGHTS AND EDUCATION ACT.

§18-10J-1. Short title.
§18-10J-2. Definitions.
§18-10J-3. Individualized education program.
§18-10J-4. Standards of competency and instruction.
§18-10J-5. Instructional materials.
§18-10J-6. Teacher certification and training.

§18-10J-1. Short title.

This article may be cited as the "Blind Persons' Literacy Rights and Education Act".

§18-10J-2. Definitions.

The following words used in this article shall be construed as follows:
(a) "Blind or visually impaired child" means an individual who is eligible for special education services and who:

(1) Has a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision such that the widest diameter subtends an angular distance of no greater than twenty degrees; or

(2) Has a medically indicated expectation of visual deterioration.

(b) "Braille" means the system of reading and writing through touch commonly known as standard English braille.

(c) "Individualized education program" and "IEP team" have the meanings provided in Section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. Section 1414(d)).

(d) "Textbooks and other instructional materials" means any literary or nonliterary works obtained for use in a course of study.

§18-10J-3. Individualized education program.

In developing the individualized education program for a child who is blind or visually impaired, the individualized education program team shall provide for the child to receive instruction in braille and the use of braille unless the individualized education program team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in braille or the use of braille), that the instruction or use is not appropriate for the child. Nothing in this section requires the exclusive use of braille if other special education services are appropriate to the child's educational needs. The provision of other appropriate services shall not preclude braille use or instruction.

§18-10J-4. Standards of competency and instruction.

Instruction in braille reading and writing shall be provided with the goal of enabling each blind or visually
impaired child to communicate effectively and efficiently with the same level of proficiency expected of the child's peers of comparable ability and grade level. The child's individualized education program shall specify:

(a) The results obtained from the evaluations required under section three of this article;

(b) How braille will be implemented as the primary mode for learning through integration with other classroom activities;

(c) The date on which braille instruction will commence;

(d) The length of the period of instruction and the frequency and duration of each instructional session;

(e) The level of competency in braille reading and writing to be achieved by the end of the period and the objective assessment measures to be used; and

(f) If a decision has been made under section two of this article, that braille instruction or use is not required for the child:

(1) Documentation that the decision was reached after a review of pertinent literature describing the educational benefits of braille instruction and use; and

(2) A specification of the evidence used to determine that the child's ability to read and write effectively without braille instruction is not impaired.

§18-10J-5. Instructional materials.

All publishers of textbooks or other instructional materials sold to the state or any local education agency (including post-secondary institutions) shall furnish computer diskettes for literary subjects in the American standard code for information interchange from which braille versions can be produced. Further, the publishers shall furnish computer diskettes in American standard code for information interchange for nonliterary subjects, including natural sciences, computer science, mathematics and music, when braille specialty code translation software is available.
§18-10J-6. Teacher certification and training.

As part of the professional certification process, teachers seeking to become certified in the education of blind and visually impaired children shall demonstrate competence in reading and writing braille. Before issuing a professional certificate to teach the blind and visually impaired, the West Virginia department of education shall require that the applicant demonstrate, based upon standards adopted by the national library service for the blind and physically handicapped, library of congress, Washington, D.C., that he or she is proficient in reading and writing braille. This requirement becomes effective the first day of July, two thousand. Teachers already certified in the education of blind and visually impaired children are not required to demonstrate that proficiency in order to retain their certification. Further, the West Virginia department of education shall, on a schedule of at least once every three years, make available to all teachers of blind and visually impaired children a continuing education class in reading or writing braille or a college credit course in reading and writing braille, or both. In order to achieve successful completion of a course, a teacher shall demonstrate proficiency in reading and writing braille at a level commensurate with the standards adopted by the national library service for the blind and physically handicapped, library of congress.

CHAPTER 129

(Com. Sub. for S. B. 365—By Senators Jackson, Craigo, Wooton, Kessler, Anderson, Snyder, White, Prezioso, Dittmar, Schoonover, Ball, Hunter, Sprouse, Sharpe, McKenzie, Ross, Bailey, Chafin, Fanning, Helmick, Love, Walker and Tomblin, Mr. President)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]
and to further amend said article by adding thereto two new sections, designated sections six-a and eleven, all relating to the West Virginia prepaid tuition trust fund; clarifying name of board; legislative findings; expanding definitions; board of trustees; board powers; authorizing savings program for fees, room and board; permitting obligation of state general revenue funds if authorized by the Legislature; administrative account; expanding report and audit requirements; requiring an actuarial surplus; confidentiality of certain information; permitting board to promulgate emergency rules when changes in federal tax code or regulations require; and ensuring audit compliance with the state audit.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six and eight, article thirty, 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 six-a and eleven, all to read as follows:

ARTICLE 30. WEST VIRGINIA PREPAID TUITION TRUST ACT.

§18-30-2. Legislative findings and purpose.
§18-30-3. Definitions.
§18-30-4. Appointment of board of trustees; terms; compensation; proceedings generally.
§18-30-5. Powers of the board.
§18-30-6. West Virginia prepaid tuition trust created.
§18-30-6a. Prepaid tuition trust fund administrative account.
§18-30-8. Report and account; annual audit.

§18-30-2. Legislative findings and purpose.

1 The Legislature hereby finds and determines that the advancement and improvement of higher education in the state of West Virginia is a proper governmental function and purpose of the state. The Legislature also finds that the creation of a prepaid tuition trust fund, to assist qualified students and their families in financing a portion of the costs of attending an accredited higher education institution or program in the state of West Virginia will increase the number of qualified students who will seek to
attend the accredited higher education institutions and programs, which will be of benefit to students, families and to the accredited higher education institutions and programs, and will therefore advance and improve higher education in the state of West Virginia. It is, therefore, the legislative intent of this article to establish a prepaid tuition trust fund to assist qualified students to pay in advance the costs of attending accredited higher education institutions and programs and thereby to encourage the qualified students to attend accredited higher education institutions and programs in the state of West Virginia. The Legislature finds and declares that prepaid tuition trust fund contracts neither contain nor obligate any general revenue funds.

§18-30-3. Definitions.

For the purpose of this article, the following terms have the meanings ascribed to them, unless the context clearly indicates otherwise:

(a) "Accredited higher education institution or program" means any accredited higher education institution or accredited higher education program offered through an accredited provider.

(b) "Beneficiary" means any intended or unintended beneficiary of the prepaid tuition contract between the purchaser and the board, including any beneficiary designated by the purchaser, his or her agent or his or her estate in the event that the intended beneficiary is unable or unwilling to benefit under the terms of the trust fund.

(c) "Board" means the board of trustees of the prepaid tuition trust fund as provided in section four of this article.

(d) "Outside tuition fee" means the amount of tuition or fees, or both, payable to an accredited higher education institution or program outside the state or independent state institutions or programs upon the election by a beneficiary to attend those institutions or programs. This fee shall generally be the amount of the average public tuition costs or fees, or both, of state institutions of higher learning as determined by the board of trustees on an annual basis.
(e) "Prepaid tuition contract" means a contract entered into by the board of the trust fund and a purchaser pursuant to this article.

(f) "Purchaser" means an individual, corporation or other entity who makes or is obligated to make payments in accordance with a prepaid tuition contract entered into pursuant to this article.

(g) "Room and board" means the charges for lodging and food incurred by a beneficiary while attending an accredited higher education institution or program.

(h) "Trust fund" means the prepaid tuition trust fund.

(i) "Tuition" means the quarter, semester or term charges imposed by an accredited higher education institution or program and all mandatory fees required as a condition of enrollment by all students.

§18-30-4. Appointment of board of trustees; terms; compensation; proceedings generally.

(a) The board of the prepaid tuition trust fund consists of nine members and shall include the secretary of education and the arts and the state treasurer, who shall serve as ex officio voting members of the board, and seven other members with knowledge, skill and experience in an academic, business or financial field. The seven appointed members shall be residents of the state. One member shall be a representative of the university of West Virginia board of trustees selected by the board of trustees from its members as defined in section one, article two, chapter eighteen-b of this code and one member shall be a representative of the board of directors of the state college system selected by the board of directors from its members as defined in section one, article three, chapter eighteen-b of this code. The governor shall appoint three members from nominations as follows: One member shall be a private citizen not employed by, or an officer of, the state or any political subdivision of the state appointed from one or more nominees of the speaker of the House of Delegates; one member shall be a private citizen not employed by, or an officer of, the state or any political subdivision of the state appointed from one or more
nominees of the president of the Senate; and one member
shall represent the interests of private institutions of higher
education located in this state who shall be appointed from
one or more nominees of the West Virginia association of
private colleges. The governor also shall appoint two
members who are representatives of the public. The
public members and the member representing the interests
of private institutions of higher education shall be
appointed by the governor with the advice and consent of
the Senate.

(b) Appointed members shall serve a term of five
years and may be reappointed at the expiration of their
terms. In the event of a vacancy among appointed
members, the governor shall appoint a person representing
the same interests to fill the unexpired term. Of the initial
appointments, the governor shall appoint one member to a
one-year term, one member to a two-year term, one
member to a three-year term, one member to a four-year
term and one member to a five-year term. Thereafter, all
terms shall be for five years.

(c) Members of the board of trustees shall serve
without compensation, but for the first twelve months after
the effective date of this section members shall be
reimbursed by the state treasurer’s office for expenses,
including travel expenses, actually incurred by a member
in the official conduct of the business of the board at the
same rate as is paid the employees of the state. Thereafter,
the state treasurer may charge back to the trust fund as
administrative expenses all expenses, including travel
expenses, actually incurred and paid to board members
for the conduct of their official duties.

(d) The state treasurer is the trustee chairman and
presiding officer of the board, and may appoint such
other employees as the board considers advisable or
necessary. A majority of the members of the board
constitute a quorum for the transaction of the business of
the trust fund.

§18-30-5. Powers of the board.

In addition to the powers granted by any other
provision of this article, the board has the powers
necessary or convenient to carry out the purposes and
provisions of this article, the purposes and objectives of
the trust and the powers delegated by any other law of the
state or any executive order of the state including, but not
limited to, the following express powers:

(a) To adopt and amend bylaws;

(b) To propose legislative rules for promulgation in
accordance with the provisions of article three-a, chapter
twenty-nine-a of this code to effectuate the purposes of
this article: Provided, That the board may promulgate
emergency rules only when changes in the federal tax
code or changes in federal regulations contravene the
current rules of the prepaid tuition trust fund board of
trustees;

(c) To invest any of its funds at the board’s
discretion, with the West Virginia investment management
board in accordance with the provisions of article six,
chapter twelve of this code. Any investments made under
this article shall be made with the care, skill, prudence and
diligence under the circumstances then prevailing that a
prudent person acting in a like capacity and familiar with
such matters would use in the conduct of an enterprise of
a like character and with like aims. Fiduciaries shall
diversify plan investments to the extent permitted by law
so as to minimize the risk of large losses, unless under the
circumstances it is clearly prudent not to do so;

(d) To execute contracts and other necessary
instruments;

(e) To enter into prepaid tuition contracts;

(f) To impose reasonable limits on the number of
prepaid tuition contract purchasers participating in the
trust fund at any given period of time;

(g) To impose reasonable requirements for residency
for qualified beneficiaries at the time of purchase of the
prepaid tuition contract. However, nothing in this
subdivision may be construed to establish residency
requirements for matriculation at state institutions of
higher education;

(h) To contract for necessary goods and services, to
employ necessary personnel and to engage the services of
private persons for administrative and technical assistance in carrying out the responsibilities of the trust fund;

(i) To solicit and accept gifts, including bequests or other testamentary gifts made by will, trust or other disposition, grants, loans and other aids from any source or to participate in any other way in any federal, state or local governmental programs in carrying out the purposes of this article;

(j) To define the terms and conditions under which payments may be withdrawn from the trust fund and impose reasonable charges for the withdrawal; Provided, That payments made by employers on behalf of beneficiaries selected by their employees are considered fully vested in the employees from time of receipt of the payments by the board;

(k) To devise and offer to purchasers other educational savings programs, such as the purchase of books, fees, room and board and other educational supplies;

(l) To impose reasonable time limits on the use of the benefits provided by the program;

(m) To provide for the receipt of contributions to the trust fund in lump sums or installment payments; and

(n) To establish other policies, procedures and criteria necessary to implement and administer the provisions of this article.

§18-30-6. West Virginia prepaid tuition trust created.

(a) There is continued within the accounts held by the state treasurer the prepaid tuition trust fund account to be administered by the board until and unless the Legislature determines otherwise, and titled the "Prepaid Tuition Trust Fund".

(b) The location of the trust fund is the state treasurer's office, and the facilities of the state treasurer shall be used and employed in the administration of the trust fund including, but without limitation thereto, the keeping of records, the management of bank accounts and
other investments, the transfer of funds and the
safekeeping of securities evidencing investments.

(c) Payments received by the board from purchasers
on behalf of beneficiaries or from any other source,
public or private, shall be placed in the trust fund.

(d) The corpus, assets and income of the trust fund do
not constitute public funds of the state.

(e) The trust fund, through the trustee chairman, is
authorized to receive any gift or transfer of property, real
or personal of any nature, from any source as may be
approved by the board, or any terms and conditions as
may be imposed by the board: Provided, That all
property received by the trust shall be converted into cash
within ninety days of receipt.

(f) The board shall cause an actuarial study to be
periodically performed to ensure that sufficient funds are
being deposited to the fund to meet the obligations of the
trust fund. Specifically, the board shall annually evaluate
or cause to be evaluated, the actuarial soundness of the
trust fund. If the board finds that additional contributions
are needed in order to preserve the actuarial soundness of
the fund, it may adjust the terms of preexisting and
subsequent prepaid tuition contracts to ensure the fund’s
soundness: Provided, That any necessary adjustment to
preexisting contracts may only be assessed on future
payments and not retroactively upon previous payments
made by the purchaser or donors to the trust fund. There
may be no obligation of state general revenue funds to the
trust fund for any purpose whatsoever, unless authorized
by the Legislature.

(g) The board shall build and maintain in the prepaid
tuition trust fund an actuarial surplus, at a level
recommended by the actuaries, to ensure appropriate
funding for the trust fund.

(h) In order to fulfill the charitable and public
purposes of this article, neither the income nor the
property of the trust fund is subject to taxation by the state
or any of its political subdivisions.

(i) The board may propose rules to provide for the
withdrawal and disbursement of contract funds on an
actuarially sound basis. The board may propose rules to
provide a tuition guarantee for beneficiaries attending state institutions of higher education: Provided, That this rule may not be promulgated as an emergency rule subject to oversight by the legislative oversight commission on education accountability as provided by section eleven, article three-a, chapter twenty-nine-a of this code.

§18-30-6a. Prepaid tuition trust fund administrative account.

There is hereby created a separate account within the state treasurer's office to be known as the prepaid tuition trust fund administrative account for the purposes of implementing and maintaining the trust fund accounts pursuant to this article. The board may charge against the fees collected and interest earned from the trust fund accounts, amounts as are reasonable and customary for the state treasurer to fund the administrative costs of maintaining the trust fund accounts. The charges shall be deposited into the prepaid tuition trust fund administrative account. The charges shall be disclosed quarterly, beginning the first day of January, one thousand nine hundred ninety-nine, to the joint committee on government and finance and the legislative oversight commission on education accountability. Expenditures from the fund are authorized from collections subject to appropriations made by the Legislature.

§18-30-8. Report and account; annual audit.

(a) In addition to any other requirements of this article, the board shall:

(1) Provide annually summary information on the financial condition of the trust fund to all purchasers of prepaid tuition contracts;

(2) Prepare, or cause to be prepared, a quarterly report on the status of the program and provide a copy of the report to the joint committee on government and finance and the legislative oversight commission on education accountability;

(3) Prepare, or cause to be prepared, an annual accounting and actuarial report of the trust fund and transmit a copy of the report to the governor, the president of the Senate, the speaker of the House of Delegates and the legislative oversight commission on education accountability; and
(4) Make all necessary and appropriate arrangements with accredited higher education institutions and programs in order to fulfill its obligations under the prepaid tuition contracts. The arrangements shall include the satisfaction by the trust fund of current applicable tuition and fee charges on behalf of a beneficiary to the accredited higher education institution or program.

(b) All accounts of the board, including the trust fund accounts, are subject to an annual external audit by an accounting firm, selected by the board, of which all members or partners assigned to head the audit are members of the American institute of certified public accountants. The audit shall comply with the requirements of section thirty-three, article two, chapter five-a of this code.


Any information that would tend to disclose the identity of a beneficiary, purchaser or donor is exempt from the provisions of chapter twenty-nine-b of this code.

CHAPTER 130

(S. B. 551—By Senators Jackson, Craigo, Plymale, Bailey, Prezioso, Dugan, Kessler, Ball, Schoonover, Hunter, Sprouse, Ross, Sharpe, Anderson, Fanning, Helmick, White, Walker, Bowman, Wooton, Snyder, Love and Tomblin, Mr. President)

[Passed March 11, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten, relating to legislative rules; and authorizing specific rules relating to the West Virginia prepaid tuition trust fund act.

Be it enacted by the Legislature of West Virginia:

That article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section ten, to read as follows:
ARTICLE 30. WEST VIRGINIA PREPAID TUITION TRUST ACT.

§18-30-10. Board of trustees; authorization of rules.

The legislative rules filed in the state register on the thirtieth day of September, one thousand nine hundred ninety-seven, modified by the board of trustees of the West Virginia prepaid tuition trust fund to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the thirtieth day of January, one thousand nine hundred ninety-eight, relating to the West Virginia prepaid tuition trust fund (rules for the West Virginia prepaid tuition trust fund), are authorized.

CHAPTER 131

(H. B. 4547—By Delegates Dempsey, Williams, C. White, Osborne, Ennis, Yeager and Henderson)

[Passed March 11, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section five, article nine, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to raising classified employee salaries by changing the experience increment from thirty-six dollars to fifty dollars.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-5. Classified employee salary.

(a) Each classified employee shall receive for the same employment at the same pay grade, subject to an appropriation by the Legislature, and in addition to the
experience increment increase provided for in subsection (b) of this section, a monthly salary which is at least one hundred twenty-five dollars more than the final base monthly salary paid the classified employee for the fiscal year commencing on the first day of July, one thousand nine hundred ninety-two, to be paid in equal installments within the regular pay periods and to be prorated for classified employees working less than thirty-seven and one-half hours per week.

(b) Commencing with the fiscal year beginning on the first day of July, one thousand nine hundred ninety-eight, and each fiscal year thereafter, each classified employee with three or more years of experience shall receive an annual salary increase equal to fifty dollars times the employee's years of experience: Provided, That the annual salary increase may not exceed the amount granted for the maximum of twenty years of experience. These incremental increases are in lieu of any salary increase received pursuant to section two, article five, chapter five of this code; are in addition to any across-the-board, cost-of-living or percentage salary increases which may be granted in any fiscal year by the Legislature; and shall be paid in like manner as the annual payment to eligible state employees of the incremental salary increases based on years of service under the provisions of section two, article five, chapter five of this code.

(c) Any classified employee may receive merit increases and salary adjustments in accordance with policies established by the board: Provided, That funds for the increases and adjustments shall be distributed in accordance with rules of the appropriate governing board and shall be available to all state institutions of higher education on an equitable basis.

(d) The current annual salary of any classified employee may not be reduced by the provisions of this article nor by any other action inconsistent with the provisions of this article, and nothing in this article may be construed to prohibit promotion of any classified employee to a job title carrying a higher pay grade if the promotion is in accordance with the provisions of this article and the personnel classification system established by the appropriate governing board.
AN ACT to amend and reenact sections two and three, article seventeen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to legislative rules; and authorizing specific rules relating to the Underwood-Smith teacher scholarship program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-2. Board of trustees.

§18B-17-3. Board of directors.

§18B-17-2. Board of trustees.

1. (a) The legislative rules filed in the state register on the third day of December, one thousand nine hundred ninety-one, modified by the board of trustees to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-two, relating to the board of trustees (report card), are authorized.

(b) The legislative rules filed in the state register on the thirteenth day of July, one thousand nine hundred ninety-one, relating to the board of trustees (equal opportunity and affirmative action), are authorized.
(c) The legislative rules filed in the state register on the eighth day of September, one thousand nine hundred ninety-two, relating to the board of trustees (holidays), are authorized.

(d) The legislative rules filed in the state register on the third day of April, one thousand nine hundred ninety-two, relating to the board of trustees (alcoholic beverages on campuses), are authorized.

(e) The legislative rules filed in the state register on the fifteenth day of November, one thousand nine hundred ninety-three, relating to the board of trustees (acceptance of advanced placement credit), are authorized.

(f) The legislative rules filed in the state register on the thirteenth day of December, one thousand nine hundred ninety-three, modified by the board of trustees to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-four, relating to the board of trustees (assessment, payment and refund of fees), are authorized.

(g) The legislative rules filed in the state register on the first day of November, one thousand nine hundred ninety-three, modified by the board of trustees to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the twenty-first day of December, one thousand nine hundred ninety-three, relating to the board of trustees (personnel administration), are authorized.

(h) The legislative rules filed in the state register on the twenty-seventh day of January, one thousand nine hundred ninety-four, relating to the board of trustees (resource allocation policy), are authorized.

(i) The legislative rules filed in the state register on the fourth day of December, one thousand nine hundred ninety-five, modified by the board of trustees to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the fifteenth day of February, one thousand nine hundred ninety-six, relating to the board of trustees (higher education report card), are authorized.
(j) The legislative rules filed in the state register on the
nineteenth day of December, one thousand nine hundred
ninety-seven, relating to the board of trustees
(Underwood-Smith Teacher Scholarship Program), are
authorized.

§18B-17-3. Board of directors.

(a) The legislative rules filed in the state register on the
sixteenth day of December, one thousand nine hundred
ninety-one, modified by the board of directors to meet the
objections of the legislative oversight commission on
education accountability and refiled in the state register on
the twenty-first day of January, one thousand nine
hundred ninety-two, relating to the board of directors
(report card), are authorized.

(b) The legislative rules filed in the state register on
the twenty-seventh day of September, one thousand nine
hundred ninety-one, relating to the board of directors
(equal opportunity and affirmative action), are authorized.

(c) The legislative rules filed in the state register on the
fourth day of December, one thousand nine hundred
ninety-one, relating to the board of directors (holiday
policy), are authorized.

(d) The legislative rules filed in the state register on
the nineteenth day of March, one thousand nine hundred
ninety-two, as modified and refiled in the state register on
the tenth day of July, one thousand nine hundred ninety-
two, relating to the board of directors (presidential
appointments, responsibilities and evaluations), are
authorized.

(e) The legislative rules filed in the state register on the
twentieth day of September, one thousand nine hundred
ninety-three, relating to the board of directors (acceptance
of advanced placement credit), are authorized.

(f) The legislative rules filed in the state register on the
tenth day of December, one thousand nine hundred
ninety-three, relating to the board of directors (resource
allocation policy), are authorized.

(g) The legislative rules filed in the state register on
the eighth day of December, one thousand nine hundred
ninety-three, modified by the board of directors to meet
the objections of the legislative oversight commission on
education accountability and refiled in the state register on
the eleventh day of January, one thousand nine hundred
ninety-four, relating to the board of directors (assessment,
payment and refund of fees), are authorized.

(h) The legislative rules filed in the state register on
the first day of November, one thousand nine hundred
ninety-three, modified by the board of directors to meet
the objections of the legislative oversight commission on
education accountability and refiled in the state register on
the twenty-first day of December, one thousand nine
hundred ninety-three, relating to the board of directors
(personnel administration), are authorized.

(i) The legislative rules filed in the state register on the
twenty-seventh day of October, one thousand nine
hundred ninety-four, modified by the board of directors
to meet the objections of the legislative oversight
commission on education accountability and refiled in the
state register on the nineteenth day of December, one
thousand nine hundred ninety-four, relating to the board
of directors (proprietary, correspondence, business,
occupational and trade schools), are authorized.

(j) The legislative rules filed in the state register on the
eighteenth day of April, one thousand nine hundred
ninety-five, relating to the board of directors (contracts
and consortium agreements with public schools, private
schools or private industry), are authorized.

(k) The legislative rules filed in the state register on
the seventeenth day of November, one thousand nine
hundred ninety-five, modified by the board of directors to
meet the objections of the legislative oversight commission
on education accountability and refiled in the state register
on the fourth day of January, one thousand nine hundred
ninety-six, relating to the board of directors (higher
education report cards), are authorized.

(l) The legislative rules filed in the state register on the
nineteenth day of December, one thousand nine hundred
ninety-seven, relating to the board of directors
(Underwood-Smith Teacher Scholarship Program), are
authorized.
AN ACT to amend and reenact section one, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing certain replacement poll workers to vote emergency absentee ballots.

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

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

**ARTICLE 3. VOTING BY ABSENTEES.**

§3-3-1. Persons eligible to vote absentee ballots.

1 (a) Duly registered and otherwise qualified voters of the county who for authorized reasons as provided in this article are unable to vote in person at the polling place on the day of a primary, general or special election may vote an absentee ballot according to the provisions of this article.

(b) Voters in the following circumstances shall be authorized to vote an absentee ballot and shall be required to vote that absentee ballot in person in the office of the clerk of the circuit court during the period of regular absentee voting in person:

1 (1) Any voter who is within the county and physically able to vote in person during regular business hours of the clerk's office during the prescribed period for absentee voting but is unable to vote in person on election day
because of: (A) Anticipated or scheduled commitment to
a hospital, institution or other confinement for medical
reasons; (B) absence from the county during the entire
time the polls are open; (C) appointment as an election
official in a precinct other than the one in which the voter
is registered; or (D) the inaccessibility of the polling place
to the voter because of his or her physical disability; and

(2) Any voter who is a member of a religious
denomination with an established history of observing
Saturday as the Sabbath, when the election is scheduled to
be held on Saturday.

(c) Voters in the following circumstances shall be
authorized to vote an absentee ballot under special
affidavit and shall be required to vote that absentee ballot
in person in the office of the clerk of the circuit court
during the period of special absentee voting in person:

Any voter who will be absent from the county
throughout the regular period and available hours for
voting in person at the polls or at the clerk's office because
of personal or business travel or employment, who will be
unable to receive an absentee ballot by mail at an address
outside the county during that absence, and who will be
present within the county between the forty-second day
before the election and the fifteenth day before the
election.

(d) Voters in the following circumstances shall be
authorized to vote an absentee ballot by mail:

(1) Any voter who is confined to a specific location
and prevented from voting in person throughout the
period of voting in person because of: (A) Illness, injury
or other medical reason; (B) physical disability or
immobility due to extreme advanced age; or (C)
incarceration or home detention when not under
conviction of a felony, treason or bribery in an election;
(2) Any voter who is absent from the county throughout the period and available hours for voting in person because of: (A) Personal or business travel; (B) attendance at a college, university or other place of education or training; or (C) employment which because of hours worked and distance from the county seat make voting in person impossible;

(3) Any voter absent from the county throughout the period and available hours for voting in person and who is an absent uniformed services voter or overseas voter, as defined by the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (Public Law 99-410, 42 U.S.C. 1973, et seq.). Members of the uniformed services on active duty, members of the merchant marine, spouses and dependents of those members on active duty, and persons who reside outside the United States and are qualified to vote in the last place in which the person was domiciled before leaving the United States are included in the above definition;

(4) Any voter who is required to dwell temporarily outside the county and is absent from the county throughout the time for voting in person because of: (A) serving as an elected or appointed federal or state officer; or (B) serving in any other documented employment assignment of specific duration of four years or less; and

(5) Any voter for whom both the office of the circuit clerk and the polling place are inaccessible to the voter because of his or her physical disability.

(e) Voters in the following circumstances shall be authorized to vote an emergency absentee ballot, subject to the availability of the services as provided in this article:

(1) Any voter who is admitted for emergency medical treatment on or after the seventh day next preceding the election and who anticipates continued confinement in a hospital or other duly licensed health care within the county of residence or other authorized area, as provided in this article;
(2) Any voter who resides in a nursing home within the county of residence and would be otherwise unable to vote in person, providing the county commission has authorized such services; and

(3) Any voter who is working as a replacement poll worker and is assigned a precinct out of his or her voting district, if the assignment was made after the period for voting an absentee ballot in person has expired.

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CHAPTER 134

(S. B. 599—By Senators Wooton, Ball, Dittmar, Hunter, Kessler, Ross, Schoonover, Snyder, White, Deem and Scott)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the transmission of certain absent voter applications by facsimile.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-5. Voting an absentee ballot by mail; penalties.

(a) Upon oral or written request, the clerk of the circuit court shall provide to any voter of the county, in person, by mail or by facsimile, if the clerk has access to facsimile equipment, the appropriate application for voting absentee by mail, as provided in this article. The voter shall complete and sign the application in his or her own handwriting or, if the voter is unable to complete the application because of illiteracy or physical disability, the person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided.
Completed applications for voting an absentee ballot by mail shall be accepted when received by the clerk in person, by mail or by facsimile, if the clerk has access to facsimile equipment, within the following times:

1. For persons eligible to vote an absentee ballot under the provisions of subdivision (3), subsection (d), section one of this article, relating to absent uniformed services and overseas voters, not earlier than the first day of January of an election year, or eighty-four days preceding the election, whichever is earlier, and not later than the sixth day preceding the election, which application shall, upon the voter's request, be accepted as an application for the ballots for all elections in the calendar year;

2. For all other persons eligible to vote an absentee ballot by mail, not earlier than eighty-four days preceding the election and not later than the sixth day preceding the election.

(c) Upon acceptance of a completed application, the circuit clerk shall determine whether the following requirements have been met:

1. The application has been completed as required by law;

2. The applicant is duly registered to vote in the precinct of his or her residence and, in a primary election, is qualified to vote the ballot of the political party requested;

3. The applicant is authorized for the reasons given in the application to vote an absentee ballot by mail;

4. The address to which the ballot is to be mailed is an address outside the county if the voter is applying to vote by mail under the provisions of subdivision (2), (3) or (4), subsection (d), section one of this article;

5. The applicant is not making his or her first vote after having registered by postcard registration under the provisions of section forty-one, article two of this chapter or, if the applicant is making the first vote under these provisions, the applicant is exempt from these requirements;
(6) No regular and repeated pattern of applications for an absentee ballot by mail for the reason of being out of the county during the entire period of voting in person exists to suggest that the applicant is no longer a resident of the county.

If the clerk determines the required conditions have not been met, or has evidence that any of the information contained in the application is not true, the clerk shall give notice to the voter that the voter’s absentee ballot will be challenged as provided in this article, and shall enter that challenge.

(d) Within one day after the clerk has both the completed application and the ballot, the clerk shall mail to the voter at the address given on the application the following: (1) One of each type of official absentee ballot the voter is eligible to vote, prepared according to law; (2) one envelope, unsealed, which shall have no marks except the designation "Absent Voter's Ballot Envelope No. 1" and printed instructions to the voter; (3) one postage paid envelope, unsealed, designated "Absent Voter's Ballot Envelope No. 2" and printed as prescribed by the secretary of state; (4) instructions for voting absentee by mail; and (5) any other supplies required for voting in the particular voting system.

(e) The voter shall mark the ballot alone: Provided, that the voter may have assistance in voting according to the provisions of section six of this article. After the voter has voted the ballot or ballots, the voter shall: (1) Place the ballot or ballots in envelope no. 1 and seal that envelope; (2) place the sealed envelope no. 1 in envelope no. 2 and seal that envelope; (3) complete and sign the forms on envelope no. 2; and (4) return that envelope to the clerk.

(f) Absentee ballots returned by United States mail or other express shipping service shall be accepted if: (1) The ballot is received by the clerk no later than the close of the polls on election day; or (2) the ballot bears a postmark of the United States postal service dated no later than election day and the ballot is received by the clerk no later than the hour at which the board of canvassers convenes to begin the canvass.
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Ballots received after the proper time which cannot be accepted shall be placed unopened in an envelope marked for the purpose and kept secure for twenty-two months following the election, after which time they shall be destroyed without being opened.

(g) Absentee ballots which are hand delivered to the clerk shall be accepted if they are received by the circuit clerk no later than the day preceding the election: Provided, That no person may hand deliver more than two absentee ballots in any election, and any person hand delivering an absentee ballot shall be required to certify that he or she has not examined or altered the ballot. Any person who makes a false certification shall be in violation of the penalty provisions of article nine of this chapter and subject to those provisions.

(h) Upon receipt of the sealed envelope, the clerk shall: (1) Enter onto the envelope any other required information; (2) enter the challenge, if any, to the ballot; (3) enter the required information into the permanent record of persons applying for and voting an absentee ballot in person; and (4) place the sealed envelope in a secure location in the clerk's office, to remain until delivered to the polling place or, in the case of a challenged ballot, to the board of canvassers.

CHAPTER 135

(H. B. 2387—By Delegates Jenkins, Johnson, Leach, Hubbard and Underwood)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article four-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to electronic voting systems and permitting the recording of ballots on a computer disc.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-2. Definitions.

As used in this article, unless otherwise specified:

(a) "Automatic tabulating equipment" means all apparatus necessary to electronically count votes recorded on ballots and tabulate the results;

(b) "Ballot" means a tabulating card or paper on which votes may be recorded by means of perforating or marking with electronically sensible ink or pencil;

(c) "Ballot labels" means the cards, papers, booklet, pages or other material showing the names of offices and candidates and the statements of measures to be voted on, which are placed on the vote recording device used for recording votes by means of perforating;

(d) "Central counting center" means a facility equipped with suitable and necessary automatic tabulating equipment, selected by the county commission, for the electronic counting of votes recorded on ballots;

(e) "Electronic voting system" is a means of conducting an election whereby votes are recorded on ballots by means of an electronically sensible marking ink, by perforating or are recorded on equipment that registers votes on a computer disc, and votes are subsequently counted by automatic tabulating equipment at the central counting center;

(f) "Program deck" means the actual punch card deck or decks, or a computer program disk, diskette, tape or other programming media, containing the program for counting and tabulating the votes, including the "application program deck";
"Application program deck" means the punch card deck or equivalent capacity in other program medias as provided, containing specific options used and necessary to modify the program of general application, to conduct and tabulate a specific election according to applicable law;

(h) "Standard validation test deck" means a group of ballots wherein all voting possibilities which can occur in an election are represented; and

(i) "Vote recording device" means equipment in which ballot labels and ballots are placed to allow a voter to record his or her vote by perforating.

CHAPTER 136

(Com. Sub. for S. B. 113—By Senator Bailey)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the dates of filing certificates of announcements for candidacy in primary elections; establishing effective dates; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates when section applicable.

Any person who is eligible and seeks to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this chapter shall file a certificate of announcement
declaring as a candidate for the nomination or election to the office.

(a) The certificate of announcement shall be filed as follows:

(1) With the secretary of state, if it be an office or political position to be filled by the voters of more than one county;

(2) With the clerk of the circuit court, if it be for an office to be filled by the voters of a single county or of a subdivision less than a county;

(3) With the recorder or city clerk if it be for an office to be filled by the voters of a municipality.

The certificate of announcement shall be filed with the proper officer not earlier than the second Monday in January next preceding the primary election day, and not later than the last Saturday in January next preceding the primary election day, and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked by the United States postal service before that hour.

(b) The certificate of announcement shall be in a form prescribed by the secretary of state on which the candidate shall make a sworn statement before a notary public or other officer authorized to give oaths, containing the following information:

(1) The date of the election in which the candidate seeks to appear on the ballot;

(2) The name of the office sought; the district, if any; and the division, if any;

(3) The legal name of the candidate, and the exact name the candidate desires to appear on the ballot, subject to limitations prescribed in section thirteen, article five of this chapter;

(4) The county of residence and a statement that the candidate is a legally qualified voter of that county; and the magisterial district of residence for candidates elected from magisterial districts or under magisterial district limitations;
(5) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number, and city, state and zip code;

(6) For partisan elections, the name of the candidate's political party, and a statement that the candidate is a member of and affiliated with that political party as is evidenced by the candidate's current registration as a voter affiliated with that party, and that the candidate has not been registered as a voter affiliated with any other political party for a period of sixty days before the date of filing the announcement;

(7) For candidates for delegate to national convention, the name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot; or, a statement that the candidate prefers to remain "uncommitted";

(8) A statement that the person filing the certificate of announcement is a candidate for the office in good faith;

(9) The words "subscribed and sworn to before me this _____ day of _____________, 19____," and a space for the signature of the officer giving the oath.

The secretary of state or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or remove the certification of the candidacy upon receipt of a certified copy of the voter's registration record of the candidate evidencing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the sixty days immediately preceding the filing of the certificate: Provided, That unless a signed formal complaint of violation of this section and the certified copy of the voter's registration record of the candidate be filed with the officer receiving that candidate's certificate of announcement no later than ten days following the close of the filing period, the candidate shall not be refused certification for this reason.

(c) The certificate of announcement shall be subscribed and sworn to by the candidate before some officer qualified to administer oaths, who shall certify the same. Any person who knowingly provides false information on the certificate is guilty of false swearing
and shall be punished as set forth in section three, article nine of this chapter.

(d) Any candidate for delegate to a national convention may change his or her statement of presidential preference by notifying the secretary of state by letter received by the secretary of state no later than the third Tuesday following the close of candidate filing. When the rules of the political party allow each presidential candidate to approve or reject candidates for delegate to convention who may appear on the ballot as committed to that presidential candidate, the presidential candidate or the candidate's committee on his or her behalf may file a list of approved or rejected candidates for delegate, and the secretary of state shall list as "uncommitted" any candidate for delegate who is disapproved by the presidential candidate.

(e) No person shall be a candidate for more than one office or office division at any election: Provided, That a candidate for an office may also be a candidate for president of the United States, for membership on a political party executive committee or for delegate to a political party national convention. Notwithstanding the provisions of this section, nothing shall prohibit a candidate from jointly running for or holding the offices of county clerk and circuit clerk in those counties which operate a joint clerkship system.

(f) Any candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by section eleven, article five of this chapter, from all but one office prior to the close of the filing period shall not be certified by the secretary of state or placed on the ballot for any office by the board of ballot commissioners.

The provisions of this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-one shall apply to the primary election held in the year one thousand nine hundred ninety-two and every primary election held thereafter. The provisions of this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-eight shall apply to the primary election held in the year two thousand and every primary election held thereafter.
AN ACT to amend and reenact section thirteen, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the form and contents of ballots and ballot labels; and requiring that the office of county commissioner be listed by magisterial district to be filled in certain counties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-13. Form and contents of ballots and ballot labels.

The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

(a) The heading of every ballot shall be printed in display type. The heading shall contain a ballot title, the name of the county, the state, the words "Primary Election" and the month, day and year of the election. The ballot title of the political party ballots shall contain the words "Official Ballot of the (Name) Party" and the official symbol of the political party may be included in the heading. The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for the board of education shall contain the words "Nonpartisan Ballot of Election of Members of the _______ County Board of Education". The districts for which less than two candidates may be elected and the number of available seats shall be specified and the names of the candidates shall be printed without reference to political
party affiliation, and without designation as to a particular term of office. Any other ballot or portion of a ballot on a question shall have a heading which clearly states the purpose of the election, according to the statutory requirements for that question.

(b) (1) For paper ballots, the heading of the ballot shall be separated from the rest of the ballot by heavy lines, and the offices shall be arranged in columns with the following headings, from left to right across the ballot: "National Ticket", "State Ticket", "County Ticket", and, in a presidential election year, "National Convention", or, in a nonpresidential election year "District Ticket". The columns shall be separated by heavy lines. Within the columns, the offices shall be arranged in the order prescribed in section thirteen-a of this article.

(2) For voting machines, electronic voting devices and any ballot tabulated by electronic means, the offices shall appear in the same sequence as prescribed in section thirteen-a, and under the same headings as prescribed in subsection (a) of this section. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements, subject to approval by the secretary of state.

(3) The title of each office shall be separated from preceding offices or candidates by a line, and shall be printed in bold type, no smaller than eight point. Below the office shall be printed the number of the district, if any, the number of the division, if any, and the words "Vote for ________" with the number to be nominated or elected or "Vote For Not More Than ________" in multicandidate elections. For offices in which there are limitations relating to the number of candidates which may be nominated, elected or appointed to or hold office at one time from a political subdivision within the district or county in which they are elected, there shall be a clear explanation of such limitation, as prescribed by the secretary of state, printed in bold type immediately preceding the names of the candidates for those offices on the ballot in every voting system. For counties in which the number of county commissioners exceeds three and the total number of members of the county commission is
equal to the number of magisterial districts within the county, the office of county commission shall be listed separately for each district to be filled, with the name of the magisterial district and the words "Vote for One" printed below the name of the office.

(c) The location for indicating the voter's choices on the ballot shall be clearly shown. For paper ballots, other than those tabulated electronically, the official primary ballot shall contain a square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names.

(d) (1) The name of every candidate certified by the secretary of state or the board of ballot commissioners shall be printed in capital letters in no smaller than eight point type on the ballot for the appropriate precincts. Subject to the rules promulgated by the secretary of state, the name of each candidate shall appear in the form set out by the candidate on the certificate of announcement, but in no case may the name misrepresent the identity of the candidate, nor may the name include any title, position, rank, degree or nickname implying or inferring any status as a member of a class or group or affiliation with any system of belief.

(2) The city of residence of every candidate, the state of residence of every candidate residing outside the state, the county of residence of every candidate for an office on the ballot in more than one county, and the magisterial district of residence of every candidate for an office subject to magisterial district limitations, shall be printed in lower case letters beneath the names of the candidates.

(3) The arrangement of names within each office shall be determined as prescribed in section thirteen-a of this article.

(4) If the number of candidates for an office exceeds the space available on a column or ballot label page and requires that candidates for a single office be separated, to the extent possible, the number of candidates for the office on separate columns or pages shall be nearly equal, and clear instructions given the voter that the candidates
for the office are continued on the following column or page.

(e) When an insufficient number of candidates has filed for a party to make the number of nominations allowed for the office, or for the voters to elect sufficient members to the board of education or to executive committees, the vacant positions on the ballot shall be filled with the words "No Candidate Filed": Provided, That in paper ballot systems which allow for write-ins to be made directly on the ballot, a blank line shall be placed in any vacant position in the office of board of education or for election to any party executive committee. A line shall separate each candidate from every other candidate for the same office.

(f) In presidential election years, the words "For election in accordance with the plan adopted by the party and filed with the secretary of state" shall be printed following the names of all candidates for delegate to national convention.

(g) All paper ballots shall be printed in black ink on paper sufficiently thick so that the printing or marking cannot be discernible from the back. Ballot cards and paper for printing ballots using electronically sensible ink shall meet minimum requirements of the tabulating systems.

(h) Electronically tabulated ballots and ballot cards shall contain perforated tabs at the top of the ballots and shall be printed with unique sequential numbers from one to the highest number representing the total number of ballots or ballot cards printed. On paper ballots, the ballot shall be bordered by a solid line at least one sixteenth of an inch wide, and the ballot shall be trimmed to within one-half inch of that border.

(i) On the back of every official ballot or ballot card, there shall be printed the words "Official Ballot" with the name of the county and the date of the election. Beneath shall be two blank lines, followed by the words "Poll Clerks".
(j) Absent voters' ballots shall be in all respects like other official ballots, except that three blank lines shall be printed on the back of the ballot or ballot card in the lower left corner with the words "Ballot Commissioners" printed underneath.

(k) The face of sample paper ballots and sample ballot labels shall be like other official ballots or ballot labels, except that the word "sample" shall be prominently printed across the front of the ballot in such a way that the names of candidates are not obscured, and the word "sample" may be printed in red ink. No printing may be placed on the back of the sample.

CHAPTER 138

(S. B. 473—By Senators Wooton, Ball, Bowman, Dittmar, Hunter, Ross, Schoonover, Snyder, White, Buckalew and Scott)

[Passed March 10, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article six, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the disposition of certificates of election; requiring candidates to request copies of such certificates; providing for the filing of certificates with county clerks; and requiring county clerks to preserve and make certificates available to the general public and the media.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.
§3-6-11. Disposition of certificates.

