

**ACTS**  
**OF THE**  
**LEGISLATURE**  
**OF**  
**WEST VIRGINIA**



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

**Volume I**  
**Chapters 1 — 176**

COMPILED AND PUBLISHED  
UNDER THE DIRECTION  
OF  
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## 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.

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.

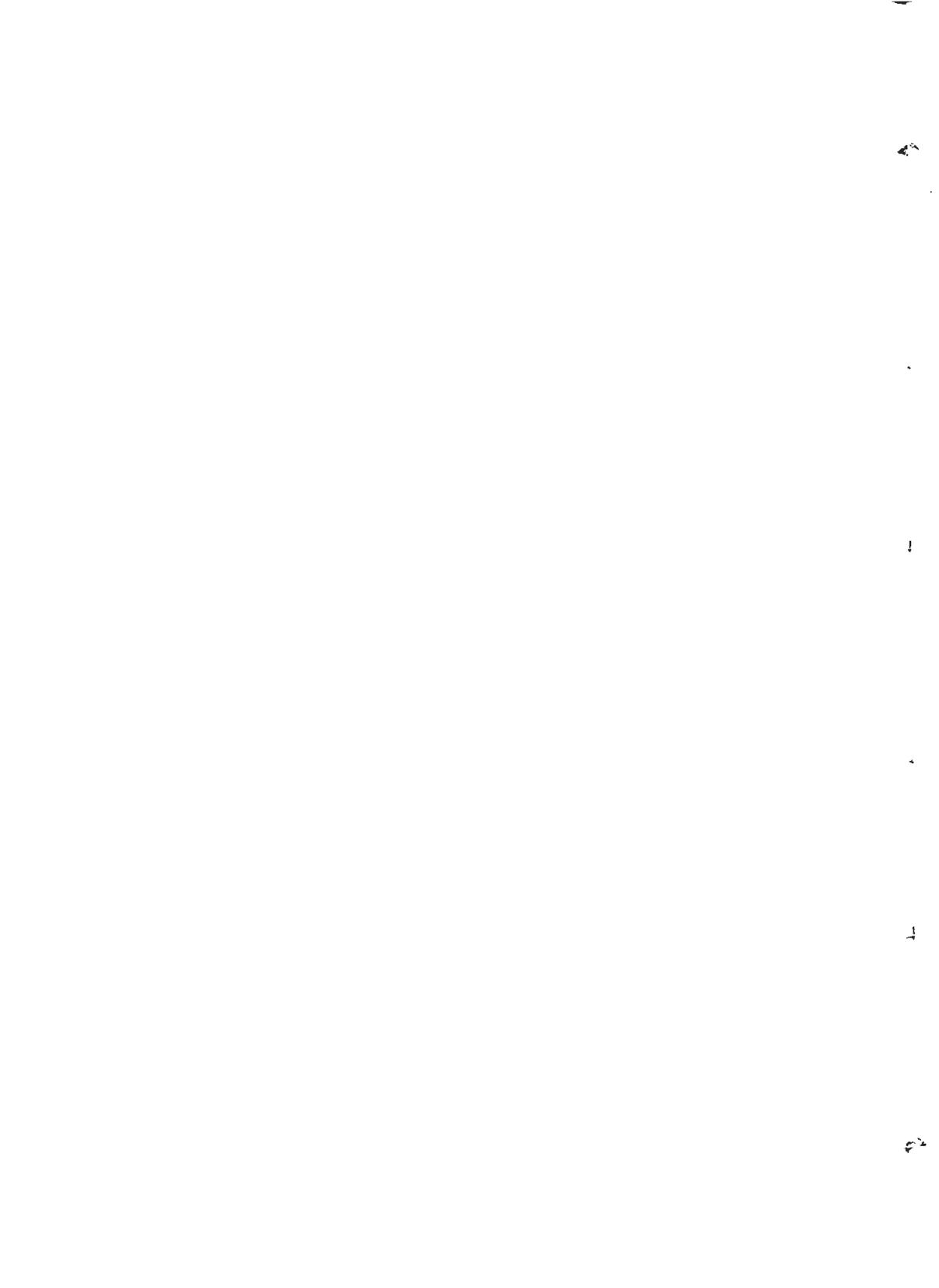
The Legislature adjourned the Extraordinary Session pursuant to House Concurrent Resolution 1 on July 14, 1998.

\* \* \* \* \*

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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## MEMBERS OF THE HOUSE OF DELEGATES

## REGULAR SESSION, 1998

## OFFICERS

*Speaker*—Robert S. Kiss, Beckley*Clerk*—Gregory M. Gray, Charleston*Sergeant at Arms*—Oce Smith, Fairmont*Doorkeeper*—John A. Roberts, Hedgesville

District	Name	Address	Prior Legislative Service
First .....	Jeff Davis (D) .....	New Cumberland ..	
	Tamara Pettit (D) .....	New Cumberland ..	Appt. 12/1/89, 69th; 70th-72nd
Second .....	Timothy R. Ennis (D) .....	Wellsburg .....	72nd
	Roy E. Givens (D) .....	Wellsburg .....	64th-69th; 72nd
Third .....	Tal Hutchins (D) .....	Wheeling .....	72nd
	L. Gil White (R) .....	Wheeling .....	70th-71st
Fourth .....	Kenneth D. Tucker (D) .....	Moundsville .....	
	Scott G. Varner (D) .....	Moundsville .....	71st-72nd
Fifth .....	Charles Clements (R) .....	New Martinsville ..	72nd
Sixth .....	James E. Willison (R) .....	Sistersville .....	69th-72nd
Seventh .....	Otis A. Leggett (R) .....	St. Marys .....	68th-72nd
Eighth .....	Everette W. Anderson, Jr. (R) ..	Williamstown .....	71st-72nd
Ninth .....	Larry Border (R) .....	Davisville .....	70th-72nd
	Tom Azinger (R) .....	Vienna .....	72nd
Tenth .....	J. D. Beane (D) .....	Parkersburg .....	70th-72nd
	Fred Gillespie (R) .....	Parkersburg .....	
Eleventh .....	Bob Ashley (R) .....	Spencer .....	67th-72nd
Twelfth .....	Karen L. Facemyer (R) .....	Ripley .....	71st-72nd
Thirteenth .....	Jerry K. Kelley (D) .....	Red House .....	72nd
	Gary Otho Tillis (D) .....	Eleanor .....	72nd
Fourteenth .....	Kelly L. Given (R) .....	Hurricane .....	72nd
	William Michael Hall (R) .....	Hurricane .....	72nd
Fifteenth .....	Arley R. Johnson (D) .....	Huntington .....	72nd
	Margarette R. Leach (D) .....	Huntington .....	71st-72nd
	Mark Forest Underwood (D) ..	Huntington .....	
Sixteenth .....	Susan Hubbard (D) .....	Huntington .....	72nd
	Evan H. Jenkins (D) .....	Huntington .....	72nd
	Jody G. Smirl (R) .....	Huntington .....	58th-61st; 67th; 72nd
Seventeenth .....	Jerry Mike Damron (D) .....	Wayne .....	
Eighteenth .....	Larry Jack Heck (D) .....	Huntington .....	71st-72nd
Nineteenth .....	K. Steven Kominar (D) .....	Kermit .....	72nd
	Harry Keith White (D) .....	Gilbert .....	Appt. 9/11/92, 70th; 71st
Twentieth .....	Greg A. Butcher (D) .....	Chapmanville .....	
	Sammy D. Dalton (D) .....	Harts .....	62nd-67th; 69th; (Senate 70th-71st)
	Tracy Dempsey (D) .....	Harts .....	70th-72nd
	Tom Tomblin (D) .....	Logan .....	72nd
Twenty-first .....	Earnest H. Kuhn (D) .....	Van .....	72nd
Twenty-second .....	Lacy Wright, Jr. (D) .....	Welch .....	62nd-64th; (Senate 65th-66th)
	Emily W. Yeager (D) .....	Welch .....	Appt. 3/10/93, 71st; 72nd
Twenty-third .....	Joe Sparks (D) .....	Pineville .....	
	W. Richard Staton (D) .....	Mullens .....	69th-72nd
Twenty-fourth .....	Eustace Frederick (D) .....	Bluefield .....	Appt. 10/17/93, 71st; 72nd
Twenty-fifth .....	Richard D. Flanigan (D) .....	Princeton .....	66th-71st
	Elizabeth Osborne (D) .....	Princeton .....	Appt. 10/20/94, 71st; 72nd
Twenty-sixth .....	Mary Pearl Compton (D) .....	Union .....	69th-72nd
Twenty-seventh .....	Robert S. Kiss (D) .....	Beckley .....	69th-72nd
	Virginia Mahan (D) .....	Elton .....	
	Warren R. McGraw II (D) .....	Beckley .....	71st-72nd
	Robert P. Pulliam (D) .....	Beckley .....	71st-72nd
	Ron Thompson (D) .....	Beckley .....	72nd

# HOUSE OF DELEGATES

XXXV

Twenty-eighth ..	Thomas W. Campbell (D) .....	Lewisburg .....	
	Carroll Willis (D) .....	Alderson .....	
Twenty-ninth ...	William R. Laird IV (D) .....	Fayetteville .....	
	Tom Louisos (D) .....	Oak Hill .....	67th-68th; 70th-72nd
	John Pino (D) .....	Oak Hill .....	67th-68th; 72nd
Thirtieth .....	Jon Amores (D) .....	Charleston .....	72nd
	Shelley Moore Capito (R) .....	Charleston .....	
	Margaret Miller (R) .....	South Charleston ...	69th-72nd
	Larry L. Rowe (D) .....	Malden .....	
	Rudy Seacrist (D) .....	Charleston .....	Appt. 7/25/77, 63rd; 65th-69th; 72nd
	Joe F. Smith (D) .....	Charleston .....	71st
	Sharon Spencer (D) .....	Charleston .....	66th; 68th-71st
Thirty-first .....	Mark A. Hunt (D) .....	Charleston .....	72nd
Thirty-second ...	Steve Harrison (R) .....	Nitro .....	71st-72nd
	Dick Henderson (R) .....	St. Albans .....	71st-72nd
	Ronald Neal Walters (R) .....	Cross Lanes .....	71st-72nd
	Rusty Webb (R) .....	Cross Lanes .....	
Thirty-third .....	William Stemple (D) .....	Arnoldsburg .....	
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
	William Proudfoot (D) .....	Elkins .....	70th-72nd
Thirty-eighth ...	Douglas K. Stalaker (R) .....	Weston .....	72nd
Thirty-ninth .....	Dale F. Riggs (R) .....	Buckhannon .....	69th-72nd
Fortieth .....	Richard H. Everson (D) .....	Philippi .....	71st-72nd
Forty-first .....	Samuel J. Cann (D) .....	Bridgeport .....	72nd
	Ron Fragale (D) .....	Clarksburg .....	70th-72nd
	Larry A. Lynch (D) .....	Bridgeport .....	71st-72nd
	Barbara A. Warner (D) .....	Bridgeport .....	69th-72nd
Forty-second ...	Tom Coleman (D) .....	Grafton .....	
Forty-third .....	Michael Caputo (D) .....	Fairmont .....	
	Nick Fantasia (D) .....	Kingmont .....	52nd-53rd; 57th-60th; 62nd; 69th; Appt. 2/23/93, 71 st; 72nd
	Paul E. Prunty (D) .....	Fairmont .....	61st; 63rd-65th; 67th-68th; 70th; 72nd
Forty-fourth .....	Robert C. Beach (D) .....	Core .....	Appt. 7/27/90, 69th; 70th-72nd
	Mike Buchanan (D) .....	Morgantown .....	68th-69th
	Eugene Claypole (D) .....	Granville .....	(Senate 70th-71st)
	Barbara Evans Fleischauer (D) ...	Morgantown .....	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. Mezzatesta (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

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(D) Democrats .....		74
(R) Republicans .....		26
<b>TOTAL</b> .....		<b>100</b>

<sup>1</sup>Appointed 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

District	Name	Address	Prior Legislative Service
First .....	Edwin J. Bowman (D) .....	Weirton .....	72nd
	Andy McKenzie (R) .....	Wheeling .....	
Second .....	<sup>1</sup> Jeffrey Kessler (D) .....	Glen Dale .....	
	Don Macnaughtan (D) .....	New Martinsville .....	70th-72nd
Third .....	Donna Jean Boley (R) .....	St. Marys .....	Appt. 5/14/85, 67th; 68th-72nd
	J. Frank Deem (R) .....	Vienna .....	(House 52nd-56th); 57th-62nd; 64th-65th; (House 69th); 72nd
Fourth .....	Oshel B. Craig (D) .....	Hurricane .....	(House 65th); 66th-72nd
	Robert L. Dittmar (D) .....	Ravenswood .....	69th-72nd
Fifth .....	Robert H. Plymale (D) .....	Ceredo .....	71st-72nd
	Thomas F. Scott (R) .....	Huntington .....	72nd
Sixth .....	H. Truman Chafin (D) .....	Williamson .....	66th-72nd
	John Pat Fanning (D) .....	Jaeger .....	58th-64th; 67th-68th
Seventh .....	Lloyd G. Jackson II (D) .....	Hamlin .....	68th-69th; 72nd
	Earl Ray Tomblin (D) .....	Chapmanville .....	(House 62nd-64th); 65th-72nd
Eighth .....	Jack Buckalew (R) .....	Charleston .....	72nd
	Vic Sprouse (R) .....	South Charleston .....	(House 72nd)
Ninth .....	Billy Wayne Bailey, Jr. (D) ..	Alpoa .....	Appt. 1/9/91, 70th; 71st-72nd
	William R. Wooton (D) .....	Beckley .....	(House 63rd-67th; 69th); 70th-72nd
Tenth .....	Leonard W. Anderson (D) ..	Hinton .....	70th-72nd
	Homer Ball (D) .....	Athens .....	(House 72nd)
Eleventh .....	Shirley D. Love (D) .....	Oak Hill .....	72nd
	Randy Schoonover (D) .....	Lewisburg .....	(House 69th-70th); Appt. 9/27/93, 71st; 72nd
Twelfth .....	William R. Sharpe, Jr. (D) ..	Weston .....	55th-64th; 67th-72nd
	Rebecca I. White (D) .....	Jane Lew .....	72nd
Thirteenth .....	Michael A. Oliverio II (D) ..	Morgantown .....	(House 71st); 72nd
	Roman W. Prezioso (D) .....	Fairmont .....	(House 69th-72nd)
Fourteenth .....	Jon Blair Hunter (D) .....	Morgantown .....	
	Sarah M. Minear (R) .....	Parsons .....	72nd
Fifteenth .....	Walt Helmick (D) .....	Marlinton .....	(House 1 yr., 69th); Appt. 9/13/89, 69th; 70th-72nd
	Mike Ross (D) .....	Coalton .....	71st-72nd
Sixteenth .....	Harry E. Dugan (R) .....	Martinsburg .....	72nd
	Herb Snyder (D) .....	Shenandoah Junction .....	
Seventeenth .....	Larry Kimble (R) .....	Charleston .....	72nd
	Martha Yeager Walker (D) ..	Charleston .....	(House 70th); 71st-72nd

(D) Democrats ..... 25  
 (R) Republicans ..... 9

TOTAL ..... 34

<sup>1</sup>Appointed Nov. 10, 1997, to fill the vacancy created by the death of Larry Wiedebusch.

**COMMITTEES OF THE HOUSE OF DELEGATES**  
**Regular Session, 1998**

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**STANDING**

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**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, Lynch, 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.

**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.

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**JOINT**

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**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.

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**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**

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**STANDING**

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**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.

**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.

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**JOINT**

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**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.

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**STATUTORY LEGISLATIVE COMMISSIONS**

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**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**

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**ACTS**

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**SECOND REGULAR SESSION, 1998**

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**CHAPTER 1**

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

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

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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.**

1 (a) Any person licensed to practice medicine and

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

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

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## CHAPTER 2

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

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

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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:

**ARTICLE 10A. THE WEST VIRGINIA EGG MARKETING LAW  
OF 1998.**

- §19-10A-1. Purpose; and short title.
- §19-10A-2. Definitions.
- §19-10A-3. Permits and registration.
- §19-10A-4. Exemptions.
- §19-10A-5. Container requirements.
- §19-10A-6. Prohibited acts.
- §19-10A-7. Labeling.
- §19-10A-8. Invoice requirements.
- §19-10A-9. Advertising.
- §19-10A-10. Powers and duties of the commissioner.
- §19-10A-11. Egg handling facilities, temperature and humidity, sanitation and cleaning.
- §19-10A-12. Access to premises.
- §19-10A-13. Penalties.
- §19-10A-14. Persons punishable as principals.
- §19-10A-15. Cooperation with other entities.
- §19-10A-16. Confidentiality of trade secrets.

**§19-10A-1. Purpose; and short title.**

- 1 (a) The intent of this article is to protect and promote
- 2 the public health and general welfare and to prevent fraud
- 3 and deception in the production, processing, sale and
- 4 distribution of eggs. This article provides for the
- 5 registration of business houses engaged in selling, trading

6 or traffic of eggs; establishes standards for the grading,  
7 classification and marketing of eggs; provides a penalty  
8 for the failure to comply with the provisions of this article;  
9 and provides for other purposes. This article shall be  
10 known as "The West Virginia Egg Marketing Law of  
11 1998". All provisions of this code in conflict with this  
12 article are repealed.

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

#### §19-10A-2. Definitions.

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

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

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

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

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

15 (f) "Consumer" means any person using eggs for  
16 food and shall include restaurants, hotels, cafeterias,  
17 hospitals, state institutions and any other establishment  
18 serving food to be consumed or produced on the  
19 premises, but shall not include the armed forces or any  
20 other federal agency or institution.

21 (g) "Denatured" means rendering unfit for human  
22 food by treatment or the addition of a foreign substance  
23 as approved by the United States department of  
24 agriculture (USDA), agriculture marketing service (AMS),  
25 administrator.

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

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

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

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

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

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

56 (n) "Packer" means any person who grades, sizes,  
57 candles or packs eggs for the purpose of resale.

58 (o) "Person" means any partnership, association,  
59 business trust, corporation or any organized group of  
60 persons, whether incorporated or not.

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

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

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

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

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

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

### §19-10A-3. Permits and registration.

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

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

15 (c) The commissioner shall set an inspection fee and  
16 annual permit fee by legislative rule for the distribution of  
17 all shell eggs processed or sold in the state of West  
18 Virginia.

19 (d) All fees, interest, penalties or other moneys  
20 collected by the commissioner under the provisions of this  
21 article shall be paid into a special account and be  
22 expended upon the order of the commissioner for the  
23 purpose of the enforcement and administration of this  
24 article.

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

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

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

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

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

#### **§19-10A-4. Exemptions.**

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

#### **§19-10A-5. Container requirements.**

1 No distributor may market eggs unless there is clearly  
2 designated on the container the consumer grade and size  
3 or weight class established in accordance with the  
4 provisions of this article and the eggs shall conform to the  
5 designated grade and size or weight class, except when  
6 sold on contract to an agency of the United States  
7 government.

**§19-10A-6. Prohibited acts.**

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

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

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

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

16 (2) Not refrigerated; or

17 (3) Mislabeled or deceptively advertised.

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

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

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

28 (f) No person may distribute eggs without a valid egg  
29 distributor's permit.

30 (g) No person may store or transport eggs unless held  
31 under refrigeration as outlined in legislative rule.

32 (h) No person may offer for sale or expose for sale  
33 shell eggs that are in containers that are dirty, broken or  
34 not free from foreign odor.

**§19-10A-7. Labeling.**

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

4 (1) The identity of the packer by registry of USDA  
5 plant number or by state permit number or name and  
6 address of the packer, distributor, retailer or repacker;

7 (2) The correct grade and size or weight classification;

8 (3) The term "EGGS";

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

13 (5) The words "keep refrigerated" in a plain and  
14 conspicuous manner on each container or consumer  
15 receptacle of shell eggs;

16 (6) Use by or expiration date; and

17 (7) Additional labeling according to legislative rule.

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

**§19-10A-8. Invoice requirements.**

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

6 date of the sale. This invoice shall be retained for one  
7 year.

8 (b) The commissioner of agriculture is authorized to  
9 examine the invoices and such other records needed to  
10 determine the cause and place of any violation of this  
11 article.

**§19-10A-9. Advertising.**

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

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

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

**§19-10A-10. Powers and duties of the commissioner.**

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

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

16 (c) The commissioner of agriculture shall enforce the  
17 provisions of this article and may make and propose those  
18 rules for promulgation as may be necessary for the  
19 enforcement of this article.

20 (d) The commissioner has the power to issue an  
21 embargo or general embargo for any product which is or  
22 is believed to be adulterated, mislabeled or is not in  
23 compliance with this article and to cause the distributing  
24 of that product to cease. Nothing in this article may be  
25 construed as to requiring the commissioner to issue  
26 embargoes for minor violations of this article when the  
27 commissioner believes that a written notice of violation  
28 will serve the public interest.

29 (e) Audits:

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

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

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

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

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

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

**§19-10A-12. Access to premises.**

1 (a) The commissioner of agriculture may enter any  
2 store, vehicle, market or any other business or place where  
3 eggs are bought, stored, processed, packed or offered for

4 sale and to make inspections as needed to determine  
5 compliance with this article and rules adopted under the  
6 authority of this article. During an inspection the  
7 commissioner of agriculture may also candle and weigh  
8 eggs to determine if the grades and sizes of the eggs  
9 conform to grades and sizes labeled on the exterior of the  
10 container.

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

### §19-10A-13. Penalties.

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

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

24 (1) The commissioner may assess a civil penalty of up  
25 to one thousand dollars for a violation;

26 (2) The civil penalty is payable to the state of West  
27 Virginia and is collectible in any manner now or hereafter  
28 provided for collection of debt. If any person liable to  
29 pay a civil penalty neglects or refuses to pay the civil  
30 penalty, the amount of the civil penalty, together with  
31 interest at ten percent, is a lien in favor of the state of West  
32 Virginia upon the property, both real and personal, of that  
33 person after the lien has been entered and docketed to  
34 record in the county where the property is situated. The  
35 clerk of the county, upon receipt of the certified copy of  
36 the lien, shall enter it to record without requiring the  
37 payment of costs as a condition precedent to recording.

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

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

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

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

60 (g) *Hearings and appeals.* —

61 (1) Any person aggrieved by any action taken under  
62 this article shall be afforded the opportunity for a hearing  
63 before the commissioner under the rules promulgated by  
64 the commissioner;

65 (2) Hearings shall be conducted in accordance with  
66 procedures set forth by rule;

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

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

**§19-10A-14. Persons punishable as principals.**

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

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

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

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

**§19-10A-16. Confidentiality of trade secrets.**

1 The commissioner may not make public information  
2 which contains or relates to trade secrets, commercial or  
3 financial information obtained from a person or  
4 privileged or confidential information: *Provided*, That  
5 when the information is needed to carry out the provisions  
6 of this article, this information may be revealed, subject to  
7 a protective order, to any federal, state or local agency  
8 consultant or may be revealed, subject to a protective  
9 order, at a closed hearing or in findings of fact issued by  
10 the commissioner.

## CHAPTER 3

(H. B. 4332—By Delegates Beach and Williams)

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

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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.**

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

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

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

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

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

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

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

37 (h) "Complete record" means any and all information  
38 which relates to the origin, treatment, germination, purity,

39 kind and variety of each lot of agricultural seed sold in  
40 this state, or which relates to the treatment, germination,  
41 kind and variety of each lot of vegetable, or tree and shrub  
42 seed sold in this state. The information shall include seed  
43 samples and records of declarations, labels, purchases,  
44 sales, conditioning, bulking, treatment, handling, storage,  
45 analyses, tests and examinations.

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

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

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

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

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

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

69 (o) "Germination" means the emergence and  
70 development from the seed embryo of those essential  
71 structures which, for the kind of seed in question, are  
72 indicative of the ability to produce a normal plant under  
73 favorable conditions.

74 (p) "Hard seeds" means seeds which remain hard at the  
75 end of the prescribed test period because they have not  
76 absorbed water due to an impermeable seed coat.

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

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

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

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

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

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

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

109 (x) "Mulch" means a protective covering of any  
110 suitable substance placed with seed which acts to retain

111 sufficient moisture to support seed germination and  
112 sustain early seedling growth and aid in the prevention of  
113 the evaporation of soil moisture, the control of weeds and  
114 the prevention of erosion.

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

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

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

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

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

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

146 (cc) "Other crop seed" means seed of plants grown as  
147 crops (other than the kind or variety included in the pure  
148 seed) as determined by methods defined by rule.

149 (dd) "Person" means an individual, partnership,  
150 corporation, company, association, receiver, trustee, agent,  
151 fiduciary, firm or any group of organized persons whether  
152 incorporated or not.

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

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

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

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

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

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

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

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

181 (mm) "Type" means a group of varieties so nearly  
182 similar that the individual varieties cannot be clearly  
183 differentiated except under special conditions.

184 (nn) "Variant" means any seed or plant which: (A) Is  
185 distinct within the variety but occurs naturally in the  
186 variety; (B) is stable and predictable with a degree of  
187 reliability comparable to other varieties of the same kind,  
188 within recognized tolerances, when the variety is  
189 reproduced or reconstituted; and (C) was originally a part  
190 of the variety as released. A variant is not an off-type.

191 (oo) "Variety" means a subdivision of a kind which is  
192 distinct, uniform and stable.

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

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

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

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

207 (qq) "Weed seed" means the seeds of all plants  
208 generally recognized as weeds within this state, as  
209 determined by methods defined by rule, and includes the  
210 categories of prohibited noxious weed seeds and restricted  
211 noxious weed seeds.

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

1 Each container of agricultural or vegetable seeds  
2 which is distributed or transported within this state for  
3 sowing purposes shall bear on the container or have  
4 attached to the container in a conspicuous place a plainly  
5 written or printed label or tag in the English language.

6 (a) For all treated agricultural and vegetable seeds (for  
7 which a separate label may be used) the label shall include  
8 the following:

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

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

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

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

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

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

35 (2) The lot number or other lot identification;

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

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

40 (5) The name and rate of occurrence per pound or  
41 ounce of each kind of restricted noxious weed seed or

42 undesirable grass seed present. The name and  
43 approximate number of each kind of noxious weed seed:  
44 (A) Per ounce in *Agrostis* spp., *Poa* spp., Rhodes grass,  
45 Bermuda grass, timothy, orchard grass, fescues, alsike and  
46 white clover, reed canary grass, Dallas grass, ryegrass,  
47 foxtail millet, alfalfa, red clover, sweet clovers, lespedezas,  
48 smooth brome, crimson clover, *Brassica* spp., flax,  
49 *Agropyron* spp., and other agricultural seeds of similar  
50 size and weight, or mixtures within this group; and (B) per  
51 pound in sudan grass, wheat, oats, rye, barley, buckwheat,  
52 sorghums, vetches and other agricultural seeds of a size  
53 and weight similar to or greater than those within this  
54 group, or any mixtures within this group;

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

58 (7) The percentage by weight of inert matter;

59 (8) For each named agricultural seed:

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

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

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

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

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

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

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

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

75 (3) The commonly accepted name of kind or kind  
76 and variety of each agricultural seed component in excess

77 of five percent of the whole, and the percentage by weight  
78 of pure seed in order of its predominance and in  
79 columnar form;

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

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

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

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

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

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

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

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

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

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

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

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

- 111 (2) The percentage by weight of coating material;
- 112 (3) The percentage by weight of inert material  
113 exclusive of coating material; and
- 114 (4) Percentage of germination, to be determined on  
115 400 pellets with or without seeds.
- 116 (e) For vegetable seeds in packets as prepared for use  
117 in home gardens or household plantings; or in preplanted  
118 containers, mats, tapes or other planting devices the label  
119 shall include the following:
- 120 (1) The name of kind and variety of seed;
- 121 (2) The lot number or other lot identification;
- 122 (3) The year for which the seed was packed for sale as  
123 "Packed for \_\_\_\_\_" or the percentage  
124 germination and the calendar month and year the test was  
125 completed to determine the percentage; and
- 126 (4) The name and address of the person who labeled  
127 the seed or who distributes the seed for sale within this  
128 state.
- 129 (f) For seeds which germinate less than the standard as  
130 established by rule promulgated under this article the label  
131 shall include the following:
- 132 (1) The percentage of germination, exclusive of hard  
133 seed;
- 134 (2) The percentage of hard seed, if present; and
- 135 (3) The words "Germination Below Standard" in not  
136 less than eight-point type.
- 137 (g) For seeds placed in a germination medium, mat,  
138 tape or other device in such a way as to make it difficult to  
139 determine the quantity of seed without removing the seeds  
140 from the medium, mat, tape or device, a statement to  
141 include the minimum number of seeds in the container.
- 142 (h) For vegetable seeds in containers other than  
143 packets prepared for use in home gardens or household  
144 plantings and other than preplanted containers, mats, tapes

145 or other planting devices the label shall include the  
146 following:

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

150 (2) The lot number or other lot identification;

151 (3) For each named vegetable seed:

152 (A) The percentage germination exclusive of hard  
153 seed;

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

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

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

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

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

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

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

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

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

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

176 (2) The year for which the seed was packaged;

177 (k) For combination mulch, seed and fertilizer  
178 products the label shall include the following:

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

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

192 (A) The product name;

193 (B) The lot number;

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

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

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

200 (F) The percentage by weight of weed seeds;

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

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

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

208 (l) The labeling requirements for agricultural, and  
209 vegetable seeds shall be considered to have been met if the  
210 seed is weighed from a properly labeled bulk container in  
211 the presence of the purchaser.

212 (m) Once a dealer has broken the seal on a container  
213 of seed for any reason, the dealer is fully responsible for  
214 its contents including the guarantees for purity,  
215 germination rate and anything else pertaining to the  
216 integrity of the opened seed container.

217 (n) Label requirements for tree and shrub seeds:

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

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

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

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

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

246 (D) The date beyond which the inoculant is not to be  
247 considered effective (date of expiration), if the seed has  
248 been treated with an inoculant;

- 249 (2) For all tree and shrub seeds subject to the article:
- 250 (A) The common name of the species of seed (and  
251 subspecies, if appropriate);
- 252 (B) The scientific name of the genus and species (and  
253 subspecies, if appropriate);
- 254 (C) The lot number or other lot identification; and
- 255 (D) Their origin:
- 256 (i) For seed collected from a predominantly  
257 indigenous stand, the area of collection given by latitude  
258 and longitude, or geographic description, or political  
259 subdivision such as state or county;
- 260 (ii) For seed collected from other than a  
261 predominantly indigenous stand, the area of collection  
262 and the origin of the stand or the statement "Origin not  
263 Indigenous."
- 264 (E) The elevation or the upper and lower limits of  
265 elevations within which the seed was collected;
- 266 (F) The purity as a percentage of pure seed by weight;
- 267 (G) For those species for which standard germination  
268 testing procedures are prescribed by the commissioner, the  
269 following:
- 270 (i) Percentage germination exclusive of hard seed;
- 271 (ii) Percentage of hard seed, if present;
- 272 (iii) The calendar month and year test was completed  
273 to determine such percentages; or
- 274 (iv) In lieu of paragraphs (i), (ii) and (iii) of this  
275 subparagraph, the seed may be labeled "Test is in process,  
276 results will be supplied upon request";
- 277 (H) For those species for which standard germination  
278 testing procedures have not been prescribed by the  
279 commissioner, the calendar year in which the seed was  
280 collected;

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

283 (o) Label requirements for seed potatoes:

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

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

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

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

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

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

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

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

21 (d) The commissioner may refuse to grant, or may  
22 suspend or revoke a certificate of registration when it is

23 determined that the applicant or registrant has violated the  
24 provisions of this article or any rule promulgated under  
25 this article: *Provided*, That the applicant or registrant may  
26 request a hearing prior to the denial of the application or  
27 suspension or revocation of the registration.

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

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

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

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

56 (i) All fees and penalties collected under the  
57 provisions of this article shall be deposited with the state  
58 treasurer in a special revenue account. These moneys  
59 shall be expended by the commissioner of agriculture for  
60 inspection, sampling, analysis and other expenses  
61 necessary for the administration of this article.

**§19-16-4. Prohibitions.**

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

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

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

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

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

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

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

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

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

32 (B) That the seed bears an official label issued for that  
33 seed by a seed certifying agency certifying that the seed is  
34 of a specified class and a specified kind, species (and  
35 subspecies, if appropriate) or variety;

36 (8) Labeled with a variety name but not certified by an  
37 official seed certifying agency when it is a variety for  
38 which a U. S. certificate of plant variety protection under  
39 the Plant Variety Protection Act specifies sale only as a  
40 class of certified seed: *Provided*, That seed from a  
41 certified lot may be labeled as to variety name when used  
42 in a mixture by, or with the approval of, the owner of the  
43 variety.

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

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

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

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

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

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

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

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

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

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

70 (B) If it is not labeled as required by this article;

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

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

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

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

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

#### §19-16-5. Exemptions.

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

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

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

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

18 (b) No person is subject to the penalties of this article  
19 for having sold or offered for sale seeds subject to

20 provisions of this article which were incorrectly labeled or  
21 represented as to kind, species (and subspecies, if  
22 appropriate), variety, type, or origin, elevation and year of  
23 collection (if required), which cannot be identified by  
24 examination, unless he or she has failed to obtain an  
25 invoice, genuine grower's or tree seed collector's  
26 declaration or other labeling information and to take such  
27 other precautions as may be reasonable to ensure the  
28 identity to be that which is stated. A genuine grower's  
29 declaration of variety shall affirm that the grower holds  
30 records of proof concerning parent seed, such as invoice  
31 and labels.

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

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

1 The commissioner may:

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

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

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

21 (d) Issue certificates of registration pursuant to this  
22 article;

23 (e) Refuse applications for registration; or suspend or  
24 revoke registrations as provided in this article;

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

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

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

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

37 (j) Conduct hearings as provided by this article;

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

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

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

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

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

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

56 (q) Publish and distribute annually a composite report  
57 containing: (1) The sales of agricultural, vegetable, tree  
58 and shrub seeds and seed potatoes during the preceding

59 period; (2) the results of analysis of official samples as  
60 compared with the guarantee on the label; (3) the firms  
61 responsible for the product; and (4) such other data the  
62 commissioner considers necessary: *Provided*, That the  
63 information on production and use provided does not  
64 disclose the operations of any person;

65 (r) Cooperate with and enter into agreements with  
66 governmental agencies of this state and other states,  
67 agencies of the federal government and foreign  
68 governments, and private associations in order to carry out  
69 the purpose and provisions of this article;

70 (s) Establish fees by legislative rule;

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

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

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

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

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

16 (2) The commissioner shall release the stop sale or  
17 embargo order when the seed has been brought into  
18 compliance with this article and its rules.

19 (3) The commissioner has the authority to issue a stop  
20 sale or embargo order against a perishable product, even if  
21 the result is the involuntary disposal of the product.