The separate certificates of the board of canvassers, made pursuant to section ten of this article, shall be disposed of by the board of canvassers as follows: Of the certificates respecting the election for delegate or delegates in the Legislature, they shall, upon request of the candidate, transmit a copy to any candidate, and shall file a copy in the office of the clerk of the county commission to be preserved and made available to the general public and to the media. The clerk shall transmit a copy to the secretary of state within thirty days from the date of the election, except that in the case of a recount, within thirty days from the date of the completion of the recount, who shall submit the same to the House of Delegates, on the first day of the next ensuing session, together with a list of the persons appearing thereby to be elected. Of the certificates respecting the election of state senator, they shall, upon request of the candidate, transmit a copy to any candidate, and shall file a copy in the office of the clerk of the county commission to be preserved and made available to the general public and to the media. The clerk shall transmit a copy to the secretary of state within thirty days from the date of the election, except that in the case of a recount, within thirty days from the date of the completion of the recount, to be submitted by the secretary of state to the Senate, on the first day of the next ensuing session, together with a list of persons appearing thereby to be elected. Of the certificates respecting the election of state officers, a copy for each officer, except justice of the supreme court of appeals, shall be sealed and transmitted by the commissioners to the secretary of state within thirty days from the date of the election endorsed on the envelope as follows: "Returns of the election for state officers." Except in the case of a recount, the certificates shall be transmitted within thirty days from the date of the completion of the recount. The secretary of state shall deliver the certificates to the speaker of the House of Delegates on the first day of the next session of the Legislature; and the speaker shall, immediately after the organization of the House of Delegates and before
proceeding to other business, open and publish the certificates in the presence of a majority of each house of the Legislature, which bodies shall, for that purpose, assemble in the hall of the House of Delegates. The person having the highest number of votes for any one of such offices shall be declared duly elected thereto; but if two or more persons have the same and the highest number of votes for the same office, the Legislature shall, by a joint vote of the two houses, choose one of said persons for the office; and one of each of the last-mentioned certificates shall also be transmitted, under seal, to the governor, who shall immediately tabulate the vote in all the counties, for each office, and cause the results to be printed in a newspaper published at the seat of government. Of the certificates respecting the election for United States senator, member of the House of Representatives in the Congress of the United States, justice of the supreme court of appeals, judge of a circuit court, and president and vice president of the United States, respectively, the commissioners shall, upon request of the candidate, transmit a copy to any candidate, and a copy to the governor within thirty days from the date of the election; except that in the case of a recount, within thirty days from the date of the completion of the recount; and the governor shall ascertain who are elected and make proclamation thereof. The commissioners shall also file a copy of the certificates in the office of the clerk of the county commission to be preserved and made available to the general public and to the media. Of the certificates respecting the election of all county and district officers, the commissioners shall, upon request of the candidate, transmit a copy to any candidate, and shall file a copy in the office of the clerk of the county commission to be preserved and made available to the general public and to the media.

No county may be charged for the publication of any certificates of election.
CHAPTER 139
(Com. Sub. for H. B. 4293—By Delegates Staton, Varner and Caputo)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter thirty-nine of said code by adding thereto a new article, designated article five, all relating generally to the authorization of electronic signatures where written signatures are currently required; establishing legislative findings; providing definitions; allowing for the acceptance of certain electronic signatures where a rule of law requires a signature; authorizing the secretary of state and the state auditor to propose legislative and emergency rules authorizing governmental electronic signatures; authorizing the secretary of state to be the digital key depository and authority and authorizing the secretary of state to contract with a private entity to serve as the digital key depository and authority; allowing all governmental entities to participate in the electronic and digital signature program with certain conditions and limitations; authorizing public use of electronic signatures with certain requirements; limitation of liability for the secretary of state; and providing for admissibility of electronic signatures and other electronic records legal proceeding as evidence.

Be it enacted by the Legislature of West Virginia:

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

Chapter
CHAPTER 2. COMMON LAW, STATUTES, LEGAL HOLIDAYS, DEFINITIONS, AND LEGAL CAPACITY.

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-10. Rules for construction of statutes.

1 The following rules shall be observed in the construction of statutes, unless a different intent on the part of the Legislature be apparent from the context:

2 (a) A word importing the singular number only may be applied to several persons or things, as well as to one person or thing; a word importing the plural number only may be applied to one person or thing as well as to several; and a word importing the masculine gender only may be applied to females as well as males;

3 (b) Words purporting to give a joint authority to three or more persons confer such authority upon a majority of them, and not upon any less number;

4 (c) The words "written" or "in writing" include any representation of words, letters or figures, whether by printing, engraving, writing or otherwise. But when the signature of any person is required, it must be in his or her own proper handwriting, or his or her mark, attested, proved or acknowledged: Provided, That unless a provision of this code specifically provides otherwise, an electronic signature satisfies this signature requirement if the electronic signature meets the requirements of subsection (a), section three, article five, chapter thirty nine of this code;

5 (d) The words "preceding," "succeeding" or "following" used in reference to any section or sections of a chapter or statute, mean next preceding, next succeeding or next following that in which such reference is made, unless a different interpretation be required by the context;

6 (e) An officer shall be deemed to have qualified when he or she has done all that is required by law to be done
before proceeding to exercise the authority and discharge
the duties of his or her office;

(f) The words "the governor" are equivalent to "the
executive of the state" or "the person having the executive
power";

(g) "Justice" or "justices" as used in article one, chapter
fifty-one of this code and in other references to a member
or members of the supreme court of appeals shall mean
and apply to a judge or the judges of said court as
provided for in the constitution of the state. The word
"justice" in any other context is equivalent to the words
"justice of the peace," and the word "notary" is equivalent
to "notary public";

(h) The word "state," when applied to a part of the
United States and not restricted by the context, includes
the District of Columbia and the several territories, and the
words "United States" also include the said district and
territories;

(i) The word "person" or "whoever" shall include
corporations, societies, associations and partnerships, if not
restricted by the context;

(j) The words "personal representative" include the
executor of a will, the administrator of the estate of a
deceased person, the administrator of such estate with the
will annexed, the administrator de bonis non of such
estate, whether there be a will or not, the sheriff or other
officer lawfully charged with the administration of the
estate of a deceased person, and every other curator or
committee of a decedent's estate for or against whom suits
may be brought for causes of action which accrued to or
against such decedent;

(k) The word "will" embraces a testament, a codicil, an
appointment by will or writing in the nature of a will in
exercise of a power, also any other testamentary
disposition;

(l) The word "judgment" includes decrees and orders
for the payment of money or the conveyance or delivery
of land or personal property, or some interest therein, or any undertaking, bond or recognizance which has the legal effect of a judgment;

(m) The words "under disability" include persons under the age of eighteen years, insane persons, and convicts while confined in the penitentiary;

(n) The words "insane person" include everyone who has mental illness as defined in section two, article one, chapter twenty-seven of this code;

(o) The word "convict" means a person confined in the penitentiary of this or any other state, or of the United States;

(p) The word "land" or "lands" and the words "real estate" or "real property" include lands, tenements and hereditaments, all rights thereto and interests therein except chattel interests;

(q) The words "personal estate" or "personal property" include goods, chattels, real and personal, money, credits, investments and the evidences thereof;

(r) The word "property" or "estate" embraces both real and personal estate;

(s) The word "offense" includes every act or omission for which a fine, forfeiture or punishment is imposed by law;

(t) The expression "laws of the state" includes the constitution of the state and the constitution of the United States, and treaties and laws made in pursuance thereof;

(u) The word "town" includes a city, village or town, and the word "council," any body or board, whether composed of one or more branches, who are authorized to make ordinances for the government of a city, town or village;

(v) When a council of a town, city or village, or any board, number of persons or corporations, are authorized to make ordinances, bylaws, rules, regulations or orders, it
shall be understood that the same must be consistent with
the laws of this state;

(w) The words "county court" include any existing
tribunal created in lieu of a county court; the words
"commissioner of the county court" and "county
commissioner" mean, and have reference to, the
commissioners, or one of them, composing the county
court, in pursuance of section twenty-two, article eight of
the constitution, as amended, or any existing tribunal
created in lieu of a county court;

(x) The word "horse" embraces a stallion, a mare and a
gelding;

(y) The words "railroad" and "railway" shall be
construed by the courts of this state to mean the same
thing in law; and, in any proceeding wherein a railroad
company or a railway company is a party, it shall not be
deemed error to call a railroad company a railway
company or vice versa; nor shall any demurrer, plea or
any other defense be set up to a motion, pleading or
indictment in consequence of such misdescription;

(z) The sectional headings or headlines of the several
sections of this code printed in black-faced type are
intended as mere catchwords to indicate the contents of
the section and shall not be deemed or taken to be titles of
such sections, or as any part of the statute, and, unless
expressly so provided, they shall not be so deemed when
any of such sections, including the headlines, are amended
or reenacted;

(aa) The words "infant" and "minor" mean persons
under the age of eighteen years as such words are used in
this code or in rules and regulations promulgated by the
supreme court of appeals;

(bb) A statute is presumed to be prospective in its
operation unless expressly made retrospective;

(cc) Unless there is a provision in a section, article or
chapter of this code specifying that the provisions thereof
shall not be severable, the provisions of every section,
article or chapter of this code, whether enacted before or
subsequent to the effective date of this subdivision, shall
be severable so that if any provision of any such section,
article or chapter is held to be unconstitutional or void, the
remaining provisions of such section, article or chapter
shall remain valid, unless the court finds the valid
provisions are so essentially and inseparably connected
with, and so dependent upon, the unconstitutional or void
provision that the court cannot presume the Legislature
would have enacted the remaining valid provisions without
the unconstitutional or void one, or unless the court finds
the remaining valid provisions, standing alone, are
incomplete and are incapable of being executed in
accordance with the legislative intent: Provided, That if
any such section, article or chapter of this code has its own
severability clause, then such severability clause shall
govern and control with respect to such section, article or
chapter in lieu of the provisions of this subdivision. The
provisions of this subdivision shall be fully applicable to
all future amendments or additions to this code, with like
effect as if the provisions of this subdivision were set forth
in extenso in every such amendment or addition and were
reenacted as a part thereof, unless such amendment or
addition contains its own severability clause;

(dd) A reference to any section, article or chapter of
this code applies to all reenactments, revisions or
amendments thereof;

(ee) If a statute refers to a series of numbers or letters,
the first and the last numbers or letters in the series are
deemed to be included;

(ff) The words "board of regents," wherever they
appear in the code, means the board of trustees created by
section one, article one, chapter eighteen-b of this code
and the board of directors created by section one, article
one, chapter eighteen-b of this code unless the term is
used in relation to activities conducted solely by an
institution or institutions governed by article two, chapter
eighteen-b of this code in which case it only means the
board of trustees, or where the term is used in relation to
activities conducted solely by an institution or institutions
The Legislature finds that the rapid and secure conveyance of signed written transactions, messages and official documents is essential to effective and economical conduct of commercial, governmental and personal affairs; and that technology is available to allow instantaneous transmission of documents and to provide secure means of authorization through electronic signatures. Therefore, it is the purpose of this act to facilitate and promote electronic commerce and online government by clarifying the legal status of electronic records and electronic signatures in the context of writing and signing requirements imposed by law; to permit and encourage the continued expansion of electronic commerce and online government through the operation of free market forces rather than prescriptive legislation; to promote public confidence in the validity, integrity and reliability of electronic commerce and online government; and to promote the development of the legal and business infrastructure necessary to support and encourage electronic commerce and online government.
As used in this article, the following words shall have the following meanings:

(a) “Certificate” means a computer-based record that:

1. Identifies the certification authority issuing it;
2. Names or identifies its subscriber;
3. Contains the subscriber’s public key; and
4. Is digitally signed by the certification authority issuing it.

(b) “Certification authority” means a person who issues a certificate.

c) “Electronic” means electrical, digital, magnetic, optical, electromagnetic, or any other technology that is similar to these technologies.

d) “Electronic record” means a record generated, communicated, received, or stored by electronic means.

e) “Electronic signature” means any identifier or authentication technique attached to or logically associated with an electronic record that is intended by the person using it to have the same force and effect as a manual signature. Electronic signatures include, but are not limited to the following:

1. A “digitized signature” which consists of a handwritten signature entered on a recording device utilizing electronic recording software which simultaneously converts the image created to a digital record and attaches it to the electronic document to which it relates;

2. A “digital mark” which consists of an electronic code indicating approval or confirmation which is entered into a protected digital record following access protocols which identify the user and require a password, personal identification number, encrypted card or other security device which restricts access to one or more authorized individuals; and
(3) A "digital signature" which consists of a message transformed using an asymmetric cryptosystem so that a person having the initial message and the signer's public key can accurately determine:

(A) Whether the transformed message was created using the private key that corresponds to the signer's public key; and

(B) Whether the initial message has been altered since the message was transformed.

(f) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.


(a) Where a rule of law requires a signature, or provides for certain consequences in the absence of a signature, that rule may be satisfied by an electronic signature, if:

(1) The type of electronic signature provided is authorized according to the provisions of this article by the person or governmental entity receiving the message;

(2) The original digitized signature, digital mark or digital signature was affixed by the signer with the intention of signing the message, or the facsimile digitized signature was affixed by the signer's designee with the authority of the signer; and

(3) The recipient has no knowledge or notice that the signer either:

(A) Breached a duty; or

(B) Does not rightfully hold the access code used to affix the digital mark or the private key used to affix the digital signature.

(b) Nothing in this article:
(1) Precludes an electronic signature from being valid as a signature under other applicable law;

(2) May be construed to obligate a recipient or any other person asked to rely on an electronic signature to accept an electronic signature or to respond to an electronic message containing an electronic signature; or

(3) Precludes the recipient of an electronic signature or an electronic message containing an electronic signature from establishing the conditions under which the recipient will accept an electronic signature.

§39-5-4. Duties of the secretary of state and state auditor; state agencies use of electronic signatures.

(a) The secretary of state and state auditor shall propose joint legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish standards and processes to facilitate the use of electronic signatures in all governmental transactions by state agencies subject to chapter twenty-nine-a of this code. These rules shall include minimum standards for secure transactions to assure confidence and efficiency in legally binding electronic document transactions. These rules may be amended from time to time to keep the rules current with new developments in technology and improvements in secured transaction processes. The Legislature also authorizes these rules to be initially promulgated as emergency rules pursuant to article three, chapter twenty-nine-a of this code.

(b) The secretary of state is also designated the certification authority and repository for all governmental agencies which are subject to chapter twenty-nine-a of this code, and shall regulate transactions and digital signature verifications. The secretary may enter into reciprocity agreements with all state and federal governmental entities to promote the efficient governmental use of electronic transactions. The secretary of state may also propose legislative rules for issuing certificates that bind public
keys to individuals, and other electronic transaction
authentication devices as provided for in section three.
The secretary of state is further authorized to contract with
a private entity to serve as certification authority for the
state of West Virginia. This private certification authority
may contract with persons to provide certification service.
Any contract entered into must assure the certification
authority will meet the requirements of this act and any
rules promulgated pursuant to this subsection.

(c) Nothing contained in this act shall be construed to
mandate any specific form of technology, process or
standard to be the only technology, process or standard
which may be utilized by state entities, nor shall limit the
secretary of state and state auditor in adopting by
legislative rule, alternative technologies to authorize
electronic signatures.

§39-5-5. Acceptance of electronic signature by governmental
entities in satisfaction of signature requirement.

(a) Any governmental entity may, by appropriate
official action, authorize the acceptance of electronic
signatures in lieu of original signatures on messages or
filings requiring one or more original signatures, subject
to the requirements and limitations of section three of this
article.

(b) Any governmental entity may elect to participate
and utilize the secretary of state’s digital signature
authority and registry. Upon acceptance of and
registration with the secretary of state’s digital signature
authority and registry, the governmental entity’s
electronic transactions are bound to the regulation of the
authority and registry and those rules promulgated
thereunder. Any governmental entity not required to
participate, but which elects to participate, may withdrawal
at any time from the program, upon notification of the
secretary of state and all others who utilize that entity’s
digital signature program.
(c) Any governmental entities may adopt, in the manner provided by law, an ordinance, rule or official policy designating the documents on which electronic signatures are authorized, and the type or types of electronic signatures which may be accepted for each type of document. Those governmental entities not subject to the provisions of chapter twenty-nine-a of this code, which proposes to authorize the acceptance of electronic signatures on documents filed with that entity shall give public notice of the proposed adoption in a manner prescribed by law, an ordinance, rule or official policy, but in no case for less than thirty days before adoption.

(d) Any governmental entity which intends to extend, modify or revoke the authority to accept electronic signatures shall do so by the same means and with the same notice as required in this section for adoption.

§39-5-6. Acceptance of electronic signatures by persons other than governmental entities.

(a) Where a commercial or other transaction between persons other than governmental entities consists in part of a message which requires the signature of one or more parties to the transaction, an electronic signature shall be a valid signature if authorized and accepted by the receiving party and made in good faith by the signing party or parties.

(b) The receiving party may determine the type or types of electronic signatures which will be accepted for particular types of messages or transactions.

(1) The receiving party shall give notice to the prospective signing party of the type or types of electronic signatures which will be accepted for the particular type of message or transaction; and

(2) The receiving party may confirm to the signer the receipt and acceptance of an electronic message containing an electronic signature.

§39-5-7. Secretary of state; liability.
The secretary of state, serving as authority and repository for governmental entities for signature keys shall revoke any signature key when the secretary has reason to believe that the digital signature key has been stolen, fraudulently used or otherwise compromised. This article creates no liability upon the secretary of state for any transaction compromised by any illegal act or inappropriate uses associated with electronic signatures.


In any legal proceeding, nothing in the application or the rules of evidence shall apply so as to deny the admissibility of an electronic record or electronic signature into evidence solely on the ground that it is an electronic record or electronic signature, or, on the grounds that it is not in its original form or is not an original.

CHAPTER 140

(Com. Sub. for H. B. 4043—By Delegates Beane, Cann, Thompson, Compton, Faircloth, Amores and Hutchins)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-one, article one, chapter thirty-three of said code; to amend article fifteen of said chapter by adding thereto a new section, designated section twenty-one; to amend and reenact section three-i, article sixteen of said chapter; to amend and reenact section seven-e, article twenty-four of said chapter; to amend and reenact section eight-d, article twenty-five of said chapter; and to amend and reenact section eight-d, article twenty-five-a of said chapter, all relating to defining emergency medical services and emergency medical condition; requiring coverage for medical screenings and stabilization of emergency medical
conditions; and directing that services be covered for prudent layperson; and requiring reporting to the legislative oversight commission on health and human resources accountability.

Be it enacted by the Legislature of West Virginia:

That section eight, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twenty-one, article one, chapter thirty-three of said code be amended and reenacted; that article fifteen of said chapter be amended by adding thereto a new section, designated section twenty-one; that section three-i, article sixteen of said chapter be amended and reenacted; that section seven-e, article twenty-four of said chapter be amended and reenacted; that section eight-d, article twenty-five of said chapter be amended and reenacted; and that section eight-d, article twenty-five-a of said chapter be amended and reenacted, all to read as follows:

Chapter

5. General Powers And Authority Of The Governor, Secretary Of State And Attorney General; Board Of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

33. Insurance.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-8. Conditions of insurance program.

1 The insurance plans provided for in this article shall be designed by the public employees insurance agency:

3 (1) To provide a reasonable relationship between the hospital, surgical, medical and prescription drug benefits to be included and the expected reasonable and customary hospital, surgical, medical and prescription drug expenses as established by the director to be incurred by the
affected employee, his or her spouse and his or her dependents. The establishment of reasonable and customary expenses by the public employees insurance agency pursuant to the preceding sentence is not subject to the state administrative procedures act in chapter twenty-nine-a of this code;

(2) To include reasonable controls which may include deductible and coinsurance provisions applicable to some or all of the benefits, and shall include other provisions, including, but not limited to, copayments, preadmission certification, case management programs and preferred provider arrangements;

(3) To prevent unnecessary utilization of the various hospital, surgical, medical and prescription drug services available;

(4) To provide reasonable assurance of stability in future years for the plans;

(5) To provide major medical insurance for the employees covered under this article;

(6) To provide certain group life and accidental death insurance for the employees covered under this article;

(7) To include provisions for the coordination of benefits payable by the terms of the plans with the benefits to which the employee, or his or her spouse or his or her dependents may be entitled by the provisions of any other group hospital, surgical, medical, major medical, or prescription drug insurance or any combination thereof;

(8) To provide a cash incentive plan for employees, spouses and dependents to increase utilization of, and to encourage the use of, lower cost alternative health care facilities, health care providers and generic drugs. The plan shall be reviewed annually by the director and the advisory board;

(9) To provide “wellness” programs and activities which will include, but not be limited to, benefit plan incentives to discourage tobacco, alcohol and chemical abuse and an educational program to encourage proper
diet and exercise. In establishing "wellness" programs, the division of vocational rehabilitation shall cooperate with the public employees insurance agency in establishing statewide wellness programs. The director of the public employees insurance agency shall contract with county boards of education for the use of facilities, equipment or any service related to that purpose. Boards of education may charge only the cost of janitorial service and increased utilities for the use of the gymnasium and related equipment. The cost of the exercise program shall be paid by county boards of education, the public employees insurance agency, or participating employees, their spouses or dependents. All exercise programs shall be made available to all employees, their spouses or dependents and shall not be limited to employees of county boards of education;

(10) To provide a program, to be administered by the director, for a patient audit plan with reimbursement up to a maximum of one thousand dollars annually, to employees for discovery of health care provider or hospital overcharges when the affected employee brings the overcharge to the attention of the plan. The hospital or health care provider shall certify to the director that it has provided, prior to or simultaneously with the submission of the statement of charges for payments, an itemized statement of the charges to the employee participant for which payment is requested of the plan;

(11) To require that all employers give written notice to each covered employee prior to institution of any changes in benefits to employees, and to include appropriate penalty for any employer not providing the required information to any employee; and

(12) To provide coverage for emergency services under offered plans. For the purposes of this subsection, "emergency services" means services provided in or by a hospital emergency facility, an ambulance providing related services under the provisions of article four-c, chapter sixteen of this code or the private office of a dentist to evaluate and treat a medical condition manifesting itself by the sudden, and at the time,
unexpected onset of symptoms that require immediate medical attention and for which failure to provide medical attention would result in serious impairment to bodily function, serious dysfunction to any bodily organ or part, or would place the person’s health in jeopardy. From the first day of July, one thousand nine hundred ninety-eight, through the thirtieth day of June, two thousand, the following provisions apply: Plans shall provide coverage for emergency services, including any prehospital services, to the extent necessary to screen and stabilize the covered person. The plans shall reimburse, less any applicable copayments, deductibles, or coinsurance, for emergency services rendered and related to the condition for which the covered person presented. Prior authorization of coverage shall not be required for the screening services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Prior authorization of coverage shall not be required for stabilization if an emergency medical condition exists. In the event that prior authorization was obtained, the authorization may not be retracted after the services have been provided except when the authorization was based on a material misrepresentation about the medical condition by the provider of the services or the insured person. The provider of the emergency services and the plan representative shall make a good faith effort to communicate with each other in a timely fashion to expedite postevaluation or poststabilization services. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms of the covered person. For purposes of this subdivision: (A) “Emergency services” means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital care; (B) “prudent layperson” means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought; (C) “emergency medical condition for the prudent layperson” means one that manifests itself by
across symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part; (D) "stabilize" means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: Provided, That this provision may not be construed to prohibit, limit or otherwise delay the transportation required for a higher level of care than that possible at the treating facility; (E) "medical screening examination" means an appropriate examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists. The director is to report annually to the legislative oversight commission on health and human resources accountability on the utilization of emergency services, the cost of those services, a comparison of utilization and costs between enrollees of the various plans, and possible plan amendments designed to decrease any inappropriate utilization of emergency services; and (F) "emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health or with respect to a pregnant woman the health of the unborn child, serious impairment to bodily functions or serious dysfunction of any bodily part or organ.

CHAPTER 33. INSURANCE.

Article

1. Definitions.
15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.


ARTICLE 1. DEFINITIONS.

§33-1-21. Emergency services.

(a) Emergency services are: Those services provided in or by a hospital emergency facility, an ambulance providing related services under the provisions of article four-c, chapter sixteen of this code or the private office of a dentist to evaluate and treat a medical condition manifesting itself by the sudden, and at the time, unexpected onset of symptoms that require immediate medical attention and that failure to provide medical attention would result in serious impairment to bodily function, serious dysfunction to any bodily organ or part, or would place the person's health in jeopardy.

(b) From the first day of July, one thousand nine hundred ninety-eight, through the thirtieth day of June, two thousand, the following provisions apply:

(1) "Emergency medical services" means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital care;

(2) "Prudent layperson" means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought;

(3) "Emergency medical condition for the prudent layperson" means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious
(4) “Stabilize” means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: Provided, That this provision may not be construed to prohibit, limit or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

(5) “Medical screening examination” means an appropriate examination within the capability of the hospital’s emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

(6) “Emergency medical condition” means a condition that manifests itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual’s health or with respect to a pregnant woman the health of the unborn child, serious impairment to bodily functions or serious dysfunction of any bodily part or organ.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.


From the first day of July, one thousand nine hundred ninety-eight, through the thirtieth day of June, two thousand, the following provisions apply:

(a) Every insurer shall provide coverage for emergency medical services, including prehospital services, to the extent necessary to screen and to stabilize an emergency medical condition. The insurer shall not require prior authorization of the screening services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Prior
authorization of coverage shall not be required for stabilization if an emergency medical condition exists. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms of the covered person.

(b) An insurer that has given prior authorization for emergency services shall cover the services and shall not retract the authorization after the services have been provided unless the authorization was based on a material misrepresentation about the covered person's health condition made by the referring provider, the provider of the emergency services or the covered person.

(c) Coverage of emergency services shall be subject to coinsurance, copayments and deductibles applicable under the health benefit plan.

(d) The emergency department and the insurer shall make a good faith effort to communicate with each other in a timely fashion to expedite postevaluation or poststabilization services in order to avoid material deterioration of the covered person's condition.

(e) As used in this section:

(1) "Emergency medical services" means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital care;

(2) "Prudent layperson" means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought;

(3) "Emergency medical condition for the prudent layperson" means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious
impairment to bodily functions; or serious dysfunction of any bodily organ or part;

(4) "Stabilize" means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: Provided, That this provision may not be construed to prohibit, limit or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

(5) "Medical screening examination" means an appropriate examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

(6) "Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health or with respect to a pregnant woman the health of the unborn child, serious impairment to bodily functions or serious dysfunction of any bodily part or organ.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3i. Coverage of emergency services.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall provide as benefits to all subscribers and members coverage for emergency services. A policy, provision, contract, plan or agreement may apply to emergency services the same deductibles, coinsurance and other limitations as apply to other covered services: Provided, That preauthorization or precertification shall not be required.
10 From the first day of July, one thousand nine
11 hundred ninety-eight, through the thirtieth day of June,
12 two thousand, the following provisions apply:

13 (1) Every insurer shall provide coverage for
14 emergency medical services, including prehospital
15 services, to the extent necessary to screen and to stabilize
16 an emergency medical condition. The insurer shall not
17 require prior authorization of the screening services if a
18 prudent layperson acting reasonably would have believed
19 that an emergency medical condition existed. Prior
20 authorization of coverage shall not be required for
21 stabilization if an emergency medical condition exists.
22 Payment of claims for emergency services shall be based
23 on the retrospective review of the presenting history and
24 symptoms of the covered person.

25 (2) An insurer that has given prior authorization for
26 emergency services shall cover the services and shall not
27 retract the authorization after the services have been
28 provided unless the authorization was based on a material
29 misrepresentation about the covered person’s health
30 condition made by the referring provider, the provider of
31 the emergency services or the covered person.

32 (3) Coverage of emergency services shall be subject to
33 coinsurance, copayments and deductibles applicable under
34 the health benefit plan.

35 (4) The emergency department and the insurer shall
36 make a good faith effort to communicate with each other
37 in a timely fashion to expedite postevaluation or
38 poststabilization services in order to avoid material
39 deterioration of the covered person’s condition.

40 (5) As used in this section:

41 (A) “Emergency medical services” means those
42 services required to screen for or treat an emergency
43 medical condition until the condition is stabilized,
44 including prehospital care;

45 (B) “Prudent layperson” means a person who is
46 without medical training and who draws on his or her
47 practical experience when making a decision regarding
whether an emergency medical condition exists for which emergency treatment should be sought;

(C) "Emergency medical condition for the prudent layperson" means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part;

(D) "Stabilize" means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: Provided, That this provision may not be construed to prohibit, limit or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

(E) "Medical screening examination" means an appropriate examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

(F) "Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health or with respect to a pregnant woman the health of the unborn child, serious impairment to bodily functions or serious dysfunction of any bodily part or organ.

(c) The commissioner shall require periodic reports regarding emergency services utilization and costs provided pursuant to the provisions of this article. Those reports will be provided annually to the legislative
§33-24-7e. Coverage of emergency services.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall provide as benefits to all subscribers and members coverage for emergency services. A policy, provision, contract, plan or agreement may apply to emergency services the same deductibles, coinsurance and other limitations as apply to other covered services: Provided, That preauthorization or precertification shall not be required.

(b) From the first day of July, one thousand nine hundred ninety-eight, through the thirtieth day of June, two thousand, the following provisions apply:

(1) Every insurer shall provide coverage for emergency medical services, including prehospital services, to the extent necessary to screen and to stabilize an emergency medical condition. The insurer shall not require prior authorization of the screening services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Prior authorization of coverage shall not be required for stabilization if an emergency medical condition exists. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms of the covered person.

(2) An insurer that has given prior authorization for emergency services shall cover the services and shall not retract the authorization after the services have been provided unless the authorization was based on a material misrepresentation about the covered person’s health condition made by the referring provider, the provider of the emergency services or the covered person.
(3) Coverage of emergency services shall be subject to coinsurance, copayments and deductibles applicable under the health benefit plan.

(4) The emergency department and the insurer shall make a good faith effort to communicate with each other in a timely fashion to expedite postevaluation or poststabilization services in order to avoid material deterioration of the covered person’s condition.

(5) As used in this section:

(A) “Emergency medical services” means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital care;

(B) “Prudent layperson” means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought;

(C) “Emergency medical condition for the prudent layperson” means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual’s health, or, with respect to a pregnant woman, the health of the unborn child; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part;

(D) “Stabilize” means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: Provided, That this provision may not be construed to prohibit, limit or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

(E) “Medical screening examination” means an appropriate examination within the capability of the
hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

(F) "Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health or with respect to a pregnant woman the health of the unborn child, serious impairment to bodily functions or serious dysfunction of any bodily part or organ.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8d. Coverage of emergency services.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall provide as benefits to all subscribers and members coverage for emergency services. A policy, provision, contract, plan or agreement may apply to emergency services the same deductibles, coinsurance and other limitations as apply to other covered services: Provided, That preauthorization or precertification shall not be required.

(b) From the first day of July, one thousand nine hundred ninety-eight, through the thirtieth day of June, two thousand, the following provisions apply:

(1) Every insurer shall provide coverage for emergency medical services, including pre-hospital services, to the extent necessary to screen and to stabilize an emergency medical condition. The insurer shall not require prior authorization of the screening services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Prior authorization of coverage shall not be required for stabilization if an emergency medical condition exists. Payment of claims for emergency services shall be based
(2) An insurer that has given prior authorization for emergency services shall cover the services and shall not retract the authorization after the services have been provided unless the authorization was based on a material misrepresentation about the covered person's health condition made by the referring provider, the provider of the emergency services or the covered person.

(3) Coverage of emergency services shall be subject to coinsurance, copayments and deductibles applicable under the health benefit plan.

(4) The emergency department and the insurer shall make a good faith effort to communicate with each other in a timely fashion to expedite postevaluation or poststabilization services in order to avoid material deterioration of the covered person's condition.

(5) As used in this section:

(A) "Emergency medical services" means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital care;

(B) "Prudent layperson" means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought;

(C) "Emergency medical condition for the prudent layperson" means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part;
(D) "Stabilize" means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: Provided, That this provision may not be construed to prohibit, limit or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

(E) "Medical screening examination" means an appropriate examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

(F) "Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health or with respect to a pregnant woman the health of the unborn child, serious impairment to bodily functions or serious dysfunction of any bodily part or organ.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8d. Coverage of emergency services.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall provide as benefits to all subscribers and members coverage for emergency services. A policy, provision, contract, plan or agreement may apply to emergency services the same deductibles, coinsurance and other limitations as apply to other covered services: Provided, That preauthorization or precertification shall not be required.

(b) From the first day of July, one thousand nine hundred ninety-eight, through the thirtieth day of June, two thousand, the following provisions apply:
(1) Every insurer shall provide coverage for emergency medical services, including pre-hospital services, to the extent necessary to screen and to stabilize an emergency medical condition. The insurer shall not require prior authorization of the screening services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Prior authorization of coverage shall not be required for stabilization if an emergency medical condition exists. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms of the covered person.

(2) An insurer that has given prior authorization for emergency services shall cover the services and shall not retract the authorization after the services have been provided unless the authorization was based on a material misrepresentation about the covered person's health condition made by the referring provider, the provider of the emergency services or the covered person.

(3) Coverage of emergency services shall be subject to coinsurance, copayments and deductibles applicable under the health benefit plan.

(4) The emergency department and the insurer shall make a good faith effort to communicate with each other in a timely fashion to expedite postevaluation or poststabilization services in order to avoid material deterioration of the covered person's condition.

(5) As used in this section:

(A) "Emergency medical services" means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital care;

(B) "Prudent layperson" means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought;
(C) "Emergency medical condition for the prudent layperson" means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part;

(D) "Stabilize" means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: Provided, That this provision may not be construed to prohibit, limit or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

(E) "Medical screening examination" means an appropriate examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

(F) "Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health or with respect to a pregnant woman the health of the unborn child, serious impairment to bodily functions or serious dysfunction of any bodily part or organ.

(6) Each insurer shall provide the enrolled member with a description of procedures to be followed by the member for emergency services, including the following:

(A) The appropriate use of emergency facilities;
(B) The appropriate use of any prehospital services provided by the health maintenance organization;

(C) Any potential responsibility of the member for payment for nonemergency services rendered in an emergency facility;

(D) Any cost-sharing provisions for emergency services; and

(E) An explanation of the prudent layperson standard for emergency medical condition.

(c) The commissioner shall require periodic reports regarding emergency services utilization and costs provided pursuant to the provisions of this article. Those reports will be provided annually to the legislative oversight commission on health and human resources accountability.

CHAPTER 141

(H. B. 4595—By Delegates Seacrist, Pulliam, Compton, Warner, Fantasia, Kelley and Pettit)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six-b, relating to creating an emergency medical services licensure fund, expenditures therefrom, and annual reporting.

Be it enacted by the Legislature of West Virginia:

That article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section six-b, to read as follows:
ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-6b. Establishment of emergency medical services agency licensure fund; authorized expenditures; annual report.

(a) There is established in the state treasury a special revenue fund designated the "emergency medical services agency licensure fund", which shall be administered by the commissioner of the bureau of public health.

(b) All application and licensing fees collected pursuant to the provisions of section six-a of this article shall be deposited into the fund and expended in accordance with the licensure duties imposed in this article.

(c) Any remaining balance, including accrued interest, in the fund at the end of the fiscal year shall not revert to the general revenue fund, but shall remain in the account.

(d) On or before the first day of January of each year, the commissioner shall provide the Legislature with an annual fiscal year report on the emergency medical services agency licensure account including, but not limited to, the previous fiscal year's expenditures; projected expenditures for the current and next fiscal years; the number of agency licenses issued, denied, suspended or revoked; and, the status of licensure hearings and court actions.

CHAPTER 142

(H. B. 4693—By Delegates Staton, Amores, Hunt, Pino, Tomblin, Riggs and L. White)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating
generally to allowing the department of environmental protection to promote pollution reduction and elimination; providing for findings, policy and purpose; allowing the director to establish a program to assist businesses with pollution reduction and elimination activities; providing duties and powers of the director; requiring release of information when human health or the environment are at risk; granting the director authority to propose legislative rules to implement the pollution reduction and elimination program; and deleting provisions relating to governor’s discretion in appointing director or requiring secretary to act as director.

Be it enacted by the Legislature of West Virginia:

That sections one and six, article one, 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 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-1. Legislative findings; legislative statement of policy and purpose.

§22-1-6. Director of the division of environmental protection.

§22-1-1. Legislative findings; legislative statement of policy and purpose.

(a) The Legislature finds that:

1 (1) Restoring and protecting the environment is fundamental to the health and welfare of individual citizens, and our government has a duty to provide and maintain a healthful environment for our citizens.

6 (2) The state has the primary responsibility for protecting the environment; other governmental entities, public and private organizations and our citizens have the primary responsibility of supporting the state in its role as protector of the environment.

11 (3) Governmental decisions on matters which relate to the use, enhancement, preservation, protection and conservation of the environment should be made after public participation and public hearings.
15 (4) Efficiency in the wise use, enhancement, preservation, protection and conservation of the environment can best be accomplished by an integrated and interdisciplinary approach in decision making and would benefit from the coordination, consolidation and integration of state programs and agencies which are significantly concerned with the use, enhancement, preservation, protection and conservation of the environment.

24 (5) Those functions of government which regulate the environment should be consolidated in order to accomplish the purposes set forth in this article, to carry out the environmental functions of government in the most efficient and cost effective manner, to protect human health and safety and, to the greatest degree practicable, to prevent injury to plant, animal and aquatic life, improve and maintain the quality of life of our citizens, and promote economic development consistent with environmental goals and standards.

(b) The Legislature declares that the establishment of a division of environmental protection is in the public interest and will promote the general welfare of the state of West Virginia without sacrificing social and economic development. It is the policy of the state of West Virginia, in cooperation with other governmental agencies, public and private organizations, and the citizens of this state, to use all practicable means and measures to prevent or eliminate harm to the environment and biosphere, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations. The purposes of this chapter are:

(1) To strengthen the commitment of this state to restore, maintain and protect the environment;

(2) To consolidate environmental regulatory programs in a single state agency;

(3) To provide a comprehensive program for the conservation, protection, exploration, development,
enjoyment and use of the natural resources of the state of West Virginia;

(4) To supplement and complement the efforts of the state by coordinating state programs with the efforts of other governmental entities, public and private organizations and the general public; to improve the quality of the environment, the public health and public enjoyment of the environment, and the propagation and protection of animal, aquatic and plant life, in a manner consistent with the benefits to be derived from strong agricultural, manufacturing, tourism and energy-producing industries;

(5) Insofar as federal environmental programs require state participation, to endeavor to obtain and continue state primacy in the administration of such federally-mandated environmental programs, and to endeavor to maximize federal funds which may be available to accomplish the purposes of the state and federal environmental programs and to cooperate with appropriate federal agencies to meet environmental goals;

(6) To encourage the increased involvement of all citizens in the development and execution of state environmental programs;

(7) To promote improvements in the quality of the environment through research, evaluation and sharing of information;

(8) To improve the management and effectiveness of state environmental protection programs;

(9) To increase the accountability of state environmental protection programs to the governor, the Legislature and the public generally; and

(10) To promote pollution prevention by encouraging reduction or elimination of pollutants at the source through process modification, material substitutions, in-process recycling, reduction of raw material use or other source reduction opportunities.
§22-1-6. Director of the division of environmental protection.

(a) The director is the chief executive officer of the division. Subject to section seven of this article and other provisions of law, the director shall organize the division into such offices, sections, agencies and other units of activity as may be found by the director to be desirable for the orderly, efficient and economical administration of the division and for the accomplishment of its objects and purposes. The director may appoint assistants, hearing officers, clerks, stenographers and other officers, technical personnel and employees needed for the operation of the division and may prescribe their powers and duties and fix their compensation within amounts appropriated therefore.

(b) The director has the power to and may designate supervisory officers or other officers or employees of the division to substitute for him or her on any board or commission established under this code or to sit in his or her place in any hearings, appeals, meetings or other activities with such substitute having the same powers, duties, authority and responsibility as the director. Additionally, the director has the power to delegate, as he or she considers appropriate, to supervisory officers or other officers or employees of the division his or her powers, duties, authority and responsibility relating to issuing permits, hiring and training inspectors and other employees of the division, conducting hearings and appeals and such other duties and functions set forth in this chapter or elsewhere in this code.

(c) The director has responsibility for the conduct of the intergovernmental relations of the division, including assuring: (1) That the division carries out its functions in a manner which supplements and complements the environmental policies, programs and procedures of the federal government, other state governments and other instrumentalities of this state; and (2) that appropriate officers and employees of the division consult with

*Clerk’s Note: This section was also amended by HB 2735 (Chapter 143), which passed prior to this act, and SB 145 (Chapter 144), which passed subsequent to this act.
individuals responsible for making policy relating to environmental issues in the federal government, other state governments and other instrumentalities of this state concerning differences over environmental policies, programs and procedures and concerning the impact of statutory law and rules upon the environment of this state.

(d) The director has the authority to designate employees in established programs within the division of environmental protection to engage in bona fide pollution prevention and compliance assistance activities as designated by the director within the state. Disclosure to the enforcement or other division personnel is not required unless an imminent hazard to human health or the environment exists. Pollution prevention and compliance assistance may not interfere with current or future enforcement actions by state or federal regulatory agencies even if such assistance may result in compliance although the director may modify agency enforcement actions in light of a facility's implementation of pollution prevention and waste minimization practices. The director shall propose for legislative promulgation, legislative rules pursuant to article three, chapter twenty-nine-a of this code to implement the provisions of this subsection.

(e) In addition to other powers, duties and responsibilities granted and assigned to the director by this chapter, the director is hereby authorized and empowered to:

(1) Sign and execute in the name of the state by the "division of environmental protection" any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: Provided, That the powers granted to the director to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision shall not exceed or be interpreted as authority to exceed the powers heretofore granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary's department pursuant to the provisions of chapter five-f of this code;

(2) Conduct research in improved environmental protection methods and disseminate information to the citizens of this state;
(3) Enter private lands to make surveys and inspections for environmental protection purposes; to investigate for violations of statutes or rules which the division is charged with enforcing; to serve and execute warrants and processes; to make arrests; issue orders, which for the purposes of this chapter include consent agreements; and to otherwise enforce the statutes or rules which the division is charged with enforcing;

(4) Acquire for the state in the name of the "division of environmental protection" by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the division of environmental protection, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property;

(5) Provide for workshops, training programs and other educational programs, apart from or in cooperation with other governmental agencies, necessary to insure adequate standards of public service in the division. The director may also provide for technical training and specialized instruction of any employee. Approved educational programs, training and instruction time may be compensated for as a part of regular employment. The director is further authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to such educational programs, training, and instruction. Eligibility for participation by employees will be in accordance with guidelines established by the director;

(6) Issue certifications required under 33 U.S.C. §1341. Prior to issuing any such certification the director shall solicit from the division of natural resources reports and comments concerning the possible certification. The reports and comments shall be directed from the division of natural resources to the director for consideration; and

(7) Notwithstanding any provisions of this code to the contrary, employ in-house counsel to perform all legal services for the director and the division, including, but not limited to, representing the director, any chief, the
division or any office thereof in any administrative proceeding or in any proceeding in any state or federal court. Additionally, the director may call upon the attorney general for legal assistance and representation as provided by law.

(f) The director shall be appointed by the governor, by and with the advice and consent of the Senate, and serves at the will and pleasure of the governor.