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

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

#### §19-16-8. Penalties and prosecutions.

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

11 (b) *Civil penalties.* —

12 (1) Any person violating any of the provisions of this  
13 article or the rules adopted under this article may be  
14 assessed a civil penalty by the commissioner. In  
15 determining the amount of any civil penalty, the  
16 commissioner shall give due consideration to the history

17 of previous violations of any person; the seriousness of the  
18 violation, including any irreparable harm to the  
19 environment, and the demonstrated good faith of any  
20 person charged in attempting to achieve compliance with  
21 this article after written notification of the violation.

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

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

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

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

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

## CHAPTER 4

(S. B. 585—By Senators Prezioso and Bowman)

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

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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  
2 of the appurtenances and facilities therewith to any  
3 available lessee, subject to all constitutional and statutory  
4 limitations with respect thereto, at such rental and upon  
5 such terms and conditions as the authority deems proper.  
6 The leases shall be subordinate to any mortgage or deed  
7 of trust executed by the authority. An authority may lease  
8 land, the original taking of which was necessary for airport  
9 purposes, for economic development purposes compatible  
10 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.**

- 1 (a) Beginning the first day of July, one thousand nine
- 2 hundred ninety-eight, all persons licensed to sell alcoholic
- 3 liquor, wine or nonintoxicating beer at retail, either for
- 4 consumption on-premises or off-premises, or both, shall
- 5 display signs provided by the alcohol beverage control
- 6 commissioner warning of the possible danger of birth
- 7 defects which may result from the consumption of alcohol
- 8 during pregnancy. These signs shall be displayed upon
- 9 the licensed premises in the following manner:
- 10 (1) If a licensee holds a license providing for the retail
- 11 sale of alcoholic liquor, wine or nonintoxicating beer for

12 on-premises consumption, the sign shall be posted in an  
13 open and prominent place in the licensed portion of the  
14 establishment: *Provided*, That self-service "mini-bars" in  
15 hotel guest rooms are exempt: *Provided, however*, That  
16 airports, convention centers, sports facilities and other  
17 licensed premises with more than one authorized location  
18 of sales, service and consumption shall post signs in plain  
19 view to the majority of patrons entering or approaching  
20 the licensed portion of the premises.

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

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

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

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

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

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

50 (B) Procedures meeting the requirements of due  
51 process through which an alleged violation of this section  
52 may be contested.

53 (3) The proceeds of civil administrative penalties  
54 collected for violations of this section shall be deposited in  
55 a fund hereby established in the state treasury to be known  
56 as the "fetal alcohol syndrome fund". The commissioner  
57 shall expend the moneys deposited in the fund to educate  
58 the public concerning the dangers of fetal alcohol  
59 syndrome without appropriation except as provided in this  
60 subsection. After the sum of five thousand dollars has  
61 been deposited into the fund during a fiscal year, any  
62 additional deposits shall be divided as follows: (1) An  
63 amount necessary to allow the commissioner to carry out  
64 his or her duties pursuant to this section, not to exceed one  
65 half of such additional deposits, shall be deposited in the  
66 alcohol beverage control administration fund; and (2) the  
67 remainder of such additional deposits shall be made to the  
68 state fund, general revenue. Any moneys remaining in the  
69 fund on the thirtieth day of June of each year shall be  
70 subject to reappropriation for expenditure during the  
71 following fiscal year. The commissioner shall annually file  
72 a report with the president of the Senate and the speaker  
73 of the House of Delegates, informing the Legislature as to  
74 the amounts deposited in the funds, and the purposes for  
75 which the amounts deposited in the alcohol beverage  
76 control administration fund were expended.

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## CHAPTER 6

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

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

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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.
- §4. Method of expenditure.
- §5. Maximum expenditures.

**TITLE I—GENERAL PROVISIONS.**

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

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

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

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

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

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

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

18       "Special revenue funds" shall mean specific revenue  
 19 sources which by legislative enactments are not required to  
 20 be accounted for as general revenue, including federal  
 21 funds.

22 "From collections" shall mean that part of the total  
23 appropriation which must be collected by the spending  
24 unit to be available for expenditure. If the authorized  
25 amount of collections is not collected, the total  
26 appropriation for the spending unit shall be reduced  
27 automatically by the amount of the deficiency in the  
28 collections. If the amount collected exceeds the amount  
29 designated "from collections," the excess shall be set aside  
30 in a special surplus fund and may be expended for the  
31 purpose of the spending unit as provided by article two,  
32 chapter five-a of the code.

1 **Sec. 3. Classification of appropriations.**—An appro-  
2 priation for:

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

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

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

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

17 "Employee benefits" shall mean social security  
18 matching, workers' compensation, unemployment  
19 compensation, pension and retirement contributions,  
20 public employees insurance matching, personnel fees or  
21 any other benefit normally paid by the employer as a  
22 direct cost of employment. Should the appropriation be  
23 insufficient to cover such costs, the remainder of such cost  
24 shall be transferred by each spending unit from its  
25 "personal services" line item or its "unclassified" line item

26 to its "employee benefits" line item. If there is no  
27 appropriation for "employee benefits," such costs shall be  
28 transferred by each spending unit from its "personal  
29 services" line item or its "unclassified" line item. Each  
30 spending unit is hereby authorized and required to make  
31 such payments in accordance with the provisions of article  
32 two, chapter five-a of the code.

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

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

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

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

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

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

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

59 "Capital outlay" shall mean and include buildings,  
60 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

100 office of the secretary of the department of transportation  
 101 is not a use other than the purpose for which such funds  
 102 were dedicated and is permitted.

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

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

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

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

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## TITLE II—APPROPRIATIONS.

- 1 Section 1. Appropriations from general revenue.
- 2 —From the state fund, general revenue, there are hereby
- 3 appropriated conditionally upon the fulfillment of the
- 4 provisions set forth in article two, chapter five-a of the
- 5 code the following amounts, as itemized, for expenditure

6 during the fiscal year one thousand nine hundred ninety-  
7 nine.

## LEGISLATIVE

### *1—Senate*

Fund 0165 FY 1999 Org 2100

	Activity	General Revenue Fund
1 Compensation of Members (R) . . . . .	003	\$ 816,200
2 Compensation and Per Diem of		
3 Officers and Employees (R) . . . . .	005	2,179,200
4 Employee Benefits (R) . . . . .	010	414,000
5 Current Expenses and Contingent		
6 Fund (R) . . . . .	021	560,000
7 Repairs and Alterations (R) . . . . .	064	200,000
8 Computer Supplies (R) . . . . .	101	15,000
9 Computer Systems (R) . . . . .	102	200,000
10 Printing Blue Book (R) . . . . .	103	150,000
11 Expenses of Members (R) . . . . .	399	<u>445,000</u>
12 Total . . . . .		\$ 4,979,400

13 The appropriations for the senate for the fiscal year  
14 1997-98 are to remain in full force and effect and are  
15 hereby reappropriated to June 30, 1999. Any balances so  
16 reappropriated may be transferred and credited to the  
17 1998-99 accounts.

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

22 The clerk of the senate, with the approval of the  
23 president, is authorized to draw his or her requisitions  
24 upon the auditor, payable out of the Current Expenses and  
25 Contingent Fund of the senate, for any bills for supplies  
26 and services that may have been incurred by the senate

27 and not included in the appropriation bill, for supplies and  
28 services incurred in preparation for the opening, the  
29 conduct of the business and after adjournment of any  
30 regular or extraordinary session, and for the necessary  
31 operation of the senate offices, the requisitions for which  
32 are to be accompanied by bills to be filed with the auditor.

33 The clerk of the senate, with the written approval of  
34 the president, or the president of the senate shall have  
35 authority to employ such staff personnel during any  
36 session of the Legislature as shall be needed in addition to  
37 staff personnel authorized by the senate resolution  
38 adopted during any such session. The clerk of the senate,  
39 with the written approval of the president, or the president  
40 of the senate shall have authority to employ such staff  
41 personnel between sessions of the Legislature as shall be  
42 needed, the compensation of all staff personnel during  
43 and between sessions of the Legislature, notwithstanding  
44 any such senate resolution, to be fixed by the president of  
45 the senate. The clerk is hereby authorized to draw his or  
46 her requisitions upon the auditor for the payment of all  
47 such staff personnel for such services, payable out of the  
48 appropriation for Compensation and Per Diem of Officers  
49 and Employees or Current Expenses and Contingent Fund  
50 of the senate.

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

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

*2—House of Delegates*

Fund 0170 FY 1999 Org 2200

1	Compensation of Members (R) . . . . .	003	\$ 2,200,000
2	Compensation and Per Diem of		
3	Officers and Employees (R) . . . . .	005	521,162
4	Current Expenses and Contingent		
5	Fund (R) . . . . .	021	3,500,000
6	Expenses of Members (R) . . . . .	399	<u>1,120,000</u>
7	Total . . . . .		\$ 7,341,162

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

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

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

28       The speaker of the house of delegates, upon approval  
29 of the house committee on rules, shall have authority to  
30 employ such staff personnel during and between sessions  
31 of the Legislature as shall be needed, in addition to  
32 personnel designated in the house resolution, and the  
33 compensation of all personnel shall be as fixed in such  
34 house resolution for the session, or fixed by the speaker,  
35 with the approval of the house committee on rules, during  
36 and between sessions of the Legislature, notwithstanding  
37 such house resolution. The clerk of the house is hereby  
38 authorized to draw requisitions upon the auditor for such  
39 services, payable out of the appropriation for the

40 Compensation and Per Diem of Officers and Employees  
41 or Current Expenses and Contingent Fund of the house of  
42 delegates.

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

3—Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 1999 Org 2300

1	Joint Committee on Government		
2	and Finance (R) .....	104	\$ 5,091,839
3	Legislative Printing (R) .....	105	940,000
4	Legislative Rule-Making Review		
5	Committee (R) .....	106	200,000
6	Legislative Computer System (R) ....	107	900,000
7	Joint Standing Committee on		
8	Education (R) .....	108	56,000
9	Tax Reduction and Federal Funding		
10	Increased Compliance (TRAFFIC) 642		<u>10,000,000</u>
11	Total .....		\$17,187,839

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

17 Upon the written request of the clerk of the senate,  
18 with the approval of the president of the senate, and the  
19 clerk of the house of delegates, with the approval of the  
20 speaker of the house of delegates, and a copy to the  
21 legislative auditor, the auditor shall transfer amounts

22 between items of the total appropriation in order to protect  
23 or increase the efficiency of the service.

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

### JUDICIAL

#### 4—Supreme Court— General Judicial

Fund 0180 FY 1999 Org 2400

1	Personal Services (R) . . . . .	001	\$29,934,022
2	Annual Increment (R) . . . . .	004	456,350
3	Social Security Matching (R) . . . . .	011	2,342,770
4	Public Employees' Insurance		
5	Matching (R) . . . . .	012	3,441,820
6	Public Employees' Retirement		
7	Matching (R) . . . . .	016	2,907,319
8	Other Expenses (R) . . . . .	029	3,900,000
9	Judges' Retirement System (R) . . . . .	110	5,416,036
10	Other Court Costs (R) . . . . .	111	2,600,000
11	Judicial Training Program (R) . . . . .	112	250,000
12	Mental Hygiene Fund (R) . . . . .	113	975,000
13	Family Law Master Program (R) . . . . .	190	1,324,055
14	Guardianship Attorney Fees (R) . . . . .	588	<u>150,000</u>
15	Total . . . . .		\$53,697,372

16 The appropriations to the supreme court of appeals for  
17 the fiscal years 1995-96, 1996-97 and 1997-98 are to  
18 remain in full force and effect and are hereby  
19 reappropriated to June 30, 1999. Any balances so  
20 reappropriated may be transferred and credited to the  
21 1998-99 accounts.

22 This appropriation shall be administered by the  
 23 administrative director of the supreme court of appeals,  
 24 who shall draw his or her requisitions for warrants in  
 25 payment in the form of payrolls, making deductions  
 26 therefrom as required by law for taxes and other items.

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

**EXECUTIVE**

*5—Governor's Office*

(WV Code Chapter 5)

Fund 0101 FY 1999 Org 0100

1	Personal Services .....	001	\$ 1,699,351
2	Salary of Governor .....	002	90,000
3	Annual Increment .....	004	17,250
4	Employee Benefits .....	010	428,946
5	Unclassified .....	099	991,818
6	National Governors' Association .....	123	64,900
7	Southern States Energy Board .....	124	38,732
8	WV Human Resource		
9	Investment Council .....	294	260,000
10	Southern Growth Policies Board .....	299	24,339
11	Southern Technology Council .....	308	10,000
12	Southern Governors' Association .....	314	5,740
13	National Governors' Association		
14	for State Budget Officers .....	315	<u>11,100</u>
15	Total .....		\$ 3,642,176

*6—Governor's Office—  
 Custodial Fund*

(WV Code Chapter 5)

Fund 0102 FY 1999 Org 0100

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 From this appropriation there may be expended, at the  
 10 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 The above appropriation is intended to provide  
 14 contingency funding for accidental, unanticipated,

15 emergency or unplanned events which may occur during  
 16 the fiscal year and is not to be expended for the normal  
 17 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

1	Personal Services .....	001	\$ 1,815,438
2	Salary of Auditor .....	002	70,000
3	Annual Increment .....	004	50,523
4	Employee Benefits .....	010	627,401
5	Unclassified (R) .....	099	590,283
6	Office Automation (R) .....	117	<u>790,000</u>
7	Total .....		\$ 3,943,645

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

13 Any unexpended balances remaining in the  
 14 appropriations for Image Processing and Printer  
 15 Replacement (fund 0116, activity 240) and Encoding  
 16 System and Printer Replacement-Surplus (fund 0116,  
 17 activity 767) at the close of the fiscal year 1997-98 are  
 18 hereby reappropriated for expenditure during the fiscal  
 19 year 1998-99. Any balances so reappropriated are hereby  
 20 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

1	Unclassified—Total .....	096	\$ 450,000
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2 The above appropriation shall be expended for the  
 3 administrative expenses of the family law masters

4 program, excluding personal services and employee  
5 benefits.

*11—Treasurer's Office*

(WV Code Chapter 12)

Fund 0126 FY 1999 Org 1300

1	Personal Services .....	001	\$ 1,569,556
2	Salary of Treasurer .....	002	65,000
3	Annual Increment .....	004	34,856
4	Employee Benefits .....	010	538,087
5	Unclassified (R) .....	099	1,246,101
6	Abandoned Property Program .....	118	278,000
7	Debt Payment on Morris Street—		
8	Workers' Compensation Building.	290	2,000,000
9	Hardware/Software Upgrade .....	518	-0-
10	Tuition Trust Fund .....	692	152,210
11	School Building Sinking Fund		
12	Debt Service (R) .....	770	9,434,000
13	Debt Payment—Regional Jails and		
14	Correctional Facilities (R) .....	771	<u>-0-</u>
15	Total .....		\$15,317,810

16 Any unexpended balances remaining in the  
17 appropriations for Unclassified (fund 0126, activity 099),  
18 Imaging System (fund 0126, activity 006), School  
19 Building Sinking Fund Debt Service (fund 0126, activity  
20 770), Debt Payment - Regional Jails and Correctional  
21 Facilities (fund 0126, activity 771) and Tuition Trust Fund  
22 (fund 0126, activity 692) at the close of the fiscal year  
23 1997-98 are hereby reappropriated for expenditure  
24 during the fiscal year 1998-99.

*12—Department of Agriculture*

(WV Code Chapter 19)

Fund 0131 FY 1999 Org 1400

1	Personal Services .....	001	\$ 3,178,115
2	Salary of Commissioner .....	002	70,000

3	Annual Increment . . . . .	004	71,200
4	Employee Benefits . . . . .	010	1,191,106
5	Unclassified (R) . . . . .	099	1,004,955
6	Gypsy Moth Program (R). . . . .	119	820,055
7	Mingo County Surface Mine		
8	Project (R) . . . . .	296	150,000
9	Moorefield Agriculture Center . . . . .	786	251,430
10	Bee Research . . . . .	691	70,000
11	Microbiology Program . . . . .	785	150,000
12	Predator Control . . . . .	470	90,000
13	Charleston Farmers Market . . . . .	476	150,000
14	Central City Market Place . . . . .	808	<u>90,000</u>
15	Total . . . . .		\$ 7,286,861

16 Any unexpended balances remaining in the  
 17 appropriations for Unclassified (fund 0131, activity 099),  
 18 Gypsy Moth Program (fund 0131, activity 119), Mingo  
 19 County Surface Mine Project (fund 0131, activity 296),  
 20 Moorefield Field Office Furnishings - Surplus (fund 0131,  
 21 activity 724) and Logan Farmers Market - Surplus (fund  
 22 0131, activity 728) at the close of the fiscal year 1997-98  
 23 are hereby reappropriated for expenditure during the  
 24 fiscal year 1998-99.

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

*13—Department of Agriculture—  
 State Soil Conservation Committee*

(WV Code Chapter 19)

Fund 0132 FY 1999 Org 1400

1	Personal Services . . . . .	001	\$ 417,844
2	Annual Increment . . . . .	004	8,400
3	Employee Benefits . . . . .	010	142,382
4	Unclassified (R) . . . . .	099	282,455

5	Soil Conservation Projects (R) . . . . .	120	2,500,000
6	Maintenance of Flood Control		
7	Projects (R) . . . . .	522	<u>1,722,990</u>
8	Total . . . . .		\$ 5,074,071

9 Any unexpended balances remaining in the  
 10 appropriations for Unclassified (fund 0132, activity 099),  
 11 Maintenance of Flood Control Projects (fund 0132,  
 12 activity 522), Soil Conservation Projects (fund 0132,  
 13 activity 120) and Soil Conservation Projects - Surplus  
 14 (fund 0132, activity 269) at the close of the fiscal year  
 15 1997-98 are hereby reappropriated for expenditure  
 16 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	<u>76,317</u>
5	Total . . . . .		\$ 563,036

6 Any part or all of this appropriation may be  
 7 transferred to a special revenue fund for the purpose of  
 8 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	<u>382,000</u>
4	Total . . . . .		\$ 472,000

*16—Attorney General*

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

Fund 0150 FY 1999 Org 1500

1	Personal Services (R) . . . . .	001	\$ 2,145,120
2	Salary of Attorney General . . . . .	002	75,000
3	Annual Increment (R) . . . . .	004	34,900
4	Employee Benefits (R) . . . . .	010	632,441
5	Unclassified (R) . . . . .	099	608,598
6	Better Government Bureau (R) . . . . .	740	<u>237,943</u>
7	Total . . . . .		\$ 3,734,002

8 Any unexpended balance remaining in the  
 9 appropriation at the close of the fiscal year 1997-98 is  
 10 hereby reappropriated for expenditure during the fiscal  
 11 year 1998-99.

12 When legal counsel or secretarial help is appointed by  
 13 the attorney general for any state spending unit, this ac-  
 14 count shall be reimbursed from such spending unit's spe-  
 15 cifically appropriated account or from accounts appropri-  
 16 ated by general language contained within this bill: *Pro-*  
 17 *vided*, That the spending unit shall reimburse at a rate and  
 18 upon terms agreed to by the state spending unit and the  
 19 attorney general: *Provided, however*, That if the spending  
 20 unit and the attorney general are unable to agree on the  
 21 amount and terms of the reimbursement, the spending unit  
 22 and the attorney general shall submit their proposed reim-  
 23 bursement rates and terms to the joint committee on gov-  
 24 ernment and finance for final determination.

17—*Secretary of State*

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 1999 Org 1600

1	Personal Services . . . . .	001	\$ 566,203
2	Salary of Secretary of State . . . . .	002	65,000
3	Annual Increment . . . . .	004	11,670
4	Employee Benefits . . . . .	010	216,456
5	Unclassified (R) . . . . .	099	<u>338,997</u>
6	Total . . . . .		\$ 1,198,326

7 Any unexpended balances remaining in the  
 8 appropriations for Unclassified (fund 0155, activity 099),  
 9 Administrative Law Improvements (fund 0155, activity  
 10 617), Technology Improvements (fund 0155, activity  
 11 599) and Technology Improvements - Surplus (fund  
 12 0155, activity 725) at the close of the fiscal year 1997-98  
 13 are hereby reappropriated for expenditure during the  
 14 fiscal year 1998-99.

*18—State Election Commission*

(WV Code Chapter 3)

Fund 0160 FY 1999 Org 1601

1 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

1 Unclassified . . . . . 099 \$ 245,197

2 Public Employees' Insurance

3 Match (R)-Transfer . . . . . 012 3,550,000

4 Total . . . . . \$ 3,795,197

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

*20—Consolidated Public Retirement Board*

(WV Code Chapter 5)

Fund 0195 FY 1999 Org 0205

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

8 the various special revenue funds in excess of specific  
9 appropriations.

21—*Division of Finance*

(WV Code Chapter 5A)

Fund 0203 FY 1999 Org 0209

1	Personal Services .....	001	\$	524,650
2	Annual Increment .....	004		11,090
3	Employee Benefits .....	010		153,362
4	Unclassified .....	099		549,175
5	GAAP Project (R) .....	125		<u>1,263,808</u>
6	Total .....		\$	2,502,085

7 Any unexpended balance remaining in the  
8 appropriation for GAAP Project (fund 0203, activity 125)  
9 at the close of the fiscal year 1997-98 is hereby  
10 reappropriated for expenditure during the fiscal year  
11 1998-99.

22—*Division of General Services*

(WV Code Chapter 5A)

Fund 0230 FY 1999 Org 0211

1	Personal Services .....	001	\$	467,904
2	Annual Increment .....	004		20,300
3	Employee Benefits .....	010		215,206
4	Unclassified .....	099		956,441
5	Capitol Complex-Capital Outlay .....	417		500,000
6	Fire Service Fee .....	126		<u>13,440</u>
7	Total .....		\$	2,173,291

1 Any unexpended balances remaining in the  
2 appropriations for Capitol Building Preservation (fund  
3 0230, activity 503), Capitol Building Preservation-Surplus  
4 (fund 0230, activity 675), Capital Improvements-Capitol  
5 Complex-Surplus (fund 0230, activity 676), Capitol  
6 Complex-Capital Outlay (fund 0230, activity 417), Capitol  
7 Complex-Capital Outlay-Surplus (fund 0230, activity  
8 526), Capitol Complex Master Plan-Total-Surplus (fund

9 0230, activity 606), Chilled Water Plant-Phase III (fund  
 10 0230, activity 291), Capital Improvements-Capitol  
 11 Complex-Surplus (fund 0230, activity 676) and Capitol  
 12 Complex-Capital Outlay-Total-Surplus (fund 0230,  
 13 activity 777) at the close of the fiscal year 1997-98 are  
 14 hereby reappropriated for expenditure during the fiscal  
 15 year 1998-99.

*23—Division of Purchasing*

(WV Code Chapter 5A)

Fund 0210 FY 1999 Org 0213

1	Personal Services . . . . .	001	\$	570,000
2	Annual Increment . . . . .	004		14,982
3	Employee Benefits . . . . .	010		193,051
4	Unclassified . . . . .	099		131,584
5	Purchasing Card Program . . . . .	711		<u>121,788</u>
6	Total . . . . .		\$	1,031,405

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

*24—Commission on Uniform State Laws*

(WV Code Chapter 29)

Fund 0214 FY 1999 Org 0217

1	Unclassified—Total . . . . .	096	\$	22,000
2	To pay expenses of members of the commission on			
3	uniform state laws.			

*25—Board of Risk and Insurance Management*

(WV Code Chapter 29)

Fund 0217 FY 1999 Org 0218

1	Unclassified . . . . .	099	\$	10,454,116
2	Retro Payments . . . . .	523		<u>4,850,000</u>
3	Total . . . . .		\$	15,304,116

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

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

*26—Education and State Employees’  
 Grievance Board*

(WV Code Chapter 18)

Fund 0220 FY 1999 Org 0219

1	Personal Services .....	001	\$	660,822
2	Annual Increment .....	004		7,683
3	Employee Benefits .....	010		192,839
4	Unclassified .....	099		<u>169,678</u>
5	Total .....		\$	1,031,022

*27—Ethics Commission*

(WV Code Chapter 6B)

Fund 0223 FY 1999 Org 0220

1	Personal Services .....	001	\$	190,262
2	Annual Increment .....	004		1,650
3	Employee Benefits .....	010		57,149
4	Unclassified .....	099		<u>119,979</u>
5	Total .....		\$	369,040

28—Public Defender Services  
(WV Code Chapter 29)

Fund 0226 FY 1999 Org 0221

1	Personal Services . . . . .	001	\$	252,039
2	Annual Increment . . . . .	004		4,050
3	Employee Benefits . . . . .	010		85,260
4	Unclassified (R) . . . . .	099		95,540
5	Appointed Counsel Fees and Public			
6	Defender Corporations (R) . . . . .	127		-0-
7	Appointed Counsel Fees . . . . .	788		13,337,469
8	Public Defender Corporation-			
9	1st Judicial Circuit . . . . .	789		662,930
10	Public Defender Corporation-			
11	2nd Judicial Circuit . . . . .	790		359,158
12	Public Defender Corporation-			
13	5th Judicial Circuit . . . . .	791		371,200
14	Public Defender Corporation-			
15	6th Judicial Circuit . . . . .	792		883,180
16	Public Defender Corporation-			
17	7th Judicial Circuit . . . . .	793		353,935
18	Public Defender Corporation-			
19	8th Judicial Circuit . . . . .	794		328,370
20	Public Defender Corporation-			
21	9th Judicial Circuit . . . . .	795		536,330
22	Public Defender Corporation-			
23	10th Judicial Circuit . . . . .	796		530,675
24	Public Defender Corporation-			
25	12th Judicial Circuit . . . . .	797		315,200
26	Public Defender Corporation-			
27	13th Judicial Circuit . . . . .	798		2,136,183
28	Public Defender Corporation-			
29	15th Judicial Circuit . . . . .	799		633,625
30	Public Defender Corporation-			
31	23rd Judicial Circuit . . . . .	800		1,065,280

32	Public Defender Corporation-		
33	28th Judicial Circuit . . . . .	801	197,215
34	Public Defender Corporation-		
35	30th Judicial Circuit . . . . .	802	<u>400,155</u>
36	Total . . . . .		\$22,547,794
37	Any unexpended balances remaining in the		
38	appropriations for Unclassified (fund 0226, activity 099)		
39	and Appointed Counsel Fees and Public Defender		
40	Corporations (fund 0226, activity 127) at the close of the		
41	fiscal year 1997-98 are hereby reappropriated for		
42	expenditure during the fiscal year 1998-99.		

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

Fund 0233 FY 1999 Org 0224

1	Unclassified—Total . . . . .	096	\$ 4,656
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30—Public Employees Insurance Agency  
(WV Code Chapter 5)

Fund 0200 FY 1999 Org 0225

1 The division of highways, division of motor vehicles,  
2 bureau of employment programs, public service  
3 commission and other departments or divisions operating  
4 from special revenue funds and/or federal funds shall pay  
5 their proportionate share of the public employees health  
6 insurance cost for their respective divisions.

31—West Virginia Prosecuting  
Attorneys' Institute

Fund 0557 FY 1999 Org 0228

1	Federal Funds/Grant Match . . . . .	749	\$ 80,000
2	Forensic Medical Examinations—Total	681	<u>251,346</u>
3	Total . . . . .		\$ 331,346

**DEPARTMENT OF EDUCATION**

32—State Department of Education—  
School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 0303 FY 1999 Org 0402

1	Personal Services	001	\$ 164,282
2	Annual Increment	004	3,291
3	Employee Benefits	010	56,364
4	Unclassified	099	<u>1,781,744</u>
5	Total		\$ 2,005,681

*33—State FFA-FHA Camp and  
Conference Center*

(WV Code Chapters 18 and 18A)

Fund 0306 FY 1999 Org 0402

1	Personal Services	001	\$ 138,057
2	Annual Increment	004	3,250
3	Employee Benefits	010	63,073
4	Unclassified	099	<u>162,360</u>
5	Total		\$ 366,740

*34—State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 0313 FY 1999 Org 0402

1	Personal Services	001	\$ 2,392,225
2	Annual Increment	004	38,524
3	Employee Benefits	010	831,619
4	Unclassified	099	3,580,027
5	WV Education Information		
6	System (WVEIS)	138	2,929,971
7	34/1000 Waiver	139	500,000
8	Increased Enrollment	140	3,373,070
9	National Science Foundation Match	142	139,500
10	Safe Schools	143	2,000,000
11	Computer Basic Skills (R)	145	-0-

12	Implementation of Norm Referenced		
13	Testing Program . . . . .	297	1,473,433
14	Technology Repair and		
15	Modernization . . . . .	298	750,000
16	Curriculum Technology		
17	Resource Center . . . . .	300	251,490
18	Employment Programs Rate Relief . . .	401	720,000
19	Three Tier Funding . . . . .	411	1,000,000
20	Educational Enhancements . . . . .	695	2,427,000
21	Governor's Honors Academy . . . . .	478	190,000
22	WVGC Writing Project . . . . .	482	-0-
23	Marshall University Graduate		
24	College Writing Project . . . . .	807	25,000
25	Micro Computer Network . . . . .	506	150,000
26	Technology and Telecommuni-		
27	cations Initiative (R) . . . . .	596	2,003,119
28	Professional Certification . . . . .	615	-0-
29	Adult Advisory Council . . . . .	621	268,710
30	Foreign Student Education (R) . . . . .	636	102,676
31	Technology Demonstration Project . . .	639	150,000
32	State Teacher of the Year . . . . .	640	34,748
33	Principals Mentorship . . . . .	649	100,000
34	Mingo County Board of Education-		
35	Tax Assessment Error . . . . .	693	-0-
36	Allowance for Work Based Learning ..	744	50,000
37	Pickens School Support . . . . .	758	150,000
38	Webster County Board of		
39	Education/Hacker Valley . . . . .	809	<u>100,000</u>
40	Total . . . . .		\$25,731,112

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

43 Any unexpended balances remaining in the  
44 appropriations for Computer Basic Skills (fund 0313,

45 activity 145), Technology and Telecommunications  
 46 Initiative (fund 0313, activity 596), Foreign Student  
 47 Education (fund 0313, activity 636) and Technology and  
 48 Telecommunications Initiative - Surplus (fund 0313,  
 49 activity 774) at the close of the fiscal year 1997-98 are  
 50 hereby reappropriated for expenditure during the fiscal  
 51 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		
4	Predispositional Juvenile		
5	Detention Centers . . . . .	302	466,450
6	Education of Institutionalized		
7	Juveniles and Adults . . . . .	472	4,829,705
8	Potomac Center . . . . .	810	<u>292,805</u>
9	Total . . . . .		\$15,815,184

10 From the above appropriations, the superintendent  
 11 shall have authority to expend funds for the costs of  
 12 special education for those children residing in out-of-  
 13 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

5	Administration . . . . .	155	7,676,603
6	Other Current Expenses . . . . .	022	106,858,856
7	Improve Instructional Programs . . .	156	<u>33,000,000</u>
8	Basic Foundation Allowances . . . . .		1,178,987,236
9	Less Local Share . . . . .	332	<u>(254,502,547)</u>
10	Total Basic State Aid . . . . .		924,484,689
11	Public Employees'		
12	Insurance Match . . . . .	012	137,488,199
13	Teachers' Retirement System . . . . .	019	199,019,000
14	School Building Authority . . . . .	453	<u>22,667,120</u>
15	Total . . . . .		\$1,283,659,008

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

(WV Code Chapter 18 )

Fund 0573 FY 1999 Org 0402

1	Personal Services . . . . .	001	\$ 445,000
2	Annual Increment . . . . .	004	2,500
3	Employee Benefits . . . . .	010	145,000
4	Unclassified . . . . .	099	<u>235,500</u>
5	Total . . . . .		\$ 828,000

*38—State Board of Education—  
Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 0390 FY 1999 Org 0402

1	Personal Services . . . . .	001	\$ 717,448
2	Annual Increment . . . . .	004	14,902
3	Employee Benefits . . . . .	010	268,287
4	Unclassified . . . . .	099	549,707

5	Wood Products—Forestry		
6	Vocational Program (R) . . . . .	146	63,024
7	Albert Yanni Vocational Program . . . . .	147	139,300
8	Vocational Aid . . . . .	148	12,111,246
9	Adult Basic Education . . . . .	149	2,600,500
10	Equipment Replacement . . . . .	150	1,019,750
11	Program Modernization (R) . . . . .	305	600,000
12	Aquaculture Support . . . . .	769	<u>201,865</u>
13	Total . . . . .		\$18,286,029

14 Any unexpended balances remaining in the  
 15 appropriations for Wood Products—Forestry Vocational  
 16 Program (fund 0390, activity 146) and Program  
 17 Modernization (fund 0390, activity 305) at the close of  
 18 the fiscal year 1997-98 are hereby reappropriated for  
 19 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

1	Personal Services . . . . .	001	\$ 5,611,253
2	Annual Increment . . . . .	004	4,000
3	Employee Benefits . . . . .	010	2,134,009
4	Unclassified . . . . .	099	1,473,843
5	Capital Outlay, Repairs and		
6	Equipment . . . . .	589	<u>-0-</u>
7	Total . . . . .		\$ 9,223,105

8 Any unexpended balances remaining in the  
 9 appropriations for Fire and Smoke Alarm System -  
 10 Surplus (fund 0320, activity 726) at the close of the fiscal  
 11 year 1997-98 is hereby reappropriated for expenditure  
 12 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

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

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

*41—Division of Culture and History*

(WV Code Chapter 29)

Fund 0293 FY 1999 Org 0432

1	Personal Services .....	001	\$ 1,613,552
2	Annual Increment .....	004	42,719
3	Employee Benefits .....	010	583,632
4	Unclassified .....	099	650,969
5	Fairs and Festivals .....	122	1,153,000
6	Historical Preservation Grants .....	311	101,889
7	West Virginia Public Theater .....	312	150,000
8	Theater Arts of West Virginia .....	464	330,000
9	Grants for Competitive Arts Programs .	624	1,000,000
10	Culture and History Programming ...	732	300,014
11	Contemporary American		
12	Theater Festival .....	811	50,000
13	Independence Hall .....	812	<u>50,000</u>
14	Total .....		\$ 6,025,775

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

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

28 All federal moneys received as reimbursement to the  
 29 division of culture and history for moneys expended from  
 30 the general revenue fund for the arts fund and historical  
 31 preservation are hereby reappropriated for the purposes as

32 originally made, including personal services, current  
33 expenses and equipment.

*42—Library Commission*

(WV Code Chapter 10)

Fund 0296 FY 1999 Org 0433

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

*43—Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 0300 FY 1999 Org 0439

1	Personal Services . . . . .	001	\$ 3,112,491
2	Annual Increment . . . . .	004	65,200
3	Employee Benefits . . . . .	010	990,558
4	Unclassified . . . . .	099	<u>1,230,402</u>
5	Total . . . . .		\$ 5,398,651

6 Any unexpended balances remaining in the  
7 appropriations for Capital Improvements-Total-Surplus  
8 (fund 0300, activity 672) and Capital Improvements-600  
9 Capitol Street (fund 0300, activity 313) are hereby  
10 reappropriated for expenditure during the fiscal year  
11 1998-99.

12 These funds may be transferred to special revenue  
 13 accounts for matching college, university, city, county,  
 14 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		
7	Cord Injury . . . . .	813	<u>250,000</u>
8	Total . . . . .		\$10,671,077
9	Any unexpended balances remaining in the		
10	appropriation for Technology - Related Assistance		
11	Revolving Loan Fund for Individuals with Disabilities		
12	(fund 0310, activity 766) at the close of the fiscal year		
13	1997-98 is hereby reappropriated for expenditure during		
14	the fiscal year 1998-99 and may be transferred to a		
15	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

3	Tuition Contract Program (R) . . . . .	165	703,552
4	Minority Doctoral Fellowship . . . . .	166	100,000
5	Underwood-Smith		
6	Scholarship Program		
7	—Student Awards (R) . . . . .	167	150,000
8	WVNET . . . . .	169	2,401,656
9	36/50 Classified Staff		
10	Increment Increase . . . . .	821	706,300
11	Public Employees' Insurance		
12	Matching (R) . . . . .	012	<u>2,424,352</u>
13	Total . . . . .		\$12,532,891

14 Any unexpended balances remaining in the  
15 appropriation for Higher Education Grant Program (fund  
16 0333, activity 164), Tuition Contract Program (fund 0333,  
17 activity 165), Underwood - Smith Scholarship Program -  
18 Student Awards (fund 0333, activity 167), Higher  
19 Education Technology Initiative - Surplus (fund 0333,  
20 activity 508) and Higher Education Grant Program (fund  
21 4055, activity 164) at the close of the fiscal year 1997-98  
22 are hereby reappropriated for expenditure during the  
23 fiscal year 1998-99.

24 The appropriation for Minority Doctoral Fellowship  
25 (fund 0333, activity 166) may be transferred to special  
26 revenue accounts for matching college, university, city,  
27 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

1	Strategic Planning and		
2	Compliance - Institutions—Total . .	772	\$10,528,605

*47—Board of Trustees of the  
University System of West Virginia  
Control Account*

(WV Code Chapter 18B)

Fund 0327 FY 1999 Org 0461

1	Unclassified . . . . .	.099	\$171,892,933
2	Marshall University—Southern WV		
3	Community and Technical		
4	College 2+2 Program (R) . . . . .	.170	350,000
5	Marshall University—		
6	Autism Training Center . . . . .	.548	575,000
7	Marshall University—		
8	Forensic Lab (R) . . . . .	.572	450,000
9	Marshall and West Virginia		
10	University Faculty and		
11	Course Development		
12	International Study Project . . . . .	.549	35,000
13	WVU Law School—Skills Program . .	.745	150,000
14	WVU College of Engineering		
15	and Mineral Resources-		
16	Diesel Training-Transfer . . . . .	.699	<u>50,000</u>
17	Total . . . . .		\$173,502,933

18 Any unexpended balances remaining in the  
19 appropriations for Marshall University-Southern WV  
20 Community and Technical College 2+2 Program (fund  
21 0327, activity 170), Marshall University—Forensic Lab  
22 (fund 0327, activity 572), WVU College of Engineering  
23 and Mineral Resources - Diesel Study (fund 0327, activity  
24 699) and Chestnut Blight Project - Total - Surplus (fund  
25 0327, activity 780) at the close of the fiscal year 1997-98  
26 are hereby reappropriated for expenditure during the  
27 fiscal year 1998-99.

*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

1	School of Osteopathic Medicine . . . . .	172	\$ 6,187,694
2	Marshall School of Medicine . . . . .	173	11,057,522
3	WVU-Health Sciences . . . . .	174	39,075,945
4	WVU—School of Health Sciences—		
5	Charleston Division . . . . .	175	3,787,416
6	Health Sciences Scholarship Fund (R) .	176	148,500
7	Primary Health Education		
8	Program Support (R) . . . . .	177	4,460,000
9	Medical Education . . . . .	178	-0-
10	Rural Health Initiative		
11	Site Support (R) . . . . .	295	2,980,000
12	Vice Chancellor for Health Sciences . .	473	263,594
13	WVU—Health Career		
14	Opportunities Program (R) . . . . .	474	175,000
15	WVU Charleston Division—		
16	Poison Control Hot Line . . . . .	510	415,985
17	Marshall University Medical		
18	School-Capital Improvements . . . .	814	1,000,000
19	MA Public Health Program and		
20	Health Science Technology . . . . .	623	<u>75,000</u>
21	Total . . . . .		\$69,626,656
22	Any unexpended balances remaining in the		
23	appropriations for Primary Health Education Program		
24	Support (fund 0323, activity 177), Rural Health Initiative		

25 Site Support (fund 0323, activity 295), Health Sciences  
 26 Scholarship Fund (fund 0323, activity 176) and WVU -  
 27 Health Career Opportunities Program (fund 0323, activity  
 28 474) at the close of the fiscal year 1997-98 are hereby  
 29 reappropriated for expenditure during the fiscal year  
 30 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		
3	Institute of Technology		
4	Transfer to Board of Trustees -		
5	West Virginia University Institute		
6	of Technology Resource		
7	Allocation Policy Adjustment ....	454	284,526
8	Workforce Development .....	832	<u>500,000</u>
9	Total .....		\$81,094,678

10 The above appropriation for West Virginia University  
 11 Institute of Technology Transfer to Board of Trustees -  
 12 West Virginia University Institute of Technology Resource  
 13 Allocation Policy Adjustment (fund 0330, activity 454) is  
 14 pursuant to enrolled senate bill no. 591, regular session,  
 15 1996, and shall be used solely for the purpose of  
 16 implementing the provisions of section nine, article two,  
 17 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)

Fund 0400 FY 1999 Org 0501

1	Unclassified—Total .....	096	\$	117,264
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*51—Division of Health—  
Central Office*

(WV Code Chapter 16)

Fund 0407 FY 1999 Org 0506

1	Personal Services .....	001	\$	6,145,144
2	Annual Increment .....	004		131,907
3	Employee Benefits .....	010		2,604,363
4	Unclassified .....	099		4,324,965
5	Corporate Nonprofit			
6	Community Health Centers -			
7	F.M.H.A. Mortgage Finance .....	184		135,455
8	Appalachian State Low			
9	Level Radioactive			
10	Waste Commission .....	185		48,000
11	Safe Drinking Water Program .....	187		463,224
12	Women, Infants and Children .....	210		45,000
13	Early Intervention .....	223		2,018,357
14	Cancer Registry .....	225		197,358
15	Transitional Funding for			
16	Local Health Departments .....	723		4,302,660
17	Home Health - Local			
18	Health Departments .....	326		-0-
19	Black Lung Clinics .....	467		200,000
20	Pediatric Dental Services .....	550		150,000
21	Vaccine for Children .....	551		431,480
22	Adult Influenza Vaccine .....	552		65,000
23	Tuberculosis Control .....	553		249,420

24	Regional EMS Entities . . . . .	557	630,000
25	Maternal and Child Health Clinics,		
26	Clinicians and Medical		
27	Contracts and Fees (R) . . . . .	575	4,673,043
28	Epidemiology Support . . . . .	626	365,625
29	Rural EMS Equipment and Training . .	627	560,664
30	Primary Care Support . . . . .	628	6,706,303
31	Health Right Free Clinics . . . . .	727	1,200,000
32	State Aid to Local		
33	Health Departments . . . . .	702	7,880,684
34	State EMS Coordinator . . . . .	738	756,320
35	EMS Training for Children . . . . .	739	50,000
36	Osteoporosis Prevention Fund . . . . .	729	200,000
37	Emergency Response Entities-		
38	Special Projects . . . . .	822	<u>1,000,000</u>
39	Total . . . . .		\$45,534,972

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

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

*52—Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 0525 FY 1999 Org 0506

1 Personal Services . . . . . 001 \$ 504,540

2	Annual Increment . . . . .	004	10,300
3	Employee Benefits . . . . .	010	200,000
4	Special Olympics . . . . .	208	26,074
5	Behavioral Health Program -		
6	Unclassified . . . . .	219	19,449,313
7	Family Support Act . . . . .	221	1,088,605
8	Institutional Facilities Operations . . . .	335	39,274,470
9	Colin Anderson Community		
10	Placement . . . . .	803	3,433,963
11	Renaissance Program . . . . .	804	<u>200,000</u>
12	Total . . . . .		\$64,187,265

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

25       Additional funds have been appropriated in fund  
26 5156, fiscal year 1999, organization 0506, for the  
27 operation of the institutional facilities. The secretary of  
28 the department of health and human resources is  
29 authorized to utilize up to ten percent of the funds from  
30 the Institutional Facilities Operations line item to facilitate  
31 cost effective and cost saving services at the community  
32 level.

33       From the above appropriation to Institutional Facilities  
34 Operations, together with available funds from the division  
35 of health—hospital services revenue account (fund 5156,  
36 activity 335), on July 1, 1998, the sum of one hundred

37 fifty thousand dollars shall be transferred to the  
 38 department of agriculture—land division as advance  
 39 payment for the purchase of food products; actual  
 40 payments for such purchases shall not be required until  
 41 such credits have been completely expended.

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

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

(WV Code Chapter 16)

Fund 0561 FY 1999 Org 0506

1 West Virginia Drinking  
 2 Water Treatment  
 3 Revolving Fund—Transfer . . . . . 689 \$ 700,000

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

*54—Human Rights Commission*

(WV Code Chapter 5)

Fund 0416 FY 1999 Org 0510

1	Personal Services . . . . .	001	\$	531,095
2	Annual Increment . . . . .	004		11,581
3	Employee Benefits . . . . .	010		176,873
4	Unclassified . . . . .	099		184,652
5	Anti-Hate Program and			
6	Human Rights Summit . . . . .	815		<u>18,000</u>
7	Total . . . . .		\$	922,201

8 Any unexpended balance remaining in the  
 9 appropriation for Automated Management Information  
 10 System (fund 0416, activity 528) at the close of the fiscal  
 11 year 1997-98 is hereby reappropriated for expenditure  
 12 during the fiscal year 1998-99.

*55—Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 1999 Org 0511

1	Personal Services . . . . .	001	\$ 17,824,735
2	Annual Increment . . . . .	004	456,261
3	Employee Benefits . . . . .	010	6,861,592
4	Unclassified . . . . .	099	19,956,784
5	Child Care Development . . . . .	144	1,390,400
6	Medical Services Contracts and		
7	Office of Managed Care . . . . .	183	2,313,176
8	Medicaid Management		
9	Information Technology . . . . .	186	-0-
10	Medical Services . . . . .	189	165,955,333
11	Women's Commission . . . . .	191	80,869
12	Social Services . . . . .	195	52,010,138
13	Family Preservation Program . . . . .	196	1,565,000
14	Grants for Licensed Domestic		
15	Violence Programs and		
16	Statewide Prevention . . . . .	750	500,000
17	Grants for Licensed Domestic		
18	Violence Shelters . . . . .	332	-0-
19	Child Protective Services		
20	Case Workers . . . . .	468	6,852,721
21	OSCAR and RAPIDS . . . . .	515	3,222,808
22	Child Welfare System . . . . .	603	2,441,995

23	Commission for the Deaf		
24	and Hard of Hearing . . . . .	704	154,914
25	Indigent Burials . . . . .	730	680,000
26	Child Support Enforcement . . . . .	705	1,649,816
27	Medicaid Auditing . . . . .	706	529,611
28	Temporary Assistance for		
29	Needy Families/Maintenance		
30	of Effort . . . . .	707	29,689,373
31	West Virginia Childrens'		
32	Health Fund/Transfer . . . . .	714	5,000,000
33	Child Care—Maintenance of		
34	Effort and Match . . . . .	708	<u>4,409,643</u>
35	Total . . . . .		\$323,545,169

36 Any unexpended balance remaining in the  
37 appropriation for Unclassified (fund 0403, activity 099)  
38 fiscal year 1996-97 at the close of fiscal year 1997-98 is  
39 hereby reappropriated for expenditure during fiscal year  
40 1998-99. Of the balance reappropriated, \$500,000 is  
41 hereby redesignated as Medicaid Management  
42 Information Technology (fund 0403, activity 186),  
43 \$823,195 is redesignated as Unclassified (fund 0403,  
44 activity 099), \$136,000 is redesignated as Child Support  
45 Enforcement (fund 0403, activity 705), and any  
46 remaining balance is redesignated as Unclassified (fund  
47 0403, activity 099).

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

56 The secretary shall have authority to expend funds for  
57 the educational costs of those children residing in out-of-

58 state placements, excluding the costs of special education  
 59 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	<u>400,000</u>
8	Total . . . . .		\$ 6,978,501

9 The College Education Fund line item above shall be  
 10 the total annual appropriation for awarding scholarships.  
 11 The secretary of the department of military affairs and  
 12 public safety shall devise a method to equitably reimburse  
 13 all eligible participants on a pro rata basis should the  
 14 appropriation be insufficient to cover total annual eligible  
 15 expenses.

*58—West Virginia Parole Board*

(WV Code Chapter 62)

Fund 0440 FY 1999 Org 0605

1	Personal Services .....	001	\$	36,384
2	Annual Increment .....	004		1,100
3	Employee Benefits .....	010		77,160
4	Unclassified .....	099		69,575
5	Salaries of Members of West			
6	Virginia Parole Board .....	227		<u>200,000</u>
7	Total .....		\$	384,219

*59—Office of Emergency Services*

(WV Code Chapter 15)

Fund 0443 FY 1999 Org 0606

1	Personal Services .....	001	\$	153,016
2	Annual Increment .....	004		5,300
3	Employee Benefits .....	010		73,822
4	Unclassified .....	099		31,751
5	Federal Emergency Management			
6	Agency Match .....	188		<u>237,610</u>
7	Total .....		\$	501,499

*60—Division of Corrections—  
Central Office*

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

Fund 0446 FY 1999 Org 0608

1	Personal Services .....	001	\$	334,984
2	Annual Increment .....	004		8,260
3	Employee Benefits .....	010		115,111
4	Unclassified .....	099		<u>111,004</u>
5	Total .....		\$	569,359

61—Division of Corrections—  
Correctional Units

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

Fund 0450 FY 1999 Org 0608

1	Personal Services .....	001	\$13,297,271
2	Annual Increment .....	004	191,988
3	Employee Benefits .....	010	5,168,839
4	Unclassified .....	099	6,785,391
5	Payment to Counties and/or		
6	Regional Jails .....	229	3,916,250
7	St. Mary's Correctional Center .....	230	8,021,199
8	Lakin Facility .....	231	-0-
9	Denmar Facility .....	448	2,498,732
10	Mt. Olive Correctional Complex .....	533	15,712,403
11	Northern Correctional Facility .....	534	5,342,505
12	Inmate Medical Expense .....	535	5,118,439
13	Ohio County Jail .....	784	<u>1,200,000</u>
14	Total .....		\$67,253,017

15 Any unexpended balance remaining in the  
16 appropriation for Capital Improvements - Surplus (fund  
17 0450, activity 661), Ohio County Jail (fund 0450, activity  
18 784) and St. Mary's Correctional Center (fund 0450,  
19 activity 230) at the close of the fiscal year 1997-98 is  
20 hereby reappropriated for expenditure during the fiscal  
21 year 1998-99.

22 The commissioner of corrections, prior to the  
23 beginning of the fiscal year, shall file with the legislative  
24 auditor and the department of administration an  
25 expenditure schedule for each formerly separate spending  
26 unit which has been consolidated into the above account  
27 and which receives a portion of the above appropriation.  
28 The commissioner shall also, within fifteen days after the

29 close of each six-month period of said fiscal year, file with  
 30 the legislative auditor and the department of  
 31 administration an itemized report of expenditures made  
 32 during the preceding six-month period. Such report shall  
 33 include the total of expenditures made for personal  
 34 services, annual increment, current expenses (inmate  
 35 medical expenses and other), repairs and alterations and  
 36 equipment.

37 From the above appropriation to Unclassified, on July  
 38 1, 1998, the sum of two hundred thousand dollars shall be  
 39 transferred to the department of agriculture — land  
 40 division as advance payment for the purchase of food  
 41 products; actual payments for such purchases shall not be  
 42 required until such credits have been completely  
 43 expended.

*62—West Virginia State Police*

(WV Code Chapter 15)

Fund 0453 FY 1999 Org 0612

1	Personal Services .....	001	\$23,404,814
2	Annual Increment .....	004	151,900
3	Employee Benefits .....	010	4,679,140
4	Unclassified .....	099	5,139,166
5	COPS Program-Federal Match .....	327	350,727
6	Vehicle Purchase .....	451	1,000,000
7	Barracks Maintenance and		
8	Construction (R) .....	494	113,947
9	Communications and Other		
10	Equipment (R) .....	558	2,415,000
11	Debt Payment/Capital		
12	Outlay, Renovations,		
13	Repair to Barracks .....	751	2,000,000
14	Overtime and Wage Court Awards .....	568	-0-
15	Trooper Retirement Fund .....	605	15,021,220

16	Handgun Administration Expense . . .	747	63,504
17	Trooper Class/Grant Match . . . . .	733	1,814,807
18	COPS-Telecommunicators Match . . . .	816	<u>58,968</u>
19	Total . . . . .		\$56,213,193

20 Any unexpended balance remaining in the  
 21 appropriation for Unclassified (fund 0453, activity 099),  
 22 Barracks Maintenance and Construction (fund 0453,  
 23 activity 494), Communications and Other Equipment  
 24 (fund 0453, activity 558), and Handgun Administration  
 25 Expense (fund 0453, activity 747) at the close of the fiscal  
 26 year 1997-1998 is hereby reappropriated for expenditure  
 27 during the fiscal year 1998-99.

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

33 The above appropriation for Trooper Class/Grant  
 34 Match (fund 0453, activity 733) may qualify for federal  
 35 grant funds. Should a federal grant be approved, any  
 36 excess funds intended for personal services or employee  
 37 benefits—which are not required for grant match—are to  
 38 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

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

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	<u>150,000</u>
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		
20	1998-99.		

*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	<u>160,234</u>
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
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2	Annual Increment . . . . .	004	11,800
3	Employee Benefits . . . . .	010	173,556
4	Unclassified . . . . .	099	<u>205,601</u>
5	Total . . . . .		\$ 938,321

*66—Division of Criminal Justice  
and Highway Safety*

(Executive Order)

Fund 0546 FY 1999 Org 0620

1	Personal Services . . . . .	001	\$ -0-
2	Annual Increment . . . . .	004	-0-
3	Employee Benefits . . . . .	010	-0-
4	Unclassified . . . . .	099	-0-
5	Statistical Analysis Program . . . . .	597	<u>-0-</u>
6	Total . . . . .		\$ -0-

*67—Division of Criminal Justice Services*

(Executive Order)

Fund 0546 FY 1999 Org 0620

1	Personal Services . . . . .	001	\$ 160,148
2	Annual Increment . . . . .	004	2,900
3	Employee Benefits . . . . .	010	58,619
4	Unclassified . . . . .	099	152,758
5	Statistical Analysis Program . . . . .	597	<u>50,000</u>
6	Total . . . . .		\$ 424,425

*68—Division of Juvenile Services*

(WV Code Chapter 49)

Fund 0570 FY 1999 Org 0621

1	Personal Services . . . . .	001	\$ -0-
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## APPROPRIATIONS

[Ch. 6

2	Annual Increment . . . . .	004	-0-
3	Employee Benefits . . . . .	010	-0-
4	Unclassified . . . . .	099	<u>-0-</u>
5	Unclassified—Total . . . . .	096	\$ 9,160,244

**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

1	Unclassified—Total . . . . .	096	\$ 166,626
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*70—Tax Division*

(WV Code Chapter 11)

Fund 0470 FY 1999 Org 0702

1	Personal Services . . . . .	001	\$ 9,578,009
2	Annual Increment . . . . .	004	232,650
3	Employee Benefits . . . . .	010	3,451,431
4	Unclassified . . . . .	099	6,214,296
5	Property Tax Valuation and		
6	Assessment System . . . . .	477	2,000,000
7	Remittance Processor . . . . .	570	<u>325,000</u>
8	Total . . . . .		\$21,801,386

9 Any unexpended balances remaining in the  
10 appropriations for Automation Project (fund 0470,  
11 activity 442), Automation Project-Total-Surplus (fund  
12 0470, activity 673) and Property Tax Electronic Data  
13 Processing System Network Project (fund 0470, activity  
14 684) at the close of the fiscal year 1997-98 are hereby  
15 reappropriated for expenditure during the fiscal year  
16 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		<u>400,000</u>
7	Total . . . . .		\$	1,306,695
8	Any unexpended balances remaining in the			
9	appropriations for Port Authority (fund 0500, activity			
10	443) and Aeronautics Commission - Surplus (fund 0500,			
11	activity 450) at the close of the fiscal year 1997-98 are			
12	hereby reappropriated for expenditure during the fiscal			
13	year 1998-99.			
14	Any unexpended balance remaining in the			
15	appropriation for Unclassified (fund 0500, activity 099) *			
16	at the close of fiscal year 1997-98 is hereby			
17	reappropriated for expenditure during the fiscal year			
18	1998-99.			

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\*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

1 Unclassified—Total . . . . . 096 \$ 727,439

*74—Division of Public Transit*

(WV Code Chapter 17)

Fund 0510 FY 1999 Org 0805

1 Unclassified—Total (R) . . . . . 096 \$ 872,680

2 Any unexpended balance remaining in the  
 3 appropriation for Unclassified - Total (fund 0510, activity  
 4 096) at the close of the fiscal year 1997-98 is hereby  
 5 reappropriated for expenditure during the fiscal year  
 6 1998-99.

**BUREAU OF COMMERCE***75—Division of Forestry*

(WV Code Chapter 19)

Fund 0250 FY 1999 Org 0305

1 Personal Services . . . . . 001 \$ 1,341,464

2 Annual Increment . . . . . 004 33,600

3 Employee Benefits . . . . . 010 507,883

4 Unclassified . . . . . 099 396,161

5 Aerial Tanker Air Planes . . . . . 752 200,000

6 Total . . . . . \$ 2,479,108

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

*76—Geological and Economic Survey*

(WV Code Chapter 29)

Fund 0253 FY 1999 Org 0306

1	Personal Services .....	001	\$ 1,183,929
2	Annual Increment .....	004	- 27,617
3	Employee Benefits .....	010	378,975
4	Unclassified .....	099	152,500
5	Mineral Mapping System (R) .....	207	1,190,896
6	Geographic Information System (R) ..	214	312,500
7	Computer Upgrade .....	349	<u>6,125</u>
8	Total .....		\$ 3,252,542

9 Any unexpended balances remaining in the  
 10 appropriations for Mineral Mapping System - Surplus  
 11 (fund 0253, activity 610), Mineral Mapping System (fund  
 12 0253, activity 207) and Geographic Information System  
 13 (fund 0253, activity 214) at the close of the fiscal year  
 14 1997-98 are hereby reappropriated for expenditure  
 15 during the fiscal year 1998-99.

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

*77—West Virginia Development Office*

(WV Code Chapter 5B)

Fund 0256 FY 1999 Org 0307

1	Personal Services .....	001	\$ 2,044,881
2	Annual Increment .....	004	32,605
3	Employee Benefits .....	010	624,729
4	Unclassified .....	099	2,452,436
5	Partnership Grants (R) .....	131	5,300,000
6	National Youth Science Camp .....	132	200,000
7	Local Economic Development		
8	Partnerships (R) .....	133	1,650,000

9	ARC Assessment . . . . .	136	167,308
10	Wood Products Initiative . . . . .	233	94,400
11	High Tech Initiative . . . . .	236	94,400
12	Welfare-to-Work . . . . .	237	-0-
13	Polymer Alliance . . . . .	754	100,000
14	Guaranteed Work Force Grant (R) . . .	242	3,005,602
15	Small Business Financial		
16	Assistance (R) . . . . .	360	317,352
17	Robert C. Byrd Institute for		
18	Advanced\Flexible		
19	Manufacturing—Technology		
20	Outreach and Programs		
21	for Environmental and		
22	Advanced Technologies . . . . .	367	700,000
23	Industrial Park Assistance (R) . . . . .	480	1,000,000
24	WV Film Development Office . . . . .	498	101,656
25	National Institute of Chemical Studies .	805	100,000
26	Leverage Technology		
27	and Small Business		
28	Development Program (R) . . . . .	525	800,000
29	WV Partnership for Industrial		
30	Modernization (R) . . . . .	592	200,000
31	International Offices (R) . . . . .	593	606,000
32	European Trade and Tourism Office .	763	400,000
33	Small Business Work Force (R) . . . . .	735	372,283
34	Local Economic Development		
35	Assistance . . . . .	819	<u>2,000,000</u>
36	Total . . . . .		\$22,363,652
37	Any unexpended balances remaining in the		
38	appropriations for Partnership Grants (fund 0256, activity		
39	131), Guaranteed Work Force Grant (fund 0256, activity		

40 242), Local Economic Development Partnerships (fund  
 41 0256, activity 133), Empowerment Zone/Enterprise  
 42 Community (fund 0256, activity 218), Guaranteed Work  
 43 Force Grant - Surplus (fund 0256, activity 496),  
 44 Guaranteed Work Force Grant/Small Business Programs  
 45 (fund 0256, activity 354), Small Business Financial  
 46 Assistance (fund 0256, activity 360), Industrial Park  
 47 Assistance (fund 0256, activity 480), Leverage  
 48 Technology and Small Business Development Program  
 49 (fund 0256, activity 525), Small Business Work Force  
 50 (fund 0256, activity 735), International Offices (fund  
 51 0256, activity 593) and West Virginia Partnership for  
 52 Industrial Modernization (fund 0256, activity 592) at the  
 53 close of the fiscal year 1997-98 are hereby reappropriated  
 54 for expenditure during the fiscal year 1998-99.

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

*78—Division of Labor*

(WV Code Chapters 21 and 47)

Fund 0260 FY 1999 Org 0308

1	Personal Services .....	001	\$ 1,528,260
2	Annual Increment .....	004	21,410
3	Employee Benefits .....	010	580,793
4	Unclassified .....	099	1,053,484
5	Computer/Technology Upgrades ....	322	<u>0-</u>
6	Total .....		\$ 3,183,947

7 Any unexpended balance remaining in the  
 8 appropriation for Computer/Technology Upgrades (fund  
 9 0260, activity 322) at the close of the fiscal year 1997-98  
 10 is hereby reappropriated for expenditure during the fiscal  
 11 year 1998-99.

*79—Division of Natural Resources*

(WV Code Chapter 20)

Fund 0265 FY 1999 Org 0310

1	Personal Services .....	001	\$ 8,112,773
2	Annual Increment .....	004	250,844
3	Employee Benefits .....	010	3,614,971
4	Unclassified .....	099	107,883
5	Nongame Wildlife .....	527	550,000
6	West Virginia Stream		
7	Partners Program .....	637	100,000
8	Upper Mud River Flood Control .....	654	201,768
9	Law Enforcement .....	806	<u>300,000</u>
10	Total .....		\$13,238,239

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

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

*80—Division of Miners' Health,  
 Safety and Training*

(WV Code Chapter 22)

Fund 0277 FY 1999 Org 0314

1	Personal Services .....	001	\$ 3,527,623
2	Annual Increment .....	004	60,750
3	Employee Benefits .....	010	1,199,437
4	Unclassified .....	099	1,032,350
5	West Virginia Diesel Equipment		
6	Commission .....	712	<u>30,000</u>
7	Total .....		\$ 5,850,160

*81—Board of Coal Mine  
Health and Safety*

(WV Code Chapter 22)

Fund 0280 FY 1999 Org 0319

1	Personal Services .....	001	\$ 95,650
2	Annual Increment .....	004	300
3	Employee Benefits .....	010	23,200
4	Unclassified .....	099	<u>39,532</u>
5	Total .....		\$ 158,682

*82—Coal Mine Safety and  
Technical Review Committee*

(WV Code Chapter 22)

Fund 0285 FY 1999 Org 0320

1	Unclassified—Total .....	096	\$ 73,410
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**BUREAU OF ENVIRONMENT**

*83—Environmental Quality Board*

(WV Code Chapter 20)

Fund 0270 FY 1999 Org 0311

1	Personal Services .....	001	\$ 63,609
2	Annual Increment .....	004	443
3	Employee Benefits .....	010	23,026

4	Unclassified .....	099	<u>30,186</u>
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		
2	to the Interstate Commission		
3	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		
2	the Ohio River Valley Water		
3	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	<u>125,671</u>
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
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**BUREAU OF SENIOR SERVICES***88—Bureau of Senior Services*

(WV Code Chapter 29)

Fund 0420 FY 1999 Org 0508

1	Personal Services . . . . .	001	\$	116,238
2	Annual Increment . . . . .	004		2,333
3	Employee Benefits . . . . .	010		57,601
4	Unclassified . . . . .	099		438,101
5	Local Programs Service			
6	Delivery Costs . . . . .	200		2,475,250
7	Silver Haired Legislature . . . . .	202		14,400
8	Area Agencies Administration . . . . .	203		87,428
9	Foster Grandparents Stipends			
10	and Travel . . . . .	205		57,734
11	In-Home Services for Senior Citizens .	224		<u>700,000</u>
12	Total . . . . .		\$	3,949,085
13	Any unexpended balance remaining in the			
14	appropriation for Senior Citizens Centers—Land			
15	Acquisition, Construction and Repairs and Alterations			
16	(fund 0420, activity 201) at the close of the fiscal year			
17	1997-98 is hereby reappropriated for expenditure during			
18	the fiscal year 1998-99.			

**BUREAU OF EMPLOYMENT PROGRAMS***89—Bureau of Employment Programs*

(WV Code Chapter 23)

Fund 0572 FY 1999 Org 0323

1	Welfare-to-Work—Total . . . . .	416	\$	2,500,000
2	Total TITLE II, Section 1—			
3	General Revenue . . . . .			<u>\$2,586,963,474</u>

1       **Sec. 2. Appropriations from state road fund.**—From  
 2 the state road fund there are hereby appropriated  
 3 conditionally upon the fulfillment of the provisions set  
 4 forth in article two, chapter five-a of the code the  
 5 following amounts, as itemized, for expenditure during the  
 6 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

	Activity	State Road Fund
1	Personal Services . . . . . 001	\$ 6,235,008
2	Annual Increment . . . . . 004	92,200
3	Employee Benefits . . . . . 010	2,287,487
4	Unclassified . . . . . 099	16,426,366
5	Capital Outlay-Building . . . . . 222	980,000
6	International Fuel Tax Agreement . 536	<u>623,968</u>
7	Total . . . . .	\$ 26,645,029

*91—Division of Highways*

(WV Code Chapters 17 and 17C)

Fund 9017 FY 1999 Org 0803

1	Debt Service . . . . . 040	\$ 48,700,000
2	ARC Assessment . . . . . 136	794,000
3	Maintenance, Expressway,	
4	Trunkline and Feeder . . . . . 270	85,000,000
5	Maintenance, State Local Services . . 271	129,000,000

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	<u>1,360,000</u>
18	Total . . . . .		\$ 553,639,000

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

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

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

33       It is the intent of the Legislature to capture and match  
34 all federal funds available for expenditure on the  
35 Appalachian highway system at the earliest possible time.  
36 Therefore, should amounts in excess of those appropriated  
37 be required for the purposes of Appalachian programs,  
38 funds in excess of the amount appropriated may be made  
39 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

1	Interstate Construction . . . . .	278	\$ 35,000,000
2	Other Federal Aid Programs . . . . .	279	180,000,000
3	Appalachian Programs . . . . .	280	<u>60,000,000</u>
4	Total . . . . .		\$275,000,000

*93—Claims Against the State Road Fund*

1	Claims Against the State . . . . .	319	\$ -0-
2	Total TITLE II, Section 2—		
3	State Road Fund . . . . .		<u>\$855,284,029</u>

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

**LEGISLATIVE**

*94—Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 1731 FY 1999 Org 2300

			<b>Other Funds</b>
1	Personal Services . . . . .	001	\$ 145,096
2	Annual Increment . . . . .	004	2,500



*97—Auditor's Office—  
Securities Regulation Fund*

(WV Code Chapter 32)

Fund 1225 FY 1999 Org 1200

1	Personal Services . . . . .	001	\$	406,260
2	Annual Increment . . . . .	004		4,722
3	Employee Benefits . . . . .	010		91,116
4	Unclassified . . . . .	099		404,862
5	Total . . . . .		\$	906,960

*98—Auditor's Office—  
Technology Support and Acquisition Fund*

(WV Code Chapter 12)

Fund 1232 FY 1999 Org 1200

1	Unclassified—Total . . . . .	096	\$	400,000
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*99—Treasurer's Office—  
Technology Support and Acquisition Fund*

(WV Code Chapter 12)

Fund 1329 FY 1999 Org 1300

1	Unclassified—Total . . . . .	096	\$	100,000
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*100—Department of Agriculture*

(WV Code Chapter 19)

Fund 1401 FY 1999 Org 1400

1	Personal Services . . . . .	001	\$	517,807
2	Annual Increment . . . . .	004		6,150
3	Employee Benefits . . . . .	010		129,381
4	Unclassified . . . . .	099		854,141
5	Total . . . . .		\$	1,507,479

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

(WV Code Chapter 19)

Fund 1408 FY 1999 Org 1400

1 Student and Farm Loans—Total . . . 235 \$ 536,076

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

(WV Code Chapter 19)

Fund 1409 FY 1999 Org 1400

1	Personal Services . . . . .	001	\$	20,684
2	Employee Benefits . . . . .	010		14,877
3	Unclassified . . . . .	099		51,493
4	Total . . . . .		\$	87,054

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

*103—Department of Agriculture—  
Farm Operating Fund*

(WV Code Chapter 19)

Fund 1412 FY 1999 Org 1400

1 Unclassified—Total . . . . . 096 \$ 964,094

*104—Attorney General—  
Antitrust Enforcement*

(WV Code Chapter 47)

Fund 1507 FY 1999 Org 1500

1	Personal Services . . . . .	001	\$	213,424
2	Annual Increment . . . . .	004		935
3	Employee Benefits . . . . .	010		65,252
4	Unclassified . . . . .	099		177,882
5	Total . . . . .		\$	457,493

*105—Attorney General—  
Preneed Funeral Regulation Fund*

(WV Code Chapter 47)

Fund 1513 FY 1999 Org 1500

1 Unclassified—Total . . . . . 096 \$ 220,944

*106—Attorney General—  
Preneed Funeral Guarantee Fund*

(WV Code Chapter 47)

Fund 1514 FY 1999 Org 1500

1 Unclassified—Total . . . . . 096 \$ 775,000

*107—Secretary of State—  
Trademark Registration*

(WV Code Chapters 3, 5, and 59)

Fund 1610 FY 1999 Org 1600

1 Unclassified—Total . . . . . 096 \$ 7,000

**DEPARTMENT OF ADMINISTRATION**

*108—Office of the Secretary—  
Natural Gas Contract Refund Fund*

(WV Code Chapter 5A)

Fund 2040 FY 1999 Org 0201

1 Unclassified—Total . . . . . 096 \$ 77,059

*109—Division of Information Services  
and Communications*

(WV Code Chapter 5A)

Fund 2220 FY 1999 Org 0210

1 Personal Services . . . . . 001 \$ 5,295,813

2 Annual Increment . . . . . 004 92,815

3 Employee Benefits . . . . . 010 1,561,868

4	Unclassified .....	099	<u>2,131,360</u>
5	Total .....		\$ 9,081,856

6       The total amount of this appropriation shall be paid  
7 from a special revenue fund out of collections made by  
8 the division of information services and communications  
9 as provided by law.