(g) At the time of his or her initial appointment, the director shall be at least thirty years old and shall be selected with special reference and consideration given to his or her administrative experience and ability, to his or her demonstrated interest in the effective and responsible regulation of the energy industry and the conservation and wise use of natural resources. The director shall have at least a bachelor's degree in a related field and shall have at least three years of experience in a position of responsible charge in at least one discipline relating to the duties and responsibilities for which the director will be responsible upon assumption of the office of director. The director shall not be a candidate for or hold any other public office, shall not be a member of any political party committee and shall immediately forfeit and vacate his or her office as director in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.

(h) The director shall receive an annual salary of sixty-five thousand dollars and shall be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of the duties of his or her office, the director shall take and subscribe to the oath required of public officers prescribed by section five, article IV of the constitution of West Virginia and shall execute a bond, with surety approved by the governor, in the penal sum of ten thousand dollars, which executed oath and bond shall be filed in the office of the secretary of state. Premiums on the bond shall be paid from the division funds.
AN ACT to amend and reenact section six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying status of division of environmental protection in-house counsel.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

*§22-1-6. Director of the division of environmental protection.

(a) The director is the chief executive officer of the division. Subject to section seven of this article and other provisions of law, the director shall organize the division into such offices, sections, agencies and other units of activity as may be found by the director to be desirable for the orderly, efficient and economical administration of the division and for the accomplishment of its objects and purposes. The director may appoint assistants, hearing officers, clerks, stenographers and other officers, technical personnel and employees needed for the operation of the division and may prescribe their powers and duties and fix their compensation within amounts appropriated therefor.

(b) The director has the power to and may designate supervisory officers or other officers or employees of the division.

*Clerk’s Note: This section was also amended by HB 4693 (Chapter 142), and SB 145 (Chapter 144), which passed subsequent to this act.
division to substitute for him or her on any board or
commission established under this code or to sit in his or
her place in any hearings, appeals, meetings or other
activities with such substitute having the same powers,
duties, authority and responsibility as the director.
Additionally, the director has the power to delegate, as he
or she considers appropriate, to supervisory officers or
other officers or employees of the division his or her
powers, duties, authority and responsibility relating to
issuing permits, hiring and training inspectors and other
employees of the division, conducting hearings and
appeals and such other duties and functions set forth in
this chapter or elsewhere in this code.

(c) The director has responsibility for the conduct of
the intergovernmental relations of the division, including
assuring: (1) That the division carries out its functions in
a manner which supplements and complements the
environmental policies, programs and procedures of the
federal government, other state governments and other
instrumentalities of this state; and (2) that appropriate
officers and employees of the division consult with
individuals responsible for making policy relating to
environmental issues in the federal government, other state
governments and other instrumentalities of this state
concerning differences over environmental policies,
programs and procedures and concerning the impact of
statutory law and rules upon the environment of this state.

(d) In addition to other powers, duties and
responsibilities granted and assigned to the director by this
chapter, the director is hereby authorized and empowered
to:

(1) Sign and execute in the name of the state by the
"division of environmental protection" any contract or
agreement with the federal government or its departments
or agencies, subdivisions of the state, corporations,
associations, partnerships or individuals: Provided, That
the powers granted to the director to enter into agreements
or contracts and to make expenditures and obligations of
public funds under this subdivision shall not exceed or be
interpreted as authority to exceed the powers heretofore
granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary's department pursuant to the provisions of chapter five-f of this code;

(2) Conduct research in improved environmental protection methods and disseminate information to the citizens of this state;

(3) Enter private lands to make surveys and inspections for environmental protection purposes; to investigate for violations of statutes or rules which the division is charged with enforcing; to serve and execute warrants and processes; to make arrests; issue orders, which for the purposes of this chapter include consent agreements; and to otherwise enforce the statutes or rules which the division is charged with enforcing;

(4) Acquire for the state in the name of the "division of environmental protection" by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the division of environmental protection, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property;

(5) Provide for workshops, training programs and other educational programs, apart from or in cooperation with other governmental agencies, necessary to insure adequate standards of public service in the division. The director may also provide for technical training and specialized instruction of any employee. Approved educational programs, training and instruction time may be compensated for as a part of regular employment. The director is further authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to such educational programs, training, and instruction. Eligibility for participation by employees will be in accordance with guidelines established by the director;

(6) Issue certifications required under 33 U.S.C. §1341. Prior to issuing any such certification the director
shall solicit from the division of natural resources reports and comments concerning the possible certification. The reports and comments shall be directed from the division of natural resources to the director for consideration; and

(7) Notwithstanding any provisions of this code to the contrary, employ in-house counsel to perform all legal services for the director and the division, including, but not limited to, representing the director, any chief, the division or any office thereof in any administrative proceeding or in any proceeding in any state or federal court, said counsel to be classified-exempt. Additionally, the director may call upon the attorney general for legal assistance and representation as provided by law.

(e) The director shall be appointed by the governor, by and with the advice and consent of the Senate, and serves at the will and pleasure of the governor: Provided, That in lieu of appointing a director, the governor may order the secretary to directly exercise the powers of the director. The secretary shall designate the order in which other officials of the division shall act for and perform the functions of the secretary or the director during the absence or disability of both the secretary and the director or in the event of vacancies in both of those offices.

(f) At the time of his or her initial appointment, the director shall be at least thirty years old and shall be selected with special reference and consideration given to his or her administrative experience and ability, to his or her demonstrated interest in the effective and responsible regulation of the energy industry and the conservation and wise use of natural resources. The director shall have at least a bachelor's degree in a related field and shall have at least three years of experience in a position of responsible charge in at least one discipline relating to the duties and responsibilities for which the director will be responsible upon assumption of the office of director. The director shall not be a candidate for or hold any other public office, shall not be a member of any political party committee and shall immediately forfeit and vacate his or her office as director in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.
(g) The director shall receive an annual salary of sixty-five thousand dollars and shall be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of the duties of his or her office, the director shall take and subscribe to the oath required of public officers prescribed by section five, article IV of the constitution of West Virginia and shall execute a bond, with surety approved by the governor, in the penal sum of ten thousand dollars, which executed oath and bond shall be filed in the office of the secretary of state. Premiums on the bond shall be paid from the division funds.

CHAPTER 144

(Com. Sub. for S. B. 145—By Senators Anderson, Dittmar, Ross, Sharpe, White, Bowman, Walker, Helmick, Schoonover, McKenzie and Dugan)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article eleven of said chapter by adding thereto a new section, designated section seven-a, all relating generally to establishing a water quality certification program for surface mining operations; authorizing the director to enter into certification agreements; providing for certificating upon receipt of certain federal permits; requiring compliance with current environmental laws; providing circumstances when a certification is required; establishing mitigation ratios and fees for loss of waters of this state; requiring certain activities as part of certification requirements; establishing requirements and review of mitigation by the director; establishing application processing requirements for the director; providing for public participation of application approval process; providing that the legislative auditor conduct a performance review of the mitigation program;
requiring the director to conduct a study and enter into certain agreements; and authorizing the joint committee on government and finance to conduct a study and establishing guidelines for the study.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Division of Environmental Protection.
11. Water Pollution Control Act.

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

*§22-1-6. Director of the division of environmental protection.

(a) The director is the chief executive officer of the division. Subject to section seven of this article and other provisions of law, the director shall organize the division into such offices, sections, agencies and other units of activity as may be found by the director to be desirable for the orderly, efficient and economical administration of the division and for the accomplishment of its objects and purposes. The director may appoint assistants, hearing officers, clerks, stenographers and other officers, technical personnel and employees needed for the operation of the division and may prescribe their powers and duties and fix their compensation within amounts appropriated therefor.

(b) The director has the power to and may designate supervisory officers or other officers or employees of the division to substitute for him or her on any board or commission established under this code or to sit in his or her place in any hearings, appeals, meetings or other activities with such substitute having the same powers, duties, authority and responsibility as the director. Additionally, the director has the power to delegate, as he or she considers appropriate, to supervisory officers or

*Clerk's Note: This section was also amended by HB 2735 (Chapter 143) and HB 4693 (Chapter 142), which passed prior to this act.
other officers or employees of the division his or her
powers, duties, authority and responsibility relating to
issuing permits, hiring and training inspectors and other
employees of the division, conducting hearings and
appeals and such other duties and functions set forth in
this chapter or elsewhere in this code.

(c) The director has responsibility for the conduct of
the intergovernmental relations of the division, including
assuring:

(1) That the division carries out its functions in a
manner which supplements and complements the
environmental policies, programs and procedures of the
federal government, other state governments and other
instrumentalities of this state; and (2) that appropriate
officers and employees of the division consult with
individuals responsible for making policy relating to
environmental issues in the federal government, other state
governments and other instrumentalities of this state
concerning differences over environmental policies,
programs and procedures and concerning the impact of
statutory law and rules upon the environment of this state.

(d) In addition to other powers, duties and
responsibilities granted and assigned to the director by this
chapter, the director is hereby authorized and empowered
to:

(1) Sign and execute in the name of the state by the
"division of environmental protection" any contract or
agreement with the federal government or its departments
or agencies, subdivisions of the state, corporations,
associations, partnerships or individuals: Provided, That
the powers granted to the director to enter into agreements
or contracts and to make expenditures and obligations of
public funds under this subdivision may not exceed or be
interpreted as authority to exceed the powers heretofore
granted by the Legislature to the various commissioners,
directors or board members of the various departments,
agencies or boards that comprise and are incorporated
into each secretary's department pursuant to the provisions
of chapter five-f of this code;
(2) Conduct research in improved environmental protection methods and disseminate information to the citizens of this state;

(3) Enter private lands to make surveys and inspections for environmental protection purposes; to investigate for violations of statutes or rules which the division is charged with enforcing; to serve and execute warrants and processes; to make arrests; issue orders, which for the purposes of this chapter include consent agreements; and to otherwise enforce the statutes or rules which the division is charged with enforcing;

(4) Acquire for the state in the name of the "division of environmental protection" by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the division of environmental protection, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property;

(5) Provide for workshops, training programs and other educational programs, apart from or in cooperation with other governmental agencies, necessary to ensure adequate standards of public service in the division. The director may also provide for technical training and specialized instruction of any employee. Approved educational programs, training and instruction time may be compensated for as a part of regular employment. The director is further authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to such educational programs, training and instruction. Eligibility for participation by employees will be in accordance with guidelines established by the director;

(6) Issue certifications required under 33 U.S.C. §1341 of the federal Clean Water Act and may enter into agreements in accordance with the provisions of section seven-a, article eleven of this chapter. Prior to issuing any certification the director shall solicit from the division of natural resources reports and comments concerning the possible certification. The reports and comments shall be directed from the division of natural resources to the director for consideration; and
(7) Notwithstanding any provisions of this code to the contrary, employ in-house counsel to perform all legal services for the director and the division, including, but not limited to, representing the director, any chief, the division or any office thereof in any administrative proceeding or in any proceeding in any state or federal court. Additionally, the director may call upon the attorney general for legal assistance and representation as provided by law.

(e) The director shall be appointed by the governor, by and with the advice and consent of the Senate, and serves at the will and pleasure of the governor: Provided, That in lieu of appointing a director, the governor may order the secretary to directly exercise the powers of the director. The secretary shall designate the order in which other officials of the division shall act for and perform the functions of the secretary or the director during the absence or disability of both the secretary and the director or in the event of vacancies in both of those offices.

(f) At the time of his or her initial appointment, the director shall be at least thirty years old and shall be selected with special reference and consideration given to his or her administrative experience and ability, to his or her demonstrated interest in the effective and responsible regulation of the energy industry and the conservation and wise use of natural resources. The director shall have at least a bachelor's degree in a related field and shall have at least three years of experience in a position of responsible charge in at least one discipline relating to the duties and responsibilities for which the director will be responsible upon assumption of the office of director. The director may not be a candidate for or hold any other public office, may not be a member of any political party committee and shall immediately forfeit and vacate his or her office as director in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.

(g) The director shall receive an annual salary of sixty-five thousand dollars and shall be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of the duties of his or her office, the director shall take and subscribe to
the oath required of public officers prescribed by section
five, article IV of the constitution of West Virginia and
shall execute a bond, with surety approved by the
governor, in the penal sum of ten thousand dollars, which
executed oath and bond shall be filed in the office of the
secretary of state. Premiums on the bond shall be paid
from the division funds.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7a. Certification agreements; required provisions; effective date.

If the applicant for the water quality certification seeks
certification of activities covered by the United States
army corps of engineers nationwide permit number
twenty-one or twenty-six issued in accordance with 33
U.S.C. §1344 and 33 C.F.R. Part 330 for use at or in
conjunction with a surface coal mining operation as
defined in section three, article three of this chapter, then
certification may be issued subject to the following
conditions:

(1) If the applicant's surface coal mining operation
will not impact waters of the state designated as national
resource waters and streams where trout naturally
reproduce and will not impact waters of the state which are
wetlands of one acre or more in size, and if the watershed
above the toe of the farthest downstream permanent
structure authorized pursuant to an United States army
corps of engineers nationwide permit number twenty-one
or twenty-six is less than four hundred eighty acres, then
the director may issue a water quality certification
containing certain conditions including, but not limited to,
the following:

(A) All earthwork operations shall be carried out so
that sediment runoff and soil erosion to waters of the state
are controlled and minimized. Best management practices
for water pollution control shall be used by the surface
coal mining operations;

(B) Heavy equipment, such as bulldozers, backhoes
and draglines, may not be used or operated within waters
of the state outside of the boundaries of a permanent
structure, unless that use cannot be avoided. If use of
heavy equipment within waters of the state outside the boundaries of a permanent structure is unavoidable, then the work shall be performed so as to minimize resuspension of sediments and disturbance to substrates, banks or riparian vegetation;

(C) Any riprap shall be of a composition that does not cause a diminution of existing water quality by adversely affecting the biological, chemical or physical properties of waters of the state. If riprap is used, it shall be of a weight and size using current and prudent engineering design;

(D) Removal of riparian vegetation outside the boundaries of a permanent structure shall be minimized.

(2) If the applicant's surface coal mining operation will not impact waters of the state designated as national resource waters and streams where trout naturally reproduce and will not impact waters of the state which are wetlands of one acre or more in size, and if the watershed above the toe of the farthest downstream permanent structure authorized pursuant to an United States army corps of engineers nationwide permit number twenty-one or twenty-six is less than four hundred eighty acres, then the director may issue a water quality certification. The director shall require that all earthwork operations shall be carried out so that sediment runoff and soil erosion to waters of the state are controlled and minimized, and that best management practices for water pollution control shall be used by the surface coal mining operations.

(3) If the watershed above the toe of the farthest downstream permanent structure authorized pursuant to the United States army corps of engineers nationwide permit number twenty-one or twenty-six is greater than or equal to four hundred eighty acres, then the director may further condition a water quality certification on a requirement that the applicant mitigate the expected water quality impacts under the following conditions:

(A) The water quality certification may require mitigation at a ratio two acres for every one acre of permanent loss of waters of the state on the permitted area, except for waters of the state isolated as a result of the permanent structure;
(B) For waters of the state isolated as a result of a permanent structure, the maximum mitigation ratio shall be five-tenths acre of mitigation area for every one acre of those isolated waters;

(C) The director may accept mitigation on the permitted area, mitigation off the permitted area, mitigation banking of waters of the state, or any combination thereof, or any other mitigation measure acceptable to the director;

(D) Upon completion of the work required by an agreement to conduct operations authorized by this subsection, the surface coal mining operation shall obtain a certification from a registered professional engineer that all mitigation work specified in the agreement has been completed in accordance with the conditions of the water quality certification. The director shall promptly review the certification and provide to the surface coal mining operation with notice that all mitigation work has been successfully completed, or that further mitigation work is necessary to meet the conditions imposed by the water quality certification. The mitigation amount may not exceed two hundred twenty-five thousand dollars per acre of stream disturbed. Those moneys shall be deposited in the stream restoration fund under the jurisdiction of the division of environmental protection and any expenditures from this fund after the thirtieth day of June, one thousand nine hundred ninety-eight, shall not be authorized from collections but shall only be authorized by appropriation by the Legislature.

(4) The director may issue a general certification if the certification consistent with state and federal laws, rules and regulations, for use of United States army corps of engineers nationwide permit number twenty-one or twenty-six for a road crossing on the permitted area directly impacting less than two hundred linear feet of waters of the state.

(5) The director shall confer with representatives of the surface coal mining industry and representatives of environmental organizations with an interest in water quality in developing a manual of approval options for mitigation on permitted areas, mitigation off permitted areas and mitigation involving banking of waters of the state.
(6) The director has twenty working days to make a determination that an application for a water quality certification is administratively complete or to give written notification to the applicant of specific deficiencies. The director has sixty working days to review an administratively complete application for a water quality certification, to issue or waive that certification, or to deny that certification with specific deficiencies identified, and to notify the applicant of the final determination: Provided, That public comment and public participation shall be in accordance with the certification requirements set forth in article three, chapter twenty-two of this code.

(7) The performance evaluation and research division of the legislative auditor's office shall conduct a preliminary performance review of the mitigation program of the division of environmental protection during the interim of the Legislature in the year one thousand nine hundred ninety-eight. The joint committee on government and finance shall authorize a study of the methods to determine values for stream mitigation. The joint committee in authorizing the study shall set the guidelines and issues to be studied. A biannual status report as to the progress of study shall be provided to the joint committee on government and finance on or before the tenth day of July of each year and the tenth day of January of each year until the study has been completed. Within thirty days of completion, a copy of the study shall be provided to the joint committee on government and finance. The director shall by the thirty-first day of December of each year provide a report to the joint committee on government and finance on receipts and expenditures from the stream restoration fund, the number of acreage reclaimed by the division through the use of these funds and the effectiveness of achieving stream restoration through the payment of the mitigation amounts into the fund in lieu of reclamation by the certificate holder.

(8) The proposed surface coal mining operation shall comply with all state and federal laws, rules and regulations. The director shall review each mitigation agreement signed on or after the ninth day of March, one thousand nine hundred ninety-six, to ensure compliance with all the provisions of this section.
CHAPTER 145

(Com. Sub. for H. B. 4578—By Delegates Ashley, Martin, Seacrist and Staton)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen, relating to requiring the director of the division of environmental protection to propose legislative rules; establishing a market-based air emission banking and trading program; and providing for emissions credits.

Be it enacted by the Legislature of West Virginia:

That article five, chapter twenty-two 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, to read as follows:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-18. Market-based banking and trading programs, emissions credits; director to promulgate rules.

(a) Within one hundred eighty days after the effective date of this section, the director shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code, to the full extent allowed by federal and state law, one or more rules establishing a voluntary emissions trading and banking program that provides incentives to make progress toward the attainment or maintenance of the national ambient air quality standards, the reduction or prevention of hazardous air contaminants or the protection of human health and welfare and the environment from air pollution.

(b) Any person reducing air emission from a source to a greater extent than otherwise required by state or federal law is entitled to an emissions credit in the amount of the
excess emission reduction. The director shall establish a
system by legislative rule for quantifying, verifying and
registering all emissions reduction credits, which are
eligible for banking and trading if achieved after the first
day of January, one thousand nine hundred ninety-one, to
the extent permitted by federal law. Credits also shall be
available for permanent shutdowns: Provided, That the
credits may be transferred by the depositor to the state
office of economic development or to a public interest
group of the depositor's designation. Except for
voluntary reductions of nitrogen oxides, ten percent of
any emission credits registered with the director shall be
credited to an account for the benefit of the state and
retired from future use, if not used within ten years. All
other emissions reduction credits registered shall remain in
effect until used and debited or retired, if not used within
ten years. The director may charge a reasonable
transaction fee at the time any credits are registered and
shall deposit the fees in the air pollution control fund.

Emission credits registered by a person in
accordance with subsection (b) of this section may be used
by the person to satisfy emission reduction requirements
that would otherwise be required under state or federal law
or the credits may be used for the same purpose at another
source, by the person who registered the credit or by
another person to whom the credit was transferred. Same
source use of banked emission credits requires prior
notification to the West Virginia office of air quality. The
rules may not prohibit the transfer of credits among
persons, but shall establish procedures by which transfers
are identified, tracked and accounted for in the program.
The division may establish the emissions trading program
as a state, multistate or regional program as long as the
program contributes to the goal of improving the air
quality in West Virginia and in the air quality region
where the source is located.

The director may propose legislative rules for
promulgation in accordance with article three, chapter
twenty-nine-a of this code, establishing classes of volatile
organic compounds, and shall allow banking and trading
of different volatile organic compounds within the same
class. In lieu thereof, trading shall be allowed among all volatile organic compounds where not inconsistent with federal law and where similar degrees of hazard and qualitative impact are anticipated with respect to air quality. For any emissions banking and trading program used for the purpose of making progress toward attaining or maintaining the national ambient air quality standard for ozone, the director may allow reductions of volatile organic compounds to be substituted for required reductions of oxides of nitrogen, or reductions of oxides of nitrogen to be substituted for required reductions of volatile organic compounds, where appropriate, if not inconsistent with federal law.

CHAPTER 146

(Com. Sub. for H. B. 4228—By Mr. Speaker, Mr. Kiss, and Delegates Martin, Varner, Staton, Kuhn, Collins and Linch)

[Passed March 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended by adding thereto a new article, designated article twenty-three, relating to prohibiting the state division of environmental protection from modifying any agency rule which implements the provisions of the United Nations Framework Convention on Global Climate Change treaty and its proposed reductions of limitations on greenhouse gases emissions; providing legislative findings relating thereto; prohibiting the division of environmental protection from entering into any agreement with any federal agency relating to limiting state emission of greenhouse gases resulting from the Kyoto protocol; allowing continuation of voluntary reduction efforts; and providing that this article be effective until a federal treaty supersedes the requirements of this article.

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

ARTICLE 23. KYOTO PROTOCOL; ENFORCEMENT PROHIBITIONS.

§22-23-1. Findings and purposes.

§22-23-1. Findings and purposes.

1 The West Virginia Legislature hereby finds that:

2 (a) The United States is a signatory to the one thousand nine hundred ninety-two United Nations Framework Convention on Global Climate Change Treaty ("FCCC");

3 (b) A protocol to expand the scope of the FCCC was negotiated in December, one thousand nine hundred ninety-seven in Kyoto, Japan ("Kyoto Protocol"), requiring the United States to reduce emissions of greenhouse gases such as carbon dioxide and methane by seven percent from one thousand nine hundred ninety emission levels during the years two thousand eight to two thousand twelve, with similar reduction obligations for other major industrial nations;

4 (c) Developing nations, including China, India, Mexico, Indonesia and Brazil, are exempt from greenhouse gas emission limitation requirements in the FCCC;

5 (d) Developing nations refused in the Kyoto negotiations to accept any new commitments for greenhouse gas emission limitations through the Kyoto Protocol or other agreements;

6 (e) With respect to new commitments under the FCCC, President William J. Clinton pledged on the twenty-second day of October, one thousand nine hundred ninety-seven, that "The United States will not assume binding obligations unless key developing nations meaningfully participate in this effort";
(f) On the twenty-fifth day of July, one thousand nine hundred ninety-seven, the United States Senate adopted Senate Resolution Number Ninety-eight by a vote of ninety-five to zero, expressing the sentiment of the Senate that "the United States should not be a signatory to any protocol to other agreement regarding, the Framework Convention on Climate Change... which would require the advice and consent of the Senate to ratification, and which would mandate new commitments to mitigate greenhouse gas emissions for the Developed Country Parties, unless the protocol or other agreement also mandates specific scheduled commitments within the same compliance period to mitigate greenhouse gas emissions for Developing Country Parties";

(g) The Kyoto Protocol fails to meet the tests established for acceptance of new climate change commitments by President Clinton and by United States Senate Resolution Number ninety-eight;

(h) Achieving the emission reductions proposed by the Kyoto Protocol would require more than a thirty-five percent reduction in projected United States carbon dioxide and other greenhouse gas emissions during the period between two thousand eight to two thousand twelve;

(i) Developing countries exempt from emission limitations under the Kyoto Protocol are expected to increase their rates of fossil fuel use over the next two decades, and to surpass the United States and other industrialized countries in total emissions of greenhouse gases;

(j) Increased emissions of greenhouse gases by developing countries would offset any potential environmental benefits associated with emissions reductions achieved by the United States and by other industrial nations;

(k) Economic impact studies by the United States government estimate that legally binding requirements for the reduction of United States greenhouse gases to one thousand nine hundred ninety, emission levels would result in the loss of more than nine hundred thousand jobs
in the United States, sharply increased energy prices, reduced family incomes and wages, and severe losses of output in energy-intensive industries important to the West Virginia economy such as aluminum, steel, rubber, chemicals and utilities;

(l) The failure to provide for commitments by developing countries in the Kyoto Protocol creates an unfair competitive imbalance between industrial and developing nations, potentially leading to the transfer of jobs and industrial development from the United States to developing countries;

(m) Federal implementation of the Kyoto Protocol, if ratified by the United States Senate, would entail new congressional legislation whose form and requirements cannot be predicted at this time, but could include national energy taxes or emission control allocation schemes that would preempt state-specific programs intended to reduce emissions of greenhouse gases;

(n) Piecemeal or other uncoordinated state regulatory initiatives intended to reduce emissions of greenhouse gases may be inconsistent with subsequent congressional determinations concerning the Kyoto Protocol, and with federal legislation implementing the Kyoto Protocol;

(o) Individual state responses to the Kyoto Protocol, including development of new regulatory programs intended to reduce greenhouse gas emissions, are premature prior to Senate ratification of that Protocol, in its current or amended form, and congressional enactment of related implementing legislation.


(a) The West Virginia division of environmental protection shall refrain from proposing or promulgating any new rule intended, in whole or in part, to reduce emissions of greenhouse gases from the residential, commercial, industrial, electric utility or transportation sectors in order to comply with the Kyoto Protocol;
7 (b) In the absence of an act of the Legislature of the
8 state of West Virginia approving same, the West Virginia
9 division of environmental protection shall not submit to
10 the United States environmental protection agency or to
11 any other agency of the federal government any legally
12 enforceable commitments related to the reduction of
13 greenhouse gases, as such gases are defined by the Kyoto
14 Protocol;
15 (c) Nothing in this section shall be construed to limit
16 or to impede state or private participation in any on-going
17 voluntary initiatives to reduce emissions of greenhouse
gases, including, but not limited to, the federal
18 environmental protection agency’s “Green Lights”
19 program, the federal department of energy’s climate
20 challenge program, and similar state and federal initiatives
21 relying on voluntary participation.
22 (d) This article shall remain in effect until repealed by
23 an act of the Legislature of the state of West Virginia, or
24 until ratification of the Kyoto Protocol by the United
25 States Senate and enactment of federal legislation
26 implementing the Kyoto Protocol.

CHAPTER 147

(S. B. 96—By Senators Oliverio, Tomblin, Mr. President, Craigo,
Buckalew, Kessler, Minear, Sprouse, Kimble, Ball, Ross,
Dittmar, Anderson, Sharpe, Walker, Dugan, Love,
McKenzie, Schoonover and Hunter)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. SMALL BUSINESS ENVIRONMENTAL LOAN PROGRAM.

§22-24-1. Legislative findings, intent and purpose.


§22-24-3. Loan application requirements.

§22-24-4. Loan conditions.

§22-24-5. Small business environmental revolving loan account.


§22-24-1. Legislative findings, intent and purpose.

The Legislature hereby finds and declares that, in this state the protection and improvement of the environment, and the sustainability of small businesses, would be collectively enhanced by the establishment of a revolving low-interest small business environmental loan program, to provide partial relief from the burden small businesses face from compliance with existing and new state and federal environmental protection rules and regulations. The Legislature intends, in providing such a loan program for small businesses, that the program will further enable small businesses to aggressively comply with or exceed environmental obligations and requirements and thereby continue as a positive economic force in the state of West Virginia.


As used in this article, the following words have the meanings ascribed to them.

(a) "Authority" means the West Virginia economic development authority established in article fifteen, chapter thirty-one of this code.

(b) "Director" means the director of the West Virginia division of environmental protection.
(c) "Division" means the West Virginia division of environmental protection as established in article one of this chapter.

(d) "Eligible borrower" means a small business as defined in subsection (g) of this section that:

Is required or needs to conduct a qualifying environmental project as defined in subsection (f) of this section.

An eligible borrower also means a small business that desires to refinance the remaining balance of a debt that was incurred between the first day of January, one thousand nine hundred ninety-two, and the effective date of this article, and that meets, or would have met, at the time of the original loan application, the requirements of this subsection. The refinancing option is not available for applications received by the authority more than two years after the effective date of this article. Funds available for refinanced loans may not, at any time, exceed forty percent of the total funds available plus the outstanding balance of funded loans.

(e) "Environmental project" means:

(1) Any environmental equipment purchases and installations thereof;

(2) Any associated transportation, technical or consulting services for installation or modification of environmental equipment;

(3) Any equipment, purchase and installation necessary to effect a process change that in the director's judgment yields significant environmental benefits; or

(4) Any combination of subdivision (1), (2) or (3) of this subsection.

(f) "Qualifying environmental project" means an environmental project as described in subsection (e) of this section that is to be undertaken at a location in West Virginia and used for the purpose of:
(1) Effecting pollution elimination, minimization, prevention, recycling or abatement measures;

(2) Improving conditions or operations environmentally or substantially improving compliance with local, city, state, interstate or federal rules, regulations or laws pertaining to the environment and human health;

(3) Purchasing equipment to establish environmental information, computing, consulting or laboratory services.

(g) "Small business" means a business that:

(1) Is properly registered with the appropriate agencies to do business in this state;

(2) Is actively conducting business in this state;

(3) Is current with all workers' compensation and unemployment premiums and state taxes; and

(4) Employs less than fifty full-time employees as defined in subsection (h) of this section within the entire company, business or corporation inside and outside this state.

(h) "Total number of full-time employees" means all full-time employees, plus all part-time employees counted as full-time employee equivalents, plus all full and part-time equivalent employees providing any type of service by contract or by any other arrangement.

§22-24-3. Loan application requirements.

(a) Any eligible small business may apply for a small business environmental loan by submitting two identical copies of an application to the authority, on forms provided by the authority.

(b) The director shall determine environmental program qualification as provided by section two of this article, and based on the following factors:

(1) Pertinent environmental benefits of the project, including expected eliminations or reductions of regulated pollutants, solid wastes, hazardous wastes and in the use of
toxic and hazardous chemicals, as well as expected benefits from recycling programs, and pollution prevention measures;

(2) The degree of compliance with applicable environmental rules, regulations, laws and statutes; and

(3) Borrower's past environmental compliance performance, including history of compliance, violations, permitting difficulties and reporting record.

§22-24-4. Loan conditions.

A loan made to an eligible borrower as provided by this article shall:

(a) Have an interest rate not to exceed one half of the federal prime interest rate, but in no case may the annual rate be less than four percent;

(b) Have repayment terms not to exceed ten years;

(c) Have collateral terms acceptable to the authority; and

(d) Be in an amount of not less than five thousand dollars nor more than one hundred fifty thousand dollars; but in no case may the amount exceed ninety percent of the cost of the project.

§22-24-5. Small business environmental revolving loan account.

The small business environmental revolving loan account is hereby established in the authority and will be made available for environmental loans defined by this article for any type of qualifying environmental project. Loans may be issued only during the five-year period commencing on the effective date of this article unless the time period is otherwise extended by the Legislature. The administration of this loan program is authorized for one year beyond the last payment date for any outstanding loan.

The environmental revolving loan account shall be funded by appropriations from the Legislature and, at the director's discretion, by using portions of penalties and fines that are collected from various sources, including
violators that economically benefited by noncompliance:
Provided, That the maximum value of all active
outstanding loans, combined with funds in reserve at any
time, may not exceed five million dollars.

Interest income from the small business environmental
loan program as well as appropriations from the
Legislature shall be used to defray the operating costs of
the program, including, but not limited to, administration,
facilities, salaries and travel. Any excess interest income
shall be used to reestablish the loan program to its
maximum authorized limit of five million dollars, with
additional excesses returned to the state's general revenue
account. If interest income is not projected to provide the
necessary operating funds for all aspects of the small
business environmental loan program for any one year,
the authority shall request the necessary funding in the
annual budget request.


The authority shall: (a) Process small business
environmental loan applications and assure that a copy is
forwarded to the director for eligibility review; (b)
confirm that the director has certified the environmental
acceptability of the project; (c) verify the borrower's
eligibility as provided by section two of this article; (d)
evaluate the borrower's financial stability, needs and
ability to repay based upon an appropriate examination of
financial information, including, but not limited to,
income and credit histories, income tax returns, financial
statements and collateral offered to secure the loan; (e)
process loans for payments; and (f) establish loan
processing procedures that include, but are not limited to,
loan approvals, accounting, authorizations for payments,
loan repayments and auditing of the small business
environmental loan program. The authority shall
implement reporting requirements that include the total
number of full-time employees of the loan recipient on
the thirtieth day of September of each calendar year for
the term of the loan.

The authority shall act upon loan requests within
forty-five days of receipt of a complete application as
determined by the authority.
CHAPTER 148

(Com. Sub. for H. B. 4312—By Mr. Speaker, Mr. Kiss, and Delegates Jenkins, Staton, Varner, Trump and Dalton)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to the recording of memoranda of trust with the clerk of the county commission; and specifying requirements for memoranda of trust.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-4a. Memorandum of trust; requirements; recordation.

(a) A memorandum of trust that satisfies both of the following requirements may be presented for recordation in the office of the clerk of the county commission of any county in which real property that is subject to the trust is located:

(1) The memorandum shall be executed by the currently acting trustee or trustees of the trust, and, if living, by the settlor or settlors, personally, or by a duly appointed attorney-in-fact or conservator of the settlor or settlors, and shall be acknowledged in the manner a deed must be acknowledged in order to be recorded.

(2) The memorandum shall contain at least the following information with respect to the trust:
(i) The existence of the trust and the date of the trust;

(ii) The names and mailing addresses of the settlor or settlors and of the currently acting trustee or trustees of the trust, the names and mailing addresses of any successor trustee or trustees, and the circumstances under which any successor trustee or trustees will assume trust powers;

(iii) The revocability or irrevocability of the trust; and

(iv) A verbatim recitation of the trust powers specified in the trust relative to the acquisition, sale, disposition, or encumbering of real property by the trustee or trustees or the conveyance or disposition of real property by the trustee or trustees and any restrictions upon those powers, or a statement that the trust powers include at least all those trust powers contained in section three, article five-a, chapter forty-four of this code as they existed at the date of the execution of the trust.

(b) A memorandum of trust may also set forth the substance or actual text of any or all of the provisions of the trust.

(c) A memorandum of trust that satisfies the provisions of this section constitutes notice only of the information contained therein.

(d) Upon the presentation of a memorandum of trust that satisfies the provisions of this section and the payment of the requisite fee, the clerk shall record the memorandum of trust with the records of deeds and list it in the grantor index under the name of the settlor or settlors and in the grantee index under the names of the then-acting trustee or trustees.

(e) Nothing herein shall be construed or deemed to require recordation of any original trust agreement or other governing instrument which establishes the trust identified in the memorandum of trust.
AN ACT to amend and reenact section eighteen, article one, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article five, chapter forty-four of said code by adding thereto a new section, designated section fifteen, all relating to the nonmerger of trusts; providing that trust estates are subject to the debts of the beneficiaries; permitting spendthrift trusts; and preventing the merger of trusts in which the trustee is also a beneficiary of the trust.

Be it enacted by the Legislature of West Virginia:

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

Chapter

36. Estates and Property.

44. Administration of Estates and Trusts.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-18. Trust estates; debts of beneficiaries; spendthrift trusts; nonmerger of trusts.

1 Estates of every kind in real or personal property,
2 holden or possessed in trust, shall be subject to the debts
3 and charges of the persons to whose use or for whose
4 benefit they are holden or possessed, as they would be if
5 those persons owned the like interest in the things holden
6 or possessed, as in the uses or trusts thereof; but where the
7 creator of the trust has expressly so provided in the
8 instrument or conveyance creating the trust, real or
9 personal property may be held in trust upon condition
that the income therefrom shall be applied by the trustee
to the support and maintenance of a beneficiary or
beneficiaries of the trust in being at the time of the
creation of the trust, other than the creator of the trust, for
the life of such beneficiary or beneficiaries, without being
subject to the liabilities of, or alienation by, such
beneficiary or beneficiaries: Provided, That no trust,
whenever executed or created, may be deemed to be
invalid or terminated, and title to trust assets may not be
merged, merely because a creditor asserts that the trustee
or trustees are the same person or persons as the
beneficiaries of the trust.

CHAPTER 44. ADMINISTRATION OF
ESTATES AND TRUSTS.

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.


(a) No trust is invalid or terminated, and title to trust
assets is not merged, because the trustee or trustees are the
same person or persons as the beneficiaries of the trust.

(b) This section applies to all trusts whenever executed
or created.

CHAPTER 150

(Com. Sub. for H. B. 4311—By Mr. Speaker, Mr. Kiss, and Delegates
Jenkins, Staton, Varner, Trump and Dalton)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one,
chapter forty-four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to
the appraisement of a decedent’s estate; and establishing a
ninety-day time period for filing an appraisement of a decedent's estate.

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

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

**ARTICLE 1. PERSONAL REPRESENTATIVES.**

§44-1-14. Appraisal of estates in triplicate; disposition; authority of appraisers to act throughout the state; hiring of experts.

The real and personal estate of every deceased person, or in which such deceased person had an interest at the time of his or her death, shall be appraised by the personal representative of such deceased person. Such personal representative, after first taking an oath for the purpose, shall list and appraise at its real and actual value all the real estate and all the tangible property of every description owned by the deceased at the time of his or her death, including, but not limited to, all real estate and tangible property in which the decedent had an interest as joint tenant or otherwise or in which any beneficial interest passes to another person by reason of the death of such decedent whose estate is being so appraised and irrespective of whether such real estate or tangible property is subject to administration and located in each county or the counties, as the case may be. The personal representative shall also list and appraise at its real and actual value all of the decedent's intangible property of every description, including moneys, credits, investments, annuities, life insurance policies, (irrespective of whether such policies are payable to named beneficiaries or in trust or otherwise), judgments and decrees for moneys, notes, bonds, accounts and all other evidences of debt, whether owing to him or her by persons or corporations in or out of the state, and the number and value, including both the par value, if any, and the actual value, of any shares of
capital stock owned by the decedent in any corporation, and every other item of intangible property of whatsoever nature or kind, including all intangible property in which the decedent had an interest as joint tenant or otherwise or in which any beneficial interest passes to another by reason of the death of such decedent, and irrespective of whether such intangible property is subject to administration and whether located in this state or elsewhere. Any real estate or interest therein so appraised shall be identified with particularity and description, shall identify the source of title in the decedent and the location of such realty for purposes of real property ad valorem taxation. In addition to all other information required by law, the appraisement shall contain and include a questionnaire designed and formulated by the tax commissioner which is designed for the purpose of examining the personal representative to determine that he or she has made a thorough and proper search and investigation as to the existence and value of each and every kind and species of property required to be included within, and subject to appraisement by, the provisions of this or any other section of this code, which said questionnaire shall be completed and answered upon the oath or adjuration of the personal representative or fiduciary.

The appraisement, list and questionnaire aforesaid shall be executed in triplicate and shall be signed by the personal representative and be returned to the clerk of the county commission by whom such personal representative was appointed or to the fiduciary supervisor within ninety days of the date of qualification of the personal representative. Such clerk or supervisor shall inspect such appraisement, list and questionnaire, see that the same are in proper form, and that all property, if any, suggested by the questionnaire is included within the appraisement. If such appraisement, list and questionnaire are returned to a fiduciary supervisor within ten days after they are received and approved by him or her, such supervisor shall deliver two copies of the same to the clerk of the county
commission. Upon receipt of the appraisement, list and questionnaire, the clerk of the county commission shall record the same, with the certificate of approval of the supervisor, and mail one copy of the same to the tax commissioner of West Virginia. The date of return of an appraisement shall be entered by the clerk of the county commission in his or her record of fiduciaries. Every such appraisement and list shall be prima facie evidence of the value of the property embraced therein, and that the personal estate embraced therein which is subject to administration came to the hands of the personal representative. No person shall be permitted by any means whatsoever to avoid the appraisement and listing of his or her estate and of all property, real, tangible and intangible, of whatsoever nature and kind, in which a beneficial interest passes to another by reason of the death of the decedent and irrespective of whether such property is subject to administration as herein provided, nor shall his or her personal representative be permitted to do so. Any personal representative who fails, refuses or declines to comply with the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars.

Every personal representative shall have authority to retain or hire the services of such expert or experts as may be deemed appropriate to assist and advise him or her in and about his or her duties in appropriately and accurately appraising all or any part of the assets or property to be appraised according to the provisions of this section. Such expert or experts so retained or hired shall be compensated a reasonable sum by the personal representative from the assets coming into his or her hands or of which he or she is embraced, which compensation and the reasonableness thereof shall be subject to review and approval by the county commission, upon recommendation of the fiduciary supervisor.
CHAPTER 151

(Com. Sub. for H. B. 4310—By Mr. Speaker, Mr. Kiss, and Delegates
Jenkins, Staton, Varner, Trump and Dalton)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and twenty-nine, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to revising the short form settlement of a decedent’s estate; providing for fees and expenses of fiduciary commissioners; establishing certain instances in which estates may proceed without reference to a fiduciary commissioner and requiring publication of notice in such instances; requiring unpaid creditors to file a claim in order to force reference to a fiduciary commissioner; permitting personal representatives to approve such claims and avoid reference to a fiduciary commissioner; addressing and clarifying certain language with respect to waivers of final settlement; and requiring unpaid creditors to file claims against an estate with the fiduciary commissioner within ninety days of the first notice publication date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-1. Reference of decedents’ estates; proceedings thereon.
§44-2-2. Fiduciary commissioner to publish notice of time for receiving claims against decedents estates.
§44-2-29. Waiver of final settlement.

§44-2-1. Reference of decedents’ estates; proceedings thereon.
(a) Upon the return of the appraisement by the personal representative to the county clerk, the estate of his or her decedent shall, by order of the county commission to be then made, be referred to a fiduciary commissioner for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributees, and any other matter necessary and proper for the settlement of the estate: Provided, That in counties where there are two or more such commissioners, the estates of decedents shall be referred to such commissioners in rotation, in order that, so far as possible, there may be an equal division of the work. Notwithstanding any other provision of this code to the contrary, a fiduciary commissioner may not charge to the estate a fee greater than three hundred dollars and expenses for the settlement of an estate, except upon: (i) Approval of the personal representative; or (ii) a determination by the county commission after a hearing that complicating issues or problems attendant to such settlement substantiate the allowance of a greater fee.

(b) If the personal representative shall deliver to the clerk an appraisement of the assets of the estate showing their value to be fifty thousand dollars or less, exclusive of real estate specifically devised and nonprobate assets, or, if it appears to the clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent at law, the clerk shall record said appraisement and publish a notice once a week for two successive weeks in a newspaper of general circulation within the county of administration of the estate, substantially as follows:

NOTICE OF PENDING OR UNADMINISTERED ESTATE

"Notice is hereby given that settlement of the estate of the following named decedents will proceed without reference to a fiduciary commissioner unless within ninety days from the first publication of this notice such reference is requested by a party in interest or an unpaid
creditor files a claim and good cause is shown to support
reference to a fiduciary commissioner.

Dated this ____ day of ________________, ____.

______________________________________________

Clerk of the County Commission of
_________ County, West Virginia."

The clerk shall charge to the personal representative,
and receive, the reasonable cost of publication of the
notice. If an unpaid creditor files a claim against the
estate, the personal representative has twenty days after the
date of the filing of a claim against the estate of the
decedent to approve or reject the claim before the estate is
referred to a fiduciary commissioner. If the personal
representative approves all claims as filed, then no
reference may be made.