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

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

*110—Division of Purchasing—  
Revolving Fund*

(WV Code Chapter 5A)

Fund 2320 FY 1999 Org 0216

1	Personal Services .....	001	\$ 862,535
2	Annual Increment .....	004	36,440
3	Employee Benefits .....	010	330,591
4	Unclassified .....	099	<u>610,678</u>
5	Total .....		\$ 1,840,244

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

9       There is hereby appropriated from this fund, in  
10 addition to the above appropriation, the necessary amount  
11 for the expenditure of funds other than personal services

12 or employee benefits to enable the division to provide  
 13 printing, publishing and document services and for the  
 14 purchase of supplies for resale to user agencies. These  
 15 services include, but are not limited to, offset printing,  
 16 electronic duplication/copying, microfilming, records  
 17 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		<u>650,000</u>
7	Total .....		\$	4,322,532

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

*112—WV Prosecuting Attorneys' Institute*

(WV Code Chapter 7)

Fund 2521 FY 1999 Org 0228

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

3	Employee Benefits . . . . .	010		156,205
4	Unclassified . . . . .	099	<u>          </u>	272,819
5	Total . . . . .		\$	862,091

6 The above appropriation for the administrative  
 7 expenses of the school building authority shall be paid  
 8 from the interest earnings on debt service reserve accounts  
 9 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

1	Personal Services . . . . .	001	\$	719,940
2	Annual Increment . . . . .	004		11,150
3	Employee Benefits . . . . .	010		323,611
4	Unclassified . . . . .	099	<u>          </u>	932,502
5	Total . . . . .		\$	1,987,203

*115—State Board of Education—  
 Strategic Staff Development*

(WV Code Chapter 18)

Fund 3937 FY 1999 Org 0402

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

1 Any unexpended balances remaining in the  
 2 appropriations are hereby reappropriated for expenditure  
 3 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)

Fund 4041 FY 1999 Org 0453

1 1997 Revenue Bond Costs . . 734 \$ 734,000

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

5 The total amount of this appropriation shall be paid  
 6 from the proceeds of revenue bonds issued pursuant to  
 7 section eight, article twelve-b, chapter eighteen of the  
 8 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)

Fund 4056 FY 1999 Org 0453

1 Higher Education Grant  
 2 Program—Total . . . . . 469 \$ 200,000

*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)

Fund 4007 FY 1999 Org 0461

1 Debt Service (R) . . . . . 040 \$ 4,231,012

2	Capital Repairs and Alterations (R) . 251	2,690,400
3	Miscellaneous Projects (R) . . . . . 252	400,000
4	Computer and Telecom-	
5	munications Technology (R) . . . 438	<u>691,200</u>
6	Total . . . . .	\$ 8,012,612

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

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

13 The above appropriations, except for debt service, may  
14 be transferred to special revenue funds for capital  
15 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)

Fund 4008 FY 1999 Org 0461

1	Debt Service (R) . . . . . 040	\$ 10,625,968
2	Building and Campus Renewal (R) . 258	9,551,300
3	Facilities Planning and	
4	Administration (R) . . . . . 386	190,000
5	Computer and Telecom-	
6	munications Technology (R) . . . 438	<u>691,200</u>
7	Total . . . . .	\$ 21,058,468

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

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

14 The above appropriations, except for debt service, may  
 15 be transferred to special revenue funds for capital  
 16 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

2 Any unexpended balance remaining in the  
 3 appropriation for the West Virginia University Health  
 4 Sciences Center is hereby reappropriated for expenditure  
 5 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

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

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

10 The above appropriations, except for debt service, may  
 11 be transferred to special revenue funds for capital  
 12 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)

Fund 4290 FY 1999 Org 0481

1	Debt Service (R) . . . . .	040	\$	3,055,965
2	Capital Improvements (New) (R) . . .	259		1,179,000
3	Capital Contingencies and			
4	Emergencies (R) . . . . .	537		250,000
5	Building and Campus			
6	Renewal and Facilities			
7	Planning and			
8	Administration (R) . . . . .	538	_____	2,404,700
9	Total . . . . .		\$	6,889,665

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

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

16 The above appropriations, except for debt service, may  
 17 be transferred to special revenue funds for capital  
 18 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

1	Unclassified . . . . .	099	\$	700,000
2	Workshop Development . . . . .	163		450,000
3	Workshop-Supported Employment . . . . .	484		50,000
4	Medical Services Trust			
5	Fund-Transfer . . . . .	512		<u>2,000,000</u>
6	Total . . . . .		\$	3,200,000

**DEPARTMENT OF HEALTH  
AND HUMAN RESOURCES**

*125—Board of Barbers and Cosmetologists*

(WV Code Chapters 16 and 30)

Fund 5425 FY 1999 Org 0505

1	Personal Services . . . . .	001	\$	187,568
2	Annual Increment . . . . .	004		4,661
3	Employee Benefits . . . . .	010		62,559
4	Unclassified . . . . .	099		<u>113,550</u>
5	Total . . . . .		\$	368,338

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

*126—Division of Health—  
Vital Statistics*

(WV Code Chapter 16)

Fund 5144 FY 1999 Org 0506

1	Personal Services . . . . .	001	\$	212,104
2	Annual Increment . . . . .	004		8,203
3	Employee Benefits . . . . .	010		111,168
4	Unclassified. . . . .	099		<u>103,950</u>
5	Total . . . . .		\$	435,425

*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

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

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

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

27 Necessary funds from the above appropriation may be  
28 used for medical facilities operations, either in connection  
29 with this account or in connection with the line item

30 designated Institutional Facilities Operations in the  
 31 consolidated medical service fund (fund 0525, fiscal year  
 32 1999, organization 0506).

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

*128—Division of Health—  
 Laboratory Services*

(WV Code Chapter 16)

Fund 5163 FY 1999 Org 0506

1	Personal Services . . . . .	001	\$	435,152
2	Annual Increment . . . . .	004		9,450
3	Employee Benefits . . . . .	010		149,628
4	Unclassified . . . . .	099		<u>450,000</u>
5	Total . . . . .		\$	1,044,230

*129—Division of Health—  
 Health Facility Licensing*

(WV Code Chapter 16)

Fund 5172 FY 1999 Org 0506

1	Personal Services . . . . .	001	\$	166,732
2	Annual Increment . . . . .	004		2,800
3	Employee Benefits . . . . .	010		62,062
4	Unclassified . . . . .	099		<u>102,904</u>
5	Total . . . . .		\$	334,498

*130—Division of Health—  
Hepatitis B Vaccine*

(WV Code Chapter 16)

Fund 5183 FY 1999 Org 0506

1	Personal Services .....	001	\$	50,056
2	Annual Increment .....	004		1,100
3	Employee Benefits .....	010		17,729
4	Unclassified. ....	099		<u>2,350,000</u>
5	Total .....		\$	2,418,885

*131—Division of Health—  
Lead Abatement Fund*

(WV Code Chapter 16)

Fund 5204 FY 1999 Org 0506

1	Unclassified—Total .....	096	\$	64,800
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*132—West Virginia Health Care Authority*

(WV Code Chapter 16)

Fund 5375 FY 1999 Org 0507

1	Personal Services .....	001	\$	1,461,109
2	Annual Increment .....	004		13,578
3	Employee Benefits .....	010		513,202
4	Unclassified .....	099		<u>2,191,231</u>
5	Total .....		\$	4,179,120

6 The above appropriation is to be expended in  
7 accordance with and pursuant to the provisions of article  
8 twenty-nine-b, chapter sixteen of the code and from the  
9 special revolving fund designated health care cost review  
10 fund.

*133—Division of Human Services—  
Health Care Provider Tax*

(WV Code Chapter 11)

Fund 5090 FY 1999 Org 0511

1 Unclassified—Total . . . . . 096 \$ 139,000,000

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

*134—Division of Human Services—  
Child Support Enforcement*

(WV Code Chapter 48A)

Fund 5094 FY 1999 Org 0511

1 Unclassified—Total . . . . . 096 \$ 26,334,382

*135—Division of Human Services—  
Medical Services Trust Fund*

(WV Code Chapter 9)

Fund 5185 FY 1999 Org 0511

1 Eligibility Expansion . . . . . 582 \$ 5,435,648

2 State Institutions DPSH Payments . . 583 6,566,355

3 Hospice Services . . . . . 584 340,115

4 Match Drop . . . . . 585 10,472,000

5 Total . . . . . \$ 22,814,118

6 Any unexpended balances remaining in the  
7 appropriations for Medical Services Payment Backlog  
8 (fund 5185, activity 260) at the close of the fiscal year  
9 1997-98 are hereby reappropriated for expenditure  
10 during the fiscal year 1998-99.

11 The Match Drop line item above shall be used in  
 12 conjunction with funds appropriated to the division of  
 13 human services in the Medical Services line item (fund  
 14 0403, activity 189). The remainder of all moneys  
 15 deposited in the fund shall be transferred to the division of  
 16 human services accounts.

**DEPARTMENT OF MILITARY AFFAIRS  
 AND PUBLIC SAFETY**

*136—State Armory Board—  
 General Armory Fund*

(WV Code Chapter 15)

Fund 6102 FY 1999 Org 0604

1 Unclassified—Total . . . . . 096 \$ 390,193

*137—West Virginia Division of Corrections—  
 Parolee Supervision Fees*

(WV Code Chapter 62)

Fund 6362 FY 1999 Org 0608

1	Personal Services . . . . .	001	\$	85,952
2	Employee Benefits . . . . .	010		38,271
3	Unclassified . . . . .	099		<u>115,408</u>
4	Total . . . . .		\$	239,631

*138—West Virginia State Police—  
 Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Fund 6501 FY 1999 Org 0612

1	Personal Services . . . . .	001	\$	658,751
2	Annual Increment . . . . .	004		3,150
3	Employee Benefits . . . . .	010		192,625
4	Unclassified (R) . . . . .	099		<u>889,861</u>
5	Total . . . . .		\$	1,744,387

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

9 Any unexpended balance remaining in the  
 10 appropriation for Unclassified (fund 6501, activity 099) at  
 11 the close of the fiscal year 1997-98 is hereby  
 12 reappropriated for expenditure during the fiscal year  
 13 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

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

*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

1 Unclassified—Total . . . . . 096 \$ 67,156

*143—Regional Jail and Correctional  
Facility Authority*

(WV Code Chapter 31)

Fund 6675 FY 1999 Org 0615

1	Personal Services . . . . .	001	\$	600,263
2	Annual Increment . . . . .	004		7,050
3	Employee Benefits . . . . .	010		196,614
4	Debt Service . . . . .	040		10,000,000
5	Unclassified . . . . .	099		<u>253,289</u>
6	Total . . . . .		\$	11,057,216

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

(WV Code Chapter 19A)

Fund 6754 FY 1999 Org 0618

1 Unclassified—Total . . . . . 096 \$ 216,000

*145—Fire Commission—  
Fire Marshal Fees*

(WV Code Chapter 29)

Fund 6152 FY 1999 Org 0619

1	Personal Services . . . . .	001	\$	403,125
2	Annual Increment . . . . .	004		5,200
3	Employee Benefits . . . . .	010		123,969
4	Unclassified . . . . .	099		<u>296,080</u>
5	Total . . . . .		\$	828,374

6 Any unexpended cash balance remaining in fund  
7 6152 at the close of the fiscal year 1997-98 is hereby  
8 available for expenditure as part of the fiscal year 1998-  
9 99 appropriation.

*146—Criminal Justice—  
Court Security Fund*

(Executive Order)

Fund 6804 FY 1999 Org 0620

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

**DEPARTMENT OF TAX AND REVENUE**

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

(WV Code Chapter 47A)

Fund 3040 FY 1999 Org 0303

1	Personal Services . . . . .	001	\$	5,000
2	Employee Benefits . . . . .	010		988
3	Unclassified . . . . .	099		<u>5,000</u>
4	Total . . . . .		\$	10,988

*148—Division of Banking*

(WV Code Chapter 31A)

Fund 3041 FY 1999 Org 0303

1	Personal Services . . . . .	001	\$	1,132,933
2	Annual Increment . . . . .	004		14,200
3	Employee Benefits . . . . .	010		366,241
4	Unclassified . . . . .	099		<u>525,540</u>
5	Total . . . . .		\$	2,038,914

*149—Tax Division—  
Office of Chief Inspector*

(WV Code Chapter 6)

Fund 7067 FY 1999 Org 0702

1	Personal Services . . . . .	001	\$	1,362,010
2	Annual Increment . . . . .	004		23,000

3	Employee Benefits .....	010		432,777
4	Unclassified .....	099	<u>          </u>	469,510
5	Total .....		\$	2,287,297

*150—Tax Division—  
Cemetery Company Account*

(WV Code Chapter 35)

Fund 7071 FY 1999 Org 0702

1	Personal Services .....	001	\$	16,116
2	Employee Benefits .....	010		5,283
3	Unclassified .....	099	<u>          </u>	10,916
4	Total .....		\$	32,315

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

(WV Code Chapter 11)

Fund 7073 FY 1999 Org 0702

1	Personal Services .....	001	\$	712,969
2	Annual Increment .....	004		7,050
3	Employee Benefits .....	010		225,545
4	Unclassified .....	099	<u>          </u>	361,098
5	Total .....		\$	1,306,662

*152—Insurance Commissioner—  
Examination Revolving Fund*

(WV Code Chapter 33)

Fund 7150 FY 1999 Org 0704

1	Personal Services .....	001	\$	412,414
2	Annual Increment .....	004		300
3	Employee Benefits .....	010		103,276
4	Unclassified .....	099	<u>          </u>	313,388
5	Total .....		\$	829,378

*153—Insurance Commissioner—  
Consumer Advocate*

(WV Code Chapter 33)

Fund 7151 FY 1999 Org 0704

1	Personal Services . . . . .	001	\$	198,692
2	Annual Increment . . . . .	004		200
3	Employee Benefits . . . . .	010		71,175
4	Unclassified . . . . .	099		<u>190,637</u>
5	Total . . . . .		\$	460,704

*154—Insurance Commissioner*

(WV Code Chapter 33)

Fund 7152 FY 1999 Org 0704

1	Personal Services . . . . .	001	\$	1,620,544
2	Annual Increment . . . . .	004		29,950
3	Employee Benefits . . . . .	010		528,947
4	Unclassified . . . . .	099		<u>1,091,300</u>
5	Total . . . . .		\$	3,270,741

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

*155—Racing Commission—  
Relief Fund*

(WV Code Chapter 19)

Fund 7300 FY 1999 Org 0707

1	Medical Expenses—Total . . . . .	245	\$	57,000
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2 The total amount of this appropriation shall be paid  
3 from the special revenue fund out of collections of license  
4 fees and fines as provided by law.

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

*156—Racing Commission—  
 Administration and Promotion*

(WV Code Chapter 19)

Fund 7304 FY 1999 Org 0707

1	Personal Services . . . . .	001	\$	53,700
2	Annual Increment . . . . .	004		900
3	Employee Benefits . . . . .	010		23,459
4	Unclassified . . . . .	099		<u>47,408</u>
5	Total . . . . .		\$	125,467

*157—Racing Commission—  
 General Administration*

(WV Code Chapter 19)

Fund 7305 FY 1999 Org 0707

1	Personal Services . . . . .	001	\$	1,138,980
2	Annual Increment . . . . .	004		17,250
3	Employee Benefits . . . . .	010		331,553
4	Unclassified . . . . .	099		<u>290,817</u>
5	Total . . . . .		\$	1,778,600

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

(WV Code Chapter 19)

Fund 7307 FY 1999 Org 0707

1	Unclassified—Total . . . . .	096	\$	35,000
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*159—Alcohol Beverage  
 Control Administration—  
 Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 1999 Org 0708

1	Personal Services . . . . .	001	\$	205,700
2	Annual Increment . . . . .	004		4,100
3	Employee Benefits . . . . .	010		77,744
4	Unclassified . . . . .	099		<u>157,072</u>
5	Total . . . . .		\$	444,616

*160—Alcohol Beverage Control Administration*

(WV Code Chapter 60)

Fund 7352 FY 1999 Org 0708

1	Personal Services . . . . .	001	\$	2,641,028
2	Annual Increment . . . . .	004		73,251
3	Employee Benefits . . . . .	010		1,456,730
4	Unclassified . . . . .	099		<u>2,023,296</u>
5	Total . . . . .		\$	6,194,305

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

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

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

**DEPARTMENT OF TRANSPORTATION***161—Division of Motor Vehicles  
Driver's License Reinstatement Fund*

(WV Code Chapter 17B)

Fund 8213 FY 1999 Org 0802

1	Unclassified—Total . . . . .	096	\$	500,650
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*162—Division of Motor Vehicles  
Driver Rehabilitation*

(WV Code Chapter 17C)

Fund 8214 FY 1999 Org 0802

1	Unclassified—Total	096	\$	899,858
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*163—Division of Motor Vehicles  
Insurance Certificate Fees*

(WV Code Chapter 20)

Fund 8215 FY 1999 Org 0802

1	Personal Services	001	\$	563,436
2	Annual Increment	004		15,450
3	Employee Benefits	010		223,349
4	Unclassified	099		<u>69,425</u>
5	Total		\$	871,660

*164—Division of Motor Vehicles  
Motorboat Licenses*

(WV Code Chapter 20)

Fund 8216 FY 1999 Org 0802

1	Unclassified—Total	096	\$	151,638
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*165—Division of Motor Vehicles  
Returned Check Fees*

(WV Code Chapter 17)

Fund 8217 FY 1999 Org 0802

1	Unclassified—Total	096	\$	22,466
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**BUREAU OF COMMERCE**

*166—Division of Forestry*

(WV Code Chapter 19)

Fund 3081 FY 1999 Org 0305

1	Personal Services .....	001	\$	303,165
2	Annual Increment .....	004		3,300
3	Employee Benefits .....	010		81,956
4	Unclassified .....	099		<u>363,044</u>
5	Total .....		\$	751,465

*167—Division of Forestry  
Timberland Enforcement Operations*

(WV Code Chapter 19)

Fund 3082 FY 1999 Org 0305

1	Unclassified—Total .....	096	\$	287,047
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*168—Division of Forestry  
Severance Tax Operations*

(WV Code Chapter 11)

Fund 3084 FY 1999 Org 0305

1	Unclassified—Total .....	096	\$	2,929,560
2	Computer Upgrades .....	349		<u>127,500</u>
3	Total .....		\$	3,057,060

*169—Geological and Economic Survey*

(WV Code Chapter 29)

Fund 3100 FY 1999 Org 0306

1	Personal Services .....	001	\$	40,893
2	Annual Increment .....	004		508
3	Employee Benefits .....	010		7,327
4	Unclassified .....	099		<u>177,847</u>
5	Total .....		\$	226,575

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

*170—West Virginia Development Office—  
 Energy Assistance*

(WV Code Chapter 5B)

Fund 3144 FY 1999 Org 0307

1 Any unexpended balances remaining in the  
 2 appropriations for Unclassified (fund 3144, activity 099)  
 3 and Energy Assistance-Total (fund 3144, activity 647) at  
 4 the close of the fiscal year 1997-98 are hereby  
 5 reappropriated for expenditure during the fiscal year  
 6 1998-99.

*171—Division of Labor  
 Contractor Licensing Board Fund*

(WV Code Chapter 21)

Fund 3187 FY 1999 Org 0308

1	Personal Services .....	001	\$	745,311
2	Annual Increment .....	004		11,012
3	Employee Benefits .....	010		270,169
4	Unclassified .....	099		<u>811,892</u>
5	Total .....		\$	1,838,384

*172—Division of Labor  
 Elevator Safety Act*

(WV Code Chapter 21)

Fund 3188 FY 1999 Org 0308

1	Personal Services .....	001	\$	166,596
2	Annual Increment .....	004		1,164
3	Employee Benefits .....	010		56,944
4	Unclassified .....	099		<u>82,068</u>
5	Total .....		\$	306,772

*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		<u>1,247,953</u>
7	Total . . . . .		\$	12,524,930

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

11    Any unexpended balance remaining in the  
12    appropriation for Capital Improvements and Land  
13    Purchase (fund 3200, activity 248) at the close of the  
14    fiscal year 1997-98 is hereby reappropriated for  
15    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
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*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

4	Unclassified . . . . .	099	<u>19,950</u>
5	Total . . . . .	\$	133,307

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

(WV Code Chapter 20)

Fund 3205 FY 1999 Org 0310

1	Personal Services . . . . .	001	\$ 213,440
2	Annual Increment . . . . .	004	5,250
3	Employee Benefits . . . . .	010	82,787
4	Unclassified . . . . .	099	<u>310,208</u>
5	Total . . . . .	\$	611,685

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

(WV Code Chapter 20)

Fund 3253 FY 1999 Org 0310

1	Unclassified—Total . . . . .	096	\$ 130,000
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*178—Division of Natural Resources  
Recycling Assistance Fund*

(WV Code Chapter 20)

Fund 3254 FY 1999 Org 0310

1	Personal Services . . . . .	001	\$ 131,016
2	Annual Increment . . . . .	004	2,500
3	Employee Benefits . . . . .	010	54,336
4	Unclassified (R) . . . . .	099	<u>2,619,306</u>
5	Total . . . . .	\$	2,807,158

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

- 10 1998-99, except for fund 3254, activity 099 (fiscal year  
 11 1993-94, 1994-95 and 1995-96) which shall expire on  
 12 June 30, 1998.

*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		<u>7,712,711</u>
8	Total . . . . .		\$	47,539,301

- 9 Any unexpended balances remaining in the  
 10 appropriations for Unclassified (fund 3440, activity 099)  
 11 and Contractual Services -TQI (fund 3440, activity 748) at  
 12 the close of the fiscal year 1997-98 are hereby  
 13 reappropriated for expenditure during the fiscal year  
 14 1998-99.

**BUREAU OF ENVIRONMENT**

*181—Solid Waste Management Board*

## (WV Code Chapter 20)

Fund 3288 FY 1999 Org 0312

1	Personal Services . . . . .	001	\$	424,047
2	Annual Increment . . . . .	004		3,200
3	Employee Benefits . . . . .	010		150,727
4	Unclassified . . . . .	099		1,122,668
5	Business/Technical Assistance . . . . .	828		<u>80,886</u>
6	Total . . . . .		\$	1,781,528

*182—Division of Environmental Protection  
Special Reclamation Fund*

## (WV Code Chapter 22A)

Fund 3321 FY 1999 Org 0313

1	Personal Services . . . . .	001	\$	188,089
2	Annual Increment . . . . .	004		6,900
3	Employee Benefits . . . . .	010		72,957
4	Unclassified . . . . .	099		<u>7,561,155</u>
5	Total . . . . .		\$	7,829,101

*183—Division of Environmental Protection  
Oil and Gas Reclamation Trust*

## (WV Code Chapter 22B)

Fund 3322 FY 1999 Org 0313

1	Unclassified—Total . . . . .	096	\$	465,000
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*184—Division of Environmental Protection  
Oil and Gas Operating Permits*

## (WV Code Chapter 22B)

Fund 3323 FY 1999 Org 0313

1	Personal Services . . . . .	001	\$	207,106
2	Annual Increment . . . . .	004		3,825

3	Employee Benefits .....	010		74,911
4	Unclassified .....	099	<u>          </u>	<u>483,398</u>
5	Total .....		\$	769,240

*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	<u>          </u>	<u>768,031</u>
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	<u>          </u>	<u>146,356</u>
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

3	Employee Benefits .....	010		121,971
4	Unclassified .....	099		<u>874,760</u>
5	Total .....		\$	1,370,502

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

(WV Code Chapter 20)

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		<u>786,353</u>
5	Total .....		\$	1,007,385

*189—Division of Environmental Protection  
Solid Waste Enforcement Fund*

(WV Code Chapter 20)

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			
6	Officers .....	564		<u>200,000</u>
7	Total .....		\$	2,937,232

*190—Division of Environmental Protection  
Fees and Operating Expenses*

(WV Code Chapter 16)

Fund 3336 FY 1999 Org 0313

1	Personal Services . . . . .	001	\$	2,567,590
2	Annual Increment . . . . .	004		10,950
3	Employee Benefits . . . . .	010		814,315
4	Unclassified . . . . .	099		<u>1,230,319</u>
5	Total . . . . .		\$	4,623,174

*191—Division of Environmental Protection—  
Environmental Laboratory  
Certification Fund*

(WV Code Chapter 22)

Fund 3340 FY 1999 Org 0313

1	Personal Services . . . . .	001	\$	110,345
2	Annual Increment . . . . .	004		1,500
3	Employee Benefits . . . . .	010		34,971
4	Unclassified . . . . .	099		<u>72,051</u>
5	Total . . . . .		\$	218,867

*192—Division of Environmental Protection  
Stream Restoration Fund*

Fund 3349 FY 1999 Org 0313

1	Unclassified—Total . . . . .	096	\$	2,000,000
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*193—Oil and Gas Conservation Commission*

(WV Code Chapter 22)

Fund 3371 FY 1999 Org 0315

1	Personal Services . . . . .	001	\$	151,503
2	Annual Increment . . . . .	004		1,300
3	Employee Benefits . . . . .	010		29,118
4	Unclassified . . . . .	099		<u>49,074</u>
5	Total . . . . .		\$	230,995

**MISCELLANEOUS BOARDS AND COMMISSIONS**

*194—Hospital Finance Authority*

(WV Code Chapter 16)

Fund 5475 FY 1999 Org 0509

1	Personal Services . . . . .	001	\$	28,568
2	Annual Increment . . . . .	004		450
3	Employee Benefits . . . . .	010		11,599
4	Unclassified. . . . .	099		<u>25,895</u>
5	Total . . . . .		\$	66,512

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

*195—Municipal Bond Commission*

(WV Code Chapter 13)

Fund 7253 FY 1999 Org 0706

1	Personal Services . . . . .	001	\$	151,994
2	Annual Increment . . . . .	004		3,000
3	Employee Benefits . . . . .	010		55,063
4	Unclassified . . . . .	099		<u>69,931</u>
5	Total . . . . .		\$	279,988

*196—WV State Board of Examiners  
for Licensed Practical Nurses*

(WV Code Chapter 30)

Fund 8517 FY 1999 Org 0906

1	Unclassified—Total . . . . .	096	\$	339,109
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*197—WV Board of Examiners for  
Registered Professional Nurses*

(WV Code Chapter 30)

Fund 8520 FY 1999 Org 0907

1	Unclassified—Total	096	\$	789,648
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*198—West Virginia Cable Television  
Advisory Board*

(WV Code Chapter 5)

Fund 8609 FY 1999 Org 0924

1	Personal Services	001	\$	154,664
2	Annual Increment	004		4,000
3	Employee Benefits	010		45,347
4	Unclassified	099		<u>68,000</u>
5	Total		\$	272,011

*199—Public Service Commission*

(WV Code Chapter 24)

Fund 8623 FY 1999 Org 0926

1	Personal Services	001	\$	6,296,252
2	Annual Increment	004		120,000
3	Employee Benefits	010		2,047,563
4	Unclassified	099		2,452,000
5	765 KV Transmission Line Study	485		<u>250,000</u>
6	Total		\$	11,165,815

7 The total amount of this appropriation shall be paid  
8 from a special revenue fund out of collections for special  
9 license fees from public service corporations as provided  
10 by law.

11 The Public Service Commission is authorized to spend  
12 up to \$250,000, from surplus funds in this account, to  
13 meet the expected deficiencies in the Motor Carrier

- 14 Division account due to passage of enrolled house bill no.  
15 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		<u>98,500</u>
5	Total . . . . .		\$	283,442

- 6 The total amount of this appropriation shall be paid  
7 from a special revenue fund out of receipts collected for  
8 or by the public service commission pursuant to and in the  
9 exercise of regulatory authority over pipeline companies  
10 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		<u>670,500</u>
5	Total . . . . .		\$	2,508,996

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

*202—Public Service Commission—  
Consumer Advocate*

(WV Code Chapter 24)

Fund 8627 FY 1999 Org 0926

1	Personal Services . . . . .	001	\$	403,887
2	Annual Increment . . . . .	004		4,350
3	Employee Benefits . . . . .	010		122,375
4	Unclassified . . . . .	099		297,985
5	Total . . . . .		\$	828,597

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

*203—Real Estate Commission*

(WV Code Chapter 47)

Fund 8635 FY 1999 Org 0927

1	Personal Services . . . . .	001	\$	293,668
2	Annual Increment . . . . .	004		4,200
3	Employee Benefits . . . . .	010		99,108
4	Unclassified . . . . .	099		269,400
5	Total . . . . .		\$	666,376

6       The total amount of this appropriation shall be paid  
7 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

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

1 **Sec. 4. Appropriations from lottery net profits.—**

2 Net profits of the lottery, not to exceed eighty million one  
3 hundred sixteen thousand one hundred thirteen dollars,  
4 are to be deposited by the lottery director to the following  
5 accounts in the amounts indicated. The auditor shall  
6 prorate each deposit of net profits by the lottery director  
7 among fund numbers 2252, 3067, 3267, 3507, 3951,  
8 3963, and 5405 in the proportion the appropriation for  
9 each account bears to the total of the appropriations for  
10 the seven accounts.

209—West Virginia Development Office—  
Division of Tourism

(WV Code Chapter 5B)

Fund 3067 FY 1999 Org 0304

	Activity	Lottery Funds
1	Tourism—Telemarketing Center . . . 463 \$	100,000
2	Tourism—Advertising (R) . . . . . 618	2,240,000
3	State Parks and Recreation	
4	Advertising (R) . . . . . 619	560,000
5	Tourism—Unclassified (R) . . . . . 662	<u>2,973,920</u>
6	Total . . . . .	\$ 5,873,920
7	Any unexpended balances remaining in the	
8	appropriations for Tourism-Advertising (fund 3067,	
9	activity 618), State Parks and Recreation Advertising (fund	
10	3067, activity 619), Tourism-Unclassified (fund 3067,	
11	activity 662) and Raleigh County Meeting and Convention	
12	Center - Total - Surplus (fund 3067, activity 763) are	
13	hereby reappropriated for expenditure during the fiscal	
14	year 1998-99.	

*210—Division of Natural Resources*

(WV Code Chapter 20)

Fund 3267 FY 1999 Org 0310

1	Pricketts Fort State Park . . . . . 324 \$	120,000
2	Parks Operations—	
3	Unclassified (R) . . . . . 645	1,440,143
4	Canaan Valley—Land	
5	Acquisition (R) . . . . . 710	<u>200,000</u>
6	Total . . . . .	\$ 1,760,143
7	Any unexpended balances remaining in the	
8	appropriations for Parks Operations — Unclassified (fund	
9	3267, activity 645), Capital Outlay — Parks (fund 3267,	
10	activity 288) and Canaan Valley - Land Acquisition (fund	
11	3267, activity 710) at the close of the fiscal year 1997-98	
12	is hereby reappropriated for expenditure during the fiscal	
13	year 1998-99, except fund 3267, activity 288 (fiscal year	
14	1991-92 and 1992-93) which shall expire on June 30,	
15	1998.	

*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		<u>16,300,000</u>	
3	Total . . . . .		\$	17,800,000	
4	Any unexpended balances remaining in the				
5	appropriation for Elementary Computer Education—Total				
6	(fund 3951, activity 285), Computer Basic Skills — Total				
7	(fund 3951, activity 567) and Pendleton County Schools -				
8	Capital Improvements - Total - Surplus (fund 3951,				
9	activity 761) at the close of the fiscal year 1997-98 are				
10	hereby reappropriated for expenditure during the fiscal				
11	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
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*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			
2	Development—Total . . . . .	504	\$	-0-
3	Unclassified . . . . .	099		3,520,000
4	Higher Education Grant Program ..	164		6,662,050
5	Infomine Network-Library			
6	Commission . . . . .	158		1,000,000
7	WV 2001 Project . . . . .	836		<u>1,500,000</u>
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		<u>-0-</u>
3	Total . . . . .		\$	-0-

4 Any unexpended balances remaining in the  
5 appropriations for Shepherd College - Capital  
6 Improvements - Lottery Surplus (fund 4800, activity 759),  
7 West Virginia Northern Community College - Capital  
8 Improvements - Lottery Surplus (fund 4800, activity 760),  
9 Capital Outlay and Improvements - Lottery Surplus (fund  
10 4800, activity 762), Educational Broadcasting Authority -  
11 600 Capital Street - Lottery Surplus (fund 4800, activity  
12 781), Shepherd College - Capital Improvements - Total -  
13 Lottery Surplus (fund 4800, activity 764) and  
14 Unclassified—Total (fund 4800, activity 096) at the close  
15 of fiscal year 1997-98 is hereby reappropriated for  
16 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			
2	Programs . . . . .	462	\$	1,200,000
3	Direct Services . . . . .	481		2,800,000

4	Transfer to Division of Human		
5	Services for Health Care		
6	and Title XIX Waiver		
7	for Senior Citizens . . . . .	539	<u>10,000,000</u>
8	Total . . . . .		\$ 14,000,000

9 Any unexpended balances remaining in the  
10 appropriations for Senior Citizens Centers and Programs -  
11 Surplus (fund 5405, activity 782) and Holly Grove  
12 Mansion Restoration - Surplus (fund 5405, activity 765) at  
13 the close of the fiscal year 1997-98 are hereby  
14 reappropriated for expenditure during the fiscal year  
15 1998-99.

16 The above appropriation for Health Care and Title  
17 XIX Waiver for Senior Citizens along with the federal  
18 moneys generated thereby shall be used for  
19 reimbursement for services provided under the program.  
20 Further, the program shall be preserved within the  
21 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
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2 Any unexpended balance remaining in the  
3 appropriation for Debt Service - Total (fund 2252, activity  
4 310) at the close of the fiscal year 1997-98 is hereby  
5 reappropriated for expenditure during the fiscal year  
6 1998-99, except fund 2252, activity 310 (fiscal year  
7 1996-97) which shall expire on June 30, 1998.

8	Total TITLE II, Section 4—		
9	Lottery Funds . . . . .		\$ 80,116,113

1 **Sec. 5. Appropriations of federal funds.—**In  
2 accordance with article eleven, chapter four of the code,  
3 from federal funds there are hereby appropriated  
4 conditionally upon the fulfillment of the provisions set  
5 forth in article two, chapter five-a of the code the

6 following amounts, as itemized, for expenditure during the  
7 fiscal year one thousand nine hundred ninety-nine.

### LEGISLATIVE

#### *218—Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 8738 FY 1999 Org 2300

	Activity	Federal Funds
1	Unclassified—Total . . . . . 096 \$	920,000

### JUDICIAL

#### *219—Supreme Court— General Judicial*

Fund 8805 FY 1999 Org 2400

1	Unclassified—Total . . . . . 096 \$	125,019
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### EXECUTIVE

#### *220—Governor's Office— Governor's Cabinet on Children and Families*

(WV Code Chapter 5)

Fund 8792 FY 1999 Org 0100

1	Unclassified—Total . . . . . 096 \$	691,433
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#### *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

1	Unclassified—Total . . . . . 096 \$	11,461,310
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#### *222—Governor's Office— Commission for National and Community Service*

(WV Code Chapter 5)

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)

Fund 8714 FY 1999 Org 0402

1 Unclassified—Total . . . . . 096 \$ 22,834,773

229—*State Department of Education—  
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 8715 FY 1999 Org 0402

1 Unclassified—Total . . . . . 096 \$ 35,025,249

**DEPARTMENT OF EDUCATION AND THE ARTS**

230—*Division of Culture and History*

(WV Code Chapter 29)

Fund 8718 FY 1999 Org 0432

1 Unclassified—Total . . . . . 096 \$ 1,481,989

231—*Library Commission*

(WV Code Chapter 10)

Fund 8720 FY 1999 Org 0433

1 Unclassified—Total . . . . . 096 \$ 1,903,007

232—*Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 8721 FY 1999 Org 0439

1 Unclassified—Total . . . . . 096 \$ 150,000

233—*State Board of Rehabilitation—  
Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 8734 FY 1999 Org 0932

1 Unclassified—Total . . . . . 096 \$ 45,050,070

**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)

Fund 8726 FY 1999 Org 0603

1 Unclassified—Total . . . . . 096 \$ 26,224,681

*240—Office of Emergency Services*

(WV Code Chapter 15)

Fund 8727 FY 1999 Org 0606

1 Unclassified—Total . . . . . 096 \$ 1,457,578

*241—West Virginia State Police*

(WV Code Chapter 15)

Fund 8741 FY 1999 Org 0612

1 Unclassified—Total . . . . . 096 \$ 3,952,782

*242—Division of Veterans' Affairs—  
Veterans' Home*

(WV Code Chapter 9A)

Fund 8728 FY 1999 Org 0618

1 Unclassified—Total . . . . . 096 \$ 436,874

*243—Fire Commission*

(WV Code Chapter 29)

Fund 8804 FY 1999 Org 0619

1 Unclassified—Total . . . . . 096 \$ 30,000

*244—Division of Criminal Justice*

(Executive Order)

Fund 8803 FY 1999 Org 0620

1 Unclassified—Total . . . . . 096 \$ 22,288,216

**DEPARTMENT OF TAX AND REVENUE**

*245—Tax Division*

(WV Code Chapter 11)

Fund 7069 FY 1999 Org 0702

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
	<i>252—West Virginia Development Office</i>			
	(WV Code Chapter 5B)			
	Fund <u>8705</u> FY <u>1999</u> Org <u>0307</u>			
1	Unclassified—Total . . . . .	096	\$	3,918,199
	<i>253—Division of Labor</i>			
	(WV Code Chapters 21 and 47)			
	Fund <u>8706</u> FY <u>1999</u> Org <u>0308</u>			
1	Unclassified—Total . . . . .	096	\$	390,512
	<i>254—Division of Natural Resources</i>			
	(WV Code Chapter 20)			
	Fund <u>8707</u> FY <u>1999</u> Org <u>0310</u>			
1	Unclassified—Total . . . . .	096	\$	7,819,592
	<i>255—Division of Miners' Health, Safety and Training</i>			
	(WV Code Chapter 22)			
	Fund <u>8709</u> FY <u>1999</u> Org <u>0314</u>			
1	Unclassified—Total . . . . .	096	\$	522,933
	<b>BUREAU OF ENVIRONMENT</b>			
	<i>256—Solid Waste Management Board</i>			
	(WV Code Chapter 22)			
	Fund <u>8820</u> FY <u>1999</u> Org <u>0312</u>			
1	Unclassified—Total . . . . .	096	\$	37,663
	<i>257—Division of Environmental Protection</i>			
	(WV Code Chapter 22)			
	Fund <u>8708</u> FY <u>1999</u> Org <u>0313</u>			
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 ..... \$1,562,844,7981 **Sec. 6. Appropriations from federal block grants.—**2 The following items are hereby appropriated from federal  
3 block grants to be available for expenditure during the  
4 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

1	Unclassified—Total . . . . .	096	\$	21,312,272
	<i>263—Bureau of Employment Programs— Job Training Partnership Act</i>			
	Fund <u>8749</u> FY <u>1999</u> Org <u>0323</u>			
1	Unclassified—Total . . . . .	096	\$	57,584,411
	<i>264—State Department of Education— Education Grant</i>			
	Fund <u>8748</u> FY <u>1999</u> Org <u>0402</u>			
1	Unclassified—Total . . . . .	096	\$	112,014,911
	<i>265—Division of Health— Maternal and Child Health</i>			
	Fund <u>8750</u> FY <u>1999</u> Org <u>0506</u>			
1	Unclassified—Total . . . . .	096	\$	7,563,937
	<i>266—Division of Health— Preventive Health</i>			
	Fund <u>8753</u> FY <u>1999</u> Org <u>0506</u>			
1	Unclassified—Total . . . . .	096	\$	2,167,929
	<i>267—Division of Health— Substance Abuse Prevention and Treatment</i>			
	Fund <u>8793</u> FY <u>1999</u> Org <u>0506</u>			
1	Unclassified—Total . . . . .	096	\$	9,514,161
	<i>268—Division of Health— Community Mental Health Services</i>			
	Fund <u>8794</u> FY <u>1999</u> Org <u>0506</u>			
1	Unclassified—Total . . . . .	096	\$	2,817,065
	<i>269—Division of Health— Abstinence Education Program</i>			
	Fund <u>8825</u> FY <u>1999</u> Org <u>0506</u>			
1	Unclassified—Total . . . . .	096	\$	487,536

270—*Division of Human Services—  
Energy Assistance*

Fund 8755 FY 1999 Org 0511

1 Unclassified—Total . . . . . 096 \$ 12,093,923

271—*Division of Human Services—  
Child Care and Development*

Fund 8756 FY 1999 Org 0511

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

272—*Division of Human Services—  
Social Services*

Fund 8757 FY 1999 Org 0511

1 Unclassified—Total . . . . . 096 \$ 16,795,528

273—*Division of Human Services—  
Temporary Assistance Needy Families*

Fund 8816 FY 1999 Org 0511

1 Unclassified—Total . . . . . 096 \$ 110,587,556

274—*Division of Human Services—  
Child Care and Development*

Fund 8817 FY 1999 Org 0511

1 Unclassified—Total . . . . . 096 \$ 15,985,965

2 Total TITLE II, Section 6—

3 Federal Block Grants . . . . . \$ 382,970,991

1 **Sec. 7. Appropriation from surplus accrued.**—The  
2 following items are hereby appropriated from the state  
3 fund, general revenue, and are to be available for  
4 expenditure during the fiscal year 1998-99 out of surplus  
5 funds only, accrued from fiscal year ending the thirtieth  
6 day of June, one thousand nine hundred ninety-eight,  
7 subject to the terms and conditions set forth in this section.

8 It is the intent and mandate of the Legislature that the  
9 following appropriations be payable only from surplus  
10 accrued as of the thirty-first day of July, one thousand

11 nine hundred ninety-eight from fiscal year ending the  
12 thirtieth day of June one thousand nine hundred ninety-  
13 eight.

14 In the event that surplus revenues available on the  
15 thirty-first day of July, one thousand nine hundred ninety-  
16 eight, are not sufficient to meet all the appropriations  
17 made pursuant to this section, then the appropriations shall  
18 be made to the extent that surplus funds are available as of  
19 the date mandated, and shall be allocated first to provide  
20 the necessary funds to meet the first appropriation of this  
21 section; next, to provide the funds necessary for the  
22 second appropriation of this section; and subsequently to  
23 provide the funds necessary for each appropriation in  
24 succession before any funds are provided for the next  
25 subsequent appropriation.

*275—Division of General Services*

(WV Code Chapter 5A)

Fund 0230 FY 1999 Org 0211

1	Capital Improvements—		
2	Total—Surplus . . . . .	672 \$	-0-
3	Capitol Building Roof-		
4	Total—Surplus . . . . .	820 \$	800,000

5 The above appropriation is intended to be expended  
6 for capital improvements to state owned buildings  
7 including but not limited to repairs, renovations and  
8 capital expenditure for entrance doors, fire escapes, roof  
9 repairs, loading dock access and general construction or  
10 reconstruction projects.

*276—Department of Agriculture*

(WV Code Chapter 19)

Fund 0131 FY 1999 Org 1400

1	Capital Improvements—		
2	Total—Surplus . . . . .	672 \$	350,000

3 The above appropriation is intended to be expended to  
4 construct an addition to the WV Building on the state fair

5 grounds and to provide for repair and renovations to  
6 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-

3 The above appropriation is intended to be expended  
4 for capital improvements to the Pruntytown Correctional  
5 Center and the Denmark Correctional Facility including but  
6 not limited to repairs, renovations and capital expenditures  
7 for electrical system upgrade, fire safety improvements,  
8 building and ground repairs and renovations to include  
9 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-

3 The above appropriation is intended to be expended  
4 for capital improvements to the Davis Center and the  
5 Industrial Home for Youth including but not limited to  
6 repairs, renovations and capital expenditures for roof  
7 repair and replacement and doorways and restroom ADA  
8 compliance.

280—*Division of Miners' Health,  
Safety, and Training*

(WV Code Chapter 22)

Fund 0277 FY 1999 Org 0314

1 Overtime and Wage Court  
2 Awards—Total—Surplus . . . . . 667 \$ 331,030

281—*Division of Public Transit*

(WV Code Chapter 17)

Fund 0510 FY 1999 Org 0805

i Federal Funds/Grant Match . . . . . 614 \$ 700,000

282—*Jobs Investment Trust Board*

Fund 0577 FY 1999 Org 0201

1 Jobs Investment Loans and  
2 Assistance . . . . . 829 \$ 1,000,000

3 Total TITLE II, Section 7—  
4 Surplus Accrued . . . . . \$ 3,181,030

1 **Sec. 8. Awards for claims against the state.**—There  
2 are hereby appropriated, for the remainder of the fiscal  
3 year 1997-1998 and to remain in effect until June 30,  
4 1999, from the fund as designated, in the amounts as  
5 specified and for the claimants named in enrolled house  
6 bill no. 4238, regular session 1998-crime victims  
7 compensation funds of \$15,000.00 for payment of claims  
8 against the state.

9 There are hereby appropriated for the remainder of  
10 the fiscal year 1997-1998 and to remain in effect until  
11 June 30, 1999, from the fund as designated, in the  
12 amounts as specified and for the claimants named in  
13 enrolled senate bill no. 426, regular session 1998, and  
14 enrolled committee substitute for house bill no. 4252,  
15 regular session 1998, unappropriated surplus general  
16 revenue funds of \$1,331,511.94 for payment of claims  
17 against the state.

18 The total general revenue funds above do not include  
19 payment for claims in the amount of \$6,095.79 from the  
20 supreme court-general judicial, fund 0180, specifically

21 made payable from the appropriation for the current fiscal  
 22 year 1997-98.

23 There are hereby appropriated for the remainder of  
 24 the fiscal year 1997-98 and to remain in effect until June  
 25 30, 1999, from the funds as designated, in the amounts as  
 26 specified and for the claimants as named in enrolled  
 27 senate bill no. 426 and enrolled committee substitute for  
 28 house bill no. 4252, regular session 1998—special  
 29 revenue funds of \$807,902.30 state road funds of  
 30 \$48,400.25 and federal funds of \$19,347.41 for payment  
 31 of claims against the state.

1 **Sec. 9. Appropriations from lottery net profit.**—The  
 2 following items are hereby appropriated from lottery net  
 3 profits, and are to be made available for expenditure  
 4 during the fiscal year ending the thirtieth day of June, one  
 5 thousand nine hundred ninety-eight. The auditor shall  
 6 prorate each deposit of net profits by the lottery director  
 7 among fund numbers 3505 and 5405 in the proportion  
 8 the appropriation for each account bears to the total of the  
 9 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	<u>200,000</u>
4	Total .....		\$ 5,000,000
5	Total TITLE II, Section 9—		
6	Lottery Net Profits .....		\$ 15,000,000

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\*Clerk's Note: The word "Programs" and a comma were deleted by the Governor.

1       **Sec. 10. Special revenue appropriations.**—There are  
2 hereby appropriated for expenditure during the fiscal year  
3 one thousand nine hundred ninety-nine appropriations  
4 made by general law from special revenue which are not  
5 paid into the state fund as general revenue under the  
6 provisions of section two, article two, chapter twelve of the  
7 code: *Provided*, That none of the money so appropriated  
8 by this section shall be available for expenditure except in  
9 compliance with and in conformity to the provisions of  
10 articles two and three, chapter twelve and article two,  
11 chapter five-a of the code, with due consideration to the  
12 digest of legislative intent of the budget bill prepared  
13 pursuant to article one, chapter four, unless the spending  
14 unit has filed with the director of the budget, the auditor  
15 and the legislative auditor prior to the beginning of each  
16 fiscal year:

17       (a) An estimate of the amount and sources of all  
18 revenues accruing to such fund;

19       (b) A detailed expenditure schedule showing for what  
20 purposes the fund is to be expended.

1       **Sec. 11. State improvement fund appropriations.**  
2 —Requests or donations of nonpublic funds, received by  
3 the governor on behalf of the state during the fiscal year  
4 one thousand nine hundred ninety-nine, for the purpose  
5 of making studies and recommendations relative to  
6 improvements of the administration and management of  
7 spending units in the executive branch of state  
8 government, shall be deposited in the state treasury in a  
9 separate account therein designated state improvement  
10 fund.

11       There are hereby appropriated all moneys so  
12 deposited during the fiscal year one thousand nine  
13 hundred ninety-nine to be expended as authorized by the  
14 governor, for such studies and recommendations which  
15 may encompass any problems of organization,  
16 procedures, systems, functions, powers or duties of a state  
17 spending unit in the executive branch, or the betterment of  
18 the economic, social, educational, health and general  
19 welfare of the state or its citizens.

1       **Sec. 12. Specific funds and collection accounts.**—A  
2 fund or collection account which by law is dedicated to a  
3 specific use is hereby appropriated in sufficient amount to  
4 meet all lawful demands upon the fund or collection

5 account and shall be expended according to the provisions  
6 of article three, chapter twelve of the code.

1       **Sec. 13. Appropriations for refunding erroneous**  
2 **payment.**—Money that has been erroneously paid into the  
3 state treasury is hereby appropriated out of the fund into  
4 which it was paid, for refund to the proper person.

5       When the officer authorized by law to collect money  
6 for the state finds that a sum has been erroneously paid, he  
7 or she shall issue his or her requisition upon the auditor  
8 for the refunding of the proper amount. The auditor shall  
9 issue his or her warrant to the treasurer and the treasurer  
10 shall pay the warrant out of the fund into which the  
11 amount was originally paid.

1       **Sec. 14. Sinking fund deficiencies.**—There is hereby  
2 appropriated to the governor a sufficient amount to meet  
3 any deficiencies that may arise in the mortgage finance  
4 bond insurance fund of the West Virginia housing  
5 development fund which is under the supervision and  
6 control of the municipal bond commission as provided by  
7 section twenty-b, article eighteen, chapter thirty-one of the  
8 code, or in the funds of the municipal bond commission  
9 because of the failure of any state agency for either  
10 general obligation or revenue bonds or any local taxing  
11 district for general obligation bonds to remit funds  
12 necessary for the payment of interest and sinking fund  
13 requirements. The governor is authorized to transfer from  
14 time to time such amounts to the municipal bond  
15 commission as may be necessary for these purposes.

16       The municipal bond commission shall reimburse the  
17 state of West Virginia through the governor from the first  
18 remittance collected from the West Virginia housing  
19 development fund or from any state agency or local  
20 taxing district for which the governor advanced funds,  
21 with interest at the rate carried by the bonds for security or  
22 payment of which the advance was made.

1       **Sec. 15. Appropriations for local governments.**—  
2 There are hereby appropriated for payment to counties,  
3 districts and municipal corporations such amounts as will  
4 be necessary to pay taxes due counties, districts and  
5 municipal corporations and which have been paid into the  
6 treasury:

7       (a) For redemption of lands;

8 (b) By public service corporations;

9 (c) For tax forfeitures.

1 **Sec. 16. Total appropriations.**—Where only a total  
2 sum is appropriated to a spending unit, the total sum shall  
3 include personal services, annual increment, employee  
4 benefits, current expenses, repairs and alterations,  
5 equipment and capital outlay, where not otherwise  
6 specifically provided and except as otherwise provided in  
7 TITLE I—GENERAL PROVISIONS, Sec. 3.

1 **Sec. 17. General school fund.**—The balance of the  
2 proceeds of the general school fund remaining after the  
3 payment of the appropriations made by this act is  
4 appropriated for expenditure in accordance with section  
5 sixteen, article nine-a, chapter eighteen of the code.

### TITLE III—ADMINISTRATION.

#### TITLE III—ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

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

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

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

## CHAPTER 7

(H. B. 4350—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)  
[By Request of the Executive]

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[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 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.**

EXECUTIVE

5—*Governor's Office*—

(WV Code Chapter 5)

Account No.

Fund 0101 FY 1998 Org 0100

8		General
9		Revenue
10	Act-	Fund
	ivity	
11	8a Publication of Papers and	
12	8b Transition Expenses (R) . . . . .	\$116,640
12	465	

13 Any unexpended balance remaining in the  
 14 appropriation for publication of papers and transition  
 15 expenses (fund 0101, activity 465) at the close of fiscal  
 16 year 1997-98, is hereby reappropriated for expenditure  
 17 during fiscal year 1998-99.

18 The purpose of this bill is to supplement this account  
 19 in the budget act for fiscal year ending the thirtieth day of  
 20 June, one thousand nine hundred ninety-eight, by adding  
 21 one hundred sixteen thousand six hundred forty dollars to  
 22 a new appropriation for publication of official papers and  
 23 transition expenses for expenditure during the fiscal year  
 24 one thousand nine hundred ninety-eight.

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## CHAPTER 8

(S. B. 514—By Senators Tomblin, Mr. President, and Buckalew)  
 [By Request of the Executive]

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[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 governor's office — custodial fund, account no. fund 0102, fiscal year 1998, organization 0100, 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 0102, fiscal year 1998, organization 0100, be supplemented and amended by increasing the total appropriation by twenty-eight thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	<b>Section 1. Appropriations from general revenue.</b>		
3	EXECUTIVE		
4	6—Governor's Office—		
5	Custodial Fund		
6	(WV Code Chapter 5)		
7	Account No.		
8	Fund <u>0102</u>	FY <u>1998</u>	Org <u>0100</u>
9			<b>General</b>
10		<b>Act-</b>	<b>Revenue</b>
11		<b>ivity</b>	<b>Fund</b>
12	1 Unclassified—Total . . . . .	096	\$28,000

13 The purpose of this bill is to supplement this account  
 14 in the budget act for the fiscal year ending the thirtieth  
 15 day of June, one thousand nine hundred ninety-eight, by  
 16 adding twenty-eight thousand dollars to an existing  
 17 appropriation for expenditure during fiscal year one  
 18 thousand nine hundred ninety-eight.

## CHAPTER 9

(H. B. 4703—By Delegates Michael, Doyle, Leach, Kelley,  
Campbell, Fantasia and Compton)

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

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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:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	EXECUTIVE		
4	<i>8—Governor's Office—</i>		
5	<i>Civil Contingent Fund</i>		
6	(WV Code Chapter 5A)		
7	Account No.		
8	Fund 0105 FY 1997 Org 0100		
9			<b>General</b>
10		<b>Act-</b>	<b>Revenue</b>
11		<b>ivity</b>	<b>Fund</b>
12	1 Civil Contingent Fund - Surplus (R)	263	\$ 5,000,000
13	Any unexpended balances remaining in the		
14	appropriation for Civil Contingent Fund - Surplus (R)		
15	(fund 0105, activity 263) at the close of the fiscal year		

16 1997-98 are hereby reappropriated for expenditure  
17 during the fiscal year 1998-1999.

18 That the total appropriation for fiscal year ending the  
19 thirtieth day of June, one thousand nine hundred ninety-  
20 eight, to account no. fund 0320, fiscal year 1998,  
21 organization 0403, be supplemented and amended by  
22 increasing the total appropriation by four hundred  
23 thousand dollars in a new line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF EDUCATION

4 39—West Virginia Schools for the Deaf and the Blind

5 (WV Code Chapters 18 and 18A)

6 Account No.

7 Fund 0320 FY 1998 Org 0403

8	9	10	Act- ivity	General Revenue Fund
11	5a Capital Outlay, Repairs and	12	589	\$400,000
13	Any unexpended balances remaining in the 14 appropriation for Capital Outlay, Repairs and Equipment 15 (fund 0320, activity 589) at the close of the fiscal year 16 1997-98 are hereby reappropriated for expenditure 17 during the fiscal year 1998-1999.			

18 That the total appropriation for fiscal year ending the  
19 thirtieth day of June, one thousand nine hundred ninety-  
20 eight, to account no. fund 0403, fiscal year 1998,  
21 organization 0511, be supplemented and amended by  
22 increasing the total appropriation by fourteen million  
23 dollars in a new line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH  
4 AND HUMAN SERVICES

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		<b>General</b>
10	<b>Act-</b>	<b>Revenue</b>
11	<b>ivity</b>	<b>Fund</b>

12 35a Medical Services

13 35b Payment Backlog-Transfer . . . . . 783 \$14,000,000

14 The total amount from the above appropriation to  
15 medical services payment backlog-transfer (fund 0403,  
16 activity 783) shall be transferred to the division of human  
17 services—medical services trust fund, account no. fund  
18 5185, fiscal year 1998, organization 0511 (activity 260),  
19 to make payments of the medical services backlog.

20 And, that the total appropriation for fiscal year ending  
21 the thirtieth day of June, one thousand nine hundred  
22 ninety-eight, to account no. fund 0450, fiscal year 1998,  
23 organization 0608, be supplemented and amended by  
24 increasing the total appropriation by six hundred  
25 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			<b>General</b>
11		<b>Act-</b>	<b>Revenue</b>
12		<b>ivity</b>	<b>Fund</b>
13	1 Personal Services .....	001	\$342,500
14	3 Employee Benefits .....	010	\$130,000
15	4 Unclassified .....	099	\$111,000
16	10 Inmate Medical Expense .....	535	\$ 16,500

17       The purpose of this bill is to expire the sum of twenty  
18 million dollars from the income tax refund reserve fund,  
19 account no. fund 1313, organization 1300, and to  
20 supplement the governor's office, civil contingent fund,  
21 account no. fund 0105, fiscal year 1998, organization  
22 0100, in the budget act for the fiscal year ending the  
23 thirtieth day of June, one thousand nine hundred ninety-  
24 eight, by adding five million dollars to the existing  
25 appropriation; to supplement the department of education,  
26 West Virginia schools for the deaf and the blind, account  
27 no. fund 0320, fiscal year 1998, organization 0403, in the  
28 budget act for the fiscal year ending the thirtieth day of  
29 June, one thousand nine hundred ninety-eight, by adding  
30 four hundred thousand dollars to a new line item in the  
31 existing appropriation; to supplement the department of  
32 health and human resources, division of human services,  
33 account no. fund 0403, fiscal year 1998, organization  
34 0511, in the budget act for the fiscal year ending the  
35 thirtieth day of June, one thousand nine hundred ninety-  
36 eight, by adding fourteen million dollars to a new line  
37 item in the existing appropriation; and to supplement the  
38 department of military affairs and public safety, division  
39 of corrections—correctional units, account no. fund 0450,  
40 fiscal year 1998, organization 0608, in the budget act for  
41 the fiscal year ending the thirtieth day of June, one  
42 thousand nine hundred ninety-eight, by adding six  
43 hundred thousand dollars to the existing appropriation.

## CHAPTER 10

(H. B. 4353—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)  
[By Request of the Executive]

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

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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.

3	EXECUTIVE		
4	<i>10—Auditor's Office—</i>		
5	<i>General Administration</i>		
6	(WV Code Chapter 12)		
7	Account No.		
8	Fund <u>0116</u> FY <u>1998</u> Org <u>1200</u>		
9			<b>General</b>
10		<b>Act-</b>	<b>Revenue</b>
11		<b>ivity</b>	<b>Fund</b>
12	6a Payroll System Acquisition . . . .	594	\$1,653,116
13	Any unexpended balance remaining in the		
14	appropriation for Payroll System Acquisition (fund 0116,		
15	activity 594) at the close of the fiscal year 1997-98, is		
16	hereby reappropriated for expenditure during fiscal year		
17	1998-99.		
18	The purpose of this bill is to supplement this account		
19	in the budget act for the fiscal year ending the thirtieth		
20	day of June, one thousand nine hundred ninety-eight, by		
21	adding one million six hundred fifty-three thousand one		
22	hundred sixteen dollars to a new appropriation for		
23	expenditure during the fiscal year one thousand nine		
24	hundred ninety-eight.		

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## 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)

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[Passed February 9, 1998; in effect from passage. Approved by the Governor.]

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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.		
2	EXECUTIVE		
3	12—Treasurer's Office		
4	(WV Code Chapter 12)		
5	Account No.		
6	Fund <u>0126</u> FY <u>1998</u> Org <u>1300</u>		
7			<b>General</b>
8		<b>Act-</b>	<b>Revenue</b>
9		<b>ivity</b>	<b>Fund</b>
10	1	Personal Services . . . . .	001 \$ 1,539,316
11	2	Salary of Treasurer . . . . .	002 65,000
12	3	Annual Increment . . . . .	004 34,856
13	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 <u>10,000,000</u>
26	16	Total . . . . .	\$25,864,758

27 Any unexpended balances remaining in the  
28 appropriation for unclassified (fund 0126, activity 099)  
29 and imaging system (fund 0126, activity 006) at the close  
30 of the fiscal year 1996-97 are hereby reappropriated for  
31 expenditure during the fiscal year 1997-98.

32 The above appropriation for regional jails and  
33 correctional facilities-transfer shall be transferred to the  
34 regional jails and correctional facilities authority to be  
35 used for construction projects.

36 The purpose of this bill is to supplement this account  
37 in the budget act for the fiscal year ending the thirtieth  
38 day of June, one thousand nine hundred ninety-eight, by  
39 amending language with no new money being  
40 appropriated.

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## CHAPTER 12

(S. B. 755—By Senators Craigo, Anderson, Bailey, Chafin, Helmick,  
Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe,  
Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

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[Passed March 11, 1998; in effect from passage. Approved by the Governor.]

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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:

1	TITLE II—APPROPRIATIONS.		
2	<b>Section 1. Appropriations from general revenue.</b>		
3	EXECUTIVE		
4	<i>12—Treasurer's Office</i>		
5	(WV Code Chapter 12)		
6	Account No.		
7	Fund <u>0126</u> FY <u>1998</u> Org <u>1300</u>		
8			<b>General</b>
9		Act-	<b>Revenue</b>
10		ivity	<b>Fund</b>
11	8 Tuition Trust Fund . . . . .	692	\$1,000,000

12 The purpose of this bill is to supplement this account  
 13 in the budget act for the fiscal year ending the thirtieth  
 14 day of June, one thousand nine hundred ninety-eight, by  
 15 adding one million dollars to an existing appropriation for  
 16 the tuition trust fund for expenditure during the fiscal  
 17 year one thousand nine hundred ninety-eight.

## CHAPTER 13

(S. B. 511—By Senators Tomblin, Mr. President, and Buckalew)  
[By Request of the Executive]

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

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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

4	22— <i>Division of Finance</i>		
5	(WV Code Chapter 5A)		
6	Account No.		
7	Fund <u>0203</u>	FY <u>1998</u>	Org <u>0209</u>
8			<b>General</b>
9		<b>Act-</b>	<b>Revenue</b>
10		<b>ivity</b>	<b>Fund</b>
11	4 Unclassified . . . . .	099	\$450,000
12	The purpose of this bill is to supplement this account		
13	in the budget act for the fiscal year ending the thirtieth		
14	day of June, one thousand nine hundred ninety-eight, by		
15	adding four hundred fifty thousand dollars to an existing		
16	appropriation for unclassified for relocation expenses for		
17	expenditure during the fiscal year one thousand nine		
18	hundred ninety-eight.		



## 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:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF ADMINISTRATION

4 24—Division of Purchasing

5 (WV Code Chapter 5A)

6 Account No.

7 Fund 0210 FY 1998 Org 0213

8			<b>General</b>
9		<b>Act-</b>	<b>Revenue</b>
10		<b>ivity</b>	<b>Fund</b>
11	4 Unclassified . . . . .	099	\$400,000

12 The purpose of this bill is to supplement this account  
13 in the budget act for the fiscal year ending the thirtieth  
14 day of June, one thousand nine hundred ninety-eight, by  
15 adding four hundred thousand dollars to an existing  
16 appropriation for unclassified for relocation expenses for  
17 expenditure during the fiscal year one thousand nine  
18 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

4	29— <i>Public Defender Services</i>		
5	(WV Code Chapter 29)		
6	Account No.		
7	Fund <u>0226</u>	FY <u>1998</u>	Org <u>0221</u>
8			<b>General</b>
9		<b>Act-</b>	<b>Revenue</b>
10		<b>ivity</b>	<b>Fund</b>
11	5	Appointed Counsel Fees and Public	
12	6	Defender Corporations (R) . . . . .	127 \$6,000,000
13	The purpose of this bill is to supplement this account		
14	in the budget act for fiscal year ending the thirtieth day of		
15	June, one thousand nine hundred ninety-eight, by adding		
16	six million dollars to an existing appropriation for		
17	appointed counsel and public defender corporations for		
18	expenditure during fiscal year one thousand nine hundred		
19	ninety-eight.		

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## CHAPTER 16

(H. B. 4715—By Delegates Michael, Doyle and Leach )

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

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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:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	BUREAU OF COMMERCE		
4	78—Division of Labor—		
5	(WV Code Chapters 21 and 47)		
6	Account No.		
7	Fund <u>0260</u> FY <u>1998</u> Org <u>0308</u>		
8			<b>General</b>
9		<b>Act-</b>	<b>Revenue</b>
10		<b>ivity</b>	<b>Fund</b>
11	4 Computer/Technology Upgrade . . . .	322	\$98,400

12 The purpose of this bill is to supplement this account  
 13 in the budget act for fiscal year ending the thirtieth day of  
 14 June, one thousand nine hundred ninety-eight, by adding  
 15 ninety-eight thousand four hundred dollars to an existing  
 16 appropriation for computer technology upgrades for  
 17 expenditure during fiscal year one thousand nine hundred  
 18 ninety-eight.

## CHAPTER 17

(Com. Sub. for H. B. 4358—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)  
[By Request of the Executive]

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

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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.**

3	BUREAU OF COMMERCE		
4	79— <i>Division of Natural Resources</i> —		
5	(WV Code Chapter 20)		
6	Account No.		
7	Fund <u>0265</u> FY <u>1998</u> Org <u>0310</u>		
8			<b>General</b>
9		<b>Act-</b>	<b>Revenue</b>
10		<b>ivity</b>	<b>Fund</b>
11	1 Personal Services . . . . .	001	\$516,109
12	3 Employee Benefits . . . . .	010	62,089
13	4 Unclassified . . . . .	099	100,000
14	5 Pricketts Fort State Park . . . . .	324	40,000

15       The purpose of this bill is to supplement this account  
 16 in the budget act for fiscal year ending the thirtieth day of  
 17 June, one thousand nine hundred ninety-eight, by adding  
 18 five hundred sixteen thousand one hundred nine dollars to  
 19 an existing appropriation for personal services, sixty-two  
 20 thousand eighty-nine dollars to employee benefits for  
 21 minimum wage increases, one hundred thousand to  
 22 unclassified expenditures, and forty thousand dollars to  
 23 Pricketts Fort State Park for expenditure during fiscal year  
 24 one thousand nine hundred ninety-eight.

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## CHAPTER 18

(H. B. 4359—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)  
 [By Request of the Executive]

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

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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:

1	TITLE II—APPROPRIATIONS.		
2	<b>Sec. 1. Appropriations from general revenue.</b>		
3	DEPARTMENT OF EDUCATION AND THE ARTS		
4	<i>42—Division of Culture and History—</i>		
5	(WV Code Chapter 29)		
6	Account No.		
7	Fund <u>0293</u> FY <u>1998</u> Org <u>0432</u>		
8			<b>General</b>
9		<b>Act-</b>	<b>Revenue</b>
10		<b>ivity</b>	<b>Fund</b>
11	4 Unclassified . . . . .	099	\$85,959

12 The purpose of this bill is to supplement this account  
 13 in the budget act for the fiscal year ending the thirtieth  
 14 day of June, one thousand nine hundred ninety-eight, by  
 15 adding eighty-five thousand nine hundred fifty-nine  
 16 dollars to an existing appropriation for unclassified for  
 17 expenditure during the fiscal year one thousand nine  
 18 hundred ninety-eight.

## CHAPTER 19

(S. B. 527—By Senators Tomblin, Mr. President, and Buckalew)  
[By Request of the Executive]

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[Passed March 11, 1998; in effect from passage. Approved by the Governor.]

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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.

3 DEPARTMENT OF EDUCATION  
 4 35—*State Department of Education*  
 5 (WV Code Chapters 18 and 18A)  
 6 Account No.  
 7 Fund 0313 FY 1998 Org 0402

8		Act-	General
9		ivity	Revenue
10			Fund
11	8 Increased Enrollment . . . . .	140	\$1,373,070

12 The purpose of this bill is to supplement this account  
 13 in the budget act for the fiscal year ending the thirtieth  
 14 day of June, one thousand nine hundred ninety-eight, by  
 15 adding one million three hundred seventy-three thousand  
 16 seventy dollars to an existing appropriation for increased  
 17 enrollment for expenditure during the fiscal year one  
 18 thousand nine hundred ninety-eight.

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## CHAPTER 20

(S. B. 528—By Senators Tomblin, Mr. President, and Buckalew)  
 [By Request of the Executive]

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[Passed March 9, 1998; in effect from passage. Approved by the Governor.]