The personal representative shall, within a reasonable
time after the date of recordation of the appraisement in
such case: (i) File a waiver of final settlement in
accordance with the provisions of section twenty-nine of
this article; or (ii) make a report to the clerk of his
receipts, disbursements and distribution and submit an
affidavit stating that all claims against the estate for
expenses of administration, taxes and debts of the
decedent have been paid in full. The clerk shall collect a
fee of ten dollars for recording such report and affidavit,
and for publication of the notice hereafter provided, the
fee to be in lieu of any other fee provided by law for
recording a report of settlement of the accounts of a
decedent's personal representative. At least once a month
the clerk shall cause to be published once a week for two
successive weeks in a newspaper of general circulation
within the county of the administration of the estate, with
regard to reports received in the prior month, a notice
substantially as follows:

NOTICE OF FILING OF ESTATE ACCOUNTS
OR WAIVERS OF FINAL SETTLEMENT
"I have before me the account or waiver of final settlement of the executor(s) or administrator(s) of the estates of the following deceased persons:

Any person having a claim against the estate of any such deceased person, or who has any beneficial interest therein, may appear before me or the county commission at any time within thirty days after first publication of this notice, and request reference of said estate to a commissioner or object to confirmation of the accounting. In the absence of such request or objection, the accounting may be approved by the county commission.

Clerk of the County Commission of __________ County, W. Va."

If no such request or objection is made to the clerk or to the county commission, the county commission may confirm the report of the personal representative, and thereupon the personal representative and his surety shall be discharged; but if such objection or request is made, the county commission may confirm the accounting and record the same, or may refer the estate to one of its fiduciary commissioners: Provided, That the personal representative has twenty days after the date of the filing of a claim or claims against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner and if all claims are approved as filed, then no reference may be made.

§44-2-2. Fiduciary commissioner to publish notice of time for receiving claims against decedents estates.

Each month the fiduciary commissioner shall publish a notice designating the date by which claims against the estate or estates referred to him during the previous calendar month must be presented. The date so designated by the fiduciary commissioner shall be ninety
days from the date of the first publication of the notice hereinafter set forth. The notice shall be to the following effect:

To the Creditors and Beneficiaries of the Estate(s) of ___________________ 
(Naming the decedent or decedents, as the case may be)

All persons having claims against the estate(s) of the said ___________________ 
(Naming the decedent or decedents, as the case may be) deceased, whether due or not, are notified to exhibit same, with the voucher thereof, legally verified, to the undersigned, at (designating the place) on or before the ____ day of ____________, otherwise they may by law be excluded from all benefit of said estate(s). All beneficiaries of said estate(s) may appear on or before said day to examine said claims and otherwise protect their interests.

Given under my hand this ____ day of ____________

Fiduciary Commissioner,

County of ____________________________

Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The publication of such notice shall be equivalent to personal service on the creditors, distributees and legatees, or any of them.

§44-2-29. Waiver of final settlement.

In all estates of decedents subject to administration under this article where a release of lien, if required by the provisions of article eleven, chapter eleven of this code, has been filed with the clerk and more than ninety days have elapsed since the filing of any notice required by the provisions of this article, even though such estate may have been referred to a fiduciary commissioner, a final
settlement may be waived by a waiver containing an affidavit made by the personal representative, that the time for filing of claims has expired, that no known and unpaid claims exist against the estate, and that all beneficiaries have each been advised of the share or shares to which each is entitled from the estate and signed by every beneficiary.

In the case of a deceased beneficiary or a beneficiary under a disability, the duly qualified fiduciary or agent of such beneficiary may sign in lieu of such beneficiary. A fiduciary or agent signing such waiver shall be responsible to the beneficiary for any loss resulting from such waiver.

The waiver shall be recorded as in the case of and in lieu of a settlement as provided in section one, article two of this chapter.

CHAPTER 152
(S. B. 771—By Senators Wooton, Ball, Bowman, Dittmar, Kessler, Ross and Schoonover)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and four, article four, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the terms of office and the appointment of family law masters; extending the current terms of office; creating new terms of office; extending the term of office of the temporary law master assigned to Marshall County; and providing for temporary assignments of family law masters.

Be it enacted by the Legislature of West Virginia:

That sections one and four, article four, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 4. PROCEEDING BEFORE A MASTER.

§48A-4-1. Appointment of family law masters; term of office; vacancy; removal.

§48A-4-4. Assignment of family law masters by geographical regions.

§48A-4-1. Appointment of family law masters; term of office; vacancy; removal.

(a) The family law masters holding office on the first day of June, one thousand nine hundred ninety-eight, by virtue of appointments made under the prior enactments of this article shall continue their service for a term of office ending on the thirtieth day of June, one thousand nine hundred ninety-nine. Before the first day of July, one thousand nine hundred ninety-nine, the governor shall appoint family law masters in such numbers and to serve for geographical regions of the state as provided for under the provisions of section four of this article, with terms commencing on the first day of July, one thousand nine hundred ninety-nine, and on a like date in every fourth year thereafter, and ending on the thirtieth day of June, two thousand three, and on a like date in every fourth year thereafter. Upon the expiration of his or her term, a family law master may continue to perform the duties of the office until the governor makes the appointment, or for sixty days after the date of the expiration of the master's term, whichever is earlier. If a vacancy occurs in the office of family law master, the governor shall, within thirty days after such vacancy occurs, fill the vacancy by appointment for the unexpired term: Provided, That if the remaining portion of the unexpired term to be filled is less than one year, the governor may, in his or her discretion, simultaneously appoint an individual to the unexpired term and to the next succeeding full four-year term.

(b) An individual may be reappointed to succeeding terms as a family law master to serve in the same or a different region of the state.

(c) Removal of a master during the term for which he or she is appointed shall be as follows:

(1) Upon a recommendation by the judicial hearing board created pursuant to the rules of procedure for the
handling of complaints against justices, judges, magistrates
and family law masters, if the supreme court of appeals
shall find that a family law master has violated the judicial
code of ethics or that the master, because of advancing
years and attendant physical or mental incapacity, should
not continue to serve, the supreme court of appeals may,
in lieu of or in addition to any disposition authorized by
such rules, remove the family law master from office; and

(2) The supreme court of appeals may remove a
master when conduct of the family law master evidences
incompetence, unsatisfactory performance, misconduct,
neglect of duty or physical or mental disability.

§48A-4-4. Assignment of family law masters by geographical
regions.

(a) There shall be a total of twenty-six family law
masters, not more than fourteen of whom shall be
full-time masters, to serve throughout the state. During
the year immediately preceding the appointment of law
masters as provided for in section one of this article, the
supreme court of appeals shall apportion the state into
geographical regions which may be single-master regions
or multi-master regions, or a combination of both.
County boundaries shall be strictly observed and no
county may be divided among two or more regions.
Otherwise, in making such apportionment, the supreme
court of appeals shall construct regions which provide, as
nearly as is practicable, for the caseload of each master to
be equal to that of other masters. Mathematical exactness
as to caseload is not required and deviations from an
absolute standard may be based upon concerns, other than
caseload, including, but not limited to, deviations dictated
by the following considerations:

(1) Judicial circuits;

(2) Geographical features which affect the time and
expense of travel;

(3) Traditional patterns of practice by members of the
bar; and

(4) Population variances between regions.
(b) In the region that includes Kanawha County, of the masters appointed, not less than two shall be part-time masters.

(c) Notwithstanding the provisions of subsection (a) of this section, for the time period extending from the first day of August, one thousand nine hundred ninety-six, until the thirtieth day of June, one thousand nine hundred ninety-nine, there shall temporarily be a total of twenty-seven family law masters, not more than fourteen of whom shall be full-time masters, to serve throughout the state, and the additional part-time position of family law master created by this subsection shall be assigned to the region that includes Marshall County.

(d) Nothing contained herein shall prohibit the chief justice of the supreme court of appeals from temporarily assigning a family law master from one geographical region to another geographical region, as caseload, disqualification, recusal, vacation or illness may dictate. In each such case of temporary assignment, the chief justice shall appoint only those persons currently serving as family law masters and appointed pursuant to section one of this article.

(e) The administrative office of the supreme court shall promulgate any procedural rule necessary to delineate the duties of the part-time and full-time law masters consistent with this article.

CHAPTER 153

(Com. Sub. for H. B. 4250—By Delegates Osborne, Mahan, Sparks, Heck and Johnson)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to vacancies in paid fire departments; requiring completion of apprenticeship before eligibility for promotion; and exceptions.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-22. Vacancies filled by promotions; eligibility for promotion.

Vacancies in positions in a paid fire department shall be filled, so far as practicable, by promotions from among individuals holding positions in the next lower grade in the department. Promotions shall be based upon experience and by competitive examinations to be provided by the firemen's civil service commission: Provided, however, That no individual shall be eligible for promotion from the lower grade to the next higher grade until such individual shall have completed at least two years of continuous service in the next lower grade in the department immediately prior to said examination and has completed the registered apprenticeship and certification program under article twenty-nine-a, chapter thirty of this code: Provided, That completion of the registered apprenticeship and certification program as a requirement for promotion shall apply only to those firefighters employed since the twelfth day of June, one thousand nine hundred eighty-seven. The commission shall have the power to determine in each instance whether an increase in salary constitutes a promotion.

CHAPTER 154

(H. B. 4042—By Delegates Buchanan, Givens, Dalton, Kominar, Tillis and Faircloth)

[Passed February 11, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to
the powers and duties of the state fire marshal and the deputy and assistant fire marshals, authorizing arrest and the making of complaint for search or arrest warrant for explosives-related offenses; removing imprecise references to a penalty, to the taking of testimony, and to determination of incendiary origin; and clarifying that those empowered under this section are those employed by the state fire marshal pursuant to section eleven of this article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-12. Powers and duties of state fire marshal.

(a) Enforcement of laws. — The state fire marshal shall enforce all laws of the state having to do with:

1. Prevention of fire;
2. The storage, sale and use of any explosive, combustible or other dangerous article in solid, flammable liquid or gas form;
3. The installation and maintenance of equipment of all sorts intended to extinguish, detect and control fires;
4. The means and adequacy of exit, in case of fire, from buildings and all other places in which persons work, live or congregate from time to time for any purpose, except buildings used wholly as dwelling houses for no more than two families;
5. The suppression of arson.

(b) Assistance upon request. — Upon request, the state fire marshal shall immediately assist any chief of any recognized fire company or department.

(c) Enforcement of regulations. — The state fire marshal shall enforce the regulations promulgated by the
(d) **Inspections generally.** — The state fire marshal shall inspect all state, county and municipally owned institutions, all public and private schools, theaters, churches and other places of public assembly as to fire exits and reasonable safety standards and report his findings and recommendations to the proper administrative heads.

(e) **Right of entry.** — The state fire marshal may at all reasonable hours enter any building or premises, other than dwelling houses, for the purpose of making an inspection, which he may deem necessary to be made under the provisions of this article.

(f) **Investigations.** — The state fire marshal may at any time investigate as to the origin or circumstances of any fire or explosion or attempt to cause fire or explosion occurring in the state. The state fire marshal shall have the authority at all times of the day or night, in performance of the duties imposed by the provisions of this article, to investigate where any fires or attempt to cause fires shall have occurred, or which at the time may be burning. Notwithstanding the above provisions of this subsection, prior to entering any building or premises for the purposes of such investigation, the state fire marshal shall obtain a proper search warrant: *Provided,* That the same shall not be necessary where there is permissive waiver or the state fire marshal is an invitee of the individual having legal custody and control of the property, building or premises to be searched.

(g) **Testimony.** — The state fire marshal, in making an inspection or investigation, when in his judgment such proceedings are necessary, may take the statements or testimony under oath of all persons who may be cognizant of any facts or have any knowledge about the matter to be examined and inquired into, and may have the statements or testimony reduced to writing; and shall transmit a copy of such statements or testimony so taken to the
prosecuting attorney for the county wherein the fire or explosion or attempt to cause a fire or explosion occurred. Notwithstanding the above, no person shall be compelled to testify or give any such statement under this subsection.

(h) Arrests; warrants. — The state fire marshal, any full-time deputy fire marshal or any full-time assistant fire marshal employed by the state fire marshal pursuant to section eleven of this article is hereby authorized and empowered:

(1) To arrest any person anywhere within the confines of the state of West Virginia, or have him arrested, for any violation of the arson-related offenses of article three, chapter sixty-one of this code or of the explosives-related offenses of article three-e of chapter sixty-one of this code: Provided, That any and all persons so arrested shall be forthwith brought before the magistrate or circuit court.

(2) To make complaint in writing before any court or officer having jurisdiction and obtain, serve and execute an arrest warrant when knowing or having reason to believe that anyone has committed an offense under any provision of this article, of the arson-related offenses of article three, chapter sixty-one of this code, or of the explosives-related offenses of article three-e of chapter sixty-one of this code. Proper return shall be made on all arrest warrants before the tribunal having jurisdiction over such violation.

(3) To make complaint in writing before any court or officer having jurisdiction and obtain, serve and execute a warrant for the search of any premises that may possess evidence or unlawful contraband relating to violations of this article, of the arson-related offenses of article three, chapter sixty-one of this code, or of the explosives-related offenses of article three-e of chapter sixty-one of this code. Proper return shall be made on all search warrants before the tribunal having jurisdiction over such violation.
(i) **Witnesses and oaths.** — The state fire marshal is empowered and authorized to issue subpoenas and subpoenas duces tecum to compel the attendance of persons before him to testify in relation to any matter which is, by the provision of this article, a subject of inquiry and investigation by the state fire marshal and cause to be produced before him such papers as he may require in making such examination. The state fire marshal is hereby authorized to administer oaths and affirmations to persons appearing as witnesses before him. False swearing in any matter or proceeding aforesaid shall be deemed perjury and shall be punishable as such.

(j) **Deputizing members of fire departments in this state.** — The state fire marshal may deputize a member of any fire department, duly organized and operating in this state, who is approved by the chief of his department and who is properly qualified, to act as his assistant for the purpose of making inspections with the consent of the property owner or the person in control of such property and such investigations as may be directed by the state fire marshal, and the carrying out of such orders as may be prescribed by him, to enforce and make effective the provisions of this article and any and all regulations promulgated by the state fire commission under authority of this article: *Provided,* That in the case of a volunteer fire department, only the chief thereof or his single designated assistant may be so deputized.

(k) **Written report of examinations.** — The state fire marshal shall, at the request of the county commission of any county or the municipal authorities of any incorporated municipality in this state, make to them a written report of the examination made by him regarding any fire happening within their respective jurisdictions.

(l) **Report of losses by insurance companies.** — It shall be the duty of each fire insurance company or association doing business in this state, within ten days after the adjustment of any loss sustained by it that exceeds fifteen hundred dollars, to report to the state fire marshal, upon forms furnished by him, such information regarding the amount of insurance, the value of the property insured
and the amount of claim as adjusted, as in the judgment of
the state fire marshal it is necessary for him to know. This
report is in addition to any such information required by
the state insurance commissioner. Upon the request of the
owner or insurer of any property destroyed or injured by
fire or explosion, or in which an attempt to cause a fire or
explosion may have occurred, the state fire marshal shall
make a written report to the person requesting the same of
the result of the examination made by him regarding the
property.

(m) Issuance of permits and licenses. — The state fire
marshal is authorized to issue permits and licenses as
required in this article.

(n) Issuance of citations for fire and life safety
violations. — The state fire marshal, any full-time deputy
fire marshal, and any full-time assistant fire marshal are
hereby authorized, and any person deputized pursuant to
subsection (j) of this section who is approved by the chief
of his department and who is properly qualified, may be
authorized by the state fire marshal, to issue citations, in
their respective jurisdictions, for fire and life safety
violations of the state fire code and as provided for by the
rules promulgated by the state fire commission in
accordance with article three, chapter twenty-nine-a of this
code: Provided, That a summary report of all citations
issued pursuant to this section by persons deputized under
subsection (j) of this section shall be forwarded
semiannually to the state fire marshal in such form and
containing such information as he may by regulation
require, including the violation for which the citation was
issued, the date of issuance, the name of the person issuing
the citation and the person to whom the citation was
issued. The state fire marshal may at any time revoke the
authorization of a person deputized pursuant to subsection
(j) of this section to issue citations, if in the opinion of the
state fire marshal, the exercise of such authority by such
person is inappropriate.

Violations for which citations may be issued include,
but are not limited to:

(1) Overcrowding places of public assembly;
(2) Locked or blocked exits in public areas;

(3) Failure to abate a fire hazard;

(4) Blocking of fire lanes or fire department connections; and

(5) Tampering with, or rendering inoperable except during necessary maintenance or repairs, on-premise firefighting equipment, fire detection equipment and fire alarm systems.

No person deputized pursuant to subsection (j) of this section may be authorized to issue a citation unless that person has satisfactorily completed a law-enforcement officer training course designed specifically for fire marshals. The course shall be approved by the law-enforcement training subcommittee of the governor's committee on criminal justice and highway safety and the state fire commission. In addition, no person deputized pursuant to subsection (j) of this section may be authorized to issue a citation until evidence of liability coverage of such person has been provided, in the case of a paid municipal fire department by the municipality wherein the fire department is located, or in the case of a volunteer fire department, by the county commission of the county wherein the fire department is located or by the municipality served by such volunteer fire department, and that evidence of liability coverage has been filed with the state fire marshal.

(o) Penalties for violations. — Any person who violates any fire and life safety regulation of the state fire code shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars or imprisoned in the county jail not more than ninety days, or both fined and imprisoned.

Each and every day during which any illegal erection, construction, reconstruction, alteration, maintenance or use continues after knowledge or official notice that same is illegal, shall be deemed a separate offense.
AN ACT to amend and reenact section sixteen-a, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring carbon monoxide detectors in certain residential units with a fuel-burning heating or cooking source after the first day of July, one thousand nine hundred ninety-eight; penalty; and requiring maintenance and repair workers to inform owners and lessors of the benefits of carbon monoxide detectors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units; penalty.

(a) On or before the first day of July, one thousand nine hundred ninety-one, an operational smoke detector shall be installed in the immediate vicinity of each sleeping area within all one- and two-family dwellings, including any "manufactured home" as that term is defined in subsection (j), section two, article nine, chapter twenty-one of this code. Such smoke detector shall be capable of sensing visible or invisible particles of combustion and shall meet the specifications and be installed as provided for in the National Fire Protection Association Standard 74, "Standard for the Installation, Maintenance and Use of Household Fire Warning Equipment", 1989 edition, and in the manufacturer's specifications. When activated, the smoke detector shall
provide an alarm suitable to warn the occupants of the
danger of fire.

(b) The owner of each dwelling described in
subsection (a) of this section shall provide, install and
replace the operational smoke detectors required by this
section. So as to assure that the smoke detector continues
to be operational, in each dwelling described in subsection
(a) of this section which is not occupied by the owner
thereof, the tenant in any such dwelling shall perform
routine maintenance on the smoke detectors within such
dwelling.

(c) Where a dwelling is not occupied by the owner and
is occupied by an individual who is deaf or hearing
impaired, the owner shall, upon written request by or on
behalf of such individual, provide and install a smoke
detector with a light signal sufficient to warn the deaf or
hearing-impaired individual of the danger of fire.

(d) An automatic fire sprinkler system installed in
accordance with the National Fire Protection Association
Standard 13D, "Standard for the Installation of Sprinkler
Systems in Residential Occupancies", 1989 edition, may be
provided in lieu of smoke detectors.

(e) After investigating a fire in any dwelling described
in subsection (a) of this section, the local investigating
authority shall issue to the owner a smoke detector
installation order in the absence of the required smoke
detectors.

(f) After the first day of July, one thousand nine
hundred ninety-eight, an operational carbon monoxide
detector with a suitable alarm shall be installed in
accordance with the manufacturer's direction:

(1) In any newly constructed residential unit which
has a fuel-burning heating or cooking source, including,
but not limited to, an oil or gas furnace or stove;

(2) In any residential unit which is connected to a
newly constructed building, including, but not limited to, a
garage, storage shed or bar, which has a fuel-burning
heating or cooking source, including, but not limited to,
an oil or gas furnace or stove.
(g) When repair or maintenance work is undertaken on a fuel-burning heating or cooking source or a venting system in an existing residential unit, the person making the repair or performing the maintenance shall inform the owner or lessor of the unit of the dangers of carbon monoxide poisoning and recommend the installation of a carbon monoxide detector.

(h) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars.

(i) A violation of this section shall not be deemed by virtue of such violation to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

(j) A violation of this section shall not constitute a defense in any civil action or proceeding involving any insurance policy.

(k) Nothing in this section shall be construed to limit the rights of any political subdivision in this state to enact laws imposing upon owners of any dwelling or other building described in subsection (a) or (f) of this section a greater duty with regard to the installation, repair and replacement of the smoke detectors or carbon monoxide detectors than is required by this section.

CHAPTER 156

(Com. Sub. for H. B. 4005—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

[By Request of the Executive]

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]
activities performed in connection with fighting forest fires under the supervision of the director.

Be it enacted by the Legislature of West Virginia:

That section four, article three, 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 3. FORESTS AND WILDLIFE AREAS.

§20-3-4. Authority and duties of director of the division of forestry and others as to forest fires; expenditures for forest fire control; limited liability of certain persons fighting forest fires.

Upon receiving notice of any fire which is injuring or endangering forest land within the state, the director of the division of forestry or his or her duly authorized representatives shall employ all necessary means to confine, extinguish or suppress the fire. For these purposes, any temporary or permanent employee of the division of forestry or any other agency of the state and any volunteer shall, under the general supervision of the director of the division of forestry, have the right and authority to enter upon public or private lands, to plow such lands, and in case of extreme emergency, to set backfires thereon. No person performing or reasonably attempting to perform any of the activities authorized by the preceding sentence under the general supervision of the director of the division of forestry, whether as a temporary or permanent employee of the division of forestry or any other agency of the state or as a volunteer, shall be liable in damages for the death of or injury to any person or for damage to any property as a result of his or her performance of such activities to an extent greater than the applicable limits of any liability insurance coverage available to such person under any liability insurance policy or policies issued to the division of forestry, any other agency of the state involved in suppressing the forest fire, any volunteer fire department
of which such person was a member and which volunteer fire department was responding to the forest fire at the time of the incident alleged to have caused such death, personal injury or property damage, or any combination thereof. The limitation of liability established by the preceding sentence shall not apply if the death, personal injury or property damage alleged was caused by such person’s willful or criminal misconduct, gross negligence or reckless misconduct, or by a conscious, flagrant indifference to the rights or safety of any person harmed by such conduct. The director of the division of forestry and any duly authorized representative may employ persons to detect fires which may injure or endanger forest land and may likewise summon or employ persons to assist in extinguishing such fires, who shall be paid for the actual time so employed, at a rate per hour to be determined by the director of the division of forestry: Provided, That the rate per hour shall not exceed the rate per hour paid for any comparable labor or skills by the division of forestry. Any person so summoned who shall fail or refuse to assist in extinguishing any such fire shall, unless such failure or refusal to assist is due to physical inability, be guilty of a misdemeanor.

Expenditures for detecting, confining, extinguishing or suppressing fires described in this section shall be charged against the state. The director of the division of forestry or his or her representative shall prepare, as soon as practicable, a sworn statement with the names of all persons who were summoned or employed to assist in fighting such fires, the time so spent by each, as well as the names of persons who furnished equipment, subsistence or supplies, or transportation therefor, and the amount of money due each for such services, subsistence, supplies or transportation. Requisitions shall be issued and payment of the sums due shall be made in the same manner as is provided for the making of other expenditures by the director of the division of forestry.
AN ACT to amend and reenact section nineteen, article fifteen, chapter seventeen-c, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to additional lighting equipment to be used by funeral hearses.

Be it enacted by the Legislature of West Virginia:

That section nineteen, article fifteen, 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 15. EQUIPMENT.


1 (a) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

2 (b) Any motor vehicle may be equipped with not more than one running board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

3 (c) Except for school buses as provided in this subsection, any motor vehicle may be equipped with not more than two back-up lamps either separately or in combination with other lamps, but any such back-up lamp shall not be lighted when the motor vehicle is in forward motion. School buses used for the transportation of school children in this state, whether owned and operated by a county board of education or privately owned and operated under contract with a county board of education, shall be equipped with two back-up lamps, one

*Clerk's Note: This section was also amended by SB 682 (Chapter 212), which passed subsequent to this act.
on each side of the rear door, with white lens or reflectors, capable of lighting the roadway and objects to the rear of the bus for safe backing during darkness, and which, at the option of the county board of education, may each provide fifty candlepower in illumination intensity instead of thirty-two candlepower.

(d) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing, and when so equipped may display such warning in addition to any other warning signals required by this article. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red.

(e) Vehicles used by "rural mail carriers" in carrying or delivering mail in rural areas may be equipped with amber flashing lights. Such lights shall be on the front and rear of the vehicle and may be activated when the vehicle is stopped or decreasing speed in order to stop in the course of carrying, delivering or picking up mail along the route.

(f) Vehicles used as the lead car in a funeral procession are hereby authorized to be equipped with, but are not required to use, purple lamps or purple flashing lights. Such lamps may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing a funeral procession, and when so equipped may display such warning in addition to any other warning signals required by this article. The lamps or flashing lights used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously either illuminated or flashing purple lights. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing or illuminated purple lights.
AN ACT to repeal section sixteen, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article seven-d, relating to liability for damages claimed for the consumption or use of donated food items or grocery products; legislative findings; definitions; limiting liability for persons, gleaners and nonprofit corporations under certain circumstances; exceptions.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter be further amended by adding thereto a new article, designated article seven-d, to read as follows:

ARTICLE 7D. GOOD SAMARITAN FOOD DONATION ACT.

§55-7D-1. Legislative findings.

§55-7D-2. Definitions.

§55-7D-3. Limiting liability of persons or corporations who donate food or grocery products; exceptions.

§55-7D-4. Limitation of liability for landowners or occupiers who allow collection or gleaning of donations; exceptions.

§55-7D-5. Construction.

§55-7D-1. Legislative findings.

1 The Legislature finds that wholesale and retail food distributors, shipping terminals and other establishments across the state are disposing of food that could be made available to those in need. However, many potential food donors are discouraged from donating this food because of potential liability. The United States Congress has recognized the need to encourage food distributors to make otherwise disposed-of food products available to
those in need and has adopted Title 42 United States Code § 1791 entitled the "Bill Emerson Good Samaritan Food Donation Act." This federal law encourages state and local governments to enact good samaritan or donor liability limitation laws to encourage private cooperative efforts to provide food for hungry people within their respective jurisdictions. The Legislature finds that this is a worthy goal, and therefore it is appropriate for the state to encourage participation in food donation programs by providing a statutory framework to protect food donators from liability for their good faith efforts.

§55-7D-2. Definitions.

As used in this section:

(a) "Apparently fit grocery product" means a grocery product that meets all quality and labeling standards imposed by federal, state and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus or other conditions.

(b) "Apparently wholesome food" means food that meets all quality and labeling standards imposed by federal, state and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus or other conditions.

(c) "Donate" means to give without requiring anything of monetary value from the recipient, except that the term includes donations by one nonprofit organization to another nonprofit organization, notwithstanding that the donor organization has charged a nominal fee to the donee organization, if the ultimate recipient or user is not required to give anything of monetary value.

(d) "Food" means any raw, cooked, processed or prepared edible substance, ice, beverage or ingredient used or intended for use, in whole or in part, for human consumption.

(e) "Gleaner" means a person who harvests a donated agricultural crop for free distribution to the needy or for
27 donation to a nonprofit organization for ultimate
distribution to the needy.

(f) "Grocery product" means a nonfood grocery
product, including disposable paper or plastic products,
household cleaning supplies, laundry detergent or other
household item.

(g) "Gross negligence" means voluntary and
conscious conduct, including a failure to act, by a person
who, at the time of the conduct, knew that the conduct was
likely to be harmful to the health or well-being of another
person.

(h) "Intentional misconduct" means conduct by a
person with knowledge, at the time of the conduct, that the
conduct is harmful to the health or well-being of another
person.

(i) "Nonprofit organization" means an incorporated
or unincorporated entity that:

(1) Is operating for religious, charitable or educational
purposes; and

(2) Does not provide net earnings to or operate in any
other manner that inures to the benefit of, any officer,
employee or shareholder of the entity.

(j) "Person" means an individual, corporation,
partnership, organization, association or governmental
entity, including a retail grocer, wholesaler, hotel, motel,
manufacturer, restaurant, caterer, farmer, nonprofit food
distributor or hospital. In the case of a corporation,
partnership, organization, association or governmental
entity, the term includes an officer, director, partner,
deacon, trustee, council member or other elected or
appointed individual responsible for the governance of the
entity.

§55-7D-3. Limiting liability of persons or corporations who
donate food or grocery products; exceptions.

(a) A person or gleaner is not subject to civil liability
or criminal liability arising from the nature, age,
packaging or condition of apparently wholesome food or
an apparently fit grocery product which the person or
gleaner donates in good faith to a nonprofit organization
for ultimate distribution without profit or gain to needy
individuals: Provided, That this limitation on liability
does not apply to an injury to or the death of an ultimate
user or recipient of the food or grocery product which
results from an act or omission of the person or gleaner
which constitutes gross negligence or intentional
misconduct.

(b) A nonprofit organization is not subject to civil
liability or criminal liability arising from the nature, age,
packaging or condition of apparently wholesome food or
an apparently fit grocery product which the nonprofit
organization received as a donation in good faith from a
person or gleaner for ultimate distribution without profit
or gain to needy individuals: Provided, That this
limitation on liability does not apply to an injury to or the
death of an ultimate user or recipient of the food or
grocery product which results from an act or omission of
the nonprofit organization which constitutes gross
negligence or intentional misconduct.

§55-7D-4. Limitation of liability for landowners or occupiers
who allow collection or gleaning of donations; exceptions.

Any person who is a landowner or occupier and who
allows the collection or gleaning of donations on his or
her property by gleaners or representatives of a nonprofit
organization, whether paid or unpaid, for ultimate
donation without profit or gain to needy individuals is not
subject to civil liability or criminal liability that arises due
to the injury or death of the gleaner or representative
while engaged in collecting or gleaning on the property:
Provided, That this limitation on liability does not apply
to an injury or death that results from an act or omission
of the landowner or occupier which constitutes gross
negligence or intentional misconduct.

§55-7D-5. Construction.

Nothing in this article shall be construed to supersede
state or local health regulations, nor to restrict the state
department of health or any county or municipal health
officer to regulate, inspect or ban the use of any donated
food for human consumption.
AN ACT to amend and reenact article two-b, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to grandparent visitation generally; setting forth legislative findings and intent; defining certain terms; providing for the grandparent of a child residing in this state to apply for an order granting reasonable visitation rights with a grandchild; authorizing a grandparent, in proceedings for divorce, custody, legal separation, annulment or establishment of paternity, to make a motion for reasonable visitation rights; authorizing a grandparent to petition for reasonable visitation rights when no domestic relations action is pending; requiring circuit courts to grant grandparent visitation upon a finding that visitation rights would be in the best interests of the child and would not substantially interfere with the parent-child relationship; describing the factors which the circuit court must consider in making a determination on a motion or petition for grandparent visitation; providing for an in camera interview with a child by the circuit judge; establishing the degree of proof required to support an award of grandparent visitation; prescribing the contents of orders granting or refusing a motion or petition for grandparent visitation; describing the effect of remarriage or adoption on an order granting grandparent visitation; providing for the modification or termination of orders; authorizing the award of attorney's fees; and defining the misdemeanor offense of allowing contact between a child and a person precluded from visitation, and establishing the penalty therefor.

Be it enacted by the Legislature of West Virginia:
That article two-b, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2B. GRANDPARENT VISITATION.

§48-2B-1. Legislative findings; intent.
§48-2B-5. Factors affecting a decision to grant visitation for grandparents.
§48-2B-6. Interview of child by judge.
§48-2B-9. Effect of remarriage or adoption on visitation for grandparents.
§48-2B-10. Modification or termination of grandparent visitation.
§48-2B-11. Attorney's fees; reasonable costs.

§48-2B-1. Legislative findings; intent.

The Legislature finds that circumstances arise where it is appropriate for circuit courts of this state to order that grandparents of minor children may exercise visitation with their grandchildren. The Legislature further finds that in such situations, as in all situations involving children, the best interests of the child or children are the paramount consideration. It is the express intent of the Legislature that the provisions for grandparent visitation that are set forth in this article are exclusive.


For purposes of this article:

(1) "Child" means a person under the age of eighteen years who has not been married or otherwise emancipated.

(2) "Grandparent" means a biological grandparent, a person married or previously married to a biological grandparent, or a person who has previously been granted custody of the parent of a minor child with whom visitation is sought.


A grandparent of a child residing in this state may, by motion or petition, make application to the circuit court of

(a) The provisions of this subsection apply to all proceedings for divorce, custody, legal separation, annulment or establishment of paternity. After the commencement of the proceeding, a grandparent seeking visitation with his or her grandchild may, by motion, apply to the circuit court for an order granting visitation. A grandparent moving for an order of visitation will not be afforded party status, but may be called as a witness by the court, and will be subject to cross-examination by the parties.

(b) The provisions of this subsection apply when no proceeding for divorce, custody, legal separation, annulment or establishment of paternity is pending. A grandparent may petition the circuit court for an order granting visitation with his or her grandchild, regardless of whether the parents of the child are married. If the grandparent filed a motion for visitation in a previous proceeding for divorce, custody, legal separation, annulment or establishment of paternity, and a decree or final order has issued in that earlier action, the grandparent may petition for visitation if the circumstances have materially changed since the entry of the earlier order or decree.

(c) When a petition under subsection (b) of this section is filed, the matter shall be styled "In re grandparent visitation of [petitioner's(s') name(s)]."

(d) The court, on its own motion or upon the motion of a party or grandparent, may appoint a guardian ad litem for the child to assist the court in determining the best interests of the child regarding grandparent visitation.

§48-2B-5. Factors affecting a decision to grant visitation for grandparents.

(a) The circuit court shall grant reasonable visitation to a grandparent upon a finding that visitation would be in the best interests of the child and would not substantially interfere with the parent-child relationship.
(b) In making a determination on a motion or petition made pursuant to section four of this article, the court shall consider the following factors:

(1) The age of the child;

(2) The relationship between the child and the grandparent;

(3) The relationship between each of the child's parents or the person with whom the child is residing and the grandparent;

(4) The time which has elapsed since the child last had contact with the grandparent;

(5) The effect that such visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing;

(6) If the parents are divorced or separated, the custody and visitation arrangement which exists between the parents with regard to the child;

(7) The time available to the child and his or her parents, giving consideration to such matters as each parent's employment schedule, the child's schedule for home, school and community activities, and the child's and parents' holiday and vacation schedule;

(8) The good faith of the grandparent in filing the motion or petition;

(9) Any history of physical, emotional or sexual abuse or neglect being performed, procured, assisted or condoned by the grandparent;

(10) Whether the child has, in the past, resided with the grandparent for a significant period or periods of time, with or without the child's parent or parents;

(11) Whether the grandparent has, in the past, been a significant caretaker for the child, regardless of whether the child resided inside or outside of the grandparent's residence;

(12) The preference of the parents with regard to the requested visitation; and
§48-2B-6. Interview of child by judge.

(a) In considering the factors listed in section five of this article for purposes of determining whether to grant visitation, establishing a specific visitation schedule, and resolving any issues related to the making of any determination with respect to visitation or the establishment of any specific visitation schedule, the court, in its discretion, may interview in chambers any or all involved children regarding their wishes and concerns. No person shall be present other than the court, the child, the child’s attorney or guardian ad litem, if any, and any necessary court personnel.

(b) No person shall obtain or attempt to obtain from a child a written or recorded statement or affidavit setting forth the wishes and concerns of the child regarding those visitation matters, and the court, in considering the factors listed in section five of this article for purposes of determining whether to grant any visitation, establishing a visitation schedule, or resolving any issues related to the making of any determination with respect to visitation or the establishment of any specific visitation schedule, shall not accept or consider such a written or recorded statement or affidavit.

(c) A child shall not be called as a witness in any proceeding to determine whether grandparent visitation should be awarded.


(a) If a motion for grandparent visitation is filed in a pending action for divorce, custody, legal separation, annulment or establishment of paternity pursuant to subsection (a), section four of this article, the grandparent shall be granted visitation if a preponderance of the evidence shows that visitation is in the best interest of the child and that:

(1) The party to the divorce through which the grandparent is related to the minor child has failed to answer or otherwise appear and defend the cause of action; or
(2) The whereabouts of the party through which the
grandparent is related to the minor child are unknown to
the party bringing the action and to the grandparent who
filed the motion for visitation.

(b) If a petition is filed pursuant to subsection (b),
section four of this article when the parent through whom
the grandparent is related to the grandchild does not: (1)
Have custody of the child; (2) share custody of the child;
or (3) exercise visitation privileges with the child that
would allow participation in the visitation by the
grandparent if the parent so chose, the grandparent shall
be granted visitation if a preponderance of the evidence
shows that visitation is in the best interest of the child.

(c) If a petition is filed pursuant to subsection (b),
section four of this article, there is a presumption that
visitation privileges need not be extended to the
grandparent if the parent through whom the grandparent
is related to the grandchild has custody of the child, shares
custody of the child, or exercises visitation privileges with
the child that would allow participation in the visitation by
the grandparent if the parent so chose. This presumption
may be rebutted by clear and convincing evidence that an
award of grandparent visitation is in the best interest of the
child.


(a) An order granting or refusing the grandparent’s
motion or petition for visitation shall state in writing the
court’s findings of fact and conclusions of law.

(b) In the court’s discretion, an order granting
visitation privileges to a grandparent may require
supervised visitation or may place such conditions upon
visitation that it finds are in the best interests of the child,
including, but not limited to, the following:

(1) That the grandparent not attempt to influence any
religious beliefs or practices of the children in a manner
contrary to the preferences of the child’s parents;

(2) That the grandparent not engage in, permit or
encourage activities, or expose the grandchild to
conditions or circumstances, that are contrary to the
preferences of the child’s parents; or
§48-2B-9. Effect of remarriage or adoption on visitation for grandparents.

(a) The remarriage of the custodial parent of a child does not affect the authority of a circuit court to grant reasonable visitation to any grandparent.

(b) If a child who is subject to a visitation order under this article is later adopted, the order for grandparent visitation is automatically vacated when the order for adoption is entered, unless the adopting parent is a stepparent, grandparent or other relative of the child.

§48-2B-10. Modification or termination of grandparent visitation.

(a) Any circuit court which grants visitation rights to a grandparent shall retain jurisdiction throughout the minority of the minor child with whom visitation is granted to modify or terminate such rights as dictated by the best interests of the minor child.

(b) A circuit court shall, based upon a petition brought by an interested person, terminate any grant of the right of grandparent visitation upon presentation of a preponderance of the evidence that a grandparent granted visitation has materially violated the terms and conditions of the order of visitation.

§48-2B-11. Attorney’s fees; reasonable costs.

In an action brought under the provisions of this article, a circuit court may order payment of reasonable attorney’s fees and costs based upon the equities of the positions asserted by the parties to pay such fees and costs.


Any grandparent who knowingly allows contact between the minor grandchild and a parent or other person who has been precluded visitation rights with the child by court order shall, in addition to any other remedy under section seven of this article, be guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county jail not more than thirty days or fined not less than one hundred dollars nor more than one thousand dollars.
AN ACT to amend and reenact section five, article twenty-nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, five, six, seven and ten, article six-a, chapter twenty-nine of said code; and to further amend said article by adding thereto a new section, designated section twelve, all relating to the education and public employees grievance process; providing for expedited grievance processes; expanding the jurisdiction of the board; changing the default provisions; giving board procedural jurisdiction at levels two and three; allowing mediation at the request of any party; allowing appeals to be filed in the circuit court of Kanawha County; and increasing the cap on attorney's fees for prevailing grievants.

Be it enacted by the Legislature of West Virginia:

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

Chapter
  18. Education.
  29. Miscellaneous Boards and Officers.

CHAPTER 18. EDUCATION.

ARTICLE 29. GRIEVANCE PROCEDURE.

§18-29-5. Education and state employees grievance board; hearing examiners.
(a) The education and state employees grievance board shall consist of three members who are citizens of the state appointed by the governor by and with the advice and consent of the Senate for overlapping terms of three years. No two members may be from the same congressional district, and no more than two of the appointed members may be from the same political party. No person may be appointed to membership on the board who is a member of any political party executive committee or holds any other public office or public employment under the federal government or under the government of this state. Members are eligible for reappointment, and any vacancy on the board shall be filled within thirty days of the vacancy by the governor by appointment for the unexpired term.

A member of the board may not be removed from office except for official misconduct, incompetence, neglect of duty, gross immorality or malfeasance, and then only in the manner prescribed in article six, chapter six of this code for the removal by the governor of the state elected officers.

The board shall hold at least two meetings yearly at times and places as it may prescribe and may meet at other times as may be necessary, the other meetings to be agreed to in writing by at least two of the members. The compensation for members of the board is seventy-five dollars for each calendar day devoted to the work of the board, but not more than seven hundred fifty dollars during any one fiscal year. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of board duties, but shall submit a request for reimbursement upon a sworn itemized statement.

The board shall administer the grievance procedure at levels two, three and four, as provided in section five, article six-a, chapter twenty-nine of this code, and as provided for in section four of this article and shall employ at least two full-time hearing examiners on an annual basis and clerical help as is necessary to implement
the legislative intent expressed in section one of this article.

In addition to the authorization granted by this section over education employees, the board has jurisdiction over the procedures to be followed in processing grievances filed under article six-a, chapter twenty-nine of this code.

The board shall hire hearing examiners who reside in different regional educational service agency areas unless and until the number of hearing examiners exceeds the number of the areas, at which time two hearing examiners may be from the same area. If a grievant previously before a hearing examiner again brings a grievance, a different hearing examiner is required to hear the grievance upon written request therefor by any party to the grievance. These hearing examiners serve at the will and pleasure of the board.

The board shall submit a yearly budget and shall report annually to the governor and Legislature regarding receipts and expenditures, number of level four hearings conducted, synopses of hearing outcomes and other information as the board determines appropriate. The board shall further evaluate on an annual basis the level four grievance process and the performance of all hearing examiners and include the evaluation in the annual report to the governor and Legislature. In making the evaluation, the board shall notify all institutions, employee organizations and all grievants participating in level four grievances in the year for which evaluation is being made and shall provide for the submission of written comment or the hearing of testimony regarding the grievance process, or both. The board shall provide suitable office space for all hearing examiners in space other than that utilized by any institution as defined in section two of this article and shall ensure that reference materials are generally available.

The board is authorized to promulgate rules consistent with the provisions of this article; the rules shall be adopted in accordance with chapter twenty-nine-a of this code.
(b) Hearing examiners may consolidate grievances, allocate costs among the parties in accordance with section eight of this article, subpoena witnesses and documents in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code, provide relief found fair and equitable in accordance with the provisions of this article, and exercise other powers as provides for the effective resolution of grievances not inconsistent with any rules of the board or the provisions of this article.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6A. GRIEVANCE PROCEDURE FOR STATE EMPLOYEES.

§29-6A-4. Procedural levels and procedure at each level.
§29-6A-5. Education and state employees grievance board; hearing examiners.
§29-6A-6. Hearings generally.
§29-6A-7. Enforcement and reviewability; costs; good faith.
§29-6A-10. Employee's right to attorney's fees and costs.
§29-6A-12. Mediation required at request of either party.


(a) (1) A grievance shall be filed within the times specified in section four of this article and shall be processed as rapidly as possible. The number of days indicated at each level specified in section four of this article is the maximum number of days allowed and, if a decision is not rendered at any level within the prescribed time limits, the grievant may appeal to the next level: Provided, That the specified time limits shall be extended whenever a grievant is not working because of accident, sickness, death in the immediate family or other cause necessitating the grievant to take personal leave from his or her employment.

(2) Any assertion by the employer that the filing of the grievance at level one was untimely shall be asserted by the employer on behalf of the employer at or before the level two hearing. The grievant prevails by default if a
grievance evaluator required to respond to a grievance at any level fails to make a required response in the time limits required in this article, unless prevented from doing so directly as a result of sickness, injury, excusable neglect, unavoidable cause or fraud. Within five days of the receipt of a written notice of the default, the employer may request a hearing before a level four hearing examiner for the purpose of showing that the remedy received by the prevailing grievant is contrary to law or clearly wrong. In making a determination regarding the remedy, the hearing examiner shall presume the employee prevailed on the merits of the grievance and shall determine whether the remedy is contrary to law or clearly wrong in light of that presumption. If the examiner finds that the remedy is contrary to law, or clearly wrong, the examiner may modify the remedy to be granted to comply with the law and to make the grievant whole.

(b) If the employer or its agent intends to assert the application of any statute, policy, rule or written agreement or submits any written response to the filed grievance at any level, a copy of the materials shall be forwarded to the grievant and any representative of the grievant named in the filed grievance. Anything submitted and the grievant's response to the submitted materials, if any, becomes part of the record. Failure to assert the statute, policy, rule or written agreement at any level does not prevent the subsequent submission of the materials in accordance with the provisions of this subsection.

(c) The grievant may file the grievance at the level vested with authority to grant the requested relief if each lower administrative level agrees in writing to filing the grievance at a higher level. In the event a grievance is filed at a higher level, the employer shall provide copies to each lower administrative level.

(d) An employee may withdraw a grievance at any time by notice, in writing, to the level where the grievance is then current. The grievance may not be reinstated by the grievant unless reinstatement is granted by the grievance evaluator at the level where the grievance was
withdrawn. If more than one employee is named as grievant in a particular grievance, the withdrawal of one employee does not prejudice the rights of any other employee named in the grievance. In the event a grievance is withdrawn or an employee withdraws from a grievance, the employer shall notify, in writing, each lower administrative level.

(e) Grievances may be consolidated at any level by agreement of all parties.

(f) A grievant may be represented by an employee organization representative, legal counsel or any other person, including a fellow employee, in the preparation or presentation of the grievance. At the request of the grievant, that person or persons may be present at any step of the procedure: Provided, That at level one of the grievance, as set forth in section four of this article, a grievant may have only one representative.

(g) If a grievance is filed which cannot be resolved within the time limits set forth in section four of this article prior to the end of the employment term, the time limit shall be reduced as agreed to in writing by both parties so that the grievance procedure may be concluded within ten days following the end of the employment term or an otherwise reasonable time.

(h) No reprisals of any kind may be taken by any employer or agent of the employer against any interested party, or any other participant in the grievance procedure by reason of the participation. A reprisal constitutes a grievance, and any person held responsible for reprisal action is subject to disciplinary action for insubordination.

(i) Decisions rendered at all levels of the grievance procedure shall be dated, in writing setting forth the decision or decisions and the reasons for the decision, and transmitted to the grievant and any representative named in the grievance within the time prescribed. If the grievant is denied the relief sought, the decision shall include the name of the individual at the next level to whom appeal may be made.
Once a grievance has been filed, supportive or corroborative evidence may be presented at any conference or hearing conducted pursuant to the provisions of this article. Whether evidence substantially alters the original grievance and renders it a different grievance is within the discretion of the grievance evaluator at the level where the new evidence is presented. If the grievance evaluator rules that the evidence renders it a different grievance, the party offering the evidence may withdraw it, the parties may consent to the evidence, or the grievance evaluator may decide to hear the evidence or rule that the grievant must file a new grievance. The time limitation for filing the new grievance is measured from the date of the ruling.

Any change in the relief sought by the grievant shall be consented to by all parties or may be granted at level four within the discretion of the hearing examiner.

Forms for filing grievances, giving notice, taking appeals, making reports and recommendations, and all other necessary documents shall be made available by the immediate supervisor to any employee upon request. The forms shall include information prescribed by the board. The grievant shall have access to the employer's equipment for purposes of preparing grievance documents subject to the reasonable rules of the employer governing the use of the equipment.

Notwithstanding the provisions of section three, article nine-a, chapter six of this code, or any other provision relating to open proceedings, all conferences and hearings pursuant to this article shall be conducted in private except that, upon the grievant's request, conferences and hearings at levels two and three shall be open to employees of the grievant's immediate office or work area or, at the request of the grievant, shall be public. Within the discretion of the hearing examiner, conferences and hearings may be public at level four.

No person may confer or correspond with a hearing examiner regarding the merits of the grievance unless all parties to the grievance are present.
(o) Grievances shall be processed during regular working hours. Attempts shall be made to process the grievance in a manner which does not interfere with the normal operation of the employer.

(p) The grievant or the employee selected by a grievant to represent him or her in the processing of a grievance through this procedure, or both, shall be granted necessary time off during working hours for the grievance procedure without loss of pay and without charge to annual or compensatory leave credits. In addition to actual time spent in grievance conferences and hearings, the grievant or the employee representative, or both, shall be granted time off during working hours, not to exceed four hours per grievance, for the preparation of the grievance without loss of pay and without charge to annual or compensatory leave credits. However, the first responsibility of any state employee is the work assigned by the appointing authority to the employee. An employee may not allow grievance preparation and representation activities to seriously affect the overall productivity of the employee.

(q) The aggrieved employee, employing agency and representatives of both have the right to call, examine and cross-examine witnesses who are employees of the agency against which the grievance is lodged and who have knowledge of the facts at issue.

(r) Both parties may produce witnesses other than employees of the agency against which the grievance is lodged, and the witnesses are subject to examination and cross-examination.

(s) If an employer or the employer's agent causes a conference or hearing to be postponed without adequate notice to employees who are scheduled to appear during their normal work day, the employees may not suffer any loss in pay for work time lost.

(t) Any grievance evaluator may be excused from participation in the grievance process for reasonable cause, including, but not limited to, conflict of interest or incapacitation, and if this occurs the grievance evaluator at
the next higher level shall designate an alternative grievance evaluator if it is reasonable and necessary.

(u) No less than one year following resolution of a grievance at any level, the grievant may by request in writing have removed any record of the grievant's identity from any file kept by the employer.

(v) All grievance forms and reports shall be kept in a file separate from the personnel file of the employee and may not become a part of the personnel file, but shall remain confidential except by mutual written agreement of the parties.

(w) The number of grievances filed against an employer or agent or by an employee is not, per se, an indication of the employer's or agent's or the employee's job performance.

(x) Any chief administrator with whom a grievance is filed may appeal a level four decision on the grounds that the decision:

(1) Is contrary to law or a lawfully adopted rule or written policy of the employer;

(2) Exceeds the hearing examiner's statutory authority;

(3) Is the result of fraud or deceit;

(4) Is clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or

(5) Is arbitrary or capricious or characterized by abuse of discretion.

The appeal shall follow the procedure regarding appeal provided the grievant in section four of this article and provided both parties in section seven of this article.

§29-6A-4. Procedural levels and procedure at each level.

(a) Level one.

Within ten days following the occurrence of the event upon which the grievance is based, or within ten days of
the date on which the event became known to the grievant, or within ten days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative, or both, may file a written grievance with the immediate supervisor of the grievant. At the request of the grievant or the immediate supervisor, an informal conference shall be held to discuss the grievance within three days of the receipt of the written grievance. The immediate supervisor shall issue a written decision within six days of the receipt of the written grievance. If a grievance alleges discrimination or retaliation by the immediate supervisor of the grievant, the level one filing may be waived by the grievant and the grievance may be initiated at level two with the administrator or his or her designee, within the time limits set forth in this subsection for filing a grievance at level one. A meeting may be held to discuss the issues in dispute, but the meeting is not required.

(b) Level two.

Within five days of receiving the decision of the immediate supervisor, the grievant may file a written appeal to the administrator of the grievant's work location, facility, area office, or other appropriate subdivision of the department, board, commission or agency. The administrator or his or her designee shall hold a conference within five days of the receipt of the appeal and issue a written decision upon the appeal within five days of the conference.

(c) Level three.

Within five days of receiving the decision of the administrator of the grievant's work location, facility, area office, or other appropriate subdivision of the department, board, commission or agency, the grievant may file a written appeal of the decision with the chief administrator of the grievant's employing department, board, commission or agency. A copy of the appeal and the level two decision shall be served upon the director of the division of personnel by the grievant.
The chief administrator or his or her designee shall hold a hearing in accordance with section six of this article within seven days of receiving the appeal. The director of the division of personnel or his or her designee may appear at the hearing and submit oral or written evidence upon the matters in the hearing.

The chief administrator or his or her designee shall issue a written decision affirming, modifying or reversing the level two decision within five days of the hearing.

(d) Level four.

(1) If the grievant is not satisfied with the action taken by the chief administrator or his or her designee, within five days of the written decision the grievant may request, in writing, on a form furnished by the employer, that the grievance be submitted to a hearing examiner as provided for in section five of this article. The hearing shall be conducted in accordance with section six of this article within fifteen days following the request for the hearing: Provided, That the hearing may be held within thirty days following the request, or within a time that is mutually agreed upon by the parties, if the hearing examiner gives reasonable cause, in writing, as to the necessity for the delay. A copy of the appeal shall be served by the grievant upon the director of the division of personnel. The director of the division of personnel, or his or her designee, may appear at the hearing and submit oral or written evidence upon the matters in the hearing.

(2) Within thirty days following the hearing, the hearing examiner shall render a decision in writing to all parties setting forth findings and conclusions on the issues submitted. Subject to the provisions of section seven of this article, the decision of the hearing examiner is final upon the parties and is enforceable in circuit court.

(e) Expedited grievance process.

(1) A grievance involving suspension without pay, demotion or dismissal or loss of wages may be initiated at level two with the administrator of the grievant's work location, facility, area office, or other appropriate
subdivision of the department, board, commission or agency.

(2) An employee may grieve a final action of the employer involving a dismissal, demotion or suspension exceeding twenty days directly to the hearing examiner. The expedited grievance shall be in writing and shall be filed within ten days of the date of the final action with the chief administrator and the director of the division of personnel.

§29-6A-5. Education and state employees grievance board; hearing examiners.

(a) The education employees grievance board, created by virtue of the provisions of section five, article twenty-nine, chapter eighteen of this code, is renamed the education and state employees grievance board and, in addition to those duties set forth in chapter eighteen, shall administer the grievance procedure at level four as provided for in section four of this article. The board has jurisdiction regarding procedural matters at levels two and three of the grievance procedure. The board shall employ, in addition to those persons employed as hearing examiners for educational employee grievances, at least two full-time hearing examiners for the purpose of conducting hearings at level four, as provided in section four of this article. The hearing examiners are employed on an annual basis along with the clerical help necessary to implement the legislative intent expressed in section one of this article.

In addition to the budget required for submission to the Legislature by virtue of the provisions of section five, article twenty-nine, chapter eighteen of this code, the board shall submit a yearly budget and shall report annually to the governor and the Legislature regarding proceedings conducted under this article, including receipts and expenditures, the number of level four hearings conducted, synopses of hearing outcomes and other information as the board determines appropriate. The board shall further evaluate on an annual basis the level four grievance process and the performance of all hearing examiners and include the evaluation in the
annual report to the governor and the Legislature. In 
making the evaluation the board shall notify all 
employers, employee organizations, the director of the 
division of personnel and all grievants participating in 
level four grievances in the year for which evaluation is 
being made and shall provide for the submission of 
written comment or the hearing of testimony regarding 
the grievance process, or both.

The board shall provide suitable office space for all 
hearing examiners in space other than that utilized by any 
employer as defined in section two of this article and shall 
ensure that reference materials are generally available. 
The board shall provide forms for filing grievances, giving 
notice, taking appeals, making reports and 
recommendations and other documents as the board 
determines necessary for any stage of a grievance under 
this article.

The board is authorized to propose rules for 
promulgation consistent with the provisions of this article, 
and in accordance with article three, chapter twenty-nine-a 
of this code.

(b) Hearing examiners may consolidate grievances, 
allocate costs among the parties in accordance with section 
eight of this article, subpoena witnesses and documents in 
accordance with the provisions of section one, article five, 
chapter twenty-nine-a of this code, provide relief as is 
determined fair and equitable in accordance with the 
provisions of this article, and take any other action to 
provide for the effective resolution of grievances not 
inconsistent with any rules of the board or the provisions 
of this article: Provided, That in all cases the hearing 
examiner has the authority to provide appropriate 
remedies including, but not limited to, making the 
employee whole.

§29-6A-6. Hearings generally.

(a) The chief administrator or his or her designee 
acting as a grievance evaluator or the hearing examiner 
shall conduct all hearings in an impartial manner and shall 
ensure that all parties are accorded procedural and
substantive due process. All parties shall have an opportunity to present evidence and argument with respect to the matters and issues involved, to cross-examine and to rebut evidence. Reasonable notice of a hearing shall be sent prior to the hearing to all parties and their named representative and shall include the date, time and place of the hearing. Level one, level two and level three hearings shall be at a convenient place accessible to the aggrieved employee. All hearings shall be held on the employer's premises or on other premises mutually agreeable to the parties and within regular working hours: Provided, That any hearing might continue beyond normal working hours. Level four hearings shall be at a place to be designated by the hearing examiner.

(b) The employer that is party to the grievance shall produce prior to the hearing any documents, not privileged, and which are relevant to the subject matter involved in the pending grievance, that have been requested by the grievant, in writing.

(c) The chief administrator or his or her designee or the hearing examiner has the power to: (1) Administer oaths and affirmations; (2) subpoena witnesses; (3) regulate the course of the hearing; (4) hold conferences for the settlement or simplification of the issues; (5) exclude immaterial, irrelevant or repetitious evidence; (6) sequester witnesses; (7) restrict the number of advocates; and (8) take any other action not inconsistent with the rules of the board or the provisions of this article.

(d) All the testimony and evidence at any level three or level four hearing shall be recorded by mechanical means, and all recorded testimony and evidence at the hearing shall be transcribed and certified by affidavit. The chief administrator is responsible for promptly providing a copy of the certified transcript of a level three hearing to any party to that hearing who requests the transcript. The hearing examiner may also request and be provided a transcript upon appeal to level four and allocate the costs for the transcript as prescribed in section eight of this article. The board is responsible for promptly providing a copy of the certified transcript of a
level four hearing to any party to that hearing who requests the transcript.

(e) Formal rules of evidence may not be applied, but parties are bound by the rules of privilege recognized by law. No employee may be compelled to testify against himself or herself in a grievance involving disciplinary action. The burden of proof rests with the employer in disciplinary matters.

(f) All materials submitted in accordance with section three of this article; the mechanical recording of all testimony and evidence or the transcription of the testimony, if any; the decision; and any other materials considered in reaching the decision are the record of a grievance. The record shall be submitted to any level at which appeal has been made, and the record shall be considered, but the development of the record is not limited thereby.

(g) Every decision pursuant to a hearing shall be in writing and shall be accompanied by findings of fact and conclusions of law.

(h) Prior to the decision any party may propose findings of fact and conclusions of law.

§29-6A-7. Enforcement and reviewability; costs; good faith.

(a) The decision of the hearing examiner is final upon the parties and is enforceable in circuit court.

(b) Either party or the director of the division of personnel may appeal to the circuit court of Kanawha County or to the circuit court of the county in which the grievance occurred on the grounds that the hearing examiner's decision:

(1) Is contrary to law or a lawfully adopted rule or written policy of the employer;

(2) Exceeds the hearing examiner's statutory authority;

(3) Is the result of fraud or deceit;
(4) Is clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or

(5) Is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) The appeal shall be filed within thirty days of receipt of the hearing examiner's decision. The decision of the hearing examiner is not automatically stayed upon the filing of an appeal, but a stay may be granted by the circuit court upon separate motion for a stay.

(d) The court's ruling shall be upon the entire record made before the hearing examiner, and the court may hear oral arguments and require written briefs. The court may reverse, vacate or modify the decision of the hearing examiner or may remand the grievance to the appropriate chief administrator for further proceedings.

(e) Both employer and employee shall at all times act in good faith and make every possible effort to resolve disputes at the lowest level of the grievance procedure. The hearing examiner may make a determination of bad faith and in extreme instances allocate the cost of the hearing to the party found to be acting in bad faith. The allocation of costs shall be based on the relative ability of the party to pay the costs.

§29-6A-10. Employee's right to attorney's fees and costs.

If an employee appeals to a circuit court an adverse decision of a hearing examiner rendered in a grievance proceeding pursuant to provisions of this article or is required to defend an appeal and the person substantially prevails, the adverse party or parties is liable to the employee, upon final judgment or order, for court costs, and for reasonable attorney's fees, to be set by the court, for representing the employee in all administrative hearings and before the circuit court and the supreme court of appeals, and is further liable to the employee for any court reporter's costs incurred during any administrative hearings or court proceedings: Provided, That in no event shall such attorney's fees be awarded in excess of a total of one thousand five hundred dollars for
the administrative hearings and circuit court proceedings
nor an additional one thousand dollars for supreme court
proceedings:  Provided, however, That the requirements
of this section shall not be construed to limit the
employee's right to recover reasonable attorney's fees in a
mandamus proceeding brought under section nine of this
article.

§29-6A-12. Mediation required at request of either party.

Upon the request of either party, the board may
require mediation or other alternative dispute resolution
technique to assist the parties in identifying, clarifying and
resolving issues regarding the grievance. Mediation may
be requested at any time prior to the level four hearing.
All of the information that is provided by parties during
mediation is and shall remain confidential. Mediators
may not be called as witnesses to provide testimony in
unresolved grievances that proceed to a grievance hearing,
and any hearing examiner involved in a mediation process
may not hear the grievance or be consulted regarding the
merits of the grievance.

CHAPTER 161

(Com. Sub. for H. B. 4118—By Delegates Cann, Warner, Coleman,
Linch, Staton and Kominar)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and four, article one,
chapter forty-four-a of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended; to amend and
reenact sections one, two, six and nine, article two of said
chapter; and to amend and reenact section five, article four
of said chapter, all relating generally to establishing conser-
vatorship for missing persons; defining missing person; and
providing petition, notice and hearing requirements for ap-
pointing conservators for missing persons.
Be it enacted by the Legislature of West Virginia:

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

Article
2. Procedure for Appointment.
4. Termination, Revocation and Modification of Appointments.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-1. Short title and legislative findings.

§44A-1-1. Short title and legislative findings.

This chapter shall be known and may be cited as the "West Virginia Guardianship and Conservatorship Act."

The Legislature finds that section six, article eight of the constitution of the state of West Virginia gives it the discretionary authority to pass legislation which "...provides that all matters of probate, the appointment and qualification of personal representatives, guardians, committees and curators, and the settlements of their accounts..." be under the exclusive jurisdiction of circuit courts. The Legislature further finds and declares that the use of the word "all" does not require an interpretation that the Legislature must place every aspect of such matters with circuit courts, but, that because of the discretionary authority given, the Legislature may transfer, from time to time, only those matters which it believes would be better served under the jurisdiction of circuit courts.

The Legislature hereby further finds and declares that legal proceedings requiring a tribunal to determine whether persons should be appointed to manage the personal or financial affairs of individuals deemed mentally incompetent, mentally retarded, mentally
handicapped or missing involve considerations of constitutionally protected rights which can best be resolved within the circuit courts of this state.


As used in this chapter, unless a different meaning is clearly required by the context:

(1) "Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of a protected person, and, where the context plainly indicates, the term "conservator" shall mean or include a "limited conservator" or a "temporary conservator."

(2) "Guardian" means a person appointed by the court who is responsible for the personal affairs of a protected person, and, where the context plainly indicates, the term "guardian" shall mean or include a "limited guardian" or a "temporary guardian."

(3) "Protected person" means an adult individual, eighteen years of age or older, who has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to such an extent that the individual lacks the capacity: (A) To meet the essential requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or (B) to manage property or financial affairs or to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment, alone, will not be considered sufficient evidence that the individual is a protected person within the meaning of this subsection. "Protected person" also means a person whom a court has determined is a missing person.

(4) "Interested person" means: (A) An individual who is the subject of a guardianship or conservatorship proceeding; (B) a guardian or conservator of a protected person; and (C) any other person with an actual and
substantial interest in the proceeding, either generally or as to a particular matter, as distinguished from a person who has only a nominal, formal, or technical interest in or connection with the proceeding.

(5) "Limited conservator" means a person appointed by the court who has only those responsibilities for managing the estate and financial affairs of a protected person, as specified in the order of appointment.

(6) "Limited guardian" means one appointed by the court who has only those responsibilities for the personal affairs of a protected person, as specified in the order of appointment.

(7) "Person" means, generally, a natural person, any corporation, association, partnership or other business entity, any political subdivision or other public agency, or any estate, trust or other collection of properties to which the law attributes the capacity of having rights or duties.

(8) "Living will" means a living will existing and duly executed in accordance with the provisions of section three, article thirty, chapter sixteen of this code.

(9) "Medical power of attorney" means a power of attorney existing and duly executed in accordance with the provisions of section six, article thirty-a, chapter sixteen of this code.

(10) "Missing person" means an adult individual, eighteen years of age or older, who is absent from his or her usual place of residence in the state and whose whereabouts are unknown for a period of six months or more.

(11) "Surrogate decision-maker" means an individual identified as such by an attending physician in accordance with the provisions of section seven, article thirty-b, chapter sixteen of this code.

ARTICLE 2. PROCEDURE FOR APPOINTMENT.

§44A-2-1. Filing of petition; jurisdiction; fees.
§44A-2-2. Who may file petition; contents.
§44A-2-9. Hearing on petition to appoint.

§44A-2-1. Filing of petition; jurisdiction; fees.

(a) A petition for the appointment of a guardian or conservator shall be filed with the clerk of the circuit court in the county in which the alleged protected person resides, or, if an alleged protected person has been admitted to a health care or correctional facility, in the county in which that facility is located. A petition for the appointment of a conservator for a missing person shall be filed with the clerk of the circuit court in the county in which the missing person last resided.

(b) The circuit court in which the proceeding is first commenced shall have exclusive jurisdiction unless that court determines that a transfer of venue would be in the best interests of the person alleged to need protection.

(c) The fee for filing a petition shall be seventy dollars, payable upon filing to the circuit clerk, all of which shall be retained by the circuit clerk. The person bringing the petition shall be responsible for fees for filings of the petition and other papers, for service of process, and for copies of court documents and transcripts. In the event that a guardian and/or conservator is appointed by the court, such fees shall be reimbursed to the individual who filed the petition from the protected person's estate, if funds are available. Any person who is pecuniarily unable to pay such fees and costs as set forth in article one, chapter fifty-nine of this code, and article two, chapter fifty-one of this code, will not be required to pay said fees and costs.

§44A-2-2. Who may file petition; contents.

(a) A petition for the appointment of a guardian, a conservator, or both, may be filed by the individual alleged to be a protected person, by a person who is responsible for or has assumed responsibility for the individual's care or custody, by the facility providing care to the individual, by the person that the individual has nominated as guardian or conservator, or by any other
interested person, including, but not limited to, the
department of health and human resources.

(b) A petition for the appointment of a guardian, a
conservator, or both, shall state the petitioner's name, place
of residence, post office address, and relationship to the
alleged protected person, and shall, to the extent known as
of the date of filing, include the following:

(1) The alleged protected person's name, date of birth,
place of residence or location and post office address;

(2) The names and post office addresses of the alleged
protected person's nearest relatives, in the following order:

(i) The spouse and children, if any; or if none

(ii) The parents and brothers and sisters, if any; or if
none

(iii) The nearest known relatives who would be entitled
to succeed to the person's estate by intestate succession as
set forth in article one, chapter forty-two of this code.

Once a relative or several relatives have been identified
in one of the aforementioned categories, relatives in a
lower category do not have to be listed in the petition;

(3) The name, place of residence or location and post
office address of the individual or facility that is
responsible for or has assumed responsibility for the
person's care or custody;

(4) The name, place of residence or location and post
office address of any person designated as a surrogate
decision-maker for the alleged protected person, or of any
representative or representatives designated under a
durable power of attorney, medical power of attorney or
living will, of which the alleged protected person is the
principal, and the petitioner shall attach a copy of any
such documents, if available;

(5) The name, post office address and phone number
of the attorney representing the petitioner in the petition
and appointment proceedings;
(6) Whether the person's incapacity will prevent attendance at the hearing and the reasons therefor;

(7) The type of guardianship or conservatorship requested and the reasons for the request;

(8) The proposed guardian or conservator's name, post office address and, if the proposed guardian or conservator is an individual, the individual's age, occupation and relationship to the alleged protected person;

(9) The name and post office address of a guardian nominated by the alleged protected person if different from the proposed guardian or conservator, and, if the person nominated as a guardian or conservator is an individual, the individual's age, occupation and relationship to the alleged protected person;

(10) The name and post office address of any guardian or conservator currently acting, whether in this state or elsewhere;

(11) If the appointment of a limited guardian is requested, the specific areas of protection and assistance to be included in the order of appointment;

(12) If the appointment of a limited conservator is requested, the specific areas of management and assistance to be included in the order of appointment; and

(13) If the appointment of a conservator is requested for a missing person, the specific circumstances under which the person is considered missing.


(a) Upon the filing of the petition and evaluation report, the court shall promptly issue a notice fixing the date, hour and location for a hearing to take place within sixty days.

(b) The alleged protected person shall be personally served with the notice, a copy of the petition, and the evaluation report not less than fourteen days before the
hearing. The person may not waive notice, and a failure

to properly notify the person shall be jurisdictional.

(c) A copy of the notice, together with a copy of the
petition, shall be mailed by certified mail, return receipt
requested, by the petitioner, at least fourteen days before
the hearing to all individuals seven years of age or older
and to all entities whose names and post office addresses
appear in the petition. In the case of a missing person, a
copy of the petition for the appointment of a conservator
shall be mailed by certified mail, return receipt requested,
by the petitioner, at least fourteen days before the hearing
to the last known address of the missing person. A copy
of certified mail return receipts shall be filed in the office
of the circuit clerk on or before the date of hearing.

(d) The notice shall include a brief statement in large
print of the purpose of the proceedings, and shall inform
the alleged protected person of the right to appear at the
hearing, the right to an attorney and the right to object to
the proposed appointment. Additionally, the notice shall
include the following statement in large print:

POSSIBLE CONSEQUENCES OF A COURT
FINDING THAT YOU ARE INCAPACITATED

At the hearing you may lose many of your rights. A
guardian may be appointed to make personal decisions
for you. A conservator may be appointed to make
decisions concerning your property and finances. The
appointment may affect control of how you spend your
money, how your property is managed and controlled,
who makes your medical decisions, where you live,
whether you are allowed to vote and other important
rights.

(e) No person may be appointed a guardian or
conservator without first receiving proper notice and
having the opportunity for a hearing.

§44A-2-9. Hearing on petition to appoint.

(a) The court may hear the petition for the
appointment of a guardian or conservator or may
designate the mental hygiene commissioner in the circuit
to serve as the trier of fact at the hearing on the petition: 

Provided, That the court shall be the trier of fact at the hearing on a petition for the appointment of a conservator for a missing person. If a mental hygiene commissioner is appointed, a mental hygiene commitment proceeding may not be held simultaneously with a proceeding for the appointment of a guardian or conservator. The designated mental hygiene commissioner shall submit written findings of fact and recommendations to the court upon conclusion of the hearing. The court may accept or reject the recommendations of the mental hygiene commissioner. Only the court may enter an order appointing a guardian or conservator.

(b) The hearing may be held at such convenient place as the court or mental hygiene commissioner directs, including the place where the alleged protected person is located. The hearing shall be closed to the public. The proposed guardian or conservator shall attend the hearing except for good cause shown. Any individual or entity may apply for permission to observe or participate at the hearing, and the court or mental hygiene commissioner shall grant the request if reasonably satisfied that the applicant's participation would be in the best interests of the alleged protected person.

(c) The alleged protected person is entitled to attend the hearing, to oppose the petition, to be represented by an attorney, to present evidence, to compel the attendance of witnesses and to confront and cross-examine all witnesses. If the alleged protected person is present at the hearing, the court or mental hygiene commissioner shall verbally inform the person of such rights, of the contents of the petition, and of the purpose and legal effect of the appointment of a guardian or conservator. Except in the case of a missing person, the hearing shall not proceed if the alleged protected person is not present unless there is an affidavit of a physician presented to the court, qualified expert testimony to warrant a finding that the presence of the individual is not possible due to a physical inability or that such presence would significantly impair his or her health, or evidence that the person refuses to appear.
(d) The standard of proof to be applied in determining whether the alleged protected person is a person for whom a guardian or conservator should be appointed is clear and convincing evidence.

(e) The court shall make specific findings of fact and conclusions of law in support of any orders entered.

(f) Upon request, a transcript of the proceedings of appointment shall be provided for the purposes of an appeal.

(g) In the case of a hearing held on a petition for the appointment of a conservator for a missing person, the court must be satisfied by clear and convincing evidence that the person has been missing and their whereabouts are unknown for six months or more and the appointment of a conservator is necessary to protect the interests of and to manage the estate and the financial affairs of the missing person. If the court finds there is no necessity to appoint a full conservator, the court may appoint a limited conservator to manage the estate and financial affairs of the missing person. The court may, only as a last resort, appoint a sheriff to serve as a conservator for a missing person.

ARTICLE 4. TERMINATION, REVOCATION AND MODIFICATION OF APPOINTMENTS.

§44A-4-5. Termination of guardianship or conservatorship of protected person - When authorized.

A guardianship or conservatorship of a protected person shall terminate upon the death of the protected person, whenever jurisdiction is transferred to another state or if ordered by the court following a hearing on the petition of any interested person. In the case of a missing person, a conservatorship shall terminate when the person’s death is established by the production of a certified death certificate, the person is presumed dead pursuant to the provisions of article nine, chapter forty-four of this code, or the missing person is located.
AN ACT to amend and reenact section two, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the collection of head tax on dogs; and exempting dogs used as guide or support dogs by disabled persons.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. DOGS AND CATS.

§19-20-2. Collection of head tax on dogs; duties of assessor and sheriff; registration of dogs; disposition of head tax; taxes on dogs not collected by assessor.

1. It shall be the duty of the county assessor and his or her deputies of each county within this state, at the time they are making assessment of the personal property within such county, to assess and collect a head tax of three dollars on each dog, male or female; and in addition to the above, the assessor and his or her deputies shall have the further duty of collecting any such head tax on dogs as may be levied by the ordinances of each and every municipality within the county. However, no head tax may be levied against any guide or support dog especially trained for the purpose of serving as a guide, leader, listener or support for a blind person, deaf person or a person who is physically or mentally disabled because of any neurological, muscular, skeletal or psychological disorder that causes weakness or inability to perform any function. Guide or support dogs must be registered as provided by this section. In the event that the owner,
keeper or person having in his or her possession or allowing to remain on any premises under his or her control any dog above the age of six months, shall refuse or fail to pay such tax, when the same is assessed or within fifteen days thereafter, to the assessor or deputy assessor, then such assessor or deputy assessor shall certify such tax to the county dog warden; if there be no county dog warden he or she shall certify such tax to the county sheriff, who shall take charge of the dog for which the tax is delinquent and impound the same for a period of fifteen days, for which service he or she shall be allowed a fee of one dollar and fifty cents to be charged against such delinquent taxpayer in addition to the taxes herein provided for. In case the tax and impounding charge herein provided for shall not have been paid within the period of fifteen days, then the sheriff may sell the impounded dog and deduct the impounding charge and the delinquent tax from the amount received therefor, and return the balance, if any, to the delinquent taxpayer. Should the sheriff fail to sell the dog so impounded within the time specified herein, he or she shall kill such dog and dispose of its body.

At the same time as the head tax is assessed, the assessor and his or her deputies shall, on the forms prescribed under section four of this article, take down the age, sex, color, character of hair (long or short) and breed (if known) and the name and address of the owner, keeper or harborer thereof. When the head tax, and extra charges, if any, are paid, the officer to whom payment is made shall issue a certificate of registration and a registration tag for such dog.

In addition to the assessment and registration above provided for, whenever a dog either is acquired or becomes six months of age after the assessment of the personal property of the owner, keeper or harborer thereof, the said owner, keeper or harborer of said dog shall, within ten days after the acquisition or maturation, register the said dog with the assessor, and pay the head tax thereon unless the prior owner, keeper or harborer paid the head tax.
All certificates of registration and registration tags issued pursuant to the provisions of this section shall be issued for the fiscal year and shall be valid from the date on which issued until the thirtieth day of June of that fiscal year, or until reissued by the assessor or his or her deputy in the regular performance of his or her duties, but in no case shall previous registration tags be valid after September thirtieth of the next ensuing fiscal year.

The assessor collecting the head tax on dogs shall be allowed a commission of ten percent upon all such taxes collected by him or her, and shall turn in to the county treasury ninety percent of such taxes so collected, as are levied by this section; and the assessor shall turn over to the treasurer or other proper officer of each and every municipality within the county ninety percent of such taxes levied by the ordinances of such municipality. All such dog taxes, except those belonging to municipalities, shall be accredited to the dog and kennel fund provided for in section ten of this article. Such dog taxes as are collected for and turned over to municipalities shall be deposited by the proper officer of such municipalities to such fund and shall be expended in such manner as the law of such municipality may provide. All taxes on dogs not collected by the assessor shall be collected by the regular tax collecting officer of the county and placed to the credit of the dog and kennel fund.

CHAPTER 163

(S. B. 764—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article sixteen-a, chapter seventeen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to funding of projects of the Hatfield-McCoy regional recreation authority from proceeds of parkways authority’s economic development projects and tourism projects; and duty of parkways authority to seek authorization to issue additional revenue bonds.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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-13. Tolls, rents, fees, charges and revenues; competitive bidding on contracts.

(a) (1) The parkways authority is hereby authorized to fix, revise, charge and collect tolls for the use of each parkway project and the different parts or sections thereof, and to fix, revise, charge and collect rents, fees, charges and other revenues, of whatever kind or character, for the use of each economic development project or tourism project, or any part or section thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right-of-way adjoining the paved portion, for placing thereon telephone, telegraph, electric light, power or other utility lines, gas stations, garages, stores, hotels, restaurants and advertising signs, or for any other purpose except for tracks for railroad or railway use, and to fix the terms, conditions, rents and rates of charges for such use. Such tolls, rents, fees and charges shall be so fixed and adjusted in respect of the aggregate of tolls, or in respect of the aggregate rents, fees and charges, from the project or projects in connection with which the bonds of any issue shall have been issued as to provide a fund sufficient with other revenues, if any, to pay: (A) The cost of maintaining, repairing and operating such project or
projects; and (B) the principal of and the interest on such
bonds as the same shall become due and payable, and to
create reserves for such purposes. Such tolls, rents, fees
and other charges shall not be subject to supervision or
regulation by any other commission, board, bureau,
department or agency of the state. The tolls, rents, fees,
charges and all other revenues derived from the project or
projects in connection with which the bonds of any issue
shall have been issued, except such part thereof as may be
necessary to pay such cost of maintenance, repair and
operation and to provide such reserves therefor as may be
provided for in the resolution authorizing the issuance of
such bonds or in the trust agreement securing the same,
shall be set aside at such regular intervals as may be
provided in such resolution or such trust agreement in a
sinking fund which is hereby pledged to, and charged
with, the payment of: (i) the interest upon such bonds as
such interest shall fall due; (ii) the principal of such bonds
as the same shall fall due; (iii) the necessary charges of
paying agents for paying principal and interest; and (iv)
the redemption price or the purchase price of bonds
retired by call or purchase as therein provided. The use
and disposition of moneys to the credit of such sinking
fund shall be subject to the provisions of the resolution
authorizing the issuance of such bonds or of such trust
agreement. Except as may otherwise be provided in such
resolution or such trust agreement, such sinking fund shall
be a fund for all such bonds without distinction or priority
of one over another. The moneys in the sinking fund, less
such reserve as may be provided in such resolution or trust
agreement, if not used within a reasonable time for the
purchase of bonds for cancellation as above provided,
shall be applied to the redemption of bonds at the
redemption price then applicable.

(2) (A) In fiscal year one thousand nine hundred
ninety-eight, after the parkways authority has met or
provided for the satisfaction of each requirement imposed
by the provisions of subdivision (1) of this subsection, the
parkways authority shall pay two hundred fifty thousand
dollars to the Hatfield-McCoy regional recreation authority from any remaining balance of revenues received from economic development projects and tourism projects.

(B) Upon the effective date of this act, the parkways authority shall seek authorization from the federal highway administration, the state department of transportation and the trustee under any trust indenture or agreement existing as the result of the issuance of any revenue bonds under the provisions of this article to issue additional revenue bonds in a total amount not to exceed six million dollars for the purpose of funding projects of the Hatfield-McCoy regional recreation authority. Upon the agreement of all of such entities that the parkways authority be authorized to do so, as certified to the parkways authority, the governor and the joint committee on government and finance, the parkways authority is authorized to issue additional revenue bonds in a total amount not to exceed six million dollars. The proceeds of the revenue bonds shall be used to fund projects of the Hatfield-McCoy regional recreation authority. Each issuance of such revenue bonds and the application of the proceeds thereof shall be subject to each condition, restriction or other provision of this article applicable to the issuance of parkway revenue bonds. In the event the agreement is not certified as required by this subsection, and until the same is certified, the parkways authority shall pay two hundred fifty thousand dollars to the Hatfield-McCoy regional recreation authority in the fiscal year ending the thirtieth day of June, two thousand, and in each fiscal year thereafter, for a total of four consecutive years, for the purpose of funding projects of the Hatfield-McCoy regional recreation authority. These amounts shall be paid in quarterly installments from remaining balances in each such fiscal year of revenues received from economic development projects and tourism projects as determined in the manner provided in paragraph (A) of this subdivision.
(b) The parkways authority shall cause, as soon as it is legally able to do so, all contracts to which it is a party and which relate to the operation, maintenance or use of any restaurant, motel or other lodging facility, truck and automobile service facility, food vending facility or any other service facility located along the West Virginia turnpike, to be renewed on a competitive bid basis. All contracts relating to any facility or services entered into by the parkways authority with a private party with respect to any project constructed after the effective date of this legislation shall be let on a competitive bid basis only. If the parkways authority receives a proposal for the development of a project, such proposal shall be made available to the public in a convenient location in the county wherein the proposed facility may be located. The parkways authority shall publish a notice of the proposal by a Class I legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The publication area shall be the county in which the proposed facility would be located. Any citizen may communicate by writing to the parkways authority his or her opposition to or approval to such proposal within a period of time not less than forty-five days from the publication of the notice. No contract for the development of a project may be entered into by the parkways authority until a public hearing is held in the vicinity of the location of the proposed project with at least twenty days' notice of such hearing by a Class I publication pursuant to section two, article three, chapter fifty-nine of this code. The parkways authority shall make written findings of fact prior to rendering a decision on any proposed project. All studies, records, documents and other materials which are considered by the parkways authority in making such findings shall be made available for public inspection at the time of the publication of the notice of public hearing and at a convenient location in the county where the proposed project may be located. The parkways authority shall promulgate rules in accordance with chapter twenty-nine-a of this code for the conduct of any hearing required by this section. Persons attending any such hearing shall be afforded a reasonable opportunity to speak and be heard on the proposed project.
CHAPTER 164

(Com. Sub. for H. B. 4299—By Mr. Speaker, Mr. Kiss, and Delegates
Martin, Compton, Leach, Douglas, Staton and Capito)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

Be it enacted by the Legislature of West Virginia:

That chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article sixteen-b; that section two-b, article four-a, chapter nine of said code be amended and reenacted; and that said article four-a be further amended by adding thereto a new section, designated section three, all to read as follows:
CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH PROGRAM.

§5-16B-1. Expansion of health care coverage to children; creation of program; legislative directives.

§5-16B-2. Definitions.

§5-16B-3. Reporting requirements.

§5-16B-4. Children's health policy board created; qualifications and removal of members; powers; duties; meetings; and compensation.

§5-16B-5. Director of the children's health program; qualifications; powers and duties.

§5-16B-6. Financial plans requirements.

§5-16B-7. West Virginia children's health fund.

§5-16B-8. Termination and reauthorization.


§5-16B-1. Expansion of health care coverage to children; creation of program; legislative directives.

(a) It is the intent of the Legislature to expand access to health services for eligible children and to pay for this coverage by using private, state and federal funds to purchase those services or purchase insurance coverage for those services. To achieve this intention, the West Virginia children's health program is hereby created. The program shall be administered by the division of children's health within the bureau for medical services of the department of health and human resources in accordance with the provisions of this article and the applicable provisions of Title XXI of the Social Security Act of 1997. Participation in the program may be made...
available to families of eligible children, subject to eligibility criteria and processes to be established, which shall not create an entitlement to coverage in any person. Nothing in this article may be construed to require any appropriation of state general revenue funds for the payment of any benefit provided for in this article. In the event that this article conflicts with the requirements of federal law, federal law shall govern.

(b) In developing a children’s health program that operates with the highest degree of simplicity and governmental efficiency, the board shall avoid duplicating functions available in existing agencies and may enter into interagency agreements for the performance of specific tasks or duties at a specific or maximum contract price.

(c) In developing benefit plans, the board may consider any cost savings, administrative efficiency or other benefit to be gained by considering existing contracts for services with state health plans and negotiating modifications of those contracts to meet the needs of the program.

§5-16B-2. Definitions.

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

(a) “Board” means the children’s health policy board;

(b) “Director” means the director of the children’s health program;

(c) “Division” means the division of children’s health created within the bureau for medical services in the department of health and human resources;

(d) “Essential community health service provider” means a health care provider that:

(1) Has historically served medically needy or medically indigent patients and demonstrates a commitment to serve low-income and medically indigent populations which make up a significant portion of its patient population, or, in the case of a sole community
provider, serves medically indigent patients within its medical capability; and

(2) Either waives service fees or charges fees based on a sliding scale and does not restrict access or services because of a client's financial limitations including, but not limited to, community mental health centers, school health clinics, primary care centers, pediatric health clinics or rural health clinics.

(e) "Program" means the West Virginia children's health program.

§5-16B-3. Reporting requirements.

(a) On the first day of January, one thousand nine hundred ninety-nine and annually thereafter, the director shall report to the governor and the Legislature regarding the number of children enrolled in the program or programs; the average annual cost per child per program; the number of children enrolled in the Medicaid program, pursuant to Title XIX of the Social Security Act, the public employees insurance agency and private sector insurance programs; the number of remaining uninsured children; and the effectiveness of the outreach activities for the previous year. The report shall include any information that can be obtained regarding the prior insurance and health status of the children enrolled in programs created pursuant to this article. Beginning with the second annual report, the director shall include information regarding the cost, quality and effectiveness of the health care delivered to enrollees of this program; satisfaction surveys; and health status improvement indicators. The board, in conjunction with other state health and insurance agencies, shall develop indicators designed to measure the quality and effectiveness of children's health programs, which information shall be included in the annual report.

(b) On a quarterly basis, the director shall provide reports to the legislative oversight commission on health and human resources accountability on the number of children served, including the number of newly enrolled children for the reporting period and current projections.
for future enrollees; outreach efforts and programs; statistical profiles of the families served and health status indicators of covered children; the average annual cost of coverage per child, the total cost of children served by provider type, service type and contract type; outcome measures for children served; reductions in uncompensated care; performance with respect to the financial plan and any other information as the legislative oversight commission on health and human resources accountability may require.

(c) The director shall report initial statistical information on the children’s health program to the legislative oversight commission on health and human resources accountability. The report shall include, but not be limited to, the number of uninsured children eligible for the program, statistical information regarding the families of eligible children, and the projected average annual cost of coverage per child.