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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:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH AND HUMAN  
4 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		General
10	Act-	Revenue
11	ivity	Fund
12 4	Unclassified . . . . . 099	\$6,961,427

13 The purpose of this bill is to supplement this account  
14 in the budget act for the fiscal year ending the thirtieth  
15 day of June, one thousand nine hundred ninety-eight, by  
16 adding six million nine hundred sixty-one thousand four  
17 hundred twenty-seven dollars to an existing appropriation  
18 for unclassified for disallowances for expenditure during  
19 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]

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

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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:

1	TITLE II—APPROPRIATIONS.		
2	<b>Section 1. Appropriations from general revenue.</b>		
3	DEPARTMENT OF HEALTH AND HUMAN		
4	RESOURCES		
5	<i>56—Division of Human Services</i>		
6	(WV Code Chapters 9, 48 and 49)		
7	Account No.		
8	Fund <u>0403</u> FY <u>1998</u> Org <u>0511</u>		
9			<b>General</b>
10		<b>Act-</b>	<b>Revenue</b>
11		<b>ivity</b>	<b>Fund</b>
12	4 Unclassified . . . . .	099	\$3,440,000

13 The purpose of this bill is to supplement this account  
 14 in the budget act for the fiscal year ending the thirtieth  
 15 day of June, one thousand nine hundred ninety-eight, by  
 16 adding three million four hundred forty thousand dollars  
 17 to an existing appropriation for unclassified for early  
 18 intervention and family support services and child welfare  
 19 services for family and children's tracking system  
 20 (FACTS) for expenditure during the fiscal year, one  
 21 thousand nine hundred ninety-eight.

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## CHAPTER 22

(S. B. 531—By Senators Tomblin, Mr. President, and Buckalew)  
 [By Request of the Executive]

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[Passed February 26, 1998; in effect from passage. Approved by the Governor.]

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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:

1	TITLE II—APPROPRIATIONS.		
2	<b>Section 1. Appropriations from general revenue.</b>		
3	DEPARTMENT OF HEALTH AND HUMAN		
4	RESOURCES		
5	56— <i>Division of Human Services</i>		
6	(WV Code Chapters 9, 48 and 49)		
7	Account No.		
8	Fund <u>0403</u> FY <u>1998</u> Org <u>0511</u>		
9			<b>General</b>
10		<b>Act-</b>	<b>Revenue</b>
11		<b>ivity</b>	<b>Fund</b>
12	17 Social Services . . . . .	195	\$16,189,150

13       The purpose of this bill is to supplement this account  
14 in the budget act for the fiscal year ending the thirtieth  
15 day of June, one thousand nine hundred ninety-eight, by  
16 adding sixteen million one hundred eighty-nine thousand  
17 one hundred fifty dollars to an existing appropriation for  
18 social services for expenditure during fiscal year one  
19 thousand nine hundred ninety-eight.

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## 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)

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[Passed March 9, 1998; in effect from passage. Approved by the Governor.]

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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 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH AND HUMAN  
4 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			<b>General</b>	
10		<b>Act-</b>	<b>Revenue</b>	
11		<b>ivity</b>	<b>Fund</b>	
12	4	Unclassified . . . . .	099	\$300,000

13 The purpose of this bill is to supplement this account  
14 in the budget act for the fiscal year ending the thirtieth  
15 day of June, one thousand nine hundred ninety-eight, by  
16 adding three hundred thousand dollars to an existing  
17 appropriation for unclassified for indigent burials for  
18 expenditure during the fiscal year one thousand nine  
19 hundred ninety-eight.

## CHAPTER 24

(S. B. 524—By Senators Tomblin, Mr. President, and Buckalew)  
[By Request of the Executive]

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

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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.

3 DEPARTMENT OF HEALTH AND HUMAN  
4 RESOURCES

5 51—*Division of Health—*  
6 *Central Office*

7 (WV Code Chapter 16)

8 Account No.

9 Fund 0407 FY 1998 Org 0506

10			<b>General</b>
11		<b>Act-</b>	<b>Revenue</b>
12		<b>ivity</b>	<b>Fund</b>
13	4 Unclassified . . . . .	099	\$35,000

14 The purpose of this bill is to supplement this account  
15 in the budget act for the fiscal year ending the thirtieth  
16 day of June, one thousand nine hundred ninety-eight, by  
17 adding thirty-five thousand dollars to an existing  
18 appropriation for unclassified for a safe drinking water  
19 information system for expenditure during fiscal year one  
20 thousand nine hundred ninety-eight.

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**CHAPTER 25**

(Com. Sub. for H. B. 4365—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)  
[By Request of the Executive]

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

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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:

1	TITLE II—APPROPRIATIONS.	
2	Sec. 1. Appropriations from general revenue.	
3	DEPARTMENT OF MILITARY AFFAIRS	
4	AND PUBLIC SAFETY	
5	<i>57—Department of Military Affairs and Public Safety—</i>	
6	<i>Office of the Secretary</i>	
7	(WV Code Chapter 5F)	
8	Account No.	
9	Fund <u>0430</u> FY <u>1998</u> Org <u>0601</u>	
10		<b>General</b>
11	<b>Activity</b>	<b>Revenue</b>
12		<b>Fund</b>
13	1 Unclassified—Total . . . . .	096 \$24,900

14       The purpose of this bill is to supplement this account  
15 in the budget act for the fiscal year ending the thirtieth  
16 day of June, one thousand nine hundred ninety-eight, by  
17 adding twenty-four thousand nine hundred dollars to an  
18 existing appropriation for unclassified-total for  
19 expenditure during fiscal year one thousand nine hundred  
20 ninety-eight.

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## CHAPTER 26

(Com. Sub. for H. B. 4366—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)  
[By Request of the Executive]

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

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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 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 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.

3 DEPARTMENT OF MILITARY AFFAIRS  
4 AND PUBLIC SAFETY

5 58—Adjutant General—  
6 State Militia

7 (WV Code Chapter 15)

8 Account No.

9 Fund 0433 FY 1998 Org 0603

10		<b>General</b>
11	<b>Act-</b>	<b>Revenue</b>
12	<b>ivity</b>	<b>Fund</b>
13	6 Mountaineer Challenge Academy—	
14	Student Stipends . . . . .	\$ 132,000

15 The purpose of this bill is to supplement this account  
16 in the budget act for fiscal year ending the thirtieth day of  
17 June, one thousand nine hundred ninety-eight, by adding  
18 one hundred thirty-two thousand dollars to a new line item  
19 appropriation for mountaineer challenge academy -  
20 student stipends for expenditure during fiscal year one  
21 thousand nine hundred ninety-eight.

## CHAPTER 27

(H. B. 4367—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)  
[By Request of the Executive]

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[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 — 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.

3	DEPARTMENT OF MILITARY AFFAIRS		
4	AND PUBLIC SAFETY		
5	67— <i>Fire Commission</i> —		
6	(WV Code Chapter 29)		
7	Account No.		
8	Fund	<u>0436</u>	FY <u>1998</u> Org <u>0619</u>
9			<b>General</b>
10		<b>Act-</b>	<b>Revenue</b>
11		<b>ivity</b>	<b>Fund</b>
12	4 Unclassified . . . . .	099	\$65,000

13 The purpose of this bill is to supplement this account  
 14 in the budget act for the fiscal year ending the thirtieth  
 15 day of June, one thousand nine hundred ninety-eight, by  
 16 adding sixty-five thousand dollars to an existing  
 17 appropriation for unclassified for expenditure during  
 18 fiscal year one thousand nine hundred ninety-eight.

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## CHAPTER 28

(S. B. 519—By Senators Tomblin, Mr. President, and Buckalew)  
 [By Request of the Executive]

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

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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	<b>Section 1. Appropriations from general revenue.</b>		
3	DEPARTMENT OF MILITARY AFFAIRS		
4	AND PUBLIC SAFETY		
5	<i>62—Division of Corrections—</i>		
6	<i>Correctional Units</i>		
7	(WV Code Chapters 25, 28, 49 and 62)		
8	Account No.		
9	Fund <u>0450</u> FY <u>1998</u> Org <u>0608</u>		
10			<b>General</b>
11		<b>Act-</b>	<b>Revenue</b>
12		<b>ivity</b>	<b>Fund</b>
13	10a St. Mary's Correctional Center . .	230	\$1,450,000
14	10b Ohio County Jail . . . . .	784	475,000

15 The purpose of this bill is to supplement this account  
 16 in the budget act for the fiscal year ending the thirtieth  
 17 day of June, one thousand nine hundred ninety-eight, by  
 18 adding one million nine hundred twenty-five thousand  
 19 dollars to a new appropriation for the St. Mary's  
 20 correctional center and Ohio County jail for expenditure  
 21 during the fiscal year one thousand nine hundred ninety-  
 22 eight.

## CHAPTER 29

(S. B. 520—By Senators Tomblin, Mr. President, and Buckalew)  
[By Request of the Executive]

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[Passed March 11, 1998; in effect from passage. Approved by the Governor.]

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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.

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		<b>General</b>
11	<b>Act-</b>	<b>Revenue</b>
12	<b>ivity</b>	<b>Fund</b>
13 5 Payments to Counties and/or		
14 6 Regional Jails . . . . .	229	\$2,500,000

15 The purpose of this bill is to supplement this account  
16 in the budget act for the fiscal year ending the thirtieth  
17 day of June, one thousand nine hundred ninety-eight, by  
18 adding two million five hundred thousand dollars to an  
19 existing appropriation for payments to counties and/or  
20 regional jails for expenditure during fiscal year one  
21 thousand nine hundred ninety-eight.



## CHAPTER 30

(S. B. 633—By Senators Craig, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, 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:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS  
4 AND PUBLIC SAFETY

5 63—West Virginia State Police

6 (WV Code Chapter 15)

7 Account No.

8 Fund 0453 FY 1998 Org 0612

9			Act-	Other
10			ivity	Funds
11	1	Personal Services . . . . .	001	\$21,900,498
12	2	Annual Increment . . . . .	004	148,550
13	3	Employee Benefits . . . . .	010	3,697,692
14	4	Unclassified . . . . .	099	5,582,653
15	5	COPS Program-Federal Match . . .	327	258,924
16	6	Vehicle Purchase . . . . .	451	1,000,000

17	7	Barracks Maintenance and		
18	8	Construction (R) . . . . .	494	713,947
19	9	Communications and Other		
20	10	Equipment (R) . . . . .	558	2,415,000
21	11	Overtime and Wage Court Awards .	568	4,169,685
22	12	Trooper Retirement Fund . . . . .	605	11,070,353
23	13	Handgun Administration Expense .	747	<u>100,000</u>
24	14	Total . . . . .		\$51,057,302

25 Any unexpended balance remaining in the  
 26 appropriation for barracks maintenance and construction  
 27 (fund 0453, activity 494) at the close of the fiscal year  
 28 1996-97 is hereby reappropriated for expenditure during  
 29 the fiscal year 1997-98.

30 Any unexpended balance remaining in the  
 31 appropriation for communications and other equipment  
 32 (fund 0453, activity 558) at the close of the fiscal year  
 33 1996-97 is hereby reappropriated for expenditure during  
 34 the fiscal year 1997-98.

35 Any unexpended balance remaining in the  
 36 appropriation for Riverside high detachment (fund 0453,  
 37 activity 753) at the close of the fiscal year 1996-97 is  
 38 hereby reappropriated for expenditure during the fiscal  
 39 year 1997-98 and redesignated as Riverside high  
 40 detachment-transfer. Any balance so reappropriated and  
 41 redesignated shall be transferred to the school building  
 42 authority-school building capital improvement fund (fund  
 43 3958, organization 0402) for the Riverside high  
 44 detachment.

45 The purpose of this bill is to supplement this account  
 46 in the budget act for the fiscal year ending the thirtieth  
 47 day of June, one thousand nine hundred ninety-eight, by  
 48 adding two hundred fourteen thousand nine hundred fifty  
 49 dollars to an existing appropriation for unclassified (fund  
 50 0453, activity 099) for expenditure during fiscal year one  
 51 thousand nine hundred ninety-eight, adding two million  
 52 one hundred sixty-nine thousand six hundred eighty-five  
 53 dollars to the overtime and wage court awards (fund 0453,  
 54 activity 568) for expenditure during fiscal year one  
 55 thousand nine hundred ninety-eight, and by amending  
 56 and reenacting language related to Riverside high  
 57 detachment.

## CHAPTER 31

(S. B. 503—By Senators Tomblin, Mr. President, and Buckalew)  
[By Request of the Executive]

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

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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

4

70—Tax Division

5

(WV Code Chapter 11)

6

Account No.

7

Fund 0470 FY 1998 Org 0702

8

9

10

Act-  
ivity

General  
Revenue  
Fund

11

4 Unclassified . . . . . 099

\$1,160,000

12

13

14

15

16

17

18

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	<b>Section 1. Appropriations from general revenue.</b>		
3	DEPARTMENT OF TAX AND REVENUE		
4	<i>70—Tax Division</i>		
5	(WV Code Chapter 11)		
6	Account No.		
7	Fund <u>0470</u> FY <u>1998</u> Org <u>0702</u>		
8			<b>General</b>
9		<b>Act</b>	<b>Revenue</b>
10		<b>ivity</b>	<b>Fund</b>
11	5a Administrative Hearing		
12	Examiner Program . . . . .	713	\$166,000
13	Any unexpended balance remaining in the		
14	appropriation for administrative hearing examiner		
15	program (fund 0470, activity 713) at the close of the fiscal		
16	year 1997-98 is hereby reappropriated for expenditure		
17	during the fiscal year 1998-99.		
18	The purpose of this bill is to supplement this account		
19	in the budget act for the fiscal year ending the thirtieth		
20	day of June, one thousand nine hundred ninety-eight, by		
21	adding one hundred sixty-six thousand dollars to a new		
22	line item for administrative hearing examiner program for		
23	expenditure during fiscal year one thousand nine hundred		
24	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 <u>0470</u>	FY <u>1998</u>	Org <u>0702</u>
8			<b>General</b>
9		<b>Act-</b>	<b>Revenue</b>
10		<b>ivity</b>	<b>Fund</b>
11	4 Unclassified . . . . .	099	\$271,256

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

		<b>General</b>
	<b>Act</b>	<b>Revenue</b>
	<b>ivity</b>	<b>Fund</b>
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.

## CHAPTER 34

(S. B. 523—By Senators Tomblin, Mr. President, and Buckalew)

[By Request of the Executive]

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

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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.

3	DEPARTMENT OF TAX AND REVENUE		
4	70—Tax Division		
5	(WV Code Chapter 11)		
6	Account No.		
7	Fund <u>0470</u> FY <u>1998</u> Org <u>0702</u>		
8			<b>General</b>
9		<b>Act-</b>	<b>Revenue</b>
10		<b>ivity</b>	<b>Fund</b>
11	4 Unclassified . . . . .	099	\$180,000
12	The purpose of this bill is to supplement this account		
13	in the budget act for the fiscal year ending the thirtieth		
14	day of June, one thousand nine hundred ninety-eight, by		
15	adding one hundred eighty thousand dollars to an existing		
16	appropriation for unclassified for relocation expenses for		
17	expenditure during the fiscal year one thousand nine		
18	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  
4 RESOURCES

5 53—*Division of Health—*  
6 *West Virginia Drinking Water Treatment*

7 (WV Code Chapter 16)

8 Account No.

9 Fund 0561 FY 1998 Org 0506

10				<b>General</b>
11				<b>Revenue</b>
12			<b>Act-</b>	<b>Fund</b>
			<b>ivity</b>	
13	1	West Virginia Drinking Water Treat-		
14	2	ment Revolving Fund—Transfer . . .	689	\$700,000

15 The above appropriation for drinking water treatment  
16 revolving fund — transfer shall be transferred to the West  
17 Virginia drinking water treatment revolving fund or  
18 appropriate bank depository and the drinking water  
19 treatment revolving — administrative expense fund as  
20 provided by chapter sixteen of the code.

21 The purpose of this bill is to supplement this account  
22 in the budget act for the fiscal year ending the thirtieth  
23 day of June, one thousand nine hundred ninety-eight, by  
24 amending language with no new money being  
25 appropriated.

## CHAPTER 36

(Com. Sub. for H. B. 4379—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)  
[By Request of the Executive]

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

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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.

3	DEPARTMENT OF MILITARY AFFAIRS		
4	AND PUBLIC SAFETY		
5	<i>68a—Division of Juvenile Services—</i>		
6	(WV Code Chapter 49)		
7	Account No.		
8	Fund <u>0570</u> FY <u>1998</u> Org <u>0621</u>		
9			<b>General</b>
10		<b>Act-</b>	<b>Revenue</b>
11		<b>ivity</b>	<b>Fund</b>
12	1 Unclassified—Total . . . . .	096	\$800,000
13	The purpose of this bill is to supplement this account		
14	in the budget act for fiscal year ending the thirtieth day of		
15	June, one thousand nine hundred ninety-eight, by		
16	providing for a new item of appropriation to be		
17	established therein to appropriate general revenue funds in		
18	the amount of eight hundred thousand dollars for		
19	unclassified for expenditure during fiscal year one		
20	thousand nine hundred ninety-eight.		

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## CHAPTER 37

(S. B. 742—By Senators Craig, Anderson, Bailey, Chafin, Helmick,  
Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe,  
Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

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

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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:*

1           That the balance of funds available for expenditure in  
2 the fiscal year ending the thirtieth day of June, one  
3 thousand nine hundred ninety-eight, to the abandoned  
4 property claims trust, account no. fund 1324, fiscal year  
5 1998, organization 1300, activity 099, be decreased by  
6 expiring the amount of four million dollars to the  
7 unappropriated surplus balance of the state fund, general  
8 revenue, to be available for further and additional  
9 appropriation.

10           The purpose of this bill is to expire the sum of four  
11 million dollars from the abandoned property claims trust,  
12 account no. fund 1324, fiscal year 1998, organization  
13 1300, activity 099, to the unappropriated surplus balance  
14 in the state fund, general revenue, for the fiscal year  
15 ending the thirtieth day of June, one thousand nine  
16 hundred ninety-eight, to be available for further and  
17 additional appropriation.

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## CHAPTER 38

(S. B. 498—By Senators Tomblin, Mr. President, and Buckalew)

[By Request of the Executive]

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[Passed March 9, 1998; in effect from passage. Approved by the Governor.]

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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:

1	TITLE II—APPROPRIATIONS.		
2	<b>Sec. 3. Appropriations from other funds.</b>		
3	DEPARTMENT OF ADMINISTRATION		
4	<i>109—Division of Purchasing</i>		
5	<i>Revolving Fund</i>		
6	(WV Code Chapter 5A)		
7	Account No.		
8	Fund <u>2320</u>	FY <u>1998</u>	Org <u>0216</u>
9		<b>Act-</b>	<b>Other</b>
10		<b>ivity</b>	<b>Funds</b>
11	1 Personal Services . . . . .	001	\$30,000
12	3 Employee Benefits . . . . .	010	10,116

13 The purpose of this supplementary appropriation bill  
14 is to supplement this account in the budget act for the  
15 fiscal year ending the thirtieth day of June, one thousand  
16 nine hundred ninety-eight, by adding thirty thousand  
17 dollars to the existing appropriation for personal services  
18 and by adding ten thousand one hundred sixteen dollars  
19 to the existing appropriation for employee benefits for  
20 expenditure during the fiscal year one thousand nine  
21 hundred ninety-eight.

## CHAPTER 39

(S. B. 780—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

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

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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)

6	Account No.		
7	Fund <u>3200</u>	FY <u>1998</u>	Org <u>0310</u>
8			<b>Act- Other</b>
9			<b>ivity Funds</b>
10	6a	Endowment Fund-Ohio River	
11		Fisheries Management/Research . 714	\$143,000
12	The purpose of this supplementary appropriation bill		
13	is to supplement this account in the budget act for the		
14	fiscal year ending the thirtieth day of June, one thousand		
15	nine hundred ninety-eight, by adding one hundred forty-		
16	three thousand dollars to the existing appropriation for		
17	endowment fund-Ohio River fisheries management/		
18	research for expenditure during the fiscal year one		
19	thousand nine hundred ninety-eight.		

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## CHAPTER 40

(S. B. 542—By Senators Tomblin, Mr. President, and Buckalew)  
[By Request of the Executive]

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[Passed March 9, 1998; in effect from passage. Approved by the Governor.]

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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.

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## CHAPTER 41

(S. B. 358—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson,  
Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie,  
Minear and Sprouse)

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[Passed February 19, 1998; in effect from passage. Approved by the Governor.]

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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:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 10. Appropriations from lottery net profit surplus.**

3 The following items are hereby appropriated from  
 4 lottery net profits, and are to be made available for  
 5 expenditure during the fiscal year ending the thirtieth day  
 6 of June, one thousand nine hundred ninety-eight, only out  
 7 of surplus lottery net profits accrued for the fiscal year  
 8 ending the thirtieth day of June, one thousand nine  
 9 hundred ninety-seven, and only after all appropriations  
 10 made pursuant to Title II, section nine of this act are fully  
 11 funded. In the event that surplus revenue available on the  
 12 thirty-first day of July, one thousand nine hundred ninety-  
 13 seven, is not sufficient to meet all the appropriations made  
 14 pursuant to this section, then the appropriations shall be  
 15 made to the extent that surplus revenues are available as of  
 16 the date mandated and shall be allocated first to provide  
 17 the necessary funds to meet the first appropriation of this  
 18 section; next, to provide the funds necessary for the  
 19 second appropriation of this section; and subsequently to  
 20 provide the funds necessary for each appropriation in  
 21 succession before any funds are provided for the next  
 22 subsequent appropriation.

23 *278—Board of Directors of the State College System—*  
 24 *Control Account*

25 (WV Code Chapter 18B)

26 Account No.

27		Fund <u>4291</u> FY <u>1998</u> Org <u>0481</u>		
28	1	Shepherd College-Capital		
29	2	Improvements—Total . . . . .	764	\$ 2,600,000
30		279— <i>West Virginia Development Office—</i>		
31		<i>Tourism Commission</i>		
32		(WV Code Chapter 5B)		
33		Account No.		
34		Fund <u>3067</u> FY <u>1998</u> Org <u>0304</u>		
35	1	Raleigh County Meeting and		
36	2	Convention Center—Total . . . . .	763	\$ -0-
37		280— <i>Department of Education and the Arts—</i>		
38		<i>Office of the Secretary</i>		
39		(WV Code Chapter 5F)		
40		Account No.		
41		Fund <u>3505</u> FY <u>1998</u> Org <u>0431</u>		
42	1	Capital Outlay and Improvements .	762	\$ 1,100,000
43		281— <i>Bureau of Senior Services</i>		
44		(WV Code Chapter 29)		
45		Account No.		
46		Fund <u>5405</u> FY <u>1998</u> Org <u>0508</u>		
47	1	Senior Citizens Centers		
48	2	and Programs . . . . .	462	\$ 700,000
49		282— <i>WV Development Office—</i>		
50		<i>Tourism Commission</i>		
51		(WV Code Chapter 5B)		
52		Account No.		
53		Fund <u>3067</u> FY <u>1998</u> Org <u>0304</u>		
54	1	Tourism-Unclassified (R) . . . . .	662	\$ 550,000
55	1	Total, TITLE II, Section 10-		
56	2	Lottery Net Profit Surplus . . . . .		\$ <u>4,950,000</u>

# CHAPTER 42

(S. B. 541—By Senators Tomblin, Mr. President, and Buckalew)  
[By Request of the Executive]

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[Passed March 9, 1998; in effect from passage. Approved by the Governor.]

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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.

2 **Sec. 3. Appropriations from other funds.**

3 DEPARTMENT OF HEALTH  
4 AND HUMAN RESOURCES

5 129—*Division of Human Services—*  
6 *Health Care Provider Tax*

7 (WV Code Chapter 11)

8		Account No.		
9		Fund <u>5090</u>	FY <u>1998</u>	Org <u>0511</u>
10			Act-	Other
11			ivity	Funds
12	1	Unclassified . . . . .	099	\$2,998,823
13		The purpose of this supplementary appropriation bill		
14		is to supplement this account in the budget act for the		
15		fiscal year ending the thirtieth day of June, one thousand		
16		nine hundred ninety-eight, by adding two million nine		
17		hundred ninety-eight thousand eight hundred twenty-		
18		three dollars to the existing appropriation for unclassified		
19		to match federal funds to pay medicaid providers for		
20		expenditure during the fiscal year one thousand nine		
21		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.		
2	<b>Sec. 3. Appropriations from other funds.</b>		
3	DEPARTMENT OF HEALTH		
4	AND HUMAN RESOURCES		
5	<i>130—Division of Human Services—</i>		
6	<i>Child Support Enforcement</i>		
7	(WV Code Chapter 48A)		
8	Account No.		
9	Fund <u>5094</u> FY <u>1998</u> Org <u>0511</u>		
10		Act-	Other
11		ivity	Funds
12	1 Unclassified—Total . . . . .	096	\$207,170

13 The purpose of this supplementary appropriation bill  
14 is to supplement this account in the budget act for the  
15 fiscal year ending the thirtieth day of June, one thousand  
16 nine hundred ninety-eight, by adding two hundred seven  
17 thousand one hundred seventy dollars to the existing  
18 appropriation for unclassified for the access and visitation  
19 program and for the family law masters program for  
20 expenditure during the fiscal year one thousand nine  
21 hundred ninety-eight.

## CHAPTER 44

(S. B. 430—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

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[Passed March 3, 1998; in effect from passage. Approved by the Governor.]

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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
- 4 RESOURCES

5 *131—Human Services—*  
6 *Medical Services Trust Fund*

7 (WV Code Chapter 9)

8 Account No.

9 Fund 5185 FY 1998 Org 0511

10	11	Act-	Other
		ivity	Funds
12	4a Payment to Nonstate Hospitals-		
13	4b DPSH Match . . . . .	287	\$ 3,982,412

14 The purpose of this supplementary appropriation bill  
15 is to supplement this fund in the budget act for the fiscal  
16 year ending the thirtieth day of June, one thousand nine  
17 hundred ninety-eight, by adding three million nine  
18 hundred eighty-two thousand four hundred twelve dollars  
19 to a new item of appropriation for payments to nonstate  
20 hospitals-DPSH match for expenditure during fiscal year  
21 one thousand nine hundred ninety-eight.



## CHAPTER 45

(S. B. 783—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 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:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 DEPARTMENT OF HEALTH AND HUMAN  
4 RESOURCES

5 *131—Human Services—*  
6 *Medical Services Trust Fund*

7 (WV Code Chapter 9)

8 Account No.

9 Fund 5185 FY 1998 Org 0511

10	Act-	Other
11	ivity	Funds
12 4c Medical Services		
13 4d Payment Backlog . . . . .	260	\$14,000,000

14 The purpose of this supplementary appropriation bill  
15 is to supplement this fund in the budget act for the fiscal  
16 year ending the thirtieth day of June, one thousand nine  
17 hundred ninety-eight, by adding fourteen million dollars  
18 to a new item of appropriation for medical services  
19 payment backlog for expenditure during fiscal year one  
20 thousand nine hundred ninety-eight.

## CHAPTER 46

(S. B. 494—By Senators Tomblin, Mr. President, and Buckalew)  
[By Request of the Executive]

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[Passed March 9, 1998; in effect from passage. Approved by the Governor.]

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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 | <b>Sec. 3. Appropriations from other funds.</b> |
| 3 | DEPARTMENT OF MILITARY AFFAIRS                  |
| 4 | AND PUBLIC SAFETY                               |
| 5 | <i>137—West Virginia State Police—</i>          |
| 6 | <i>Surplus Transfer Account</i>                 |

7	(WV Code Chapter 15)		
8	Account No.		
9	Fund <u>6519</u> FY <u>1998</u> Org <u>0612</u>		
10		<b>Act-</b>	<b>Other</b>
11		<b>ivity</b>	<b>Funds</b>
12	1 Unclassified—Total (R) . . . . .	096	\$285,500

13 Any unexpended balance remaining in the  
 14 appropriation for unclassified—total (fund 6519, activity  
 15 096) at the close of fiscal year 1997-98, is hereby  
 16 reappropriated for expenditure during the fiscal year  
 17 1998-99.

18 The purpose of this supplementary appropriation bill  
 19 is to supplement this account in the budget act for the  
 20 fiscal year ending the thirtieth day of June, one thousand  
 21 nine hundred ninety-eight, by adding two hundred eighty-  
 22 five thousand five hundred dollars to the existing  
 23 appropriation for unclassified for expenditure during the  
 24 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:*

1       That the balance of funds available for expenditure in  
2 the fiscal year ending the thirtieth day of June, one  
3 thousand nine hundred ninety-eight, to the insurance  
4 commissioner-examination revolving fund, fund 7150, be  
5 decreased by expiring the amount of five hundred ten  
6 thousand seventy-two dollars and to the insurance  
7 commissioner-cash control fund, fund 7152, be decreased  
8 by expiring the amount of eight hundred eighty-seven  
9 thousand seventy-seven dollars to the state fund, general  
10 revenue, to be available for further and additional  
11 appropriation.

12       The purpose of this bill is to expire the sum of the five  
13 hundred ten thousand seventy-two dollars from the  
14 insurance commissioner-examination revolving fund, fund  
15 7150, and to expire the sum of eight hundred eighty-  
16 seven thousand seventy-seven dollars from the insurance  
17 commissioner-cash control, fund 7152, to the  
18 unappropriated surplus balance in the state fund, general  
19 revenue, for the fiscal year ending the thirtieth day of  
20 June, one thousand nine hundred ninety-eight, to be  
21 available for further and additional appropriation.

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## 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)

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

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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.		
2	<b>Sec. 3. Appropriations from other funds.</b>		
3	MISCELLANEOUS BOARDS AND COMMISSIONS		
4	<i>194—Public Service Commission</i>		
5	(WV Code Chapter 24A)		
6	Account No.		
7	Fund <u>8623</u> FY <u>1998</u> Org <u>0926</u>		
8		Act-	Other
9		ivity	Funds
10	4	Unclassified . . . . .	099 \$ 357,000

11 And, that the items of the total appropriations to the  
12 public service commission, account no. fund 8623, fiscal  
13 year 1998, organization 0926, be amended and increased  
14 in the line items as follows:

15	TITLE II—APPROPRIATIONS.		
16	<b>Sec. 3. Appropriations from other funds.</b>		
17	MISCELLANEOUS BOARDS AND COMMISSIONS		
18	<i>194—Public Service Commission</i>		
19	(WV Code Chapter 24A)		
20	Account No.		
21	Fund <u>8623</u> FY <u>1998</u> Org <u>0926</u>		

		<b>Act- ivity</b>	<b>Other Funds</b>
22			
23			
24	1 Personal Services . . . . .	001	\$ 300,000
25	3 Employee Services . . . . .	010	57,000

26 The purpose of this supplementary appropriation bill  
 27 is to supplement, amend, reduce and transfer between  
 28 existing items in the aforesaid account for the designated  
 29 spending unit. The item for unclassified is reduced by  
 30 three hundred fifty-seven thousand dollars. The item for  
 31 personal services is increased by three hundred thousand  
 32 dollars. The item for employee benefits is increased by  
 33 fifty-seven thousand dollars. The amounts as itemized for  
 34 expenditure in the fiscal year ending the thirtieth day of  
 35 June, one thousand nine hundred ninety-eight, shall be  
 36 available for expenditure immediately upon the effective  
 37 date of this bill.

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## 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)

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

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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		Act- ivity	Other Funds
11	4 Unclassified . . . . .	099	\$ 114,240

12 And, that the items of the total appropriations to the  
13 public service commission, account no. fund 8625, fiscal  
14 year 1998, organization 0926, be amended and increased  
15 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 25		Act- ivity	Other Funds
26	1 Personal Services . . . . .	001	\$ 96,000
27	3 Employee Services . . . . .	010	18,240

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 one  
32 hundred fourteen thousand two hundred forty dollars.  
33 The item for personal services is increased by ninety-six  
34 thousand dollars. The item for employee benefits is  
35 increased by eighteen thousand two hundred forty dollars.  
36 The amounts as itemized for expenditure in the fiscal year  
37 ending the thirtieth day of June, one thousand nine  
38 hundred ninety-eight, shall be available for expenditure  
39 immediately upon the effective date of this bill.

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## CHAPTER 50

(H. B. 4385—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

[By Request of the Executive]

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

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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 <u>8706</u> FY <u>1998</u> Org <u>0308</u>		
8		Act-	Federal
9		ivity	Funds
10	1	Unclassified—Total . . . . .	096 \$10,881

11 The purpose of this supplementary appropriation bill  
 12 is to supplement this account in the budget act for fiscal  
 13 year ending the thirtieth day of June, one thousand nine  
 14 hundred ninety-eight, by adding ten thousand eight  
 15 hundred eighty-one dollars to the existing appropriation  
 16 for unclassified for the collection of occupational injury  
 17 and illness data for expenditure during fiscal year one  
 18 thousand nine hundred ninety-eight.

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## CHAPTER 51

(H. B. 4386—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)  
 [By Request of the Executive]

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[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	<b>Section 5. Appropriations of federal funds.</b>		
3	DEPARTMENT OF HEALTH		
4	AND HUMAN RESOURCES		
5	232— <i>Division of Human Services</i> —		
6	(WV Code Chapters 9, 48 and 49)		
7	Account No.		
8	Fund <u>8722</u> FY <u>1998</u> Org <u>0511</u>		
9		<b>Act-</b>	<b>Federal</b>
10		<b>ivity</b>	<b>Funds</b>
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.

## CHAPTER 52

(H. B. 4395—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)  
 [By Request of the Executive]

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

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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 | <b>Section 5. Appropriations of federal funds.</b> |
| 3 | DEPARTMENT OF HEALTH                               |
| 4 | AND HUMAN RESOURCES                                |
| 5 | <i>232—Division of Human Services—</i>             |

6 (WV Code Chapters 9, 48 and 49)

7 Account No.

8 Fund 8722 FY 1998 Org 0511

9		Act-	Federal
10		ivity	Funds
11	1 Unclassified—Total . . . . .	096	\$870,000

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 eight hundred seventy  
 16 thousand dollars to the existing appropriation for  
 17 unclassified for child welfare services for the family and  
 18 children's tracking system (FACTS) for expenditure  
 19 during fiscal year one thousand nine hundred ninety-  
 20 eight.

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## CHAPTER 53

(H. B. 4387—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)  
 [By Request of the Executive]

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[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:

1 TITLE II—APPROPRIATIONS.

2 Section 5. Appropriations of federal funds.

3 DEPARTMENT OF HEALTH AND  
4 HUMAN RESOURCES

5 231—*Human Rights Commission*—

6 (WV Code Chapter 5)

7 Account No.

8 Fund 8725 FY 1998 Org 0510

9 10		Act- ivity	Federal Funds
11	1 Unclassified—Total . . . . .	096	\$20,000

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 twenty thousand dollars  
16 to the existing appropriation for unclassified for EEOC  
17 and HUD programs for expenditure during fiscal year  
18 one thousand nine hundred ninety-eight.

## CHAPTER 54

(H. B. 4388—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)  
[By Request of the Executive]

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

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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.
- 2 Section 5. Appropriations of federal funds.
- 3 DEPARTMENT OF MILITARY AFFAIRS
- 4 AND PUBLIC SAFETY
- 5 235—West Virginia State Police—

6	(WV Code Chapter 15)		
7	Account No.		
8	Fund <u>8741</u> FY <u>1998</u> Org <u>0612</u>		
9		<b>Act-</b>	<b>Federal</b>
10		<b>ivity</b>	<b>Funds</b>
11	1	Unclassified—Total . . . . .	096 \$1,070,391

12 The purpose of this supplementary appropriation bill  
 13 is to supplement this account in the budget act for the  
 14 fiscal year ending the thirtieth day of June, one thousand  
 15 nine hundred ninety-eight, by adding one million seventy  
 16 thousand three hundred ninety-one dollars to the existing  
 17 appropriation for unclassified for law enforcement  
 18 improvements for expenditure during fiscal year one  
 19 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.]



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 West Virginia development office - community development, account no. fund 8746, fiscal year 1998, organization 0307, 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 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:

1 TITLE II—APPROPRIATIONS.

2 Section 6. Appropriations from federal block grants.

3 255—*West Virginia Development Office—*  
 4 *Community Development*

5 Account No.

6 Fund 8746 FY 1998 Org 0307

7	8	<b>Act-</b>	<b>Federal</b>
8	9	<b>ivity</b>	<b>Funds</b>
9	1 Unclassified—Total . . . . .	096	\$4,000,000

10 The purpose of this supplementary appropriation bill  
 11 is to supplement this account in the budget act for the  
 12 fiscal year ending the thirtieth day of June, one thousand  
 13 nine hundred ninety-eight, by adding four million dollars  
 14 to the existing appropriation for the small cities block  
 15 grant program to be expended during the fiscal year one  
 16 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.]

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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

		<b>Act-</b>	<b>Federal</b>
		<b>ivity</b>	<b>Funds</b>
10	1 Unclassified—Total . . . . .	096	\$551,570

11       The purpose of this supplementary appropriation bill  
 12 is to supplement this account in the budget act for fiscal  
 13 year ending the thirtieth day of June, one thousand nine  
 14 hundred ninety-eight, by adding five hundred twenty-six  
 15 thousand five hundred seventy dollars to the existing  
 16 appropriation for the development of the West Virginia  
 17 regional transpark and twenty-five thousand dollars for a  
 18 mobile aircraft rescue and fire fighting training simulator  
 19 needs survey for expenditure during fiscal year one  
 20 thousand nine hundred ninety-eight.

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## CHAPTER 57

(H. B. 4390—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)  
 [By Request of the Executive]

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[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:

1 TITLE II—APPROPRIATIONS.

2 Section 5. Appropriations of federal funds.

3 EXECUTIVE

4 219a—Department of Agriculture—  
5 State Soil Conservation Committee

6 Account No.

7 Fund 8783 FY 1998 Org 1400

8		<b>Act-</b>	
9		<b>ivity</b>	<b>Federal</b>
			<b>Funds</b>
10	1 Unclassified—Total . . . . .	096	\$28,617

11 The purpose of this supplementary appropriation bill  
12 is to supplement this account in the budget act for the  
13 fiscal year ending the thirtieth day of June, one thousand  
14 nine hundred ninety-eight, by providing for a new item of  
15 appropriation to be established therein to appropriate  
16 federal funds in the amount of twenty-eight thousand six  
17 hundred seventeen dollars to be expended during fiscal  
18 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]

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

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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:

- |   |  |
|---|--|
| 1 | TITLE II—APPROPRIATIONS.                           |
| 2 | <b>Section 5. Appropriations of federal funds.</b> |
| 3 | EXECUTIVE  |
| 4 | <i>213—Governor's Office—</i>                      |
| 5 | <i>Governor's Cabinet on Children and Families</i> |

6	(WV Code Chapter 5)		
7	Account No.		
8	Fund <u>8792</u> FY <u>1998</u> Org <u>0100</u>		
9		<b>Act-</b>	<b>Federal</b>
10		<b>ivity</b>	<b>Funds</b>
11	1 Unclassified—Total . . . . .	096	\$460,000

12       The purpose of this supplementary appropriation bill  
 13 is to supplement this account in the budget act for the  
 14 fiscal year ending the thirtieth day of June, one thousand  
 15 nine hundred ninety-eight, by adding four hundred sixty  
 16 thousand dollars to the existing appropriation for the  
 17 governor's cabinet on children and families for  
 18 expenditure during fiscal year one thousand nine hundred  
 19 ninety-eight.

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## CHAPTER 59

(Com. Sub. for H. B. 4392—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)  
 [By Request of the Executive]

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[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 governor's office — commission for national and community service, account no. fund 8800, fiscal year 1998, organization 0100, 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 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

6 (WV Code Chapter 5)

7 Account No.

8 Fund 8800 FY 1998 Org 0100

9	10		<b>Act- ivity</b>	<b>Federal Funds</b>
11	1	Unclassified—Total . . . . .	096	\$707,500

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 seven hundred seven  
16 thousand five hundred dollars to the existing  
17 appropriation for unclassified for the commission for  
18 national and community service for expenditure during  
19 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]

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

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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
- 4                   RESOURCES
- 5                   229a—Division of Health—
- 6                   West Virginia Drinking Water Treatment

7 (WV Code Chapter 16)  
 8 Account No.  
 9 Fund 8824 FY 1998 Org 0506

10	Act-	Federal
11	ivity	Funds
12 1	Unclassified—Total . . . . . 096	\$12,558,000

13 The above appropriation for Unclassified—Total shall  
 14 be transferred to the West Virginia Water Treatment  
 15 Revolving Fund or appropriate bank depository and the  
 16 Drinking Water Treatment Revolving — Administrative  
 17 Expense Fund as provided by chapter 16, of the code.

18 The purpose of this supplementary appropriation bill  
 19 is to supplement this account in the budget act for fiscal  
 20 year ending the thirtieth day of June, one thousand nine  
 21 hundred ninety-eight, by providing for a new item of  
 22 appropriation to be established therein to appropriate  
 23 federal funds in the amount of twelve million five hundred  
 24 fifty-eight thousand dollars to Unclassified for West  
 25 Virginia Drinking Water Treatment to be expended  
 26 during fiscal year one thousand nine hundred ninety-  
 27 eight.

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## CHAPTER 61

(H. B. 4714—By Delegates Pettit, Compton, Cann, Fantasia,  
 Facemyer, Walters and Border)

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

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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

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	<b>Sec. 6. Appropriations from federal block grants.</b>		
3	DEPARTMENT OF HEALTH		
4	AND HUMAN RESOURCES		
5	<i>261a—Division of Health—</i>		
6	<i>Abstinence Education Program</i>		
7	Account No.		
8	Fund <u>8825</u> FY <u>1998</u> Org <u>0506</u>		
9		Act-	Other
10		ivity	Funds
11	1 Unclassified—Total . . . . .	096	\$243,000

12 The purpose of this supplementary appropriation bill  
 13 is to supplement this account in the budget act for the  
 14 fiscal year ending the thirtieth day of June, one thousand  
 15 nine hundred ninety-eight, by adding two hundred forty-  
 16 three thousand dollars by providing for a new item of  
 17 appropriation to be established therein to appropriate  
 18 federal funds in the amount of two hundred forty-three  
 19 thousand dollars to the Unclassified total for Abstinence  
 20 Education Program to be expended during fiscal year one  
 21 thousand nine hundred ninety-eight.

## CHAPTER 62

(S. B. 781—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

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

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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.

7		Fund <u>9007</u> FY <u>1998</u> Org <u>0802</u>	
8			<b>State</b>
9			<b>Road</b>
10			<b>Fund</b>
11	5	Capital Outlay-Building . . . . . 222	\$1,860,000

12 And, that the items of the total appropriations from the  
 13 state road fund to account no. fund 9007, fiscal year  
 14 1998, organization 0802, be amended and increased in the  
 15 line items as follows:

16 TITLE II—APPROPRIATIONS.

17 **Sec. 2. Appropriations from state road fund.**

18 DEPARTMENT OF TRANSPORTATION

19 *92—Division of Motor Vehicles*

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

21 Account No.

22 Fund 9007 FY 1998 Org 0802

23			<b>State</b>
24			<b>Road</b>
25			<b>Fund</b>
26	1	Personal Services . . . . . 001	\$ 206,475
27	3	Employee Benefits . . . . . 010	23,800
28	4	Unclassified . . . . . 099	376,173

29 The purpose of this supplementary appropriation bill  
 30 is to supplement, amend, reduce and transfer between  
 31 existing items in the aforesaid account for the designated  
 32 spending unit. The item for capital outlay-building is  
 33 reduced by one million eight hundred sixty thousand  
 34 dollars. The item for personal services is increased by two  
 35 hundred six thousand four hundred seventy-five dollars,  
 36 employee benefits is increased by twenty-three thousand  
 37 eight hundred dollars and unclassified is increased by  
 38 three hundred seventy-six thousand one hundred seventy-  
 39 three dollars. The amounts as itemized for expenditure in  
 40 the fiscal year ending the thirtieth day of June, one  
 41 thousand nine hundred ninety-eight, shall be available for  
 42 expenditure immediately upon the effective date of this  
 43 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)

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[Passed February 5, 1998; in effect from passage. Approved by the Governor.]

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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

5 (WV Code Chapters 17 and 17C)

6 Account No.

7 Fund 9017 FY 1998 Org 0803

8			<b>State</b>
9			<b>Road</b>
10		<b>Act-</b>	<b>Fund</b>
		<b>ivity</b>	

11	2	ARC Assessment . . . . .	136	\$293,000
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12 And, that the items of the total appropriations from the  
13 state road fund to account no. fund 9017, fiscal year  
14 1998, organization 0803, be amended and increased in the  
15 line items as follows:

16 TITLE II—APPROPRIATIONS.

17 Sec. 2. Appropriations from state road fund.

18 DEPARTMENT OF TRANSPORTATION

19 93—Division of Highways

20 (WV Code Chapters 17 and 17C)

21 Account No.

22 Fund 9017 FY 1998 Org 0803

23				<b>State</b>
24			<b>Act-</b>	<b>Road</b>
25			<b>ivity</b>	<b>Fund</b>

26	5	Maintenance, State Local Service . . . . .	271	\$3,000,000
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27	6	Maintenance, Contract Paving and		
28	7	Secondary Road Maintenance . . . . .	272	3,000,000

29	8	Bridge Repair and Replacement . . . . .	273	9,000,000
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30	12	Interstate Construction . . . . .	278	5,000,000
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31	13	Other Federal Aid Programs . . . . .	279	64,000,000
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32	14	Appalachian Programs . . . . .	280	17,000,000
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33	15	Nonfederal Aid Construction . . . . .	281	17,000,000
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34       The purpose of this supplementary appropriation bill  
 35 is to supplement, amend, reduce and transfer between  
 36 existing items in the aforesaid account for the designated  
 37 spending unit. The item for ARC assessment is reduced  
 38 by two hundred ninety-three thousand dollars. The item  
 39 for maintenance, state local service is increased by three  
 40 million dollars, maintenance, contract paving and  
 41 secondary road maintenance is increased by three million  
 42 dollars, bridge repair and replacement is increased by nine  
 43 million dollars, interstate construction is increased by five  
 44 million dollars, other federal aid programs is increased by  
 45 sixty-four million dollars, Appalachian programs is  
 46 increased by seventeen million dollars, and nonfederal aid  
 47 construction is increased by seventeen million dollars.  
 48 The amounts as itemized for expenditure in fiscal year  
 49 ending the thirtieth day of June, one thousand nine  
 50 hundred ninety-eight, shall be available for expenditure  
 51 immediately upon the effective date of this bill.

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## 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)

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[Passed February 4, 1998; in effect from passage. Approved by the Governor.]

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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:

- 1                                   TITLE II—APPROPRIATIONS.
- 2                   **Sec. 2. Appropriations from state road fund.**

3 DEPARTMENT OF TRANSPORTATION

4 94—Division of Highways  
5 Federal Aid Highway Matching Fund  
6 (WV Code Chapters 17 and 17C)  
7 Account No.  
8 Fund 9018 FY 1998 Org 0803

		Act- ivity	State Road Fund
12	2 Other Federal Aid Programs . . . .	279	\$18,000,000

13 And, that the items of the total appropriations from the  
14 state road fund to account no. fund 9018, fiscal year  
15 1998, organization 0803, be amended and increased in the  
16 line items as follows:

17 TITLE II—APPROPRIATIONS.

18 **Sec. 2. Appropriations from state road fund.**

19 DEPARTMENT OF TRANSPORTATION

20 94—Division of Highways  
21 Federal Aid Highway Matching Fund  
22 (WV Code Chapters 17 and 17C)  
23 Account No.  
24 Fund 9018 FY 1998 Org 0803

		Act- ivity	State Road Fund
28	3 Appalachian Programs . . . . .	280	\$15,000,000

29 The purpose of this supplementary appropriation bill  
30 is to supplement, amend, reduce and transfer between  
31 existing items in the aforesaid account for the designated  
32 spending unit. The item for other federal aid programs is  
33 reduced by eighteen million dollars. The item for  
34 Appalachian programs is increased by fifteen million  
35 dollars. The amounts as itemized for expenditure in fiscal  
36 year ending the thirtieth day of June, one thousand nine  
37 hundred ninety-eight, shall be available for expenditure  
38 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]

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

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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  
2 governor may reduce appropriations according to any of  
3 the methods set forth in sections twenty-one and twenty-  
4 two of this article. The governor may, in lieu of imposing  
5 a reduction in appropriations, request an appropriation by  
6 the Legislature from the revenue shortfall reserve fund  
7 established in this section.

8 (b) A revenue shortfall reserve fund is hereby  
9 continued within the state treasury. The revenue shortfall  
10 reserve fund shall be funded as set forth in this subsection  
11 from surplus revenues, if any, in the state fund, general  
12 revenue, as the surplus revenues may accrue from time to  
13 time. Within sixty days of the end of each fiscal year, the  
14 secretary shall cause to be deposited into the revenue  
15 shortfall reserve fund the first fifty percent of all surplus  
16 revenues, if any, determined to have accrued during the  
17 fiscal year just ended. The revenue shortfall reserve fund

18 shall be funded continuously and on a revolving basis in  
19 accordance with this subsection up to an aggregate  
20 amount not to exceed five percent of the total  
21 appropriations from the state fund, general revenue, for  
22 the fiscal year just ended. If at the end of any fiscal year  
23 the revenue shortfall reserve fund is funded at an amount  
24 equal to or exceeding five percent of the state's general  
25 revenue fund budget for the fiscal year just ended, then  
26 there shall be no further obligation of the secretary under  
27 the provisions of this section to apply any surplus  
28 revenues as set forth in this subsection until such time as  
29 the revenue shortfall reserve fund balance is less than five  
30 percent of the total appropriations from the state fund,  
31 general revenue.

32 (c) Not earlier than the first day of November of each  
33 calendar year, if the state's fiscal circumstances are such as  
34 to otherwise trigger the authority of the governor to  
35 reduce appropriations under this section or section  
36 twenty-one or section twenty-two of this article, then in  
37 that event the governor may notify the presiding officers  
38 of both houses of the Legislature in writing of his or her  
39 intention to convene the Legislature pursuant to section  
40 19, article VI of the West Virginia constitution for the  
41 purpose of requesting the introduction of a supplementary  
42 appropriation bill or to request a supplementary  
43 appropriation bill at the next preceding regular session of  
44 the Legislature to draw money from the surplus revenue  
45 shortfall reserve fund to meet any anticipated revenue  
46 shortfall. If the Legislature fails to enact a supplementary  
47 appropriation from the revenue shortfall reserve fund  
48 during any special legislative session called for the  
49 purposes set forth in this section or during the next  
50 preceding regular session of the Legislature, then the  
51 governor may proceed with a reduction of appropriations  
52 pursuant to sections twenty-one and twenty-two of this  
53 article. Should any amount drawn from the revenue  
54 shortfall reserve fund pursuant to an appropriation made  
55 by the Legislature prove insufficient to address any  
56 anticipated shortfall, then the governor may also proceed  
57 with a reduction of appropriations pursuant to sections  
58 twenty-one and twenty-two of this article.

59 (d) Upon the creation of the fund, the Legislature is  
60 authorized and may make an appropriation from the  
61 revenue shortfall reserve fund for revenue shortfalls, for  
62 emergency revenue needs caused by acts of God or  
63 natural disasters or for other fiscal needs as determined  
64 solely by the Legislature.

65 (e) Prior to the thirty-first day of October, in any fiscal  
66 year in which revenues are inadequate to make timely  
67 payments of the state's obligations, the governor may by  
68 executive order, after first notifying the presiding officers  
69 of both houses of the Legislature in writing, borrow funds  
70 from the revenue shortfall reserve fund. The amount of  
71 funds borrowed under this subsection shall not exceed one  
72 and one-half percent of the general revenue estimate for  
73 the fiscal year in which the funds are to be borrowed, or  
74 the amount the governor determines is necessary to make  
75 timely payment of the state's obligations, whichever is less.  
76 Any funds borrowed pursuant to this subsection shall be  
77 repaid, without interest, and redeposited to the credit of the  
78 revenue shortfall reserve fund within ninety days of their  
79 withdrawal.

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## CHAPTER 66

(H. B. 4055—By Delegates Seacrist, Michael, Laird and Campbell)

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[Passed February 17, 1998; in effect from passage. Approved by the Governor.]

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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.**

1 (a) Notwithstanding any other provision of this code to  
2 the contrary, whenever the treasurer of a county board of  
3 education, a county commission or a municipality is  
4 authorized or directed pursuant to law to disburse or  
5 transfer on behalf of the county board of education,  
6 county commission or municipality, funds in the custody  
7 of the treasurer or in the treasury of the county board of  
8 education, county commission or municipality, the  
9 treasurer is authorized to disburse or transfer the funds by  
10 means of electronic or wire transfer and that transfer shall  
11 include appropriate electronic remittance voucher  
12 information. The county board of education, county  
13 commission or governing body of a municipality may  
14 enter into a written agreement with the banking institution  
15 in which the funds are deposited, prescribing the manner  
16 in which electronic or wire transfer of the funds shall be  
17 accomplished, identifying by number and name those  
18 accounts from which electronic or wire transfers may be  
19 made, identifying which person or persons are authorized  
20 to order the electronic or wire transfer of funds from those  
21 accounts, and implementing a security procedure as  
22 defined in section two hundred one, article four-a, chapter  
23 forty-six of this code.

24 (b) It is the duty of the county board of education,  
25 county commission or governing body of a municipality  
26 to adopt a system of internal controls satisfactory to the  
27 tax commissioner as ex officio, the chief inspector and  
28 supervisor of public offices for the documentation and  
29 reporting of all transfers or disbursements of funds  
30 accomplished by electronic or wire transfer to ensure the  
31 safety and integrity of the payment process.

32 (c) The county board of education, county  
33 commission or governing body of a municipality shall  
34 also adopt procedures:

35 (1) Governing the method by which the treasurer is  
36 authorized to direct payments from the funds of the  
37 county board of education, county commission or  
38 municipality on deposit with a banking institution;

39 (2) Governing the method of payment of obligations  
40 of the county board of education, county commission or  
41 municipality, including payment by check, draft,  
42 electronic or wire transfer, or other method of payment  
43 mutually acceptable to the county board of education,  
44 county commission or governing body of a municipality,  
45 and the banking institution; and

46 (3) Covering any other matters it believes necessary to  
47 ensure the safety and integrity of the payment process.

48 (d) A county board of education, county commission  
49 or governing body of a municipality shall file a copy of  
50 the procedures it adopts in accordance with the provisions  
51 of subsection (c) of this section with each banking  
52 institution in which its funds are deposited.

53 (e) The treasurer of the county board of education,  
54 county commission or municipality, and the banking  
55 institution shall agree to follow rules and procedures for  
56 electronic fund transfers promulgated by the federal  
57 reserve bank and the national clearing house association  
58 (NACHA) to ensure the safety and integrity of the  
59 payment process. These safeguards must be approved by  
60 the county board of education, county commission or  
61 governing body of a municipality. If the county board of  
62 education, county commission or governing body of a  
63 municipality finds that the safeguards are consistent with  
64 and do not contravene the procedures adopted under the  
65 provisions of subsection (c) of this section, the safeguards  
66 must be approved.

67 (f) This section applies to disbursements or transfers  
68 made after the thirty-first day of May, one thousand nine  
69 hundred ninety-eight.

## CHAPTER 67

(Com. Sub. for H. B. 4096—By Delegates Thompson, Jenkins, Kominar,  
H. White, Heck, Hunt and Tomblin)

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

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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  
2 three of this chapter, the commissioner shall have  
3 supervision and jurisdiction over state banks, regulated  
4 consumer lenders, second mortgage lenders and brokers,  
5 credit unions, and all other persons now or hereafter made  
6 subject to his or her supervision or jurisdiction. All  
7 powers, duties, rights and privileges vested in the  
8 department are hereby vested in the commissioner. He or  
9 she shall be the chief executive officer of the department  
10 of banking and shall be responsible for the department's  
11 organization, services and personnel, and for the orderly  
12 and efficient administration, enforcement and execution  
13 of the provisions of this chapter and all laws vesting  
14 authority or powers in or prescribing duties or functions  
15 for the department or the commissioner.

16 (b) The commissioner shall:

17 (1) Maintain the office for the department at the state  
18 capitol, and there keep a complete record of all the  
19 department's transactions, of the financial conditions of all  
20 financial institutions and such records of the activities of  
21 other persons as the commissioner may deem important.  
22 Notwithstanding any other provision of the code of West  
23 Virginia, heretofore or hereafter enacted, the records  
24 relating to the financial condition of any financial  
25 institution and any information contained therein shall be  
26 confidential for the use of the commissioner and  
27 authorized personnel of the department of banking. No  
28 person shall divulge any information contained in any  
29 such records except as hereafter authorized in response to  
30 a valid subpoena or subpoena duces tecum issued  
31 pursuant to law in a criminal proceeding or in a civil  
32 enforcement action brought by the state or federal  
33 regulatory authorities. Subpoenas shall first be directed to  
34 the commissioner, who shall authorize disclosure of  
35 relevant records and information therefrom for good  
36 cause, upon imposing terms and conditions as are deemed  
37 necessary to protect the confidential nature of the records,  
38 the financial integrity of the financial institution or the  
39 person to which the records relate, and the legitimate  
40 privacy interests of any individual named in such records.  
41 Conformity with federal procedures shall be sought where  
42 the institution maintains federal deposit insurance. The  
43 commissioner shall have and may exercise reasonable  
44 discretion as to the time, manner and extent the other  
45 records in his or her office and the information contained  
46 therein shall be available for public examination;

47 (2) Require all financial institutions to comply with all  
48 the provisions of this chapter and other applicable laws, or  
49 any rule promulgated or order issued thereunder;

50 (3) Investigate all alleged violations of this chapter and  
51 all other laws which he or she is required to enforce and of  
52 any rule promulgated or order issued thereunder; and

53 (4)(1) Require a criminal background investigation,  
54 including fingerprint checks, of each: (A) Applicant  
55 seeking approval to charter and/or control a state bank,

56 state credit union, or a foreign bank state agency or  
57 representative office; (B) applicant seeking a license to  
58 engage in the business of money transmission, currency  
59 exchange, or other activity regulated under article two,  
60 chapter thirty-two-a of this code; (C) applicant subject to  
61 the commissioner's supervision seeking a license to  
62 engage in the business of regulated consumer lending,  
63 mortgage lending or brokering; and (D) department of  
64 banking financial institutions regulatory employee  
65 applicant, to be made through the West Virginia state  
66 police and the federal bureau of investigation: *Provided,*  
67 That where the applicant is a company or entity already  
68 subject to supervision and regulation by the federal  
69 reserve board or other federal bank, thrift or credit union  
70 regulator, or is a direct or indirect subsidiary of a  
71 company or entity subject to such supervision and  
72 regulation, or where the applicant is a company subject to  
73 the supervision and regulation of the federal securities and  
74 exchange commission whose stock is publicly traded on a  
75 registered exchange or through the national association of  
76 securities dealers automated quotation system, or the  
77 applicant is a direct or indirect subsidiary of such a  
78 company, the investigation into criminal background shall  
79 not be so required. The provisions of this subdivision are  
80 not applicable to applicants seeking interim bank charters  
81 organized solely for the purpose of facilitating the  
82 acquisition of another bank pursuant to section five, article  
83 four of this chapter.

84 (2) Where a nonexempt applicant hereunder is not a  
85 natural person, the principals of the applicant shall be  
86 subject to the requirements of subdivision (1) of this  
87 subsection. As used in this subdivision, the term  
88 "principals" means the chief executive officer, regardless  
89 of title, managing partner if a partnership, members of the  
90 organizing group if no chief executive officer has yet  
91 been appointed, trustee, or other person controlling the  
92 conduct of the affairs of a licensee. A person controlling  
93 ten percent or more of the stock of any corporate  
94 applicant shall be deemed to be a principal under this  
95 provision.

96 (c) In addition to all other authority and powers vested  
97 in the commissioner by provisions of this chapter and  
98 other applicable laws, the commissioner is authorized and  
99 empowered:

100 (1) To provide for the organization of the department  
101 and the procedures and practices thereof and implement  
102 the same by the promulgation of rules and forms as  
103 appropriate, which rules shall be promulgated in  
104 accordance with article three, chapter twenty-nine-a of this  
105 code;

106 (2) To employ, direct, discipline, discharge and  
107 establish qualifications and duties for all personnel for the  
108 department, including, but not limited to, examiners,  
109 assistant examiners, conservators and receivers, to establish  
110 the amount and condition of bonds for such thereof as he  
111 or she deems appropriate and to pay the premiums  
112 thereon, and if he or she so elects, to have all such  
113 personnel subject to and under the classified service of the  
114 state personnel department;

115 (3) To cooperate with organizations, agencies,  
116 committees and other representatives of financial  
117 institutions of the state in connection with schools,  
118 seminars, conferences and other meetings to improve the  
119 responsibilities, services and stability of the financial  
120 institutions;

121 (4) In addition to the examinations required by  
122 section six of this article, to inspect, examine and audit the  
123 books, records, accounts and papers of all financial  
124 institutions at such times as circumstances in his or her  
125 opinion may warrant;

126 (5) To call for and require all such data, reports and  
127 information from financial institutions under his or her  
128 jurisdiction, at such times and in such form, content and  
129 detail, deemed necessary by him or her in the faithful  
130 discharge of his or her duties and responsibilities in the  
131 supervision of the financial institutions;

132 (6) Subject to the powers vested in the board by article  
133 three of this chapter, to supervise the location,

134 organization, practices and procedures of financial  
135 institutions and, without limitation on the general powers  
136 of supervision thereof, to require financial institutions to:

137 (A) Maintain their accounts consistent with such  
138 regulations as he or she may prescribe and in accordance  
139 with generally accepted accounting practices;

140 (B) Observe methods and standards which he or she  
141 may prescribe for determining the value of various types  
142 of assets;

143 (C) Charge off the whole or any part of an asset which  
144 at the time of his or her action could not lawfully be  
145 acquired;

146 (D) Write down an asset to its market value;

147 (E) Record or file writings creating or evidencing liens  
148 or other interests in property;

149 (F) Obtain financial statements from prospective and  
150 existing borrowers;

151 (G) Obtain insurance against damage and loss to real  
152 estate and personal property taken as security;

153 (H) Maintain adequate insurance against such other  
154 risks as he or she may deem and determine to be  
155 necessary and appropriate for the protection of depositors  
156 and the public;

157 (I) Maintain an adequate fidelity bond or bonds on its  
158 officers and employees;

159 (J) Take such other action as may in his or her  
160 judgment be required of the institution in order to  
161 maintain its stability, integrity and security as required by  
162 law and all rules promulgated by him or her; and

163 (K) Verify any or all asset or liability accounts;

164 (7) Subject to the powers vested in the board by article  
165 three of this chapter, to receive from any person or  
166 persons and to consider any request, petition or  
167 application relating to the organization, location, conduct,  
168 services, policies and procedures of any financial

169 institution and to act thereupon in accordance with any  
170 provisions of law applicable thereto;

171 (8) In connection with the investigations required by  
172 subdivision (3), subsection (b) of this section, to issue  
173 subpoenas and subpoenas duces tecum, administer oaths,  
174 examine persons under oath, and hold and conduct  
175 hearings, any such subpoenas or subpoenas duces tecum  
176 to be issued, served and enforced in the manner provided  
177 in section one, article five, chapter twenty-nine-a of this  
178 code. Any person appearing and testifying at such a  
179 hearing may be accompanied by an attorney employed by  
180 him or her;

181 (9) To issue declaratory rulings in accordance with the  
182 provisions of section one, article four, chapter twenty-  
183 nine-a of this code;

184 (10) To study and survey the location, size and  
185 services of financial institutions, the geographic, industrial,  
186 economic and population factors affecting the  
187 agricultural, commercial and social life of the state, and  
188 the needs for reducing, expanding or otherwise modifying  
189 the services and facilities of financial institutions in the  
190 various parts of the state, and to compile and keep current  
191 data thereon to aid and guide him or her in the  
192 administration of the duties of his or her office;

193 (11) To implement all of the provisions of this chapter  
194 (except the provisions of article three) and all other laws  
195 which he or she is empowered to administer and enforce  
196 by the promulgation of rules in accordance with the  
197 provisions of article three, chapter twenty-nine-a of this  
198 code;

199 (12) To implement the provisions of chapter forty-six-  
200 a of this code applicable to consumer loans and consumer  
201 credit sales by the promulgation of rules in accordance  
202 with the provisions of article three, chapter twenty-nine-a  
203 of this code so long as said rules do not conflict with any  
204 rules promulgated by the state's attorney general;

205 (13) To foster and encourage a working relationship  
206 between the department of banking and financial

207 institutions, credit, consumer, mercantile and other  
208 commercial and finance groups and interests in the state in  
209 order to make current appraisals of the quality, stability  
210 and availability of the services and facilities of financial  
211 institutions;

212 (14) To provide to financial institutions and the public  
213 copies of the West Virginia statutes relating to financial  
214 institutions, suggested drafts of bylaws commonly used by  
215 financial institutions, and such other forms and printed  
216 materials as may be found by him or her to be helpful to  
217 financial institutions, their shareholders, depositors and  
218 patrons, and to make reasonable charges therefor;

219 (15) To delegate the powers and duties of his or her  
220 office, other than the powers and duties in this subsection  
221 hereinafter excepted, to qualified department personnel,  
222 who shall act under the direction and supervision of the  
223 commissioner and for whose acts he or she shall be  
224 responsible, but the commissioner may delegate to the  
225 deputy commissioner of banking and to no other  
226 department personnel the following powers, duties and  
227 responsibilities, all of which are hereby granted to and  
228 vested in the commissioner and for all of which the  
229 commissioner shall likewise be responsible:

230 (A) To order any person to cease violating any  
231 provision or provisions of this chapter or other applicable  
232 law or any rule promulgated or order issued thereunder;

233 (B) To order any person to cease engaging in any  
234 unsound practice or procedure which may detrimentally  
235 affect any financial institution or depositor thereof;

236 (C) To revoke the certificate of authority, permit or  
237 license of any financial institution except a banking  
238 institution in accordance with the provisions of section  
239 thirteen of this article; and

240 (D) To accept an assurance in writing that the person  
241 will not in the future engage in the conduct alleged by the  
242 commissioner to be unlawful, which conduct could be  
243 subject to an order under the provisions of this chapter.  
244 Such assurance of voluntary compliance shall not be

245 considered an admission of violation for any purpose,  
246 except that if a person giving such assurance fails to  
247 comply with its terms, the assurance is prima facie  
248 evidence that prior to such assurance the person engaged  
249 in conduct described in such assurance;

250 (16) To seek and obtain from courts, civil penalties  
251 against any person who violates this chapter, the rules  
252 issued pursuant thereto, or any orders lawfully entered by  
253 the commissioner or board of banking and financial  
254 institutions in an amount not less than fifty dollars nor  
255 more than five thousand dollars for each violation;

256 (17) To receive from state banking institutions  
257 applications to change the locations of their principal  
258 offices and to approve or disapprove such applications;  
259 and

260 (18) To take such other action as he or she may deem  
261 necessary to enforce and administer the provisions of this  
262 chapter (except the provisions of article three) and all  
263 other laws which he or she is empowered to administer and  
264 enforce, and to apply to any court of competent  
265 jurisdiction for appropriate orders, writs, processes and  
266 remedies.

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## 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)

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

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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**

**2A. Maxwell Governmental Access to Financial Records Act.**

**4. Banking Institutions and Services Generally.**

### **ARTICLE 2A. MAXWELL GOVERNMENTAL ACCESS TO FINANCIAL RECORDS ACT.**

§31A-2A-1. Definitions.

§31A-2A-2. Requirements for government access to records.

§31A-2A-3. Written authorization of customer; contents; certification of compliance.

§31A-2A-4. Exceptions.

§31A-2A-5. Subpoena and notice requirements.

§31A-2A-6. Subpoena issued by grand jury.

§31A-2A-7. Penalties.

§31A-2A-8. Statute of limitations; tolling of statute.

§31A-2A-9. Injunctive relief; recovery of attorney fees.

§31A-2A-10. Exclusive remedies.

**§31A-2A-1. Definitions.**

1 As used in this article:

2 (a) "Customer" means any person or his or her duly  
3 authorized representative who has transacted business with  
4 or has used the services of a financial institution or for  
5 whom a financial institution has acted as a fiduciary in  
6 relation to an account maintained in such person's name;

7 (b) "Financial institution" means a bank, a savings  
8 and loan association, a trust company or a credit union  
9 chartered pursuant to any state or federal law;

10 (c) "Financial record" means the original or a copy  
11 of any record or document held by a financial institution  
12 pertaining to a customer of the financial institution,  
13 including any record of a transaction conducted by means  
14 of a customer bank communication terminal or other  
15 electronic device. "Financial record" also means any  
16 information derived from such records or documents;

17 (d) "Investigation" includes, but is not limited to, any  
18 inquiry by a state or local law-enforcement officer, sheriff  
19 or prosecuting attorney, or any inquiry made by a state or  
20 local governmental entity for the purpose of determining  
21 whether there has been a violation of any law which is  
22 punishable by imprisonment or by a fine or other  
23 monetary liability;

24 (e) "Person" means an individual, partnership,  
25 corporation, limited liability company, association, trust or  
26 any other legal entity;

27 (f) "State entity" means any state or local  
28 governmental office, officer, department, division, bureau,  
29 board or commission, including the Legislature, and any

30 other state or local government agency of West Virginia,  
31 its political subdivisions and any agent thereof; and

32 (g) "Subpoena" includes a subpoena duces tecum or  
33 any other lawful subpoena to compel testimony or the  
34 disclosure or production of documents.