§5-16B-4. Children’s health policy board created; qualifications and removal of members; powers; duties; meetings; and compensation.

(a) There is hereby created the West Virginia children’s health policy board, which shall consist of the director of the public employees insurance agency, the secretary of the department of health and human resources or his or her designee, and five citizen members appointed by the governor, one of whom shall represent childrens’ interests and one of whom shall be a certified public accountant, to assume the duties of the office immediately upon appointment, pending the advice and consent of the Senate. A member of the Senate, as appointed by the Senate president and a member of the House of Delegates, as appointed by the speaker of the House of Delegates, shall serve as nonvoting members. Of the citizen members first appointed, one shall serve one year, two shall serve two years and two shall serve three years. All future appointments shall be for terms of three years, except that an appointment to fill a vacancy shall be for the unexpired term only. Three of the citizen members shall have at least a bachelor’s degree and
experience in the administration or design of public or
private employee or group benefit programs and the
children's representative shall have experience that
demonstrates knowledge in the health, educational and
social needs of children. No more than three citizen
members may be members of the same political party and
no board member shall represent or have a pecuniary
interest in an entity reasonably expected to compete for
contracts under this article. Members of the board shall
assume the duties of the office immediately upon
appointment and shall hold an initial meeting not later
than the thirtieth day of June, one thousand nine hundred
ninety-eight. The members shall elect a chairperson. No
member may be removed from office by the governor
except for official misconduct, incompetence, neglect of
duty, neglect of fiduciary duty or other specific
responsibility imposed by this article, or gross immorality.
Vacancies in the board shall be filled in the same manner
as the original appointment.

(b) The purpose of the board is to develop plans for
health services or health insurance that are specific to the
needs of children and to bring fiscal stability to this
program through development of an annual financial plan
designed in accordance with the provisions of this article.

(c) Notwithstanding any other provisions of this code
to the contrary, any insurance benefits offered as a part of
the programs designed by the board are exempt from the
minimum benefits and coverage requirements of articles
fifteen and sixteen, chapter thirty-three of this code.

(d) The board may consider adopting the maximum
period of continuous eligibility permitted by applicable
federal law, regardless of changes in a family's economic
status, so long as other group insurance does not become
available to a covered child.

(e) The board shall meet at the time and place as
specified by the call of the chairperson or upon the written
request to the chairperson by at least two members.
Notice of each meeting shall be given in writing to each
member by the chairperson at least three days in advance
of the meeting. Four voting members shall constitute a quorum.

(f) For each day or portion of a day spent in the discharge of duties pursuant to this article, the board shall pay each of its citizen members the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties.

§5-16B-5. Director of the children’s health program; qualifications; powers and duties.

(a) A division director shall be appointed by the governor, with the advice and consent of the Senate, and shall be responsible for the implementation, administration and management of the children’s health insurance program created under this article. The director shall have at least a bachelor’s degree and a minimum of three years experience in health insurance administration.

(b) The director shall employ any administrative, technical and clerical employees as are required for the proper administration of the program and for the work of the board. He or she shall present recommendations and alternatives for the design of the initial and annual plans and other actions undertaken by the board in furtherance of this article.

(c) The director, under the supervision of the board, is responsible for the administration and management of the program and shall have the power and authority to make all rules necessary to effectuate the provisions of this article. Nothing in this article shall limit the director's ability to manage the program on a day-to-day basis.

(d) The director shall have exclusive authority to execute any contracts as are necessary to effectuate the provisions of this article: Provided, That the board shall approve all contracts for the provision of services or insurance coverage under the program. The provisions of article three, chapter five-a of this code, relating to the division of purchases of the department of finance and administration, shall not apply to any contracts for any health insurance coverage, health services, or professional
services authorized to be executed under the provisions of this article: Provided, however, That before entering into any such contract the director shall invite competitive bids from all qualified entities and shall deal directly with those entities in presenting specifications and receiving quotations for bid purposes. The director shall award those contracts on a competitive basis taking into account the experience of the offering agency, corporation, insurance company or service organization. Before any proposal to provide benefits or coverage under the plan is selected, the offering agency, corporation, insurance company or service organization shall provide assurances of utilization of essential community health service providers to the greatest extent practicable. In evaluating these factors, the director may employ the services of independent, professional consultants. The director shall then award the contracts on a competitive basis.

(e) The director shall issue requests for proposals from essential community health service providers for defined portions of services under the children's health plan regionally or statewide, and shall, to the greatest extent practicable, either directly contract with, or require participating providers to, contract with essential community health service providers to provide the services under the plan.

(f) Subject to the advice and consent of the board, the director may require reinsurance of primary contracts, as contemplated in the provisions of sections fifteen and fifteen-a, article four, chapter thirty-three of this code.

§5-16B-6. Financial plans requirements.

(a) Benefit plan design — All financial plans required by this section shall establish: (1) The design of a benefit plan or plans; (2) the maximum levels of reimbursement to categories of health care providers; (3) any cost containment measures for implementation during the applicable fiscal year; and (4) the types and levels of cost to families of covered children. To the extent compatible with simplicity of administration, fiscal stability and other goals of the program established in this article, the
financial plans may provide for different levels of costs based on ability to pay.

(b) Initial plan — For presentation to the board at the first meeting, the governor shall prepare: (1) A statement of goals and objectives of the children’s health program; and (2) an estimate of the total amount of general and special revenues available to fund the program for the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-nine. The initial plan is subject to the following guidelines:

(1) The board shall establish a target date for implementation of the program during the state fiscal year one thousand nine hundred ninety-nine and may offer the same benefit package as that offered to children of state employees insured through the public employees insurance agency.

(2) During state fiscal year one thousand nine hundred ninety-nine, benefits under this program shall be made available to children ages six through eighteen whose custodial parents or guardians have an income equal to or less than one hundred fifty percent of the federal poverty level as determined according to eligibility standards and other criteria approved by the board.

(3) All program costs, including the administration of the program and incurred but unreported claims, shall not exceed eighty-five percent of the funding available to the program for the state fiscal year one thousand nine hundred ninety-nine.

(4) The board shall afford interested and affected persons an opportunity to offer comment on the plan at a public meeting of the board and, in developing any proposed plan under this article, shall solicit comments in writing from interested and affected persons.

(c) Actuary requirements — Beginning with state fiscal year two thousand, any financial plan, or modifications, approved or proposed by the board shall be submitted to and reviewed by an actuary before final approval. The financial plan shall be submitted to the governor and
Legislature with the actuary's written professional opinion that all estimated program and administrative costs of the agency under the plan, including incurred but unreported claims, will not exceed ninety percent of the funding available to the program for the fiscal year for which the plan is proposed; and, that the financial plan allows for no more than thirty days of accounts payable to be carried over into the next fiscal year. This actuarial requirement is in addition to any requirement imposed by Title XXI of the Social Security Act of 1997.

(d) Subsequent annual plans — The board shall review implementation of its initial or current financial plan in light of actual experience and shall prepare an annual financial plan for fiscal year two thousand and each fiscal year thereafter during which the board remains in existence. For each fiscal year, the governor shall provide an estimate of requested appropriations and total funding available to the board no later than the first day of July of the preceding fiscal year. The board shall submit its final, approved financial plan, subject to the actuarial and public hearing requirements of this article, to the governor and to the Legislature no later than the first day of January preceding the fiscal year. The financial plan for a fiscal year shall become effective and shall be implemented by the director on the first day of July of such fiscal year. Annual plans developed pursuant to this subsection are subject to the provisions of subsections (a) and (c) of this section and the following guidelines:

(1) The aggregate actuarial value of the plan established as the benchmark plan should be considered as a targeted maximum or limitation in developing the benefits package.

(2) All estimated program and administrative costs, including incurred but not reported claims, shall not exceed ninety percent of the funding available to the program for the applicable fiscal year.

(3) The state's interest in achieving health care services for all its children at less than two hundred percent of the federal poverty level shall take precedence over enhancing the benefits available under this program.
(e) The provisions of chapter twenty-nine-a of this code do not apply to the preparation, approval and implementation of the financial plans required by this section.

(f) The board shall meet no less than once each quarter to review implementation of its current financial plan and, using actuarial data, shall make those modifications to the plan that are necessary to ensure its fiscal stability and effectiveness of service. The board may not increase the types and levels of cost to families of covered children during its quarterly review except in the event of a true emergency. The board may not expand the population of children to whom the program is made available except in its annual plan.

(g) For any fiscal year in which legislative appropriations differ from the governor’s estimate of general and special revenues available to the agency, the board shall, within thirty days after passage of the budget bill, make any modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met.

§5-16B-7. West Virginia children’s health fund.

(a) There is hereby created in the state treasury a special revolving fund to be known as the “West Virginia children’s health fund”, which shall be an interest-bearing account. All moneys deposited or accrued in this fund shall be used exclusively:

(1) To provide the state’s share of the children’s health fund;

(2) To cover administrative costs associated with the children’s health program; and

(3) To cover outreach activities.

(b) Moneys from the following sources may be placed into the fund:

(1) All public funds appropriated by the Legislature or transferred by any public agency as contemplated or permitted by applicable federal program laws;
(2) All private moneys contributed by corporations, individuals or other entities to the fund as contemplated and permitted by applicable federal and state laws;

(3) Any accrued interest; and

(4) Federal financial participation matching the amounts referred to in subdivisions (1), (2) and (3) of this subsection, in accordance with Section 1902 (a) (2) of the Social Security Act.

(c) Any balance remaining in the children's health fund at the end of any state fiscal year shall not revert to the state treasury but shall remain in this fund and shall be used only in a manner consistent with this article.

(d) Notwithstanding the provisions of section two, article two, chapter twelve of this code, funds of the West Virginia children's health fund may not be redesignated for any purpose other than those set forth in this subsection. All state and private moneys received by the program shall be deposited in the West Virginia consolidated investment pool with the West Virginia investment management board, with the interest income a proper credit to all such funds.

§5-16B-8. Termination and reauthorization.

(a) The program established in this article abrogates and shall be of no further force and effect, without further action by the Legislature, upon the occurrence of any of the following:

(1) The date of entry of a final judgment or order by a court of competent jurisdiction which disallows the program;

(2) The effective date of any reduction in annual federal funding levels below the amounts allocated and/or projected in Title XXI of the Social Security Act of 1997; or

(3) The effective date of any federal rule or regulation negating the purposes or effect of this article.
(4) For purposes of subdivisions (2) and (3) of this subsection, if a later effective date for such reduction or negation is specified, such date will control.

(b) Pursuant to the provisions of article ten, chapter four of this code, the board shall terminate on the first day of July, two thousand four, unless extended by legislation enacted before the termination date.

c) Upon termination of the board and notwithstanding any provisions to the contrary, the director may change the levels of costs to covered families only in accordance with rules proposed to the Legislature pursuant to the provisions of chapter twenty-nine-a of this code.


The board and the director are authorized to work in conjunction with a nonprofit corporation organized pursuant to the corporate laws of the state, structured to permit qualification pursuant to section 501(c) of the Internal Revenue Code for purposes of assisting the children's health program and funded from sources other than the state or federal government. Members of the board may sit on the board of directors of the private nonprofit corporation.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.

§9-4A-2b. Expansion of coverage to children and terminally ill; West Virginia children's health plan.

§9-4A-3. West Virginia Title XXI-Medicaid fund.

§9-4A-2b. Expansion of coverage to children and terminally ill; West Virginia children's health plan.

(a) It is the intent of the Legislature that steps be taken to expand coverage to children and the terminally ill and to pay for this coverage by fully utilizing federal funds. To achieve this intention, the department of health and human resources shall undertake the following:
(1) The department shall provide a streamlined application form, which shall be no longer than two pages, for all families applying for medical coverage for children under any of the programs set forth in this section.

(2) The department shall provide the option of hospice care to terminally ill West Virginians who otherwise qualify for medicaid. The department shall provide quarterly reports to the legislative oversight commission on health and human resources accountability created pursuant to section four, article twenty-nine-e, chapter sixteen of this code regarding the program provided for in this subdivision. The report shall include, but not be limited to, the total number, by age, of newly eligible clients served, the average annual cost of coverage per client, and the total cost, by provider type, to serve all clients.

(3) The department shall accelerate the medicaid option for coverage of medicaid to all West Virginia children whose family income is below one hundred percent of the federal poverty level. The department shall provide quarterly reports to the legislative oversight commission on health and human resources accountability regarding the program acceleration provided for in this subdivision. The report shall include, but not be limited to, the number of newly eligible clients, by age, served as a result of the acceleration, the average annual cost of coverage per client and the total cost of all clients served by provider type.

(4) Effective the first day of July, one thousand nine hundred ninety-eight, the department shall expand medicaid coverage for only those West Virginia children below the age of six years whose family income is below one hundred fifty percent of the federal poverty level. This program will be known as the Title XXI-Medicaid program and administered in accordance with the applicable provisions contained in Titles XIX and XXI of the Social Security Act. The department shall coordinate the eligibility determination, outreach efforts, purchasing strategies, service delivery system and reporting...
requirements with the Title XXI program created pursuant to provisions of article sixteen-b, chapter five of this code.

(b) Notwithstanding the provisions of section two-a of this article, the accruing interest in the medical services trust fund may be utilized to pay for the programs specified in subdivisions (2) and (3) of subsection (a) of this section: Provided, That to the extent the accrued interest is not sufficient to fully fund the specified programs, the disproportionate share hospital funds paid into the medical services trust fund after the thirtieth day of June, one thousand nine hundred ninety-four, may be applied to cover the cost of the specified programs.

(c) On the first day of January, one thousand nine hundred ninety-five and annually thereafter, the department shall report to the governor and to the Legislature information regarding the number of children and elderly covered by the programs in subdivisions (2) and (3) of subsection (a), the cost of services by type of service provided, a cost-benefit analysis of the acceleration and expansion on other insurers and the reduction of uncompensated care in hospitals as a result of the programs.

(d) On the first day of January, one thousand nine hundred ninety-nine, and annually thereafter, the department shall report to the governor and to the Legislature information regarding the number of children enrolled in the Title XIX-Medicaid program as a result of implementation of the provisions of subdivision (4), subsection (a) of this section; the number of children enrolled in the new Title XXI-Medicaid program; the estimated number of children eligible for enrollment in either program; the cost of services by type of service provided in both programs; an analysis of the impact of the programs on other insurers; and the reduction of uncompensated care in hospitals as a result of the programs. The annual report filed by the department shall also include information relating to any proposed expansion of the population to be served under the state's medicaid program, other than the expansions specifically authorized in this section. The department may not
expand the population to be served until sixty days following the filing of the report required in this subsection. The department shall make quarterly reports to the legislative oversight commission on health and human resources accountability, established pursuant to section four, article twenty-nine-e, chapter sixteen of this code regarding the development, implementation and monitoring of the program.

§9-4A-3. West Virginia Title XXI-Medicaid fund.

(a) There is hereby created in the state treasury a special revolving fund to be known as the “West Virginia Title XXI-Medicaid Fund”, which shall be an interest-bearing account established and maintained to purchase health services for low-income children.

(b) Funds paid into this account shall be derived from the following sources:

(1) Any appropriations by the Legislature;

(2) All public funds transferred by any public agency as permitted by applicable federal law;

(3) Any private funds contributed, donated or bequeathed by corporations, individuals or other entities to the fund as contemplated and permitted by applicable federal law; and

(4) All interest or return on investments accruing to the fund.

(c) Moneys from this fund shall be used exclusively for the following purposes:

(1) To purchase health care services for the program defined in subdivision (4), subsection (a) of this section, associated administrative costs, outreach activities and eligibility determination costs; and

(2) To provide the state’s share of the enhanced federal medical assistance percentage funds.

(d) Notwithstanding the provisions of section two, article two, chapter twelve of this code, moneys with the Title XXI-Medicaid program may not be redesignated for any purpose other than those set forth in this subsection.
AN ACT to amend and reenact section five, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the conversion of rural hospital acute care beds to skilled nursing beds certified by both medicare and medicaid; exception to agency rules and certain statutory requirements.

Be it enacted by the Legislature of West Virginia:

That section five, article two-d, 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 2D. CERTIFICATE OF NEED.

§16-2D-5. Powers and duties of state agency.

(a) The state agency shall administer the certificate of need program as provided by this article.

(b) The state agency is responsible for coordinating and developing the health planning research efforts of the state and for amending and modifying the state health plan which includes the certificate of need standards.

(c) The state agency may seek advice and assistance of other persons, organizations and other state agencies in the performance of the state agency's responsibilities under this article.

(d) For health services for which competition appropriately allocates supply consistent with the state health plan, the state agency shall, in the performance of its functions under this article, give priority, where appropriate to advance the purposes of quality assurance, cost effectiveness and access, to actions which would
strengthen the effect of competition on the supply of the services.

(e) For health services for which competition does not or will not appropriately allocate supply consistent with the state health plan, the state agency shall, in the exercise of its functions under this article, take actions, where appropriate to advance the purposes of quality assurance, cost effectiveness and access and the other purposes of this article, to allocate the supply of the services.

(f) Notwithstanding the provisions of section seven of this article, the state agency may charge a fee for the filing of any application, the filing of any notice in lieu of an application, the filing of any exemption determination request or the filing of any request for a declaratory ruling. The fees charged may vary according to the type of matter involved, the type of health service or facility involved or the amount of capital expenditure involved. The state agency shall implement this subsection by filing procedural rules pursuant to chapter twenty-nine-a of this code. The fees charged shall be deposited into a special fund known as the certificate of need program fund to be expended for the purposes of this article.

(g) No hospital, nursing home or other health care facility shall add any intermediate care or skilled nursing beds to its current licensed bed complement. This prohibition also applies to the conversion of acute care or other types of beds to intermediate care or skilled nursing beds: Provided, That hospitals eligible under the provisions of section four-a and subsection (i), section five of this article may convert acute care beds to skilled nursing beds in accordance with the provisions of these sections, upon approval by the state agency. Furthermore, no certificate of need shall be granted for the construction or addition of any intermediate care or skilled nursing beds except in the case of facilities designed to replace existing beds in unsafe existing facilities. A health care facility in receipt of a certificate of need for the construction or addition of intermediate care or skilled nursing beds which was approved prior to the effective date of this section shall incur an obligation for a capital
expenditure within twelve months of the date of issuance of the certificate of need. No extensions shall be granted beyond the twelve-month period.

(h) No additional intermediate care facility for the mentally retarded (ICF/MR) beds shall be granted a certificate of need, except that prohibition does not apply to ICF/MR beds approved under the Kanawha County circuit court order of the third day of August, one thousand nine hundred eighty-nine, civil action number MISC-81-585 issued in the case of E. H. v. Matin, 168 W.V. 248, 284 S.E.2d 232 (1981).

(i) Notwithstanding the provisions of subsection (g), section five of this article and, further notwithstanding the provisions of subsection (b), section three of this article, an existing acute care hospital may apply to the health care authority for a certificate of need to convert acute care beds to skilled nursing beds: Provided, That the proposed skilled nursing beds are medicare certified only: Provided, however, That any hospital which converts acute care beds to medicare certified only skilled nursing beds shall not bill for any medicaid reimbursement for any converted beds. In converting beds, the hospital shall convert a minimum of one acute care bed into one medicare certified only skilled nursing bed. The health care authority may require a hospital to convert up to and including three acute care beds for each medicare certified only skilled nursing bed: Provided further, That a hospital designated or provisionally designated by the state agency as a rural primary care hospital may convert up to thirty beds to a distinct-part nursing facility, including skilled nursing beds and intermediate care beds, on a one-for-one basis if the rural primary care hospital is located in a county without a certified free-standing nursing facility and the hospital may bill for medicaid reimbursement for the converted beds: And provided further, That if the hospital rejects the designation as a rural primary care hospital then the hospital may not bill for medicaid reimbursement. The health care authority shall adopt rules to implement this subsection which require that:
(1) All acute care beds converted shall be permanently deleted from the hospital's acute care bed complement and the hospital may not thereafter add, by conversion or otherwise, acute care beds to its bed complement without satisfying the requirements of subsection (b), section three of this article for which purposes an addition, whether by conversion or otherwise, shall be considered a substantial change to the bed capacity of the hospital notwithstanding the definition of that term found in subsection (ff), section two of this article.

(2) The hospital shall meet all federal and state licensing certification and operational requirements applicable to nursing homes including a requirement that all skilled care beds created under this subsection shall be located in distinct-part, long-term care units.

(3) The hospital shall demonstrate a need for the project.

(4) The hospital shall use existing space for the medicare certified only skilled nursing beds. Under no circumstances shall the hospital construct, lease or acquire additional space for purposes of this section.

(5) The hospital shall notify the acute care patient, prior to discharge, of facilities with skilled nursing beds which are located in or near the patient's county of residence.

Nothing in this subsection negatively affects the rights of inspection and certification which are otherwise required by federal law or regulations or by this code or duly adopted rules of an authorized state entity.

(j) (1) Notwithstanding the provisions of subsection (g) of this section, a retirement life care center with no skilled nursing beds may apply to the health care authority for a certificate of need for up to sixty skilled nursing beds provided the proposed skilled beds are medicare certified only. On a statewide basis, a maximum of one hundred eighty skilled beds which are medicare certified only may be developed pursuant to this subsection. The state health plan is not applicable to
(A) The one hundred eighty beds are to be distributed on a statewide basis;

(B) There be a minimum of twenty beds and a maximum of sixty beds in each approved unit;

(C) The unit developed by the retirement life care center meet all federal and state licensing certification and operational requirements applicable to nursing homes;

(D) The retirement center demonstrate a need for the project;

(E) The retirement center offer personal care, home health services and other lower levels of care to its residents; and

(F) The retirement center demonstrate both short and long-term financial feasibility.

(2) Nothing in this subsection negatively affects the rights of inspection and certification which are otherwise required by federal law or regulations or by this code or duly adopted rules of an authorized state entity.

(k) The state agency may order a moratorium upon the processing of an application or applications for the development of a new institutional health service filed pursuant to section three of this article, when criteria and guidelines for evaluating the need for the new institutional health service have not yet been adopted or are obsolete. The moratorium shall be declared by a written order which shall detail the circumstances requiring the moratorium. Upon the adoption of criteria for evaluating the need for the new institutional health service affected by the moratorium, or one hundred eighty days from the declaration of a moratorium, whichever is less, the moratorium shall be declared to be over and affected applications shall be processed pursuant to section ...
(1) The state agency shall coordinate the collection of information needed to allow the state agency to develop recommended modifications to certificate of need standards as required in this article. When the state agency proposes amendments or modifications to the certificate of need standards, it shall file with the secretary of state, for publication in the state register, a notice of proposed action, including the text of all proposed amendments and modifications, and a date, time and place for receipt of general public comment. To comply with the public comment requirement of this section, the state agency may hold a public hearing or schedule a public comment period for the receipt of written statements or documents.

(2) All proposed amendments and modifications to the certificate of need standards, with a record of the public hearing or written statements and documents received pursuant to a public comment period, shall be presented to the governor. Within thirty days of receiving the proposed amendments or modifications, the governor shall either approve or disapprove all or part of the amendments and modifications, and, for any portion of amendments or modifications not approved, shall specify the reason or reasons for nonapproval. Any portions of the amendments or modifications not approved by the governor may be revised and resubmitted.

(m) The state agency may exempt from or expedite rate review, certificate of need, and annual assessment requirements and issue grants and loans to financially vulnerable health care facilities located in underserved areas that the state agency and the office of community and rural health services determine are collaborating with other providers in the service area to provide cost effective health care services.

(n) Notwithstanding any provision contained in this article or section and any rule issued by the state agency, including compliance with certificate of need requirements, any rural hospital with less than eighty licensed acute care beds as of the first day of January, one thousand nine hundred ninety-eight, may convert up to forty-four percent of existing licensed acute care beds to
skilled nursing beds for certification by both medicare and medicaid for reimbursement purposes provided that the following conditions are met:

(1) There is no overall increase in the bed capacity of the hospital; one acute care bed is converted to one dually certified medicare and medicaid skilled nursing bed.

(2) All converted acute care beds shall be permanently deleted from the acute care bed complement of the hospital, which may not thereafter add, by conversion or otherwise, acute care beds to its bed complement without satisfying the requirements of subdivision (4), subsection (b), section three of this article, for which purposes the addition, whether by conversion or otherwise, shall be considered a substantial change to the bed capacity of the hospital notwithstanding the definition of that term as found in subsection (e), section two of this article.

(3) Prior to the conversion, the occupancy rate for licensed acute care beds cannot exceed forty percent for twenty-four consecutive months prior to the first month in which this section is effective.

(4) The hospital shall meet all federal and state licensing requirements for the provision of skilled nursing services. Additionally, all skilled nursing beds created under this exemption shall be located in distinct long-term care units in a previously constructed part of the hospital that can be used for that purpose.

(5) The hospital is located in a nonmetropolitan statistical area as defined by the bureau of the census of the federal government and is located in the same city in which a hospital providing mental health inpatient services owned and operated by the state of West Virginia ceased offering the inpatient services not later than one thousand nine hundred ninety.

(6) Nothing in this section negatively affects the inspection and certification which are elsewhere required by federal law or regulations.
AN ACT to amend and reenact sections one, two and three, article three-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to AIDS/HIV-related medical testing, including the authorization for treating physicians to determine bona fide medical emergencies when HIV-related testing for medical diagnostic purposes is necessary; spousal notification regarding contact with a source patient tested positive for HIV; and mandating emergency regulations be proposed pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code on or before the first day of September, one thousand nine hundred ninety-eight, addressing confidentiality, costs associated with testing, documentation, post-test counseling, post-exposure prophylaxis and other matters.

Be it enacted by the Legislature of West Virginia:

That sections one, two and three, article three-c, 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 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS CONFIDENTIALITY ACT.

§16-3C-1. Definitions.
§16-3C-2. Testing.
§16-3C-3. Confidentiality of records; permitted disclosure; no duty to notify.

§16-3C-1. Definitions.

1 When used in this article:

2 (a) "AIDS" means acquired immunodeficiency syndrome.
(b) "ARC" means AIDS-related complex.

(c) "Bureau" means the bureau of public health.

(d) "Commissioner" means the commissioner of the bureau of public health.

(e) "Department" means the state department of health and human resources.

(f) "Funeral director" shall have the same meaning ascribed to such term in section four, article six, chapter thirty of this code.

(g) "Convicted" includes pleas of guilty and pleas of nolo contendere accepted by the court having jurisdiction of the criminal prosecution, a finding of guilty following a jury trial or a trial to a court, and an adjudicated juvenile offender as defined in section three, article five-b, chapter forty-nine of this code.

(h) "Funeral establishment" shall have the same meaning ascribed to such term in section four, article six, chapter thirty of this code.

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.

(j) "HIV-related test" means a test for the HIV antibody or antigen or any future valid test approved by the bureau, the federal drug administration or the centers for disease control.

(k) "Health facility" means a hospital, nursing home, clinic, blood bank, blood center, sperm bank, laboratory or other health care institution.

(l) "Health care provider" means any physician, dentist, nurse, paramedic, psychologist or other person providing medical, dental, nursing, psychological or other health care services of any kind.

(m) "Infant" means a person under six years of age.

(n) "Medical or emergency responders" means paid or volunteer firefighters, law-enforcement officers, emergency medical technicians, paramedics, or other
emergency service personnel, providers or entities acting
within the usual course of their duties; good samaritans
and other nonmedical and nonemergency personnel
providing assistance in emergencies; funeral directors;
health care providers; commissioner of the bureau of
public health; and all employees thereof and volunteers
associated therewith.

(o) "Patient" or "test subject" or "subject of the
test" means the person upon whom a HIV test is
performed, or the person who has legal authority to make
health care decisions for the test subject.

(p) "Person" includes any natural person, partnership,
association, joint venture, trust, public or private
corporation or health facility.

(q) "Release of test results" means a written
authorization for disclosure of HIV-related test results that
is signed, dated and specifies to whom disclosure is
authorized and the time period the release is to be
effective.

(r) "Significant exposure" means:

(1) Exposure to blood or body fluids through
needlestick, instruments, sharps, surgery or traumatic
events; or

(2) Exposure of mucous membranes to visible blood
or body fluids, to which universal precautions apply
according to the national centers for disease control, and
laboratory specimens that contain HIV (e.g. suspensions
of concentrated virus); or

(3) Exposure of skin to visible blood or body fluids,
when the exposed skin is chapped, abraded or afflicted
with dermatitis or the contact is prolonged or involving an
extensive area.

(s) "Source patient" means any person whose body
fluids have been the source of a significant exposure to a
medical or emergency responder.

(t) "Victim" means the person or persons to whom
transmission of bodily fluids from the perpetrator of the

(a) HIV-related testing may be requested by a physician, dentist or the commissioner for any of the following:

(1) When there is cause to believe that the test could be positive;

(2) When there is cause to believe that the test could provide information important in the care of the patient; or

(3) When there is cause to believe that the results of HIV-testing of samples of blood or body fluids from a source patient could provide information important in the care of medical or emergency responders or other persons identified in regulations proposed by the department for approval by the Legislature in accordance with the provisions of article three, chapter twenty-nine-a of this code: Provided, That the source patient whose blood or body fluids is being tested pursuant to this section must have come into contact with a medical or emergency responder or other person in such a way that a significant exposure has occurred;

(4) When any person voluntarily consents to the test.

(b) The requesting physician, dentist or the commissioner shall provide the patient with written information in the form of a booklet or pamphlet prepared or approved by the bureau or, in the case of persons who are unable to read, shall either show a video or film prepared or approved by the bureau to the patient, or read or cause to be read to the patient the information prepared or approved by the bureau which contains the following information:

(1) An explanation of the test, including its purpose, potential uses, limitations, the meaning of its results and any special relevance to pregnancy and prenatal care;
(2) An explanation of the procedures to be followed;

(3) An explanation that the test is voluntary and may be obtained anonymously;

(4) An explanation that the consent for the test may be withdrawn at any time prior to drawing the sample for the test and that such withdrawal of consent may be given orally if the consent was given orally, or shall be in writing if the consent was given in writing;

(5) An explanation of the nature and current knowledge of asymptomatic HIV infection, ARC and AIDS and the relationship between the test result and those diseases; and

(6) Information about behaviors known to pose risks for transmission of HIV infection.

c) A person seeking an HIV-related test who wishes to remain anonymous has the right to do so, and to provide written, informed consent through use of a coded system with no linking or individual identity to the test requests or results. A health care provider who does not provide HIV-related tests on an anonymous basis shall refer such a person to a test site which does provide anonymous testing, or to any local or county health department which shall provide for performance of an HIV-related test and counseling.

d) At the time of learning of any test result, the patient shall be provided with counseling or referral for counseling for coping with the emotional consequences of learning any test result. This may be done by brochure or personally, or both.

e) No consent for testing is required and the provisions of subsection (b) of this section do not apply for the following:

(1) A health care provider or health facility performing an HIV-related test on the donor or recipient when the health care provider or health facility procures, processes, distributes or uses a human body part (including tissue and blood or blood products) donated
for a purpose specified under the uniform anatomical gift
act, or for transplant recipients, or semen provided for the
purpose of artificial insemination and such test is
necessary to assure medical acceptability of a recipient or
such gift or semen for the purposes intended;

(2) The performance of an HIV-related test in
documented bona fide medical emergencies, as
determined by a treating physician taking into account the
nature and extent of the exposure to another person, when
the subject of the test is unable or unwilling to grant or
withhold consent, and the test results are necessary for
medical diagnostic purposes to provide appropriate
emergency care or treatment to a medical or emergency
responder, or any other person who has come into contact
with a source patient in such a way that a significant
exposure necessitates HIV-testing or to a source patient
who is unable to consent in accordance with regulations
proposed by the department for approval by the
Legislature in accordance with article three, chapter
twenty-nine-a of this code: Provided, That necessary
treatment may not be withheld pending HIV test results:
Provided, however, That all sampling and HIV-testing of
samples of blood and body fluids, without the expressed
written consent of the test subject, shall be through the use
of a pseudonym and in accordance with regulations
proposed by the department for approval by the
Legislature in accordance with article three, chapter
twenty-nine-a of this code: Provided further, That the
department shall propose emergency rules pursuant to the
provisions of section fifteen, article three, chapter twenty-
nine-a of this code on or before the first day of
September, one thousand nine hundred ninety-eight,
addressing such matters as, but not limited to:

(A) Sampling and testing of blood and body fluids for
HIV-related infections including: (i) The taking of
samples from source patients; (ii) testing samples; (iii)
confidentiality; (iv) documentation; (v) post-test
counseling; and (vi) notices to the department by health
care providers of: (I) Test results found to be positive and
situations where sampling; and (II) testing was performed
without the written consent of the test subject; and
(B) Costs associated with sampling, testing, counseling, initial prophylactic treatment and compliance with this article: Provided, That: (i) The ordering of samples of blood or body fluids for HIV-test or testing of available samples by: (I) A treating physician of a medical or emergency responder; or (II) a treating physician of the source patient; and (ii) the disclosure of the results of HIV-testing of the source patient, in accordance with regulations proposed by the department for approval by the Legislature pursuant to article three, chapter twenty-nine-a of this code, shall be deemed within acceptable standards of medical care in the state of West Virginia and shall not create a legal cause of action on the part of the source patient against: (i) The treating physician of the medical or emergency responder; or (ii) the treating physician of the source patient; or (iii) any health care provider or laboratory assisting such treating physicians.

(3) The performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

(f) Mandated testing:

(1) The performance of any HIV-related testing that is or becomes mandatory shall not require consent of the subject but will include counseling.

(2) The court having jurisdiction of the criminal prosecution shall order that an HIV-related test be performed on any persons convicted of any of the following crimes or offenses:

(i) Prostitution; or

(ii) Sexual abuse, sexual assault, incest or sexual molestation.

(3) HIV-related tests performed on persons convicted of prostitution, sexual abuse, sexual assault, incest or sexual molestation shall be confidentially administered by a designee of the bureau or the local or county health department having proper jurisdiction. The commissioner may designate health care providers in regional jail
facilities to administer HIV-related tests on such convicted persons if he or she deems it necessary and expedient.

(4) When the director of the department knows or has reason to believe, because of medical or epidemiological information, that a person, including, but not limited to, a person such as an IV drug abuser, or a person who may have a sexually transmitted disease, or a person who has sexually molested, abused or assaulted another, has HIV infection and is or may be a danger to the public health, he may issue an order to:

(i) Require a person to be examined and tested to determine whether the person has HIV infection;

(ii) Require a person with HIV infection to report to a qualified physician or health worker for counseling; and

(iii) Direct a person with HIV infection to cease and desist from specified conduct which endangers the health of others.

(5) A person convicted of such offenses shall be required to undergo HIV-related testing and counseling immediately upon conviction and the court having jurisdiction of the criminal prosecution shall not release such convicted person from custody and shall revoke any order admitting the defendant to bail until HIV-related testing and counseling have been performed. The HIV-related test result obtained from the convicted person is to be transmitted to the court and, after the convicted person is sentenced, made part of the court record. If the convicted person is placed in the custody of the division of corrections, the court shall transmit a copy of the convicted person’s HIV-related test results to the division of corrections. The HIV-related test results shall be closed and confidential and disclosed by the court and the bureau only in accordance with the provisions of section three of this article.

(6) A person charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation shall be informed upon initial court appearance by the judge or magistrate responsible for setting the person’s condition of
release pending trial of the availability of voluntary HIV-related testing and counseling conducted by the bureau.

(7) The prosecuting attorney shall inform the victim, or parent or guardian of the victim, at the earliest stage of the proceedings of the availability of voluntary HIV-related testing and counseling conducted by the bureau and that his or her best health interest would be served by submitting to HIV-related testing and counseling. HIV-related testing for the victim shall be administered at his or her request on a confidential basis and shall be administered in accordance with the centers for disease control guidelines of the United States public health service in effect at the time of such request. The victim who obtains an HIV-related test shall be provided with pre- and post-test counseling regarding the nature, reliability and significance of the HIV-related test and the confidential nature of the test. HIV-related testing and counseling conducted pursuant to this subsection shall be performed by the designee of the commissioner of the bureau or by any local or county health department having proper jurisdiction.

(8) If a person receives counseling or is tested under this subsection and is found to be HIV infected, the person shall be referred by the health care provider performing the counseling or testing for appropriate medical care and support services. The local or county health departments or any other agency providing counseling or testing under this subsection shall not be financially responsible for medical care and support services received by a person as a result of a referral made under this subsection.

(9) The commissioner of the bureau or his or her designees may require an HIV test for the protection of a person who was possibly exposed to HIV infected blood or other body fluids as a result of receiving or rendering emergency medical aid or who possibly received such exposure as a funeral director. Results of such a test of the person causing exposure may be used by the requesting physician for the purpose of determining appropriate therapy, counseling and psychological support for the person rendering emergency medical aid.
including good Samaritans, as well as for the patient, or
individual receiving the emergency medical aid.

(10) If an HIV-related test required on persons
convicted of prostitution, sexual abuse, sexual assault,
incest or sexual molestation results in a negative reaction,
upon motion of the state, the court having jurisdiction
over the criminal prosecution may require the subject of
the test to submit to further HIV-related tests performed
under the direction of the bureau in accordance with the
centers for disease control guidelines of the United States
public health service in effect at the time of the motion of
the state.

(11) The costs of mandated testing and counseling
provided under this subsection and pre- and
postconviction HIV-related testing and counseling
provided the victim under the direction of the bureau
pursuant to this subsection shall be paid by the bureau.

(12) The court having jurisdiction of the criminal
prosecution shall order a person convicted of prostitution,
sexual abuse, sexual assault, incest or sexual molestation to
pay restitution to the state for the costs of any HIV-related
testing and counseling provided the convicted person and
the victim, unless the court has determined such convicted
person to be indigent.

(13) Any funds recovered by the state as a result of an
award of restitution under this subsection shall be paid
into the state treasury to the credit of a special revenue
fund to be known as the "HIV-testing fund" which is
hereby created. The moneys so credited to such fund
may be used solely by the bureau for the purposes of
facilitating the performance of HIV-related testing and
counseling under the provisions of this article.

(g) Premarital screening:

(1) Every person who is empowered to issue a
marriage license shall, at the time of issuance thereof,
distribute to the applicants for the license, information
concerning acquired immunodeficiency syndrome
(AIDS) and inform them of the availability of HIV-related
testing and counseling. The informational brochures shall be furnished by the bureau.

(2) A notation that each applicant has received the AIDS informational brochure shall be placed on file with the marriage license on forms provided by the bureau.

(h) The commissioner of the bureau may obtain and test specimens for AIDS or HIV infection for research or epidemiological purposes without consent of the person from whom the specimen is obtained if all personal identifying information is removed from the specimen prior to testing.

(i) Nothing in this section is applicable to any insurer regulated under chapter thirty-three of this code: Provided, That the commissioner of insurance shall develop standards regarding consent for use by insurers which test for the presence of the HIV antibody.

(j) Whenever consent of the subject to the performance of HIV-related testing is required under this article, any such consent obtained, whether orally or in writing, shall be deemed to be a valid and informed consent if it is given after compliance with the provisions of subsection (b) of this section.

§16-3C-3. Confidentiality of records; permitted disclosure; no duty to notify.

(a) No person may disclose or be compelled to disclose the identity of any person upon whom an HIV-related test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except to the following persons:

(1) The subject of the test;

(2) The victim of the crimes of sexual abuse, sexual assault, incest or sexual molestation at the request of the victim or the victim's legal guardian, or of the parent or legal guardian of the victim if the victim is an infant where disclosure of the HIV-related test results of the convicted sex offender are requested;
(3) Any person who secures a specific release of test results executed by the subject of the test;

(4) A funeral director or an authorized agent or employee of a health facility or health care provider if the funeral establishment, health facility or health care provider itself is authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues and the agent or employee has a need to know such information: Provided, That such funeral director, agent or employee shall maintain the confidentiality of such information;

(5) Licensed medical personnel or appropriate health care personnel providing care to the subject of the test, when knowledge of the test results is necessary or useful to provide appropriate care or treatment, in an appropriate manner: Provided, That such personnel shall maintain the confidentiality of such test results. The entry on a patient's chart of an HIV-related illness by the attending or other treating physician or other health care provider shall not constitute a breach of confidentiality requirements imposed by this article;

(6) The bureau or the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of AIDS, or a related condition;

(7) A health facility or health care provider which procures, processes, distributes or uses: (A) A human body part from a deceased person with respect to medical information regarding that person; (B) semen provided prior to the effective date of this article for the purpose of artificial insemination; (C) blood or blood products for transfusion or injection; or (D) human body parts for transplant with respect to medical information regarding the donor or recipient;

(8) Health facility staff committees or accreditation or oversight review organizations which are conducting program monitoring, program evaluation or service reviews so long as any identity remains anonymous; and
(9) A person allowed access to said record by a court order which is issued in compliance with the following provisions:

(i) No court of this state may issue such order unless the court finds that the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest;

(ii) Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the test subject of the test. The disclosure to the parties of the test subject's true name shall be communicated confidentially in documents not filed with the court;

(iii) Before granting any such order, the court shall, if possible, provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he or she is not already a party;

(iv) Court proceedings as to disclosure of test results shall be conducted in camera unless the subject of the test agrees to a hearing in open court or unless the court determines that the public hearing is necessary to the public interest and the proper administration of justice; and

(v) Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the person who may have access to the information, the purposes for which the information may be used and appropriate prohibitions on future disclosure.

(b) No person to whom the results of an HIV-related test have been disclosed pursuant to subsection (a) of this section may disclose the test results to another person except as authorized by said subsection.

(c) Whenever disclosure is made pursuant to this section, except when such disclosure is made to persons in
accordance with subdivisions (1) and (6), subsection (a) of this section, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of the information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. A general authorization for the release of medical or other information is NOT sufficient for this purpose."

(d) Notwithstanding the provisions set forth in subsections (a) through (c) of this section, the use of HIV test results to inform individuals named or identified as spouses, sex partners or contacts, or persons who have shared needles that they may be at risk of having acquired the HIV infection as a result of possible exchange of body fluids, is permitted: Provided, That the bureau shall make a good faith effort to inform spouses, sex partners, contacts or persons who have shared needles that they may be at risk of having acquired the HIV infection as a result of possible exchange of body fluids: Provided, however, That the bureau shall have no notification obligations when the bureau determines that there has been no likely exposure of such persons to HIV from the infected test subject within the ten-year period immediately prior to the diagnosis of the infection. The name or identity of the person whose HIV test result was positive is to remain confidential. Spouses, contacts, or sex partners or persons who have shared needles may be tested anonymously at the state bureau of public health's designated test sites, or at their own expense by a health care provider or an approved laboratory of their choice. A cause of action will not arise against the bureau, a physician or other health care provider from any such notification.

(e) There is no duty on the part of the physician or health care provider to notify the spouse or other sexual partner of, or persons who have shared needles with, an infected individual of their HIV infection and a cause of action will not arise from any failure to make such notification. However, if contact is not made, the bureau will be so notified.
AN ACT to amend and reenact sections one, two, four, six, nine, eleven, fifteen and twenty-four, article four, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to sexually transmitted disease; changing the phrase "venereal disease" to "sexually transmitted disease"; authorizing the secretary of the department of health and human resources to designate the diseases which are sexually transmitted; modifying the time frame for mailing diagnostic reports; permitting the sale of federally approved over-the-counter drugs for treatment of sexually transmitted diseases; and making various technical and drafting changes.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, six, nine, eleven, fifteen and twenty-four, article four, 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 4. SEXUALLY TRANSMITTED DISEASES.

§16-4-1. Diseases designated as sexually transmitted.

§16-4-2. Investigations by local health officers.

§16-4-4. Evidence of infection.

§16-4-6. Reports by physicians.

§16-4-9. Treatment.

§16-4-11. Precautions as to exposure to disease.

§16-4-15. Form and execution of warrant.

§16-4-24. Offenses by druggists.

§16-4-1. Diseases designated as sexually transmitted.

Sexually transmitted diseases, as designated by the secretary of the department of health and human resources in rules proposed for legislative approval in
accordance with the provisions of article three, chapter twenty-nine-a of this code, are hereby declared to be infectious, contagious, communicable and dangerous to the public health. If a conflict exists between a provision of this article and a provision of article three-c of this chapter, the provision of article three-c prevails.

§16-4-2. Investigations by local health officers.

(a) All municipal and county health officers shall:

(1) Use every available means to ascertain the existence of, and to investigate all cases of sexually transmitted disease coming within their respective jurisdictions and, when it is necessary, have all cases treated, if they are not already under treatment;

(2) To ascertain the sources and transmission of the infection; and

(3) To institute measures for the protection of other persons from infection by the infected person, or from persons reasonably suspected of being so infected, and for the protection of the public health at all times.

(b) A municipal health officer may designate any member of the city police or health department to make any investigation required by the provisions of this section. A county health officer may designate any discreet person to make any investigation required by the provisions of this section. Any person conducting an investigation has all authority necessary for the purpose, the same as the health officer.

§16-4-4. Evidence of infection.

The following are prima facie grounds and reasons for suspecting that a person is infected with a sexually transmitted disease:

(a) Being a person who has been convicted in any court, or before a police judge, or before a magistrate, upon any charge growing out of sexual behavior;

(b) Being a person reported by a physician as infected with a sexually transmitted disease, where the person is
afterwards reported as having failed to return for treatment; and

(c) Being a person designated in a sexually transmitted disease report as having a sexual exposure to the infected person reported.

§16-4-6. Reports by physicians.

(a) Every practicing physician or other person who makes a diagnosis in or treats a case of sexually transmitted disease and every superintendent or manager of a hospital, dispensary or charitable or penal institution in which there is a case of sexually transmitted disease shall make two reports of the case, as follows:

(1) One report shall be made to the local municipal health officer, if the party for whom the diagnosis was made or case treated lives within any municipality having a health officer, and if the municipality has no health officer, or if the party lives outside of a municipality, then to the health officer of the county in which the person lives;

(2) The second report shall be made to the director of health of the state.

(b) The reports required by this section shall state: (1) The street number and address of the person reported as diseased; (2) the age, sex, color, race, marital state and occupation of the person; (3) the date of the onset of the disease; (4) the anatomical site of the infection and the date and type of treatment; and (5) persons having a sexual exposure to the infected person reported, if any are identified by the infected person. The reports shall be mailed or delivered to the parties to whom they are directed within the specifications and time frame established by the director pursuant to rules proposed for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(c) Municipal and county health officers shall file and preserve the reports required by this section: Provided, That all records, reports and other information provided under this section shall be confidential and exempt from
public disclosure under the provisions of chapter twenty-nine-b of this code: Provided, however, That all reports shall be open to inspection by the director of the division of health, and by local health officers, or officers whose duties are connected with executing the laws against these diseases: Provided further, That any person who knowingly and willfully divulges or discloses any information entitled to protection under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail for not more than one year, or both fined and imprisoned: And provided further, That the department shall propose regulations relating hereto for approval by the Legislature in accordance with article three, chapter twenty-nine-a and such regulations shall include, but not be limited to, provisions for the implementation of the confidentiality provisions pertaining to this section.

§16-4-9. Treatment.

(a) Every physician or other person who examines or treats a person having a sexually transmitted disease shall instruct the person in measures for preventing the spread of the disease, and to inform him or her of the necessity of taking treatment until cured.

(b) Any person who has been examined and found infected, or is being treated for a sexually transmitted disease as provided by this section, shall follow the directions given by the treating physician or other person and take precautions as are necessary and are recommended. Any person starting to take treatment shall continue the treatment until discharged by the physician or other person treating him or her.

(c) Any infected person who fails to return for further treatment within ten days after the last date set by the physician or other person for the patient to return for further treatment, without lawful excuse therefor, is guilty of a misdemeanor and shall be punished as provided in section twenty-six of this article.

(d) After the expiration of the ten days
subsection (c) of this section, the physician or other person to whom the patient should have returned for treatment shall, unless he or she has knowledge of good reasons why the patient failed to return, make a report of the facts in the case to the local health officer having proper jurisdiction. The local health officer shall at once make an investigation to ascertain why the patient failed to return, and shall take any steps necessary in the matter to protect the public health, including obtaining the arrest, detention and quarantine of the patient.

§16-4-11. Precautions as to exposure to disease.

Whenever any attending physician or other person knows or has good reasons to believe that any person having a sexually transmitted disease is conducting himself or herself, or is about to conduct himself or herself, in a manner as to expose other persons to infection, the physician or other person shall at once notify the local health officer having jurisdiction of the facts in the case, giving the name and address of the person. The local health officer, upon receipt of the notice, shall at once cause an investigation to be made to ascertain what should be done in the premises, and may do whatever is necessary to protect the public health.

§16-4-15. Form and execution of warrant.

(a) Any warrant or order issued pursuant to the provisions of section fourteen of this article shall be directed to the chief of police if within a municipality, or to the county sheriff if not in a municipality or to any other officer qualified to execute process, directing the officer to apprehend the person mentioned, and to bring him or her before the health officer at a time and place set out in the warrant or order, there to be further dealt with as provided by law. The officer to whom the warrant is directed shall execute the warrant in the same manner as other papers of like character or kind.

(b) Pending a hearing in the matter the officer may for safekeeping, lodge the person apprehended under warrant, in jail or in any other place of detention that has been provided for such persons. The health officer may
at his or her discretion and by indorsement on the warrant at the time of its issuance, direct any other disposition to be made of the person arrested, before trial. The officer executing the warrant shall be guided by the warrant, but may not be held responsible if the person arrested escapes.

(c) The warrant is sufficient if it is in words and figures as follows (the blanks to be filled as necessary in each case):

State of West Virginia, Office of ........................................

County (or City) of .................. County (or City) of ........

........................................ Officer.

To..................................., Chief of Police or Sheriff of

.................................. City, of County of ....................

It having been brought to the attention of the undersigned health officer for (city or county) of ............, West Virginia, that ..........., reported as living or residing at .......... in(city or county), is infected, or is reasonably suspected of being infected, with one or more sexually transmitted diseases by reason of the fact that ............ has been reported as (set out any reasons set in section fourteen of this article, or other reasons)

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

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

and therefore reasonably suspected of being infected; and as the diseases have been declared to be infectious, contagious, communicable and dangerous to the public health.

This warrant commands you to apprehend ..........., if found within your jurisdiction and to bring ............ before me at my office in the city or county of .............. on the ............ day of ............, 19 ...., at ....... o'clock, .... M, there to be further dealt with as provided by law.

Given under my hand, this the ............ day of 19 .....
§16-4-24. Offenses by druggists.

(a) No druggist, pharmacist or other person, not a licensed physician under the laws of the state, may prescribe, recommend, sell, compound or mix any drugs, medicines or other substances to be used for the cure or alleviation of a sexually transmitted disease, including drugs, medicines or substances that are patented, proprietary or otherwise, unless:

(1) The druggist or pharmacist receives a written prescription, formula or order written for the person for whom the drugs or medicines are compounded and signed by a physician licensed to practice under the laws of the state; or

(2) The drug being recommended or sold has received federal food and drug administration approval for over-the-counter use.

(b) All drugs, medicines or substances that are known to the medical profession as being commonly used for the cure or alleviation of sexually transmitted diseases, whether the name is on the bottles or labels or not, is subject to the prohibitions established pursuant to the provisions of this section.

(c) All drugstores shall be at all times open to the inspection of any local health officer, or to any party designated by the director of the sexually transmitted diseases program of the state, to determine whether the provisions of this section are being carried out by the druggists or stores. A sale by a clerk is considered a sale by the owner or proprietor, and both may be prosecuted under the provisions of this article for a misdemeanor.
AN ACT to amend and reenact sections one and two, article five-h, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the licensure of residential board and care homes; and defining terms.

Be it enacted by the Legislature of West Virginia:

That sections one and two, article five-h, 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 5H. RESIDENTIAL BOARD AND CARE HOMES.

§16-5H-1. Purpose.


§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, 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.


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 shall 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, 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 government; 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; and

(l) The term "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.

CHAPTER 169

(H. B. 4102—By Delegates Compton, Hutchins, Caputo, Fleischauer, Manuel, Rowe and Leach)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]
long-term care; modifying the prohibition against certain prior employment in the field of long-term care of regional long-term care ombudsmen; and expanding the qualifications for regional long-term care ombudsmen.

Be it enacted by the Legislature of West Virginia:

That sections three and seven, article five-l, 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 5L. LONG-TERM CARE OMBUDSMAN PROGRAM.

§16-5L-3. Definitions.
§16-5L-7. Regional long-term care ombudsmen; qualifications; duties; training; certification.

§16-5L-3. Definitions.

1 As used in this article, unless a different meaning appears from the context:

3 (a) "Government agency" means any department, division, office, bureau, board, commission, council, authority, or any other agency or instrumentality created by the state or political subdivision thereof or to which the state is a party or by any county or municipality which is responsible for the regulation, visitation, inspection, or supervision of long-term care facilities or which provides services to residents or long-term care facilities;

11 (b) "Long-term care facility" means any nursing home, personal care home, or residential board and care home as defined in section two, article five-c of this chapter; nursing homes operated by the federal government or the state government; extended care facilities operated in connection with hospitals; and any similar 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 for consideration, for the express and implied purpose of providing accommodations and care or personal assistance to one or more persons who are ill or otherwise incapacitated or are dependent upon the services of others by reasons of physical or mental...
impairment and who are not related within the degree of consanguinity of second cousin to the owner or manager of the institution, residence or place;

(c) "Long-term care ombudsman volunteer" or "ombudsman volunteer" means any uncompensated individual who performs the duties enumerated under section eight of this article: Provided, That the individual has received appropriate certification as set forth in section nine of this article;

(d) "Pecuniary interest" means holding a financial interest in or deriving financial benefit from the provision of long-term care, but does not include employment in the long-term care industry or in the home health care industry;

(e) "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;

(f) "Regional long-term care ombudsman" means any paid staff of a designated regional long-term care ombudsman program who has obtained appropriate certification from the state commission on aging and meets the qualifications set forth in section seven of this article;

(g) "Resident" means an individual living in a nursing home, personal care home, residential board and care home, or any long-term care facility as defined in subsection (b) of this section, or who has lived in such a setting, or who has made application to live in such a setting: Provided, That nothing in this article may be construed to give a long-term care ombudsman the right to obtain the waiting list of a long-term care facility;

(h) "State long-term care ombudsman" means an individual who meets the qualifications of section five of this article and who is employed by the state commission on aging to implement the state long-term care ombudsman program as set forth in this article; and
(i) "Guardian" means a person lawfully invested with the power and charged with the duty of taking care of another person and managing the property and rights of another person who for some peculiarity of status or defect of age, understanding or self control is considered incapable of administering his or her own affairs, to include committees or other references under the code.

§16-5L-7. Regional long-term care ombudsmen; qualifications; duties; training; certification.

(a) Each regional long-term care ombudsman program shall employ one or more regional long-term care ombudsmen to effect the purposes of this article. The regional long-term care ombudsman shall have either:

1. At least a four-year degree in gerontology, social work, health, or a related field and demonstrated experience in one of the following areas: (A) The field of aging; (B) health care or social service programs; (C) community programs; or (D) long-term care issues; or

2. At least a four-year degree in any field and at least three years of experience in gerontology, social work, health or a related field. Persons employed in a designated regional long-term care ombudsman program on the date of enactment of this article may be given a waiver from these requirements provided that within one year from the date of enactment of this article they enter into a program leading to a degree in gerontology, social work, health or a related field or complete fifty hours of continuing education units in gerontology, social work, health or a related field every two calendar year periods. The regional long-term care ombudsman shall participate in ongoing training programs related to his or her duties or responsibilities. The regional long-term care ombudsman may not have been employed within the past two years prior to the date of his or her employment under this section by any association of long-term care facilities. If a regional long-term care ombudsman has been employed within the past two years prior to the date of his or her employment under this section by a long-term care facility, or by any organization or corporation that directly or indirectly regulates, owns or operates a long-term care facility, that ombudsman may not act with the
authority of a regional long-term care ombudsman in the facility of prior employment or in any other facility regulated, owned or operated by the same ownership as the facility of prior employment.

(b) Neither the regional long-term care ombudsman nor any member of his or her immediate family may have, or have had within the two years preceding his or her employment under this section, any pecuniary interest in the provision of long-term care. For the purposes of this section, the term "immediate family" shall mean the spouse, children, natural mother, natural father, natural brothers or natural sisters of the regional long-term care ombudsman.

(c) The duties of the regional long-term care ombudsman shall include, but are not limited to, the following:

(1) Regularly monitoring long-term care facilities and investigating complaints filed on behalf of a resident, or filed on the regional long-term care ombudsman's own initiative, relating to the health, safety, welfare and rights of such residents, in accordance with complaint investigation procedures developed by the state long-term ombudsman care program: Provided, That nothing in this section shall be construed as to grant a regional long-term care ombudsman the right of entry to a long-term care facility's drug rooms or to treatment rooms occupied by a resident unless prior consent has been obtained from the resident;

(2) Monitoring the development and implementation of federal, state and local laws, regulations and policies with respect to long-term care facilities;

(3) Training certified volunteers in accordance with the training and certification program developed by the state long-term care ombudsman program;

(4) Encouraging, cooperating with, and assisting the development and operation of referral services which can provide current, valid and reliable information on long-term care facilities and alternatives to institutionalization to persons in need of these services and the general public;
(5) Submitting reports as required by the state long-term care ombudsman program; and

(6) Other duties as mandated by the Older Americans Act of 1965, as amended.

(d) The state long-term care ombudsman shall develop and implement procedures for training and certification of regional long-term care ombudsmen. Regional long-term care ombudsmen who satisfactorily complete the training requirements shall be certified by the state commission on aging and shall be given identification cards which shall be presented to employees of a long-term care facility upon request. No regional long-term care ombudsman may investigate any complaint filed with the West Virginia long-term care ombudsman program unless such person has been certified by the state commission on aging. Consistent with the provisions of this article and any rules and regulations promulgated pursuant to section twenty-one, certified regional long-term ombudsmen shall be representatives of the state long-term care ombudsman program.

CHAPTER 170

(H. B. 4626—By Delegate Michael)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article thirteen-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the drinking water treatment revolving fund; requiring that set-aside accounts be created for activities required by the federal safe drinking water act; authorizing the division of health to draw federal capitalization awards and deposit the moneys in the fund and the set-aside accounts; authorizing the division of health to administer the set-aside accounts; and eliminating certain requirements for fund moneys.
Be it enacted by the Legislature of West Virginia:

That sections one and three, article thirteen-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 13C. DRINKING WATER TREATMENT REVOLVING FUND ACT.

§16-13C-1. Definitions.
§16-13C-3. Drinking water treatment revolving fund; duties of division of health and water development authority; set-aside accounts.

§16-13C-1. Definitions.

1. 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 Act", 42 U.S.C. 300f et seq., as enacted, amended, and as may be subsequently amended.

   (6) "Fund" means the West Virginia drinking water treatment revolving fund created in this article.

   (7) "Instrumentality" means the division of health which has the primary responsibility for administering the
27 fund and this article pursuant to requirements of the
28 federal safe drinking water act.
29
30 (8) "Local entity" means any municipality, public
31 utility, or person, including any individual, firm,
32 partnership, association, not-for-profit corporation or
33 other corporation organized and existing under the laws
34 of the state which may construct and operate an eligible
35 project.
36
37 (9) "Public water system" means that term as defined
38 in section nine-a, article one, chapter sixteen of the code.
39
40 (10) "Project" means a project for improving a
41 drinking water system for the purpose of achieving or
42 maintaining compliance with applicable state and federal
43 drinking water regulations.
44
45 (11) "Set-aside accounts" means those accounts that
46 shall be set up for activities required by the federal Safe
47 Drinking Water Act and the moneys for these accounts
48 may be taken from the federal capitalization grant for
49 these nonproject activities before the capitalization grant is
50 deposited into the fund.
51
52 (12) "Small system" means a public water system
53 serving ten thousand or fewer persons.

§16-13C-3. Drinking water treatment revolving fund; duties of
division of health and water development
authority; set-aside accounts.

1 (a) There is continued in the office of the state
2 treasurer a permanent and perpetual special fund to be
3 known as the "West Virginia drinking water treatment
4 revolving fund". The fund shall be administered and
5 managed in accordance with the provisions of the federal
6 Safe Drinking Water Act. The division of health may
7 draw all or a portion of those moneys available under
8 capitalization agreements and with the capitalization grant
9 awards from the United States environmental protection
10 agency under the federal Safe Drinking Water Act and to
11 deposit such moneys into the fund and the set-aside
12 accounts.
(b) The fund, less the set-aside account moneys, 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 and set-aside accounts, 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 and the division of health are 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 legislative rules for promulgation 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) Disbursements from the fund shall be authorized for payment by the director of the authority or the director’s designee. Moneys in the fund shall not be commingled with other money of the authority. 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 shall 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 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.

CHAPTER 171

(Com. Sub. for H. B. 2388—By Delegates Jenkins, Mezzatesta and Spencer)

[Passed March 14, 1998; 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 two new articles, designated article twenty-two-a and article twenty-two-b, relating to the administration of hearing loss testing for newborn infants; requiring certain payment for testing; authorizing the director of health to promulgate legislative rules to establish testing protocols and reasonable fee schedules; authorizing an advisory committee; establishing the West Virginia birth score program; establishing legislative findings and intent; authorizing the division of health to establish and implement a birth score program which identifies newborn children at high risk for postneonatal mortality, debilitating conditions and developmental delays and refers those children to primary care physicians for subsequent follow-up care; requiring hospitals, birthing facilities, attending physicians and other persons attending a birth to require and ensure that a birth score is determined; providing an exemption to program participation when it conflicts with religious beliefs; authorizing the division of health to provide necessary medical and other needed referrals; and authorizing the division of health to propose legislative rules, including
penalties, to ensure implementation of and compliance with the birth score program.

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 two new articles, designated article twenty-two-a and article twenty-two-b, all to read as follows:

Article

22 A. Testing of Newborn Infants for Hearing Impairments.

22 B. Birth Score Program.

ARTICLE 22A. TESTING OF NEWBORN INFANTS FOR HEARING IMPAIRMENTS.

§16-22A-1. Testing required.

The physician or midwife in attendance at, or present immediately after, a live birth shall perform, or cause to be performed, a test for hearing loss in the infant unless the infant’s parents refuse under subsection (c), section three of this article to have the testing performed. For any infant delivered at a nonlicensed facility, including home births, the physician or other health care provider shall inform the parents of the need to obtain testing within the first month of life. The director of the division of health shall prescribe the test or tests to be administered in accordance with this article.

§16-22A-2. Rule making authorized.

The director of the division of health shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to: (1) Establish a reasonable fee schedule for tests administered pursuant to this article, which shall be used to cover program costs not otherwise covered by federal grant funds specifically secured for this purpose; (2) establish a cost-effective testing protocol based upon
available technology and national standards; (3) establish reporting and referral requirements; and (4) establish a date for implementation of the testing protocol, which shall not be later than the first day of July, one thousand nine hundred ninety-nine.

§16-22A-3. Fees for testing; payment of same.

(a) Testing required under this article shall be a covered benefit reimbursable by all health insurers except for health insurers that offer only supplemental coverage policies or policies which cover only specified diseases. All policies issued pursuant to articles fifteen, sixteen, twenty-four and twenty-five-a of chapter thirty-three of this code shall provide coverage for the testing required under this article.

(b) The department of health and human resources shall pay for testing required under this article when the newborn infant is eligible for medical assistance under the provisions of section twelve, article five, chapter nine of this code.

(c) In the absence of a third-party payor, the parents of a newborn infant shall be informed of the testing availability and its costs and they may refuse to have the testing performed. Charges for the testing required under this article shall be paid by the hospital or other health care facility where the infant's birth occurred. Provided, that nothing contained in this section may be construed to preclude the hospital or other health care facility from billing the infant's parents directly.

§16-22A-4. Hearing impairment testing advisory committee established.

(a) There is hereby established a West Virginia hearing impairment testing advisory committee which shall advise the director of the division of health regarding the protocol, validity, monitoring and cost of testing procedures required under this article. This committee is to meet four times per year for the initial two years and on the call of the director thereafter. The director...
as the chair and shall appoint twelve members, one representing each of the following groups:

(1) A representative of the health insurance industry;

(2) An otolaryngologist or otologist;

(3) An audiologist with experience in evaluating infants;

(4) A neonatologist;

(5) A pediatrician;

(6) A hospital administrator;

(7) A speech or language pathologist;

(8) A teacher or administrative representative from the West Virginia school of the deaf;

(9) A parent of a hearing-impaired child;

(10) A representative from the office of early intervention services within the department of health and human resources;

(11) A representative from the state department of education; and

(12) A representative from the West Virginia commission for the deaf and hard-of-hearing.

(b) Members of this advisory committee shall serve without compensation. A majority of members constitutes a quorum for the transaction of all business. Members shall serve for two-year terms and may not serve for more than two consecutive terms.

ARTICLE 22B. BIRTH SCORE PROGRAM.

§16-22B-1. Legislative findings; intent; purpose.

§16-22B-2. Birth score program established.

§16-22B-3. Determination of birth score; referral to physician.

§16-22B-4. Rules.

§16-22B-1. Legislative findings; intent; purpose.
(a) The Legislature hereby finds that until 1984, West Virginia had one of the highest rates of postneonatal mortality in the United States, which is defined as infants dying between one month and one year of age. In the early 1980s, studies in West Virginia showed that infants at greatest risk of dying during the first year after birth had poor attendance at regular physician visits and often received minimal health care. The system for assessing infants at risk for postneonatal mortality, debilitating conditions and developmental delays was erratic and many West Virginia physicians were poorly trained about risk assessment. Uniform guidelines for at-risk infants to enter care did not exist.

(b) In 1985, the birth scoring system, a cooperative effort between the division of health and the West Virginia university department of pediatrics was initiated. The goals of the scoring system were: (1) To identify newborns at greatest risk for death between one month and one year of age; and (2) to link high risk infants with physicians for close follow-up during the first year of life.

(c) Since its inception, the birth scoring system has been expanded to identify and link infants at risk for debilitating conditions and developmental delays with necessary and available services. The program has been greatly successful in identifying at-risk newborns and in obtaining appropriate medical care for those infants.

(d) With the success of the birth scoring system at reducing postneonatal mortality rates in the state, it is the intention of the Legislature to establish the birth score system as a universal, preventive program to be enacted at the delivery of each newborn in the state. The purpose of this article is to ensure that all of the state’s birthing hospitals and facilities adopt and implement this prevention program.

§16-22B-2. Birth score program established.

(a) The division of health within the department of health and human resources is hereby authorized to establish and implement a birth score program designed to combat postneonatal mortality and to detect debilitating
conditions and possible developmental delays in newborn infants in the state.

(b) The purpose and goals of the birth score program are to reduce the incidence of postneonatal mortality and disease by:

(1) Identifying newborns at greatest risk for death between one month and one year of age; and

(2) Linking these infants with physicians for close follow-up during the first year of life.

(c) The birth score of a newborn infant shall be determined pursuant to the program established by the division of health by trained hospital or birthing facility personnel immediately after the infant is delivered.

§16-22B-3. Determination of birth score; referral to physician.

(a) Any hospital or birthing facility in which an infant is born, any physician attending the infant, or any other person attending the infant if not under the care of a physician, shall require and ensure that a birth score is determined for the newborn infant in order to assess the level of risk for postneonatal mortality, debilitating conditions and developmental delays: Provided, That no birth score shall be determined or birth score program implemented if the parent or guardian objects to the birth score program on the grounds that it conflicts with their religious tenets and practices. Any infant delivered at a nonlicensed facility, including, but not limited to, home births, shall have a birth score determined by the child’s primary physician within ten days of birth, subject to the exception set forth in this subsection.

(b) When any infant receives a high risk birth score, as determined by the program established by this article, the parents shall be informed of the birth score and its implications, and then linked with a local primary care physician for a recommended six visits in the first six months of the infant’s life.

(c) The division of health, in cooperation with other state departments and agencies, may provide necessary medical and other referrals for services related to infants determined to be at high risk for postneonatal mortality and other debilitating conditions and developmental delays.
§16-22B-4. Rules.
1. On or before the thirtieth day of June, one thousand nine hundred ninety-eight, the division of health shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as may be needed to establish the program, ensure compliance and assess penalties as needed to implement the provisions of this article.

CHAPTER 172
(H. B. 4300—By Delegates Boggs, Shelton, Osborne, Beach, C. White, Hall and Harrison)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article sixteen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enabling the rural health advisory panel and vice chancellor of health sciences to assume statewide and interagency as well as intra-agency responsibility for and coordination of primary care physician and other health care provider recruitment and retention efforts; including the creation of a committee on recruitment and retention within the rural health advisory panel contained in section six, article sixteen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to include more representatives from health care providers, consumers and community leaders for purposes of addressing the requirements of this article as amended herein; providing an annual report to the legislative oversight commission on education accountability which shall address the success of such recruitment and retention efforts; recommendations for improvements in all related areas of recruitment and retention efforts, as well as permission to work cooperatively with all agencies involved in the economic development of the state.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. HEALTH CARE EDUCATION.

§18B-16-6. Creation of the West Virginia rural health advisory panel.

(a) The West Virginia rural health advisory panel is hereby created and the rural health initiative advisory panel is hereby terminated as of the first day of July, one thousand nine hundred ninety-five. The advisory panel, which shall be appointed by the governor after consulting with the vice chancellor, shall consist of one community representative from each of the consortia of primary health care education sites; five members shall be rural health care providers, two of whom shall be representatives of rural health care facilities selected from such lists as may be submitted by associations interested or involved in the provision of rural health care, two of whom shall be physicians engaged in the private practice of rural medicine, and one of whom shall be an advanced nurse practitioner or a nurse midwife with experience in rural health care delivery; the dean or designee from each of the participating health sciences schools, ex officio; one representative from private colleges; one representative from the state college system; one site coordinator; the commissioner of public health, ex officio; and the director of the office of community and rural health services, ex officio. Except for the ex officio members, members of the panel shall serve for staggered three-year terms: Provided, That one third of the initial appointments shall be designated by the governor for one-year terms and one third of the initial appointments shall be designated by the governor for two-year terms.

Members of the advisory panel shall be reimbursed for the cost of reasonable and necessary expenses actually incurred in the performance of their duties: Provided, That members of the panel who are employed by the state
of West Virginia shall not be reimbursed for their expenses under the provisions of this section.

(b) The functions and duties of the panel are to recommend policies and procedures to the vice chancellor related to the rural health initiative and to oversee and coordinate implementation of those policies and procedures.

(c) Pursuant to the provisions of article ten, chapter four of this code, the West Virginia rural health advisory panel shall continue to exist until the first day of July, two thousand one, to allow for the completion of a preliminary performance review by the joint committee on government operations.

(d) The advisory panel has the power and the duty to recommend rural health care facilities to be established as primary health care education sites. Such recommendation shall be made to the vice chancellor in accordance with the criteria set forth in section seven of this article. After review of the proposals submitted to the vice chancellor by the schools of medicine pursuant to section eight of this article, the panel’s recommendation shall include an estimation of the costs to be allocated per site from available funds in the university of West Virginia health sciences account in the line item designated for rural health initiative site support.

(e) The advisory panel shall adopt guidelines regarding the application by rural health care facilities for selection as primary health care education sites and shall approve an application form which provides the panel with sufficient information to consider the criteria set forth in section eight of this article. The guidelines and application shall be sent by registered mail to each rural health care facility in the state as soon as practicable after the effective date of this section.

(f) The advisory panel shall provide an ongoing evaluation of the rural health initiative and shall make the reports required under this article.
(g) For purposes of addressing primary care physician and other health care provider recruitment and retention efforts, there is hereby created within the rural health advisory panel a committee on recruitment and retention, which shall include member representatives of health care providers, consumers, members of the advisory panel and the health sciences schools. All member representatives shall be selected by the vice chancellor for health sciences in conjunction with the director of the office of community and rural health. All operational costs of the recruitment and retention committee shall be paid by the rural health advisory panel.

(1) The recruitment and retention committee and the vice chancellor of health sciences, in conjunction with the director of the office of community and rural health services, may facilitate statewide and interagency coordination of the recruitment and retention of primary care physicians and other health care related providers to serve the state of West Virginia.

(2) Such responsibility for and coordination of primary care physician recruitment and retention efforts shall include, but are not limited to, working cooperatively with health care agencies and economic development agencies of the state.

(3) As part of its duties, the recruitment and retention committee shall provide by the thirty-first day of December, one thousand nine hundred ninety-eight, and no less than annually thereafter, a report of its findings to the legislative oversight commission on education accountability and the legislative oversight commission on health and human resources accountability. The report shall address the success of the state's primary care physician and other health care related provider recruitment and retention efforts, recommendations for improvements in all related areas of recruitment and retention efforts, recommendations for statutory or regulatory changes, as well as any other matters which the recruitment and retention committee or the rural health advisory panel deems relevant to carrying out the intent of this article.
AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article forty-three, relating to women's access to health care; defining terms; legislative findings and purpose; requiring providers of health benefits policies to provide coverage for direct access to women's health care providers and specified services without referral or additional deductibles or copayments; disclosure of female enrollees' rights to direct access to certain health care services; disclosure of certain exclusions from coverage; disclosure of right to limit coverage to medically necessary and appropriate services; prohibiting certain cost-sharing; permitting limitations on the number of women's health care providers in a network under certain conditions; prohibiting partial-birth abortions; definition of terms; establishing criminal penalties; creating exceptions; and short title.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 43. WOMEN'S ACCESS TO HEALTH CARE ACT.

§33-43-1. Short title.
§33-43-2. Legislative findings and purpose.
§33-43-4. Limitations on conditions of coverage.
§33-43-5. Required disclosure.
§33-43-6. Certain cost-sharing prohibited.
§33-43-7. Limitation on number of women's health care providers.
§33-43-1. Short title.

This article shall be known and may be cited as the "Women's Access To Health Care Act".

§33-43-2. Legislative findings and purpose.

The Legislature finds and declares that adequate delivery of health care services to women requires direct access to primary and preventative obstetrical and gynecological services, which services may be provided as "well woman examinations", direct access without prior authorization to prenatal and obstetrical services for pregnant women and access to certain services essential to the physical and psychological integrity of women.


For purposes of this article:

(1) "Advanced nurse practitioner" means a certified nurse-midwife, or an advanced nurse practitioner certified to practice in family practice, women’s health (ob/gyn), or primary care adult, geriatric or pediatric practice, practicing within the lawful scope of that provider’s practice.

(2) "Health benefits policy" means any individual or group plan, policy or contract for health care services issued, delivered, issued for delivery or renewed in this state by a health care corporation, health maintenance organization, accident and sickness insurer, fraternal benefit society, nonprofit hospital service corporation, nonprofit medical service corporation or similar entity, when the policy or plan covers hospital, medical or surgical expenses.

(3) "Partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.
(4) "Physician performing a partial-birth abortion" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery in West Virginia, or any other individual who is legally authorized by the state to perform abortions: Provided, That any individual who is not a physician or not otherwise legally authorized by the state to perform abortions, but who nevertheless directly performs a partial-birth abortion, is subject to the provisions of this article.

(5) "Vaginally delivers a living fetus before killing the fetus" means deliberately and intentionally delivering into the vagina a living fetus, or a substantial portion thereof, for the purpose of performing a procedure that the physician or person delivering the living fetus knows will kill the fetus, and kills the fetus.

(6) "Women's health care provider" means an obstetrician/gynecologist, advanced nurse practitioner certified to practice in women's health (ob/gyn), certified nurse-midwife or physician assistant-midwife practicing within the lawful scope of that provider's practice.

§33-43-4. Limitations on conditions of coverage.

No health benefits policy may require as a condition to the coverage of basic primary and preventative obstetrical and gynecological services that a woman first obtain a referral from a primary care physician: Provided, That for a health maintenance organization authorized under article twenty-five-a of this chapter, direct access, at least annually, to a women's health care provider for purposes of a well woman examination shall satisfy the foregoing requirement. No health benefits policy may require as a condition to the coverage of prenatal or obstetrical care that a woman first obtain a referral for those services by a primary care physician. No health benefit policy providing coverage for surgical services in a hospital inpatient or outpatient setting may deny coverage for: (1) Reconstruction of the breast following mastectomy; or (2) reconstructive or cosmetic surgery required as a result of an injury caused by an act of family violence as defined in section three, article two-a, chapter forty-eight of this code, when the person inflicting the
injury was convicted of a felony, a lesser included misdemeanor offense, or a charge of domestic battery for inflicting the injury.

§33-43-5. Required disclosure.

Every health benefits policy that is issued, delivered, issued for delivery or renewed in this state on or after the first day of July, one thousand nine hundred ninety-eight, shall disclose in writing to enrollees, subscribers and insureds, in clear and accurate language, the female enrollee's right of direct access to a women's health care provider of her choice. The information required to be disclosed shall include, at a minimum, any specific women's health care services that are excluded from coverage and the health benefits policy's right to limit coverage to medically necessary and appropriate women's health care services.

§33-43-6. Certain cost-sharing prohibited.

No health benefits policy may impose additional copayments or deductibles for female enrollees' direct access to in-network, participating women's health care providers unless the same additional cost-sharing is imposed for other types of health care services not delineated in this article.

§33-43-7. Limitation on number of women's health care providers.

A health benefits policy may limit the number of women's health care providers in a network: Provided, that a sufficient number of providers are available to serve a defined population or geographic service area so that female enrollees will have direct and timely access to women's health care providers.

§33-43-8. Partial-birth abortions prohibited; criminal penalties; exceptions; hearings by state board of medicine.

(a) Any person who knowingly performs a partial-birth abortion and thereby kills a human fetus is guilty of a felony and shall be fined not less than ten thousand
4 dollars, nor more than fifty thousand dollars, or
5 imprisoned not more than two years, or both fined and
6 imprisoned. This section does not apply to a partial-birth
7 abortion that is necessary to save the life of a mother when
8 her life is endangered by a physical disorder, illness or
9 injury.

10 (b) A physician charged pursuant to this section may
11 seek a hearing before the West Virginia board of medicine
12 on the issue of whether the physician’s act was necessary
13 to save the life of a mother pursuant to the provisions of
14 subsection (a) of this section. The findings of the board
15 of medicine are admissible on this issue at the trial of the
16 physician. Upon a motion by the defendant, the court
17 shall delay the beginning of trial for not more than thirty
18 days to permit the board of medicine hearing to take
19 place.

20 (c) No woman may be prosecuted under the
21 provisions of this section for having a partial-birth
22 abortion, nor may she be prosecuted for conspiring to
23 violate the provisions of this section.

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CHAPTER 174

(H. B. 4518—By Delegates Beane, Mezzatesta and Michael)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article thirteen,
chapter eight of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to business
and occupation or privilege tax; limitation on rates; treatment
of health maintenance organizations; effective date of tax on
health maintenance organizations.

Be it enacted by the Legislature of West Virginia:
That section five, 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.

§8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax; exemptions; activity in two or more municipalities; administrative provisions.

(a) Authorization to impose tax. — (1) Whenever any business activity or occupation, for which the state imposed its annual business and occupation or privilege tax under article thirteen, chapter eleven of this code, prior to July one, one thousand nine hundred eighty-seven, is engaged in or carried on within the corporate limits of any municipality, the governing body thereof shall have plenary power and authority, unless prohibited by general law, to impose a similar business and occupation tax thereon for the use of the municipality.

(2) Municipalities may impose a business and occupation or privilege tax upon every person engaging or continuing within the municipality in the business of aircraft repair, remodeling, maintenance, modification and refurbishing services to any aircraft or to an engine or other component part of any aircraft as a separate business activity.

(b) Maximum tax rates. — In no case shall the rate of such municipal business and occupation or privilege tax on a particular activity exceed the maximum rate imposed by the state, exclusive of surtaxes, upon any business activities or privileges taxed under sections two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and two-j, article thirteen of said chapter eleven, as such rates were in effect under said article thirteen, on January one, one thousand nine hundred fifty-nine, or in excess of one percent of gross income under section two-k of said article thirteen, or in excess of three tenths of one percent of gross value or gross proceeds of sale under section two-m of said article thirteen. The rate of municipal business and occupation or privilege tax on the activity described in
subdivision (2), subsection (a) of this section shall be ten
one-hundredths of one percent. The rate of municipal
business and occupation or privilege tax on the activity of
a health maintenance organization holding a certificate of
authority under the provisions of article twenty-five-a,
chapter thirty-three of this code, shall not exceed one half
of one percent to be applied solely to that portion of gross
income received from the medicaid program pursuant to
Title XIX of the Social Security Act, the state employee
programs administered by the public employees insurance
agency pursuant to article sixteen, chapter five of this
code, and other federal programs, for health care items or
services provided directly or indirectly by the health
maintenance organization, that is expended for
administrative expenses; and shall not exceed one half of
one percent to be applied to the gross income received
from enrollees, or from employers on behalf of enrollees,
from sources other than medicaid, state employee
programs administered by the public employees insurance
agency and other federal programs for health care items
or services provided directly or indirectly by the health
maintenance organization: Provided, That this tax rate
limitation shall not extend to that part of the gross income
of health maintenance organizations which is received
from the use of real property other than property in which
any such company maintains its office or offices in this
state, whether such income is in the form of rentals or
royalties. This provision concerning the maximum
municipal business and occupation tax rate on the
activities of health maintenance organizations is effective
beginning after the thirty-first day of December, one
thousand nine hundred ninety-six. Any payments of
business and occupation tax made by a health
maintenance organization to a municipality for calendar
year one thousand nine hundred ninety-seven shall not be
subject to recovery by the health maintenance
organization. Administrative expenses shall include all
expenditures made by a health maintenance organization
other than expenses paid for claims incurred or payments
made to providers for the benefits received by enrollees.
(c) Effective date of local tax. — Any taxes levied pursuant to the authority of this section may be made operative as of the first day of the then current fiscal year or any date thereafter: Provided, That any new imposition of tax or any increase in the rate of tax upon any business, occupation or privilege taxed under section two-e of said article thirteen shall apply only to gross income derived from contracts entered into after the effective date of such imposition of tax or rate increase, and which effective date shall not be retroactive in any respect: Provided, however, That no tax imposed or revised under this section upon public utility services may be effective unless and until the municipality provides written notice of the same by certified mail to said public utility at least sixty days prior to the effective date of said tax or revision thereof.

(d) Exemptions. — A municipality shall not impose its business and occupation or privilege tax on any activity that was exempt from the state's business and occupation tax under the provisions of section three, article thirteen of said chapter eleven, prior to July one, one thousand nine hundred eighty-seven, and determined without regard to any annual or monthly monetary exemption also specified therein.

(e) Activity in two or more municipalities. — Whenever the business activity or occupation of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount of gross income, or gross proceeds of sales, taxable by each municipality shall be determined in accordance with such legislative regulations as the tax commissioner may prescribe. It being the intent of the Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the same classification by two or more municipalities shall not be allowed, and that gross income, or gross proceeds of sales, derived from activity engaged in or carried on within this state, that is presently subject to state tax under section two-c or two-h, article thirteen, chapter eleven of this code, which is not taxed or taxable by any other municipality of this state, may be included in the measure of tax for any municipality in this state, from which the activity was directed, or in the absence thereof, the municipality in this
state in which the principal office of the taxpayer is located. Nothing in this subsection shall be construed as permitting any municipality to tax gross income or gross proceeds of sales in violation of the constitution and laws of this state or the United States, or as permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

(f) Where the governing body of a municipality imposes a tax authorized by this section, such governing body shall have the authority to offer tax credits from such tax as incentives for new and expanding businesses located within the corporate limits of the municipality.

(g) Administrative provisions. — The ordinance of a municipality imposing a business and occupation or privilege tax shall provide procedures for the assessment and collection of such tax, which shall be similar to those procedures in article thirteen, chapter eleven of this code, as in existence on June thirtieth, one thousand nine hundred seventy-eight, or to those procedures in article ten, chapter eleven of this code, and shall conform with such provisions as they relate to waiver of penalties and additions to tax.

CHAPTER 175

(H. B. 4113—By Mr. Speaker, Mr. Kiss, and Delegate Michael)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-c, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to simulcasting of horse and dog races and pari-mutuel wagering on simulcast races; providing for a negotiated signal transmission fee as consideration for a host racing association’s televised racing services; providing for payments into racetrack employees’ pension funds, the
thoroughbred development fund and purse funds; and making technical corrections to clarify current law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12c. Interstate simulcasts by licensed racetracks.

(a) Any licensed racing association may be authorized by the commission to transmit broadcasts of races conducted at its racetrack to legal wagering entities located outside this state, which legal wagering entities located outside this state shall not be subject to the provisions of subsection (e), section twelve-b of this article: Provided, That as consideration for the televised racing services it provides, the host racing association shall receive a signal transmission fee to be paid by the receiving legal wagering entity which shall be in an amount agreed upon by the receiving legal wagering entity and the host racing association. All broadcasts of horse races shall be in accordance with all of the provisions of the "Federal Interstate Horseracing Act of 1978", also known as Public Law 95-515, Section 3001-3007 of Title 15 of the United States Code.

(b) One percent of the total signal transmission fee provided in subsection (a) of this section shall be paid into a special fund to be established by the racing commission for and on behalf of all employees of the licensed racing association to be used for payments into the pension plan for all employees of the licensed racing association, and any thoroughbred horse racetrack which has participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two shall pay seven and one-half percent of the signal transmission fee into the West Virginia thoroughbred development fund established by the racing commission according to section thirteen-b of this article.

After deducting: (i) The amounts required to be placed
into the pension plan for all employees of the licensed 
racing association under this section; (ii) the amounts, if 
any, required to be paid into the West Virginia 
thoroughbred development fund under this section; and 
(iii) the direct costs necessary to send a live audio and 
visual signal of horse races or dog races from any 
racetrack licensed under the provisions of section one of 
this article to any legal wagering entities outside this state 
for the purpose of pari-mutuel wagering, which direct 
costs shall include the cost of satellite equipment necessary 
to transmit the signal, a satellite operator and the satellite 
time necessary to broadcast the signal and the cost of 
telecommunication and facsimile services needed to 
communicate necessary information to all legal wagering 
entities for the purpose of pari-mutuel wagering, 
thoroughbred horseracing associations shall make a 
deposit equal to fifty percent of the remainder into the 
purse fund established under the provisions of subdivision 
(1), subsection (b), section nine of this article.

CHAPTER 176

(S. B. 252—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter, 
Kessler, Oliverio, Ross, Schoonover, Snyder, White, Buckalew, Deem, 
Kimble and Scott)

[Passed February 24, 1998; in effect ninety days from passage. Approved by the Governor.]
authorities; providing for creation of city and county housing authorities; transacting business; exercising powers; determining need for housing authority; requiring resolution of governing body; appointing members; establishing terms of office; providing for expenses; providing for removal of commissioners; providing for regional housing authorities; requiring adoption of resolution to create regional housing authorities; providing for withdrawal from regional housing authority; prohibiting certain persons from acquiring interest in property or contracts; requiring disclosure of prior interest; prohibiting compensation of commissioners; providing for reimbursement of necessary expenditures; providing that housing authority is body corporate and politic; providing authority with powers necessary to effectuate purposes of article; authorizing authority to investigate living and housing conditions in area or operation; authorizing authority to study and make recommendations concerning the city or county plan; authorizing authority to form and operate nonprofit corporations; allowing authority to participate in cooperative arrangements with persons and for-profit entities; allowing authority to participate as a general or limited partner, co-venturer, shareholder; allowing authority to require contractors to comply with requirements of minimum wages and maximum hours of labor; providing for joint undertakings by authorities; establishing areas of operation; providing for the acquisition of land by purchase or by right of eminent domain; providing that developments are subject to ordinances of locality in which situated; providing that restrictions regarding acquisition, operation or disposition of property by public bodies do not apply to an authority unless specified by the Legislature; providing for the amount and nature of indebtedness; establishing rights of creditors; allowing authority to enter into agreement for supervision and control of development; requiring authority to report to mayor or county governing body; authorizing creation of community and economic development fund; providing for tax and licensing exemptions; providing for the security of funds of authority deposited in bank; establishing policy of state as to rentals; providing for occupancy standards and requirements to prohibit any criminal or other activity that threatens health, safety or right to peaceful enjoyment of
premises; authorizing provision of housing, rental, supportive services and programs to advance social, educational and economic self-sufficiency; encouraging increased availability of financing for purchase of dwellings; home improvements and repairs for persons of low or moderate income; establishing duties and limiting powers of authority; providing for an authority to lease or rent property; providing that rent will be established in appropriate manner; permitting existing tenants to occupy property upon terms and conditions set by authority; authorizing programs to increase home ownership by residents of developments; allowing authority to acquire, own and operate nonresidential property for certain limited purposes; providing for programs to rehabilitate, maintain, procure, and preserve existing affordable housing; requiring authority to conduct affairs in accordance with sound financial and business practices; providing power to issue bonds; establishing how bonds secured; providing for bonds to be authorized by resolution; establishing interest rate and life; providing for redemption; providing for payment; providing for sale; providing for presumption of validity of commissioners signatures; establishing powers of authority in connection with issuance of bonds; incurring obligations under leases; securing payment of bonds; providing for enforcement of performance of contracts; enjoining unlawful acts; surrendering possession of development upon default by authority; appointing a receiver; requiring accounting by commissioners; authorizing housing assistance for farmers of low and moderate income; and providing for application for low-cost housing by farmers.

Be it enacted by the Legislature of West Virginia:

That section one-a, article fifteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, two, three, four, six, seven, seven-a, seven-b, eight, nine, ten, eleven, twelve, fourteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four and twenty-five be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections three-a and thirteen, all to read as follows:
ARTICLE 15. STATE HOUSING LAW.

§16-15-2. Legislative declaration of necessity for creation of housing authority corporations.
§16-15-3. City and county housing authorities created; when to transact business or exercise powers; determination of need for housing authority; resolution of governing body proof of establishment; appointment, term, expenses and removal of commissioners.
§16-15-3a. Regional housing authorities.
§16-15-4. Persons prohibited from acquiring interest in property or contracts; disclosure of prior interest.
§16-15-5. Commissioner to receive no compensation; reimbursement for necessary expenditures.
§16-15-6. Authority a body corporate and politic; powers; investigations or examinations.
§16-15-7. Power of authority to include certain stipulations in contracts.
§16-15-7a. Joint undertakings by authorities; areas of operation.
§16-15-8. Power to acquire lands, etc., by purchase or by right of eminent domain.
§16-15-9. Developments subject to ordinances, etc., of locality in which situated; restrictions on acquisition, etc., of property; securities need not be offered to sinking fund commission.
§16-15-10. Amount and nature of indebtedness; rights of creditors.
§16-15-11. Agreement with federal government providing for supervision and control of authority or development.
§16-15-12. Report to mayor or county governing body.
§16-15-17. Power to issue bonds; how bonds secured.
§16-15-18. Bonds authorized by resolution; interest rate and life; forms; denominations; redemption; how payable; sale; signatures of commissioners or officers ceasing to be such before delivery; presumptions in suit, etc., involving validity.
§16-15-20. Actions by obligee of authority to enforce performance of contracts and to enjoin unlawful acts.
§16-15-21. Surrender of possession of development to obligee upon default by authority; appointment of receiver; accounting.
§16-15-22. Housing authorities empowered to provide housing for farmers of low and moderate income.


The following terms, wherever used or referred to in this article, shall have the following respective meanings, unless in any case a different meaning clearly appears from the context:

1. "Affiliate" means any corporation, entity, partnership, venture, syndicate or arrangement in which a housing authority participates by holding an ownership interest or participating in its governance, including both controlled and noncontrolled affiliates as herein defined.

2. "Affordable housing" means dwelling units that may be rented or purchased, as the case may be, by persons of eligible income, as defined herein.

3. "Annual sinking fund payment" means the amount of money specified in the resolution or resolutions authorizing term bonds as payable into a sinking fund during a particular calendar year for the retirement of term bonds at maturity after such calendar year, but shall not include any amount payable by reason only of the maturity of a bond.

4. "Area of operation" means the geographical area within which a housing authority owns or operates housing developments or administers other housing programs including any city, county or combination thereof in which it was operating on the effective date of this article.

5. "Arrangement" means a legal relationship with another party that may include, but not be limited to, a general or limited partnership; joint venture; syndicate or syndication; corporation; limited liability cooperative, corporation or partnership; an unincorporated association; a cooperative; a consortium; and all other structures, organizations, and forms of legal relationships with third parties.

6. "Authority" or "housing authority" means a corporate body organized in accordance with the
provisions of this article for the purposes, with the powers, and subject to the restrictions hereinafter set forth. Where the context requires or permits, this term shall be deemed to include regional housing authorities and/or controlled affiliates of a housing authority.

(7) "Bond" or "bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this article.

(8) "City" means and includes any political subdivision of this state, whether incorporated or unincorporated, known as a city, municipality, town or village. With respect to the provisions of other sections of this article and their application to housing authorities of counties, the term "city" shall be construed as referring to a county unless a different meaning clearly appears from the context.

(9) "Clerk" means the clerk or recorder of the city or the clerk of the county, as the case may be, or the officer charged with the duties customarily imposed on the clerk or recorder.

(10) "Commissioner" means one of the members of the governing board of a housing authority appointed in accordance with the provisions of this article.

(11) "Community facilities" means lands, buildings and equipment, real and personal property suitable for recreational, or social assembly, for educational, health, or welfare purposes and other necessary activities for the use and benefit of the occupants of housing developments and the public.

(12) “Controlled affiliate” means any affiliate of a housing authority: (i) In which commissioners, officers, employees and agents of the authority constitute a majority of the governing body; or (ii) in which the authority holds a majority of the ownership interests.

(13) “Council” means the chief legislative body of the city.
(14) "County" means and includes any political subdivision of this state known as a county.

(15) "Development" or "housing development" means and includes all dwellings and associated appurtenances, including real and personal property, and all other facilities and improvements of every kind and description, which a housing authority may own or operate or in which it may hold an interest under the provisions of this article, all land upon which such dwellings, appurtenances, and facilities are situate; all work and activities undertaken by a housing authority or others relating to the creation of such property; all tangible and intangible personal property relating thereto, including all leases, licenses, agreements, and other instruments and all rights and obligations arising thereunder, establishing or confirming ownership, title, or right of use or possession in or to any such property by a housing authority, all as more particularly described and authorized in this article.

(16) "Farmers of low or moderate income" means persons or families who at the time of their admission to occupancy in a dwelling of the authority: (A) Live under unsafe and unsanitary housing conditions; (B) derive their principal income from operating or working upon a farm; and (C) had an aggregate average annual net income for the three years preceding their admission that was less than the amount determined by the authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe and sanitary housing.

(17) "Governing body" means, in the case of a city, the council of the city, and in the case of a county, the county commission.

(18) "Government" means the state and federal governments and any subdivisions, authority or instrumentality, corporate or otherwise, of either of them.

(19) "Guest" means any person, not a resident of the development, who is present within the development, or within a dwelling in a development, as an invitee of or
otherwise with the express or implied consent of a resident of the development or dwelling.

(20) "Hold an interest" means ownership or control of, or participation in an arrangement with respect to, a development by a housing authority or any affiliate thereof.

(21) "Low-cost housing" shall include any housing accommodations which are or are to be rented at not in excess of a maximum rate per room, or maximum average rate per room, which shall be specified or provided by the housing authority of the city in which such housing accommodations are or are to be located, or the Legislature, or a duly constituted agency of the state, or of the United States of America.

(22) "Mayor" means the chief executive of the city, whether the official designation of his office be mayor, city manager or otherwise: Provided, That the term "mayor" may also be the chief elected officer of the municipality regardless of whether or not the corporate charter provides for a city manager appointed by the city council who is the chief executive officer.

(23) "Noncontrolled affiliate" means affiliate in which a housing authority participates, but does not constitute a majority of the governing body nor have a majority ownership interest.

(24) "Obligee of the authority" or "obligee" means any bondholder, trustee or trustees for any bondholders, or lessor demising to an authority property used in connection with a housing development, or any assignee or assignees of the lessor's interest or any part thereof, and the federal government when it is a party to any contract with the authority.

(25) "Person" means a family and, where the context so requires, a household.

(26) "Persons of eligible income" means individuals or families as defined by a public housing authority within the applicable local, state and federal funding guidelines.
(27) "Public agency" means and includes: (i) Any county; city; village; township; any school, drainage, tax, improvement or other district; any department, division, or political subdivision of this state or another state; any housing authority, housing finance authority, or housing trust of this state or another state; and any other agency, bureau, office, authority, or instrumentality of this state or another state; (ii) any board, agency, commission, division or other instrumentality of a city or county; and (iii) any board, commission, agency, department, or other instrumentality of the United States, or any political subdivision or governmental unit of any of them.

(28) "Regional housing authority" means a housing authority formed by two or more cities or counties pursuant to the authority provided in section three-a of this article.

(29) "Resident" means a person residing in a development of a housing authority, with the consent of such authority, according to its policies, rules and procedures.

(30) "Slum clearance" means the removal of housing conditions which shall be considered by the housing authority of the city in which such conditions exist to be unsanitary or substandard or a menace to public health.

(31) "State" means the state of West Virginia and its duly constituted government.

§16-15-2. Legislative declaration of necessity for creation of housing authority corporations.

It is hereby declared as a matter of legislative determination that in order to promote and protect the health, safety, morals and welfare of the public, it is necessary in the public interest to provide for the creation of public corporate bodies to be known as housing authorities, and to confer upon and vest in said housing authorities all powers necessary or appropriate in order that they may engage in low and moderate cost housing development and slum clearance projects; and that the powers herein conferred upon the housing authorities.
including the power to acquire and dispose of property, to
remove unsanitary or substandard conditions, to construct
and operate housing developments and to borrow, expend
and repay moneys for the purpose herein set forth, are
public objects essential to the public interest.

§16-15-3. City and county housing authorities created; when
to transact business or exercise powers; determination of need for housing authority; resolution of governing body proof of establishment; appointment, term, expenses and removal of commissioners.

(a) In each city and in each county there is hereby
created a housing authority which shall be a public body
corporate and politic. No authority hereby created shall
transact any business or exercise its powers hereunder
until or unless the governing body of the city or the
county, by proper resolution, determines that there is need
for an authority: Provided, That nothing contained herein
shall be construed as creating an additional housing
authority in a city where a housing authority has been
created pursuant to prior law, but each housing authority
shall continue as a public body corporate and politic and
shall have the area of operation defined in section one of
this article for a city or county housing authority. Each
housing authority created pursuant to this section shall
adopt a name for all legal and operating purposes.

(b) The determination as to whether or not there is a
need for an authority: (1) May be made by the governing
body on its own motion; or (2) shall be made by the
governing body upon the filing of a petition signed by
twenty-five residents of the city or county asserting that
there is need for an authority to function in the city or
county and requesting that the governing body so declare.
The governing body shall adopt a resolution declaring
that there is need for a housing authority in the city or
county if it finds: (1) That unsanitary or unsafe inhabited
dwellings exist in the city or county; or (2) that there is a
shortage of safe or sanitary dwellings in the city or county
available to persons of low or moderate income at rental
rates or purchase prices they can afford. In determining
whether dwellings are unsafe or unsanitary the governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of the dwellings, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions exist in the dwellings which endanger life or property by fire or other cause.

(c) In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the governing body declaring the need for the authority. An adopted resolution shall be deemed sufficient if it declares that there is need for an authority and finds in substantially the foregoing terms (no further detail being necessary) that either or both of the above-enumerated conditions exist. A copy of a resolution duly certified by the clerk shall be admissible in evidence in any suit, action or proceeding.

(d) When the governing body of a city adopts a resolution as aforesaid, it shall promptly notify the mayor of the adoption. Upon receiving the notice, the mayor shall appoint five persons as commissioners of the authority created for the city. When the governing body of a county adopts a resolution as aforesaid, it shall appoint five persons as commissioners of the authority created for the county. The commissioners who are first appointed shall be designated to serve for terms of one, two, three, four and five years, respectively, from the date of their appointment. Thereafter commissioners shall be appointed for a term of office of five years, except that all vacancies shall be filled for the unexpired term. No commissioner of an authority may be an officer or employee of the city or county for which the authority is created. A commissioner shall hold office until his or her successor has been appointed and has qualified, unless sooner removed according to this article. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and shall be conclusive.
evidence of the due and proper appointment of a commissioner. A commissioner shall receive no compensation for his or her services, but he or she shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his or her duties.

(e) For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority may be removed by the mayor or by the county commission. A commissioner shall be removed only after being given a copy of the charges and notice of a hearing. The charges shall be sent to the commissioner at least ten days prior to the hearing and shall notify the commissioner that he or she has an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk. The powers of each authority shall be vested in its commissioners.

§16-15-3a. Regional housing authorities.

(a) Any two or more cities or counties, or any combination thereof, may, by resolution of their separate governing bodies, establish a regional housing authority, by adopting a joint resolution declaring that there is a need for a regional housing authority to provide decent, safe and sanitary housing that is affordable to persons of low and moderate income residing in a multijurisdictional area and that this need would be more efficiently served by the establishment of a regional housing authority: Provided, That any authority in existence prior to the effective date of this article that is providing services outside of the city or county boundaries will continue to have jurisdiction in the areas where the authority is providing services on the effective date of this article.

(b) Upon adoption of a resolution by two or more cities or counties, or a combination thereof, a regional housing authority shall be established and, except as otherwise provided in this article, the regional housing authority shall have perpetual existence, unless dissolved in accordance with law. Each regional housing authority
established pursuant to this section, shall adopt a name for
all legal and operating purposes.

(c) A certified copy of the resolutions establishing a
regional housing authority shall serve as conclusive
evidence that the authority has been properly established,
is authorized to transact business, and exercise its powers
under this article.

(d) After a regional housing authority has been
established, any additional city or county may elect to
participate as a member of the regional housing authority,
on adoption of a resolution to that effect: Provided,
That a majority of the existing commissioners of the
regional housing authority and all participating political
subdivisions, by action of their respective governing
bodies, shall consent to the additional member or
members.

(e) Any city or county may withdraw from
participation in the regional housing authority by
resolution of its governing body. Any withdrawal from
participation shall be subject to the following conditions:

(1) The regional housing authority has no bonds,
notes, or other obligations outstanding, or adequate
provision for payment of bonds, notes, or other
obligations, by escrow or otherwise, has been made. Past
performance without breach or default of an obligation
secured only by one or more developments or the income
thereof shall be deemed to be “adequate provision”;

(2) The withdrawing city or county shall make
adequate provision for the performance of all of its
outstanding obligations and responsibilities as a
participant in the regional housing authority;

(3) The withdrawing city or county shall give six
months written notice to the regional housing authority
and all other cities and counties participating therein; or

(4) The commissioner or commissioners appointed by
the withdrawing city or county shall be deemed to have
resigned as of the date upon which the withdrawal is
effective. Vacancies on the board of commissioners
created by withdrawal of a city or county shall be filled in such manner as the cities and counties remaining as participants shall agree.

Notwithstanding the withdrawal of any participating city or county, the legal title to and operating responsibility for any development located outside the area of operation of the regional housing authority remaining after such withdrawal has occurred shall continue to be vested in the regional housing authority, unless a different arrangement is made.

(f) If only one city or county remains as a participant in any regional housing authority, the regional housing authority shall become the housing authority of the remaining city or county at the discretion of its governing body, or the regional housing authority shall be dissolved and its assets and liabilities transferred to another existing housing authority or to a city or county or other public agency.

§16-15-4. Persons prohibited from acquiring interest in property or contracts; disclosure of prior interest.

No commissioner or employee of an authority shall acquire any interest direct or indirect in any development or in any property included or planned to be included in any development, nor shall he or she have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any development. If any member or employee of any authority owns or controls an interest direct or indirect in any property included in any development, which was acquired prior to his or her appointment or employment, he or she shall disclose the same in writing to the authority. The disclosure shall be entered upon the minutes of the authority.

§16-15-6. Commissioner to receive no compensation; reimbursement for necessary expenditures.

No commissioner shall receive any compensation whether in form of salary, per diem allowances or otherwise, for or in connection with his or her services as
commissioner. Each commissioner shall, however, be entitled to reimbursement, to the extent of appropriations or other funds available therefor, for any necessary expenditures in connection with the performance of his or her general duties or in connection with the construction or operation of any development. The authority may allocate such expenses among its developments in such manner as it may consider proper.

§16-15-7. Authority a body corporate and politic; powers; investigations or examinations.

(a) An authority shall constitute a body both corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

(1) To investigate living and housing conditions in the authority's area of operation and the means and methods of improving such conditions;

(2) To determine whether unsanitary or substandard housing conditions exist;

(3) To study and make recommendations concerning the city or county plan in relation to the problems of clearing, replanning, redevelopment and reconstruction of areas in which unsanitary or substandard conditions exist, and the providing of housing accommodations for persons of low and moderate income, and to cooperate with any city, county or regional planning agency, to prepare, carry out and operate developments;

(4) To provide for the construction, reconstruction, redevelopment, improvement, alteration or repair of any development or any part thereof;

(5) To take over by purchase, lease or otherwise any development undertaken by any government;

(6) To act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a development or any part theretofore.
(7) To arrange with the city or with a government for the furnishing, planning, replanning, opening or closing of streets, roads, roadways, alleys or other places or facilities, or for the acquisition by the city, county, state or federal government or any agency, instrumentality or subdivision thereof, of property, options or property rights or for the furnishing of property or services in connection with a development;

(8) To sell, lease or rent any of the housing or other accommodations of any of the lands, buildings, structures or facilities embraced in any development, and to establish and revise the rents or charges therefor;

(9) To enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by eminent domain or otherwise, sell, exchange, transfer, assign or mortgage any property real or personal or any interest therein;

(10) To acquire any property real or personal or any interest therein from any person, firm, corporation, or the city, county, state or federal government or any agency, instrumentality or subdivision thereof, by gift, grant, bequest or devise; to own, hold, clear and improve property; in its discretion, to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable;

(11) To borrow money upon its bonds, notes, debentures or other evidences of indebtedness, and to secure the same by mortgages upon property held or to be held by it or by pledge of its revenues, or in any other manner;

(12) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control;

(13) To sue and be sued;

(14) To have a seal, and to alter it;
(15) To have perpetual succession;

(16) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;

(17) To form and operate nonprofit corporations and other affiliates of every kind and description, which may be wholly or partially owned or controlled, for carrying out the purposes of this article and in connection with the exercise of any of the powers of a housing authority;

(18) To participate in cooperative arrangements with persons and for-profit entities whose purpose is solely that of pecuniary gain, as well as with nonprofit entities and persons who seek no pecuniary gain. The participation of a housing authority in any arrangement with other persons or entities, including for-profit persons and entities, shall not cause any activity engaged in by the authority to be characterized as proprietary nor deprive the authority of any privilege or immunity otherwise existing under law;

(19) To participate as a general or limited partner, co-venturer, shareholder, or otherwise as a principal, an investor, a lender, a guarantor, a contracting party, or in any other manner, all upon such terms and conditions, and with such rights and obligations, as the governing board of the housing authority shall, from time to time, in its discretion determine to be appropriate;

(20) To make and, from time to time, amend and repeal bylaws and rules not inconsistent with this article to carry into effect the powers and purposes of the authority;

(21) To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information;

(22) To issue subpoenas requiring the attendance of witnesses or the production of documents and things, for the examination of witnesses who are out of the state or unable to attend before the authority, or excused from attendance; and
(23) To do all things necessary or convenient to carry out the powers given in this article.

(b) Any of the investigations or examinations provided for in this article may be conducted by the authority or by a committee appointed by it, consisting of one or more members thereof, or by counsel, or by an officer or employee specifically authorized by the authority to conduct it. Any member of the authority, its counsel, or any person designated by it to conduct an investigation or examination, shall have power to administer oaths, take affidavits and issue subpoenas.

§16-15-7a. Power of authority to include certain stipulations in contracts.

A housing authority, in addition to its other powers, shall have the power, notwithstanding any provisions of this code to the contrary, to include in any contract let in connection with a development, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the development.

§16-15-7b. Joint undertakings by authorities; areas of operation.

(a) Any two or more authorities may join or cooperate with one another in the exercise of any or all of their powers for the purpose of financing, planning, undertaking, constructing or operating a housing development or developments located within the area of operation of any one or more such authorities or for the administration of other housing programs.

(b) The area of operation of a housing authority shall be one of the following:

(1) In the case of a housing authority established by a city, the authority's area of operation shall be the city and the area within ten miles from the territorial boundaries thereof. Depending upon the geographical location of the city, the area of operation may include portions of one or
more counties. It may also include areas lying within the
territorial boundaries of cities outside the city establishing
the housing authority. In order to resolve territorial
conflicts, the following rules shall apply:

(A) In the case of the housing authority's home
county, it may operate outside of the area described in this
subsection in the unincorporated areas of the home
county without the need for the county's consent unless
the home county has established its own housing
authority. If the home county has established a housing
authority, then the city's housing authority may operate
outside the area described above only with the consent of
the county housing authority;

(B) In the case of incorporated areas of a home
county, the housing authority may only operate within the
territorial boundaries thereof by consent of the other city
and its housing authority, if any;

(C) In the case of unincorporated portions of counties
other than the housing authority's home county, it may
operate only with the consent of the governing body of
the other county, regardless of whether the other county
has established a housing authority;

(D) In the case of incorporated areas within other
counties, it may operate only with the consent of the
governing body of any city incorporating such areas, and,
if the other city has also established its own housing
authority, with the consent of the other housing authority;

(E) Notwithstanding any other provision of this
section, a housing authority may, subject to the limitations
stated in this article, provide rental assistance to persons
residing outside the authority's area of operation as
defined in this section.

For purposes of this section, the term "home county"
means the county in which the city establishing the
housing authority is situated.

(2) In the case of a housing authority established by a
county, the authority's area of operation shall be all of the
county except that portion which lies within the territorial
(3) In the case of a regional housing authority, the authority's area of operation shall be an area equivalent to the total areas of operation which the housing authorities, if created separately by political subdivisions establishing the regional housing authority, would have, when aggregated. The area of operation of a regional housing authority shall not include any area which lies within the territorial boundaries of any city or county in which a housing authority has been established and which city or county is not a participant in the regional authority: Provided, That the housing authority of the city or county and its governing body may consent to the operation of one or more developments by the regional housing authority within the city's or county's territorial boundaries.

(4) Whether due to changes in the boundaries of cities or counties which have established housing authorities, or the establishment of new housing authorities, or for any other reason, territories may exist that include the area of operation of two or more housing authorities. Such areas shall be areas of concurrent jurisdiction. No housing authority whose area of operation includes an area of concurrent jurisdiction shall construct, acquire or develop any new housing development within the area of concurrent jurisdiction without the written agreement of the other authority.

(5) Any housing development established by a housing authority pursuant to law shall continue to be maintained and operated by the housing authority establishing the development or its designee, unless the development is conveyed to another housing authority or to a city, county or other public agency or is otherwise disposed of in accordance with law.

(6) Notwithstanding the area of operation as defined herein, all housing authorities shall have the jurisdiction and authority to cooperate and contract with any other housing authorities and other public agencies within this state and any public agencies of any other state, with the
federal government, and with any person, or entity, public or private, and wherever located, in order to carry out the purposes of this article. Such cooperation may include, but shall not be limited to, activities and operations conducted with the agreement of any public agency.

§16-15-8. Power to acquire lands, etc., by purchase or by right of eminent domain.

Whenever it shall be deemed necessary by an authority in connection with the exercise of its powers herein conferred to take or acquire any lands, structures or buildings or other rights, either in fee or as easements for any housing development or slum clearance, the authority may purchase the same directly or through its agent from the owner or owners thereof, or failing to agree with the owner or owners thereof, such authority may exercise the power of eminent domain in the manner provided for condemnation proceedings, in section eight, article one and sections nine and twelve, article two, chapter fifty-four of this code.

§16-15-9. Developments subject to ordinances, etc., of locality in which situated; restrictions on acquisition, etc., of property; securities need not be offered to sinking fund commission.

All developments of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the development is situated. No provisions with respect to the acquisition, operation or disposition of property by public bodies shall be applicable to an authority unless the Legislature shall specifically so state. No authority shall be required to offer its securities to the state sinking fund commission at any time, nor shall any authority be required to turn over any surplus or sinking funds to the state sinking fund commission.

§16-15-10. Amount and nature of indebtedness; rights of creditors.

Subject to the restrictions set forth in this article, the authority may incur any indebtedness and issue any
obligations and give any security therefor which it may
decide necessary or advisable in connection with any
development undertaken by it. No statutory limitation
with respect to the nature or amount of indebtedness
which may be incurred by municipalities or other public
bodies shall apply to indebtedness of an authority, unless
the Legislature shall specifically so provide. No
indebtedness of any nature of an authority shall constitute
a debt or obligation of a municipality or the state or any
other subdivision or authority or instrumentality thereof,
or a charge against any property of such municipality, the
state, or other subdivision, agency or instrumentality
thereof. No obligation incurred by the authority shall
give any right against any commissioner of such authority,
but a commissioner shall be liable only for his own
malfeasance. The rights of creditors of an authority shall
be solely against such authority as a corporate body and
shall be satisfied only out of property held by it in its
corporate capacity, and the enforcement of such rights
shall be subject to all the provisions of this article.

§16-15-11. Agreement with federal government providing for
supervision and control of authority or
development.

An authority may, in connection with the borrowing
of funds, or otherwise, enter into any agreement with the
federal government or any agency or subdivision thereof,
providing for supervision and control of the authority or
of any development, and containing such other covenants,
terms and conditions as the authority may deem advisable.

§16-15-12. Report to mayor or county governing body.

At least once a year, an authority shall file with the
mayor, or the county commission, as appropriate, a report
of its activities for the preceding year, and shall make
recommendations with reference to any legislation or
other action as it deems necessary in order to carry out the
purposes of this article.

(a) The governing body of a housing authority may, by resolution, create a fund which may be available through gifts, contributions, grants, bequests, loans, loan proceeds or other sources. The fund shall be governed by and administered by the authority as a general purpose account separate and distinct from any other moneys, funds or accounts owned or managed by the housing authority in conjunction or cooperation with any local, state or federal governmental agency.

(b) The fund may be utilized to provide a source from which the authority may issue grants or loans to enhance community and economic development in the authority's area of operation. The grants and/or loans may include, but are not limited to, housing rehabilitation, redevelopment reconstruction, community improvement, home ownership, training and counseling for persons of eligible income, elimination of public health or safety hazards, repayment of the authority's bonds or loans and other like things which fulfill the purposes of this article.

(c) The authority shall have an audit of the fund preformed at the end of each fiscal year conducted in accordance with generally accepted accounting principles as part of the authority's annual audit established by the governing board.


(a) The authority shall be exempt from the payment of any taxes or fees to the state or any subdivision thereof, or to any officer or employee of the state or any subdivision thereof. The property of an authority shall be exempt from all local and municipal taxes. Bonds, notes, debentures and other evidences of indebtedness of an authority are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from taxes.

(b) All representatives of a housing authority, acting within the scope of carrying out the business and conducting the affairs of a housing authority, shall be exempt from all licensing requirements imposed by any law with respect to the sale, rental or management of real
§16-15-17. Policy of state as to rentals.

(a) It is hereby declared to be the policy of this state that each housing authority shall manage and operate its housing developments in an efficient manner so as to enable it to fix the rentals, leases or purchase prices for dwellings at the lowest possible rates consistent with its providing decent, safe and sanitary dwellings, and that no housing authority shall construct or operate any development for profit, or as a source of revenue to the city or county.

(b) It is the goal of this state to provide access to decent, safe, sanitary and affordable housing to its residents. The benefits of this article are not a matter of right, but of privilege. Persons accepting assistance under this article shall, by such acceptance thereof, recognize their responsibilities to the housing authorities providing such assistance and to other persons living in their vicinity. Persons accepting benefits are responsible for their own conduct and for the actions of other members of their households and of their guests. Housing authorities may impose and enforce occupancy standards and requirements to prohibit any criminal or other activity which threatens the health, safety or right to peaceful enjoyment of the premises or development by other residents. If eviction or lease termination are possible outcomes of the housing authority's enforcement of its occupancy standards, unless federal law or regulation provides otherwise, in any eviction or lease termination proceeding, there must be a finding of either: (1) The tenant's participation in; or (2) the tenant's knowledge of the participation of a member of the tenant's household or a tenant's guest in, criminal activities or other activities which threaten the health, safety or right to peaceful enjoyment of the premises or development by other residents. Unless, otherwise provided by federal law or regulation, any act done by a guest or member of a tenant's household is presumed to be known to the tenant. This presumption may be rebutted by clear and
38 convincing evidence that the tenant could not reasonably
39 have known that the act would occur or that the tenant
40 took reasonable measures to prevent the act from
41 occurring. In all cases of eviction or lease termination, the
42 housing authority shall consider all circumstances
43 surrounding the individual eviction, including the
44 seriousness of the offense, extent of participation by
45 household members, and effect of eviction on household
46 members not involved. In appropriate cases, housing
47 authorities may allow the tenant and the members of his or
48 her household to remain. Even if there is no finding of
49 knowledge, the tenant may be required to: (1) Prohibit
50 any guest from visiting; and (2) remove any member of
51 the household from the unit, if that individual participated
52 in criminal activities or other activities which threaten the
53 health, safety or right to peaceful enjoyment of the
54 premises or development by other residents.

(c) An authority shall provide housing, rental, and
56 other assistance to persons of low and moderate income,
57 and assistance to properties and entities, in accordance
58 with the provisions of this article, and, subject to standards
59 and procedures adopted by the housing authority, to
60 authorize the provision by housing authorities of
61 supportive services and programs of every kind and
62 description to advance the social, educational, and
63 economic well-being and the economic and social self-
64 sufficiency of persons receiving housing assistance under
65 this article, so as to create wholesome living environments,
66 eliminate long-term poverty, encourage gainful
67 employment, develop social and economic self-sufficiency
68 (including living independently of housing assistance),
69 and enhance personal responsibility on the part of such
70 persons;

(d) Housing authorities shall encourage the use of
72 entrepreneurial methods and approaches and to stimulate
73 and increase private sector initiatives and joint public-
74 private sector initiatives by housing authorities in carrying
75 out the purposes and provisions of this article.

(e) Housing authorities shall endeavor to increase the
76 availability, from both public and private sector sources, of
financing for the purchase of dwellings, and the financing
for home improvements, and repairs for persons of low or
moderate income; and to further endeavor to increase the
availability of sources of equity and other financing for
the development and operation by housing authorities and
private sector entities of decent, safe, and sanitary rental
housing that is affordable to persons of low and moderate
income.


(a) In the operation or management of housing
developments an authority shall at all times observe the
following duties with respect to rentals, tenant selection
and home ownership:

(1) It may rent or lease dwellings therein only to
persons of eligible income and at rentals within the
financial reach of such persons;

(2) It may rent or lease to a tenant housing consisting
of the number of rooms, but no greater number, which it
deems necessary to provide safe and sanitary
accommodations to the proposed occupants thereof,
without overcrowding;

(3) Subject only to the limitations contained in this
article or imposed by the federal government, an authority
may lease or rent any dwellings, facilities or other real or
personal property owned, controlled, or possessed by the
authority, or with respect to which the authority has
contractual rights permitting such lease or rental, for such
terms, upon such conditions and lease terms and in
exchange for such rentals as the authority may from time
to time in its discretion determine; further, and without
limiting the foregoing, to establish rents in such manner
and in such amounts as the authority may deem
appropriate, including, but not limited to, rents based upon
family income (determined with such adjustments and
exclusions as the authority deems appropriate), minimum
rents, flat rents, graduated rents, rent ranges, and
maximum rents (any of which may vary among the
authority's developments), and to establish any other
standards and conditions relating to rentals that the
authority may deem appropriate to carry out the purposes of this article;

(4) At and subsequent to an acquisition of occupied property, a housing authority may permit existing tenants therein to remain in occupancy upon such terms and conditions and for such periods as the authority shall deem appropriate, notwithstanding that such tenants do not qualify as persons of eligible income;

(5) A housing authority may operate programs to increase home ownership by residents of its developments and by other persons of eligible income; and in such regard, the housing authority may acquire, rehabilitate, construct, reconstruct, sell, convey, lease, option, and take all other actions deemed appropriate to achieve home ownership of dwellings and associated property by persons of eligible income. In connection with any program to encourage such ownership, a housing authority may dispose of dwellings and other associated property in exchange or for fair market purchase prices, and upon such terms and conditions, as the authority deems appropriate;

(6) To develop, acquire, own, lease, and operate properties and facilities that are nonresidential in character, which are used for office, administrative, management, maintenance, commercial, or educational purposes, or providing services, or carrying out any other purpose authorized under this article; to acquire, own, lease, and operate properties and facilities that are both residential and nonresidential in character;

(7) To develop, acquire, own, or lease community facilities, and to provide such facilities to any public agency or to any person, agency, institution, or organization, public or private, for recreational, educational, health or welfare purposes for the benefit and use of the housing authority or occupants of its developments, or persons of eligible income, elderly or handicapped persons, or any combination of the foregoing; to operate or manage community facilities, itself, or as agent or any public agency, or any person, institution, or organization, public or private; and to
receive compensation therefor, if any, as the parties may agree; community facilities may be utilized by private persons or organizations with or without charge, upon a determination by the authority that the utilization would be advisable to promote the public purposes of this article; and

(8) To carry out plans, programs, contracts and agreements of every kind and description and to provide grants, loans, guarantees and other financial assistance to public or private persons or entities, whether nonprofit or for-profit, in order to rehabilitate, maintain, procure, and preserve existing affordable housing stocks in safe, decent and sanitary condition and to ensure that they remain affordable to persons of eligible income.

(b) A housing authority shall conduct its affairs in accordance with sound financial and business practices, taking into account the nature of its activities and intended purpose. Therefore, a housing authority shall establish and charge rents no higher than it shall determine to be necessary to produce revenue which, together with all other available money, revenue, income and receipts of the authority from whatever source derived, will be sufficient:

(1) To pay when due all indebtedness of the authority;

(2) To pay all administrative and other costs of operating the authority's developments and programs of assistance;

(3) To pay the administrative and other costs of the maintenance, rehabilitation, renovation, repair, and replacement of the authority's developments and other property;

(4) To otherwise carry out its purposes under this article, including acquiring or creating additional housing developments and acquiring or improving property for other purposes authorized under this article, including community facilities, commercial facilities, and all other facilities and developments authorized under this article;
(5) To pay the costs of insurance, including the costs of claims, liabilities, losses and other expenses incurred in connection with any self-insurance program;

(6) To provide funds for all required payments in lieu of taxes;

(7) To make all payments required under and otherwise fully perform the authority's obligations under any contract, agreement, or arrangement entered into by the authority, including without limitation, those required in connection with any partnership or joint venture entered into by the authority;

(8) To perform the terms of any commitment or guarantee issued or given by the authority;

(9) To provide a reasonable return on the value of the property so as to enable the housing authority to continue to fulfill its duties, including, but not limited to, the acquisition of additional housing developments, land acquisition, acquisition or construction of buildings, equipment, facilities or other real or personal property for public purposes, including parks or other recreational, educational, welfare or community facilities within its area of operation;

(10) To accommodate economic factors which affect the financial stability and solvency of the authority's developments and programs;

(11) To pay the cost of actions occasioned by natural disasters and other emergencies; and

(12) To create and maintain operating and capital reserves that are reasonable and adequate to ensure the authority's ability to make all payments referred to herein and any other matter with respect to which the authority, in its discretion reasonably exercised, determines that the creation and maintenance of a reserve is appropriate.

Nothing herein shall be construed to limit the amount which a housing authority may charge for nondwelling facilities or for dwelling facilities that are not rented to persons of eligible income: Provided, That the authority's
sections do not conflict with the purposes of this article:
Provided, however, That a housing authority may allow
police officers and maintenance and management
employees, not otherwise eligible for residence, to reside
in its developments.


An authority shall have power to issue bonds from
time to time, in its discretion, for any of its corporate
purposes. An authority shall also have power to issue or
exchange refunding bonds for the purpose of paying,
retiring, extending or renewing bonds previously issued
by it. An authority may issue such types of bonds as it
may determine, including without limiting the generality
of the foregoing, bonds on which the principal and
interest are payable from income and revenues of the
authority and from grants or contributions from the
federal government or other source. Such income and
revenues securing the bonds may be: Exclusively the
income and revenues of the housing developments
financed, in whole or in part, with the proceeds of such
bonds; exclusively the income and revenues of certain
designated housing developments, whether or not they are
financed, in whole or in part, with the proceeds of such
bonds; or the income and revenues of the authority
generally. Any such bonds may be additionally secured
by a pledge of any income or revenues of the authority, or
a mortgage of any housing development, developments or
other property of the authority.

§16-15-20. Bonds authorized by resolution; interest rate and
life; forms; denominations; redemption; how payable; sale; signatures of commissioners or
officers ceasing to be such before delivery; presumptions in suit, etc., involving validity.

(a) Bonds of an authority shall be authorized by its
resolution and may be issued in one or more series and
shall bear such date or dates, mature at such time or times,
bear interest at such rate or rates, be in such denomination
or denominations, be in such form, either coupon or
registered, carry such conversion or registration privileges,
have such rank or priority, be executed in such manner, be
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8 payable in such medium of payment, at such place or
9 places, and be subject to such terms of redemption (with
10 or without premium) as such resolution, its trust indenture
11 or mortgage may provide. Bonds of a housing authority
12 may be issued in zero coupon form or subject to federal
taxation of interest thereon if the resolution authorizing
13 issuance so provides.

14 (b) The bonds may be sold at public sale held after
15 notice prior to such sale promulgated in the manner as the
16 authority deems appropriate or, if the resolution
17 authorizing issuance of the bonds so provides, they may
18 be sold on a negotiated basis or at private sale without any
19 public advertisement. At the discretion of the housing
20 authority, the bonds may be sold at par, or at any discount
21 or premium, as the resolution authorizing them provides.
22 A housing authority issuing bonds may enter into
23 agreements and arrangements with third parties for the
24 marketing of its bonds as it shall deem appropriate.

25 (c) In case any of the commissioners or officers of the
26 authority whose signatures appear on any bonds or
27 coupons shall cease to be such commissioners or officers
28 before the delivery of such bonds, such signatures shall,
29 nevertheless, be valid and sufficient for all purposes, the
30 same as if they had remained in office until such delivery.
31 Any provisions of any law to the contrary notwithstanding,
32 any bonds issued pursuant to this article shall be
33 negotiable.

34 (d) In any suit, action or proceedings involving the
35 validity or enforceability of any bond of an authority or
36 the security therefor, any such bond reciting in substance
37 that it has been issued by the authority to aid in financing
38 a housing development to provide housing for persons of
39 eligible income shall be conclusively deemed to have been
40 issued for a housing development of such character, and
41 the development shall be conclusively deemed to have
42 been planned, located and constructed in accordance with
43 the purposes and provisions of this article.

of bonds, incurring obligations under leases and
securing payment of bonds.
In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of bonds or obligations, any authority, in addition to its other powers shall have power:

(1) To pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence;

(2) To mortgage all or any part of its real or personal property, then owned or thereafter acquired;

(3) To covenant against pledging all or any part of its rents, fees and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing development or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it;

(4) To covenant as to the bonds to be issued and as to the issuance of bonds or otherwise, and as to the issuance of bonds in escrow or otherwise and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof;

(5) To covenant, subject to the limitations contained in this article, as to the rents, purchase prices, and fees to be charged in the operation of a housing development or developments, the amount to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds;

(6) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended
or abrogated, the amount of bonds the holders of which
must consent thereto and the manner in which such
consent may be given;

(7) To covenant as to use of any or all of its real or
personal property; and to covenant as to the maintenance
of its real and personal property, the replacement thereof,
the insurance to be carried thereon and the use and
disposition of insurance moneys;

(8) To covenant as to the rights, liabilities, powers and
duties arising upon the breach by it of any covenant,
condition, or obligation; and to covenant and prescribe as
to events of default and terms and conditions upon which
any or all of its bonds or obligations shall become or may
be declared due before maturity, and as to the terms and
conditions upon which the declaration and its
consequences may be waived;

(9) To vest in a trustee or trustees or the holders of
bonds or any proportion of them the right to enforce the
payment of the bonds or any covenants securing or
relating to the bonds; to vest in a trustee or trustees the
right, in the event of a default by said authority, to take
possession and, as long as the authority is in default, to
retain possession and to use, operate and manage any
housing development or part thereof, and to collect the
rents and revenues arising therefrom and to dispose of
such moneys in accordance with the agreement of the
authority with said trustees; to provide for the powers and
duties of a trustee or trustees and to limit the liabilities
thereof; and to provide the terms and conditions upon
which the trustee or trustees or the holders of bonds or
any proportion of them may enforce any covenant or
rights securing or relating to the bonds; and

(10) To exercise all or any part or combination of the
powers herein granted; to make covenants other than and
in addition to the covenants herein expressly authorized,
of like or different character; to make covenants and to do
any and all acts and things as may be necessary or
convenient or desirable in order to secure its bonds, or, in
the absolute discretion of said authority, as will tend to
make the bonds more marketable notwithstanding that the
covenants, acts or things may not be enumerated herein.

An obligee of an authority shall have the right in addition to all other rights which may be conferred on the obligee, subject only to any contractual restrictions binding upon the obligee:

(1) By mandamus, suit, action or proceeding at law or in equity to compel said authority and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said authority with or for the benefit of the obligee, and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon said authority by this article; and

(2) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of an obligee of the authority.

§16-15-23. Surrender of possession of development to obligee upon default by authority; appointment of receiver; accounting.

An authority shall have power by its resolution, trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(1) To cause possession of any housing development or any part thereof to be surrendered to the obligee; possession may be retained by the bondholder or trustee so long as the authority shall continue in default;

(2) To obtain the appointment of a receiver of any housing development of the authority or any part thereof and of the rents and profits therefrom. If a receiver is appointed, he or she may enter and take possession of the housing development or any part thereof and, so long as the authority shall continue in default, operate and
Housing authorities empowered to provide housing for farmers of low and moderate income.

Housing authorities created for counties and other authorities whose jurisdiction includes rural areas are specifically empowered and authorized to borrow money, accept grants and exercise their other powers to provide housing for farmers of low and moderate income. In connection with such developments, housing authorities may enter into leases or purchase agreements, accept such conveyances and rent or sell dwellings forming part of developments to or for farmers of low and moderate income, as the housing authority deems necessary in order to assure the achievement of the objectives of this article. Leases, agreements or conveyances may include such covenants as the housing authority deems appropriate regarding dwellings and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate. Nothing contained in this section shall be construed as limiting any other powers of any housing authority.

Application for low-cost housing for farmers.

The owner of any farm operated, or worked upon, by farmers of low and moderate income in need of safe and sanitary housing may file an application with a housing authority requesting that it provide for a safe and sanitary dwelling or dwellings for occupancy by farmers of low and moderate income. The applications shall be received and examined by housing authorities in connection with the formulation of developments or programs to provide housing for farmers of low and moderate income.