**§31A-2A-2. Requirements for government access to records.**

1 (a) No state entity may have access to or obtain from a  
2 financial institution financial records of any customer  
3 except as set forth in section four of this article or under  
4 the following circumstances:

5 (1) The customer has executed a written authorization  
6 pursuant to section three of this article;

7 (2) The financial records are disclosed in response to a  
8 judicial order, warrant, summons or subpoena issued by a  
9 court of competent jurisdiction or a valid administrative  
10 order or subpoena of a state entity expressly ordering or  
11 requiring the disclosure of financial records: *Provided,*  
12 That any subpoena issued pursuant to the provisions of  
13 this subsection shall comply with the provisions of section  
14 five of this article;

15 (3) The financial records are disclosed in response to a  
16 judicial order authorizing the appointment of the state  
17 entity or its agent: (A) As guardian of the customer or  
18 conservator of his or her property; or (B) as administrator  
19 or executor of the customer's estate;

20 (4) The financial records are disclosed: (A) Pursuant  
21 to a state or federal rule of civil or criminal procedure or  
22 any comparable rule of another court of competent  
23 jurisdiction; (B) in response to a subpoena issued in  
24 connection with any pending civil or criminal proceeding  
25 in which a state entity is a party; or (C) in response to  
26 interrogatories in aid of execution propounded by a state  
27 entity where it is a judgment creditor of the customer;

28 (5) The financial records are disclosed to law-  
29 enforcement officers pursuant to a grand jury or trial  
30 subpoena resulting from a criminal investigation which

31 complies with the provisions of section six of this article;  
32 or

33 (6) As may be required or permitted by any other  
34 state or federal law.

35 (b) No state entity obtaining financial records  
36 pursuant to the provisions of this article and no person  
37 who obtains financial records from a state entity which  
38 obtained such financial records pursuant to the provisions  
39 of this article shall disclose such financial records: (i) To  
40 any other state entity unless such other state entity has  
41 authority or authorization to receive the financial record  
42 in accordance with the provisions of this article; or (ii) to  
43 any person unless such person has authority or  
44 authorization to receive the financial record: *Provided,*  
45 That nothing herein shall limit or prevent the disclosure of  
46 financial records which are otherwise public documents or  
47 matters of public record or the disclosure of financial  
48 records made to facilitate a lawful proceeding,  
49 investigation, examination or inspection by a state entity.  
50 Financial records obtained under this article by a state  
51 entity shall not be subject to disclosure under the  
52 provisions of article one, chapter twenty-nine-b of this  
53 code.

**§31A-2A-3. Written authorization of customer; contents;  
certification of compliance.**

1 (a) A customer may authorize disclosure under section  
2 two of this article by signing and dating a statement in  
3 which he or she:

4 (1) Authorizes the disclosure for such period as may  
5 be agreed upon;

6 (2) Indicates an understanding of his or her right to  
7 revoke such authorization at any time before the financial  
8 records are disclosed;

9 (3) Identifies the financial records which are  
10 authorized to be disclosed;

11 (4) Specifies the purposes for which, and the state  
12 entity to which, such records may be disclosed; and

13 (5) Acknowledges that he or she has been advised of  
14 his or her rights under this article by the state entity  
15 seeking the disclosure of the financial records.

16 (b) No authorization as provided in subsection (a) of  
17 this section shall be required as a condition of doing  
18 business with any financial institution.

19 (c) No financial institution shall release the financial  
20 records of a customer pursuant to his or her authorization  
21 under this section until the state entity seeking the records  
22 also provides certification in writing to the financial  
23 institution that it has complied with the applicable  
24 provisions of this article. The financial institution and the  
25 state entity seeking to obtain the disclosure of the financial  
26 records shall retain copies of this written authorization.

#### §31A-2A-4. Exceptions.

1 (a) Nothing in this article is intended to, or shall  
2 prohibit, apply to or interfere with:

3 (1) The lawful authority or ability of the  
4 commissioner of banking or any other state or federal  
5 regulatory agency of a bank, savings and loan association,  
6 trust company or credit union to obtain or to share  
7 between such regulatory agencies any records which the  
8 commissioner of banking or such state or federal  
9 regulatory agency may deem appropriate for the  
10 examination and regulation of the financial institution;

11 (2) The lawful authority or ability of the  
12 commissioner of insurance or the state auditor to obtain  
13 any records from a financial institution relating to the  
14 financial institution's sale of insurance or securities;

15 (3) The dissemination or publication of information  
16 derived from financial records if the information cannot  
17 be identified to any particular customer, deposit or  
18 account, or if the information is in composite form and is  
19 not disseminated or published in a way which identifies  
20 any particular customer, deposit or account;

21           (4) The making of reports or returns specifically  
22 required or permitted by federal or state law, including  
23 applicable tax law or regulations;

24           (5) The disclosure of any information under the  
25 provisions of the uniform commercial code governing the  
26 dishonor of a negotiable instrument, or the disclosure to  
27 any purported state entity payee or to any purported state  
28 entity holder of a check, draft, order or other item,  
29 whether or not such instrument has been accepted by such  
30 payee or holder as payment, as to whether or not such  
31 instrument would be honored if presented at the time of  
32 such disclosure;

33           (6) A state entity obtaining a credit report or  
34 consumer credit report from anyone other than a financial  
35 institution;\*

36           (7) The exchange, in the regular course of business, of  
37 information showing the outstanding balance of a  
38 mortgage loan account in connection with a sale,  
39 refinancing or foreclosure of real property in a transaction  
40 to which the state entity is a party; or the disclosure, in the  
41 regular course of business, of information on a mortgage  
42 or deed of trust on a subject property to a state entity as  
43 holder of any subordinate mortgage, deed of trust or  
44 security interest;

45           (8) The disclosure to the department of health and  
46 human resources, upon written request, of an individual's  
47 financial records which the department determines are  
48 necessary to verify or confirm the individual's eligibility  
49 or ineligibility for public assistance;

50           (9) The disclosure of an individual's financial records  
51 in response to a written request by the department of  
52 health and human resources, as authorized by the federal  
53 parent locator service of the United States department of  
54 health and human services;

55           (10) The examination or audit of financial records  
56 relating to preneed funeral trust accounts pursuant to  
57 article fourteen, chapter forty-seven of this code;

58       (11) The disclosure of financial records relating to  
59 unclaimed property pursuant to article eight, chapter  
60 thirty-six of this code, including the examination of  
61 financial records by the state treasurer or his or her agent  
62 to determine compliance with the handling and reporting  
63 of unclaimed property as provided by, and subject to, the  
64 limitations set forth in section twenty of said article;

65       (12) The presentation to appropriate local, state or  
66 federal law-enforcement authorities of a certificate under  
67 oath by an authorized representative of a financial  
68 institution drawee that declares the dishonor of the check,  
69 draft or order by the drawee, the lack of an account with  
70 the drawee at the time of utterance or the insufficiency of  
71 the drawer's funds at the time of presentation and  
72 utterance in connection with any criminal action for  
73 obtaining property or services by a worthless check, draft  
74 or order;

75       (13) The notification to appropriate local, state or  
76 federal law-enforcement authorities or regulatory agencies  
77 that the financial institution, its officers, employees or  
78 agents thereof have information which may be relevant to  
79 a possible violation of any statute or regulation. The  
80 disclosure of any information pursuant to this subdivision  
81 may only include the name or other identifying  
82 information concerning any individual, corporation or  
83 account involved in and the nature of any suspected illegal  
84 activity;

85       (14) The disclosure of information or records by a  
86 financial institution to any court or other appropriate state  
87 entity which is incidental to recording a lien, perfecting a  
88 security interest, proving a claim in bankruptcy or  
89 otherwise collecting on a debt owing either to the financial  
90 institution itself or in its role as a fiduciary;

91       (15) The disclosure of information or records by a  
92 financial institution which is incidental to processing an  
93 application for assistance to a customer in the form of a  
94 government loan, loan guaranty, or loan insurance  
95 agreement, or which is incidental to processing a default  
96 on, or administering, a government guaranteed or insured  
97 loan or to initiating contact with an appropriate state entity

98 for the purpose of providing any financial record  
99 necessary to permit such authority to carry out its  
100 responsibilities under a loan, loan guaranty or loan  
101 insurance agreement;

102 (16) The disclosure of information incidental to a  
103 transaction in the normal course of business of the  
104 financial institution where there is no reasonable cause to  
105 believe that the information is intended to be used by the  
106 state entity in connection with an investigation of the  
107 customer;

108 (17) The preparation, review, handling or maintenance  
109 of financial records in the ordinary course of business by  
110 any officer, employee or agent of a financial institution  
111 having custody of the records; or

112 (18) The disclosure to appropriate law-enforcement  
113 officials of the financial records of any officer, director,  
114 employee or controlling shareholder of a financial  
115 institution by a financial institution or by any state or  
116 federal regulatory agency having authority to regulate the  
117 financial institution, if there is reason to believe that the  
118 financial record is relevant to a possible violation by such  
119 person of any law relating to a crime against the financial  
120 institution or any such state or federal regulatory agency.  
121 No state or federal regulatory agency which discloses any  
122 information pursuant to this subdivision shall be deemed  
123 to have waived any privilege applicable to that record  
124 under law.

125 (b) Nothing in this article shall preclude a state entity  
126 from obtaining information that is public record without  
127 regard to this article although the information may have  
128 been derived from financial records.

129 (c) Nothing in this article shall preclude a state entity  
130 from obtaining information or financial records  
131 voluntarily submitted to it by others in an attempt to seek  
132 governmental assistance or redress of a grievance,  
133 including legislative change: *Provided*, That the financial  
134 record or information was not solicited by the state entity  
135 in an effort to evade the requirements of this article or

136 submitted by a financial institution in contravention of  
137 section seven of this article.

**§31A-2A-5. Subpoena and notice requirements.**

1 (a) A financial institution may disclose or produce  
2 financial records to a state entity in compliance with a  
3 subpoena served upon it if the subpoena contains a  
4 certification that: (1) A copy of the subpoena has been  
5 served on the customer whose records are sought by the  
6 state entity seeking disclosure or production of the records  
7 at least ten days prior to the date on which disclosure or  
8 production is sought; or (2) that service on the customer  
9 has been waived for good cause by the circuit court of  
10 Kanawha County or other circuit court of competent  
11 jurisdiction.

12 (b) Any person whose financial records are to be  
13 disclosed pursuant to a subpoena served under the  
14 provisions of subdivision (1), subsection (a) of this section  
15 may challenge the subpoena by filing a motion to quash  
16 in a court of competent jurisdiction at any time prior to  
17 the disclosure of the records. After the filing and service  
18 of the motion upon the financial institution and the state  
19 entity requesting the issuance of the subpoena, the  
20 production of financial records shall be stayed, without  
21 liability to the financial institution, until the court holds a  
22 hearing on the motion and an order is entered sustaining,  
23 modifying or quashing the subpoena.

**§31A-2A-6. Subpoena issued by grand jury.**

1 (a) In addition to the requirements of section five of  
2 this article, financial records obtained pursuant to a  
3 subpoena issued under the authority of a grand jury:

4 (1) Shall be returned and actually presented to the  
5 grand jury;

6 (2) Shall be used only: (A) For the purpose of  
7 considering whether to issue an indictment or presentment  
8 by that grand jury; (B) for the purpose of prosecuting a  
9 crime for which that indictment or presentment is issued;  
10 or (C) for any other purpose authorized by the West  
11 Virginia rules of criminal procedure; and

12 (3) Shall be destroyed or returned to the financial  
13 institution if not used for one of the purposes specified in  
14 subdivision (2) of this subsection.

15 (b) Financial records obtained pursuant to a subpoena  
16 issued under the authority of a grand jury and any  
17 descriptions of the contents of such financial records must  
18 be maintained in sealed records of the grand jury unless  
19 such financial records or descriptions thereof have been  
20 used in the prosecution of a crime for which the grand  
21 jury issued an indictment or presentment or for any other  
22 purpose authorized by the West Virginia rules of criminal  
23 procedure.

#### **§31A-2A-7. Penalties.**

1 (a) Any state, county or local government official or  
2 employee who knowingly and willfully discloses financial  
3 records with intent to violate this article, or who knowingly  
4 and willfully induces or attempts to induce an officer,  
5 employee, agent or director of a financial institution to  
6 disclose financial records to a state entity with intent to  
7 violate this article, is guilty of a misdemeanor and, upon  
8 conviction thereof, shall be fined not more than one  
9 thousand dollars.

10 (b) Any customer whose financial records or the  
11 information contained therein has been negligently  
12 disclosed by a state entity or a financial institution in  
13 violation of this article may file an action in any circuit  
14 court of this state against the state entity or financial  
15 institution and, if the customer proves that the state entity  
16 or financial institution negligently disclosed the  
17 customer's financial records or the information contained  
18 therein, may recover from the state entity or financial  
19 institution an amount equal to the sum of:

20 (1) Up to one thousand dollars in civil damages, as  
21 penalty, without regard to the volume of records involved  
22 or lack of actual damages;

23 (2) Any actual damages sustained by the customer as a  
24 result of the disclosure; and

25 (3) The costs of the action, including reasonable  
26 attorney's fees, as may be allowed by the court.

27 (c) No financial institution or person shall be held  
28 liable, notwithstanding subsection (a) or (b) of this section,  
29 for the disclosure of financial records pursuant to a  
30 subpoena, summons, warrant, court order or administrative  
31 order which on its face appears to have been issued upon  
32 lawful authority. No financial institution or agent or  
33 employee thereof who discloses financial records pursuant  
34 to this article: (i) In good faith reliance upon a certificate  
35 by any state entity that this article has been complied with;  
36 or (ii) pursuant to the provisions of subdivision (13),  
37 subsection (a), section four of this article shall be liable  
38 under this article or any other law or rule of this state or  
39 any political subdivision hereof.

**§31A-2A-8. Statute of limitations; tolling of statute.**

1 (a) An action to enforce any provision of this article  
2 may be brought in any circuit court of competent  
3 jurisdiction in this state within three years from the date on  
4 which the violation occurs or the date of discovery of such  
5 violation, whichever is later.

6 (b) If any customer files a motion or application  
7 under this article which has the effect of delaying the  
8 access of a state entity to financial records pertaining to  
9 such customer, any applicable statute of limitations shall  
10 be tolled for the period extending from the date such  
11 motion or application was filed until the date an order is  
12 entered pursuant thereto.

**§31A-2A-9. Injunctive relief; recovery of attorney fees.**

1 In addition to any other remedy contained in this  
2 article, injunctive relief shall be available to require  
3 compliance with any procedure established in this article.  
4 Any customer awarded injunctive relief pursuant to this  
5 section may recover costs and reasonable attorney's fees as  
6 determined by the court.

**§31A-2A-10. Exclusive remedies.**

1           The remedies provided in this article are exclusive for  
2 any violations or alleged violations of this article.

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENER-  
ALLY.**

**§31A-4-10a. Stockholder inspection of books and records.**

1           (a) Any stockholder or group of stockholders of a  
2 state banking institution, holding of record the number of  
3 voting shares of such bank specified below, upon making  
4 written demand stating a proper purpose, shall have the  
5 right to examine, in person or by agent or attorney, at any  
6 reasonable time or times, nonconfidential portions of its  
7 books and records of account, minutes and record of  
8 stockholders and to make extracts therefrom. Such right  
9 of examination is limited to a stockholder or group of  
10 stockholders holding of record:

11           (1) Voting shares having a cost of not less than one  
12 hundred thousand dollars or constituting not less than one  
13 percent of the total outstanding voting shares: *Provided*,  
14 That such stockholder or group of stockholders have held  
15 of record such voting shares for a period of at least six  
16 months before making such written demand; or

17           (2) Not less than five percent of the total outstanding  
18 voting shares.

19           (b) Except as provided in subsection (a) of this section  
20 and in section ten of this article with respect to inspection  
21 of a list of stockholders, no stockholder or group of  
22 stockholders of a state banking institution shall have any  
23 other right under this section or common law to examine  
24 its books and records of account, minutes and record of  
25 stockholders.

26           (c) The right to examination authorized by subsection  
27 (a) of this section and any right to inspect the list of  
28 stockholders provided by a bank's bylaws to an extent  
29 greater than that authorized under section ten of this  
30 article may be denied to any stockholder or group of  
31 stockholders upon the refusal of any such stockholder or  
32 group of stockholders to furnish such institution, its  
33 transfer agent or registrar an affidavit that such

34 examination or inspection is not desired for any purpose  
35 which is in the interest of a business or object other than  
36 the business of the institution, that such stockholder has  
37 not within the five years preceding the date of the affidavit  
38 sold or offered for sale, and does not now intend to sell or  
39 offer for sale, any list of stockholders of the bank or of  
40 any other bank or bank holding company, and that such  
41 stockholder has not within said five-year period aided or  
42 abetted any other person in procuring any list of  
43 stockholders for purposes of selling or offering such list  
44 for sale.

45 (d) Notwithstanding any provision of this section or  
46 any common law, no stockholder or group of  
47 stockholders shall have the right to obtain, inspect or copy  
48 any portion of any books or records of a state banking  
49 institution containing:

50 (1) A list of depositors in, borrowers from or  
51 customers of such banking institution;

52 (2) The addresses of the banking institution's  
53 depositors, borrowers or customers;

54 (3) Individual deposit or loan balances or records of  
55 the banking institution's depositors, borrowers or  
56 customers; or

57 (4) Any data from which such information could be  
58 reasonably constructed.

59 (e) For purposes of this section, a confidential record  
60 includes, but is not limited to:

61 (1) Any document or information relating to a  
62 nonpublic market strategy or plan of the bank;

63 (2) Any document or information relating to matters  
64 declared confidential under state or federal law, including,  
65 but not limited to, bank regulatory reports;

66 (3) Any document or information relating to a  
67 proposed merger, acquisition or sale of assets which has  
68 not yet been disclosed to the public by the bank, including  
69 any document or information which constitutes inside

70 information for purposes of state or federal securities law;  
71 and

72 (4) Any document or information deemed by the  
73 bank as proprietary relating to the loan policy established  
74 by the bank.

### CHAPTER 31C. CREDIT UNIONS.

#### ARTICLE 5. DIRECTION OF CREDIT UNION AFFAIRS.

##### §31C-5-11. Inspection of books and records by members.

1 (a) Each credit union shall keep at its principal office  
2 in this state a record of the names and addresses of its  
3 members entitled to vote. A credit union shall keep  
4 correct and complete books and records of account and  
5 shall keep minutes of the proceedings of its members,  
6 board of directors and committees having any of the  
7 authority of the board of directors. Any member or  
8 group of members of a credit union, upon making a  
9 demand stating a proper purpose, shall have the right to  
10 examine, in person or by agent or attorney, at any  
11 reasonable time or times, nonconfidential portions of its  
12 books and records of account, minutes and records of  
13 members and to make extracts therefrom.

14 (b) The right to examination authorized by subsection  
15 (a) of this section and any right to inspect the list of  
16 members provided by a credit union's bylaws to an extent  
17 greater than that provided by this section may be denied  
18 to any member or group of members upon the refusal of  
19 any such member or group of members to furnish the  
20 credit union with an affidavit that such examination or  
21 inspection is not desired for any purpose which is in the  
22 interest of a business or object other than the business of  
23 the credit union.

24 (c) Notwithstanding any provision of this section or  
25 common law, no member or group of members shall have  
26 the right to obtain, inspect or copy any portion of any  
27 books or records of a credit union containing:

28 (1) Individual deposit or loan balances or records  
29 regarding other credit union members or information  
30 respecting their personal affairs; or

31 (2) Any data from which such information could be  
32 reasonably constructed.

33 (d) For purposes of this section, a confidential record  
34 includes, but is not limited to, the following:

35 (1) Any document or information relating to a  
36 nonpublic market strategy or plan of the credit union;

37 (2) Any document or information relating to matters  
38 declared confidential under state or federal law, including,  
39 but not limited to, credit union regulatory reports; and

40 (3) Any document or information deemed by the  
41 credit union as proprietary relating to the loan policy  
42 established by the credit union.

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## CHAPTER 69

(H. B. 4038—By Delegates Thompson and Kominar)

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[Passed February 16, 1998; in effect ninety days from passage. Approved by the Governor.]

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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.**

1 (a) Any state-chartered banking institution shall have  
2 and exercise all of the powers necessary for, or incidental  
3 to, the business of banking, and without limiting or  
4 restricting such general powers, it shall have the right to  
5 buy or discount promissory notes and bonds, negotiate  
6 drafts, bills of exchange and other evidences of  
7 indebtedness, borrow money, receive deposits on such  
8 terms and conditions as its officers may prescribe, buy and  
9 sell, exchange, bank notes, bullion or coin, loan money on  
10 personal or other security, rent safe-deposit boxes and  
11 receive on deposit, for safekeeping, jewelry, plate, stocks,  
12 bonds and personal property of whatsoever description  
13 and provide customer services incidental to the business of  
14 banking, including, but not limited to, the issuance and  
15 servicing of and lending money by means of credit cards  
16 as letters of credit or otherwise. Any state-chartered  
17 banking institution may accept, for payment at a future  
18 date, not to exceed one year, drafts drawn upon it by its  
19 customers. Any state-chartered banking institution may  
20 issue letters of credit, with a specified expiration date or  
21 for a definite term, authorizing the holders thereof to draw  
22 drafts upon it or its correspondents, at sight or on time.  
23 Any such banking institution may organize, acquire, own,  
24 operate, dispose of, and otherwise manage wholly owned  
25 subsidiary corporations for purposes incident to the  
26 banking powers and services authorized by this chapter.

27 (b) Any state-chartered banking institution may  
28 acquire, own, hold, use and dispose of real estate, which  
29 shall in no case be carried on its books at a value greater  
30 than the actual cost: *Provided*, That such property shall be  
31 necessary for the convenient transaction of its business,  
32 including any buildings, office space or other facilities to  
33 rent as a source of income: *Provided, however*, That such  
34 investment hereafter made shall not exceed sixty-five  
35 percent of the amount of its capital stock and surplus,  
36 unless the consent in writing of the commissioner of  
37 banking is first secured.

38 (c) Any state-chartered banking institution may  
39 acquire, own, hold, use and dispose of real estate, which  
40 shall be carried on its books at the lower of fair value or  
41 cost as defined in rules promulgated by the commissioner  
42 of banking, subject to the following limitations:

43 (1) Such as shall be mortgaged to it in good faith as  
44 security for debts in its favor;

45 (2) Such as shall be conveyed to it in satisfaction of  
46 debts previously contracted in the course of its business  
47 dealings; and

48 (3) Such as it shall purchase at sales under judgments,  
49 decrees, trust deeds or mortgages in its favor, or shall  
50 purchase at private sale, to secure and effectuate the  
51 payment of debts due to it.

52 (d) The value at which any real estate is held shall not  
53 be increased by the addition thereto of taxes, insurance,  
54 interest, ordinary repairs, or other charges which do not  
55 materially enhance the value of the property.

56 (e) Any real estate acquired by any such banking  
57 institution under subdivisions (2) and (3) of subsection (c)  
58 of this section shall be disposed of by the banking  
59 institution at the earliest practicable date, but the officers  
60 thereof shall have a reasonable discretion in the matter of  
61 the time to dispose of such property in order to save the  
62 banking institution from unnecessary losses: *Provided*,  
63 That in every case such property shall be disposed of  
64 within ten years from the time it is acquired by the  
65 banking institution, unless an extension of time is given in  
66 writing by the commissioner of banking.

67 (f) The sale of insurance by state-chartered banking  
68 institutions shall be subject to the following:

69 Any state-chartered banking institution having its  
70 main or a branch office in any place the population of  
71 which does not exceed five thousand inhabitants, as shown  
72 by the last preceding decennial census, through its  
73 employees or agents, may, from that place or office,  
74 directly or through a controlled subsidiary, act as agent  
75 for any fire, life, casualty, liability or other insurance  
76 company authorized by the authorities of the state to do  
77 business in this state, by soliciting and selling insurance  
78 and collecting premiums on policies issued by such  
79 company; and may receive for services so rendered all  
80 permissible fees or commissions as may be agreed upon  
81 between the bank and the insurance company for which it  
82 may act as agent: *Provided*, That no such bank shall in  
83 any case assume or guarantee the payment on insurance  
84 policies issued through its agency by its principal:

85 *Provided, however,* That the bank shall not guarantee the  
86 truth of any statement made by an insured in filing his,  
87 her or its application for insurance. For purposes of this  
88 section, a "controlled subsidiary" is one in which the state-  
89 chartered banking institution owns at least eighty percent  
90 of all classes of stock. This provision is intended to give  
91 state-chartered banking institutions parity with national  
92 banks operating in this state with regard to the marketing  
93 and sale of insurance notwithstanding the prohibitions and  
94 limitations contained in article eight-c or elsewhere in this  
95 chapter, and shall be construed consistently with  
96 interpretations of 12 U.S.C. §92, the regulations  
97 promulgated thereunder, and any successor legislation or  
98 regulations.

99 (g) Any state-chartered banking institution may,  
100 through its employees or agents, market and sell, as agent,  
101 annuities, either at its main office or at any of its branches.  
102 The marketing and sale of annuities may be made by the  
103 bank, through its employees or agents, directly, or through  
104 a controlled subsidiary, as defined in subsection (f) above.  
105 This provision is intended to give state-chartered banks  
106 parity with national banks operating in this state with  
107 regard to the sale of annuities, notwithstanding the  
108 prohibitions and limitations contained in article eight-c or  
109 elsewhere in this chapter.

110 (h) Unless waived in writing by the commissioner, a  
111 state-chartered bank may not invest or otherwise expend  
112 in excess of ten percent of its capital and surplus  
113 calculated at the end of the previous calendar year on the  
114 activities permitted by subsections (f) and (g) on an  
115 aggregate basis together with any of its approved  
116 financially related products and services. For purposes of  
117 this section, approved financially related products and  
118 services means those products and services offered by a  
119 state-chartered bank pursuant to an approved application  
120 submitted under article eight-c of this chapter.

121 (i) The commissioner shall promulgate rules in  
122 accordance with chapter twenty-nine-a of this code  
123 relating to the sale of insurance or annuities, including, but  
124 not limited to, rules requiring notice of the intention to  
125 engage in such activities and relating to the policies and  
126 procedures state-chartered banking institutions should  
127 adopt in connection with such activities.

128 (j) Any state-chartered banking institution and its  
129 employees or agents engaged in the sale of insurance or  
130 annuities permitted hereby must also comply with all  
131 applicable requirements for the sale of such products  
132 imposed by the West Virginia commissioner of insurance  
133 and by any state or federal securities regulator.

134 (k) No state-chartered banking institution shall  
135 hereafter invest more than twenty percent of the amount  
136 of its capital and surplus in furniture and fixtures, whether  
137 the same be installed in a building owned by such banking  
138 institution, or in quarters leased by it, unless the consent in  
139 writing of the commissioner of banking is first secured.

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## CHAPTER 70

(H. B. 4101—By Delegates Thompson, Dempsey, Jenkins,  
Faircloth, Kominar, Clements and Laird)

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[Passed February 16, 1998; in effect ninety days from passage. Approved by the Governor.]

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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.**

1 Every state banking institution shall make at least four  
2 reports each year to the commissioner of banking upon  
3 his or her call therefor. The reports shall be called for as  
4 nearly as conveniently may be on the dates on which the  
5 comptroller of the currency shall call for reports by  
6 national banking associations, and be in the form and  
7 contain the details as shall be prescribed by the  
8 commissioner of banking. The reports shall be verified  
9 by the oath of the president or active vice president or  
10 cashier and attested by the signatures of at least three  
11 directors of the banking institution. Each report shall  
12 show in detail, under appropriate heads, the resources and  
13 liabilities of the banking institution at the close of business  
14 on the date specified by the banking commissioner, and  
15 shall be transmitted to the commissioner within ten days  
16 from the receipt of the request for the report. The reports  
17 may be submitted or made available electronically in a  
18 format specified by the commissioner of banking. An  
19 electronic filing with the appropriate federal bank  
20 regulatory agency may be deemed as meeting the  
21 requirements of this section, unless the commissioner  
22 objects in writing and requires alternative filing(s).

23 In lieu of the report, the commissioner of banking  
24 shall have discretion to accept from a banking institution  
25 which is a member of the federal reserve system a report,  
26 the submission thereof which is required of the banking  
27 institution by the federal reserve board, or by its agency,  
28 provided that the report shall show in detail, under  
29 appropriate heads, the resources and liabilities of the  
30 banking institution at the close of business on the day  
31 specified by the federal reserve board, or by its agency,  
32 and shall contain such further details as may be deemed  
33 necessary or desirable by the commissioner of banking.

34 Any report shall be at the expense of the banking  
35 institution.

## CHAPTER 71

(Com. Sub. for H. B. 4040—By Delegates Thompson, Jenkins, Amores, Kominar, Trump, Johnson and Smirl)

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[Passed February 11, 1998; in effect ninety days from passage. Approved by the Governor.]

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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.**

1 (a) Any bank may cause to be copied or reproduced,  
2 by any photographic, photostatic, microphotographic or  
3 by similar miniature photographic process or by  
4 nonerasable optical image disks (commonly referred to as  
5 compact disks) or by other records retention technology  
6 approved by rule of the commissioner of banking, all or  
7 any number of its checks, and all or any part of its  
8 documents, books, records, correspondence and all other  
9 instruments, papers and writings, in any manner relating to  
10 the operation of its business, other than its notes, bonds,  
11 mortgages and other securities and investments, and may  
12 substitute such copies or reproductions either in positive  
13 or negative form for the originals thereof. Thereafter,

14 such copy or reproduction in the form of a positive print  
15 thereof, shall be deemed for all purposes to be an original  
16 counterpart of and shall have the same force and effect as  
17 the original thereof and shall be admissible in evidence in  
18 all courts and administrative agencies in this state, to the  
19 same extent, and for the same purposes as the original  
20 thereof, and the banking institution may destroy or  
21 otherwise dispose of the original, but every banking  
22 institution shall retain either the originals or such copies or  
23 reproductions of its records of final entry, including,  
24 without limiting the generality of the foregoing, cards  
25 used under the card system and deposit tickets for deposits  
26 made, for a period of at least six years from the date of the  
27 last entry on such books or the date of making of such  
28 deposit tickets and card records, or, in the case of a  
29 banking institution exercising trust or fiduciary powers,  
30 accounting and legal records shall be retained until the  
31 expiration of six years from the date of termination of any  
32 trust or fiduciary relationship relating to such accounting  
33 and legal records by a final accounting, release, court  
34 decree or other proper means of termination, and  
35 supporting documentation for fiduciary account  
36 transactions shall be retained for six years from the dates  
37 of entry of such transactions.

38 All circumstances surrounding the making or issuance  
39 of such checks, documents, books, records, correspon-  
40 dence and other instruments, papers or writings, or the  
41 photographic, photostatic or microphotographic copies or  
42 optical disks or other permissible reproductions thereof,  
43 when the same are offered in evidence, may be shown to  
44 affect the weight but not the admissibility thereof.

45 Any device used to copy or reproduce such  
46 documents and records shall be one which correctly and  
47 accurately reproduces the original thereof in all details  
48 and any disk or film used therein shall be of durable  
49 material.

50 (b) When a subpoena duces tecum is served upon a  
51 custodian of records of any bank in an action or  
52 proceeding in which the bank is neither a party nor the  
53 place where any cause of action is alleged to have arisen

54 and the subpoena requires the production of all or any  
55 part of the records of the bank relating to the conduct of  
56 its business with its customers, the bank shall be entitled to  
57 a search fee not to exceed ten dollars, together with  
58 reimbursement for costs incurred in the copying or other  
59 reproduction of any such record or records which have  
60 already been reduced to written form, in an amount not to  
61 exceed seventy-five cents per page. Any and all such  
62 costs shall be borne by the party requesting the  
63 production of the record or records.

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## CHAPTER 72

(Com. Sub. for H. B. 4039—By Delegates Thompson, Kominar, H. White, Jenkins,  
Amores, Clements and Cann)

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

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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.**

1 (a) It is illegal for any banking institution or other  
2 depository institution to conduct its business in a facility  
3 that is a mobile unit not permanently attached to the real  
4 estate upon which it is located, except: (i) That such  
5 mobile units may be used as temporary banking quarters

6 pending construction of a permanent bank building on  
7 the same or adjacent property thereto if a charter for said  
8 bank has previously been approved; or except (ii) as  
9 provided by subsection (b) of this section. This section  
10 shall not be construed or interpreted to prohibit a financial  
11 institution from providing messenger services to its  
12 customers by which items are received by mail, armored  
13 car service or other courier or delivery service for  
14 subsequent deposit: *Provided*, That all such messenger  
15 services are confined to the territorial boundaries of the  
16 county in which an office of such financial institution is  
17 located or within fifty miles of an office of such financial  
18 institution.

19 (b) Upon the approval of the commissioner, a banking  
20 institution may establish one or more mobile facilities to  
21 accept or withdraw deposits, pay checks, issue cashier's  
22 checks, traveler's checks and other instruments, as well as  
23 perform other banking services. Each mobile facility shall  
24 be affiliated with and operated by a bank or branch office  
25 of a bank physically located and authorized to do business  
26 in West Virginia. All mobile facilities permitted hereunder  
27 are confined to the territorial boundaries of the county in  
28 which an office of such financial institution is located or  
29 within thirty miles of an office of such financial  
30 institution. A mobile facility shall be viewed as an  
31 extension of the qualified offices of the bank located in  
32 West Virginia and the transactions shall be governed by  
33 the laws applicable as if made at such offices. The term  
34 "mobile facility" shall include a mobile customer bank  
35 communications terminal which is intended to be moved  
36 or driven from place to place. A mobile customer bank  
37 communications terminal will be treated as an off-  
38 premises unit subject to mandatory sharing laws and rules  
39 notwithstanding any contrary provisions of this  
40 subsection: *Provided*, That no mobile customer bank  
41 communications terminal may serve as an automatic loan  
42 machine (ALM) terminal on behalf of any other  
43 institution other than the operating bank: *Provided*,  
44 *however*, That no mobile facility may be operated within  
45 two thousand feet of another bank's main office or  
46 branch office.

## CHAPTER 73

(Com. Sub. for H. B. 4591—By Delegates Thompson, Kominar, Seacrist,  
Jenkins, H. White, Hutchins and L. White)

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

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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-2-3. Exemptions.
- §32A-2-4. License application, issuance, and renewal.
- §32A-2-5. Fees.
- §32A-2-6. Denial of license or renewal of license.
- §32A-2-7. Authorization to propose rules.
- §32A-2-8. Qualifications for license or renewal of license.
- §32A-2-9. Access to criminal history information.
- §32A-2-10. Bond.
- §32A-2-11. Examination and fraudulently structured transactions.
- §32A-2-12. Investigations and subpoenas.
- §32A-2-13. Notification requirements.
- §32A-2-14. Records maintenance.
- §32A-2-15. Transaction records.
- §32A-2-16. Enforcement.
- §32A-2-17. Cooperative agreements.
- §32A-2-18. Criminal penalty.
- §32A-2-19. Civil penalty.
- §32A-2-20. Injunction.
- §32A-2-21. Consent orders.
- §32A-2-22. Cease and desist orders.
- §32A-2-23. Liability of licensees.
- §32A-2-24. Confidential information.
- §32A-2-25. Hearing on suspension or revocation of license.
- §32A-2-26. Deceptive name or advertising.
- §32A-2-27. Authorized delegates.
- §32A-2-28. Revocation or suspension of authorized delegates.

**§32A-2-1. Definitions.**

1 (1) "Commissioner" means the commissioner of  
2 banking of this state.

3 (2) "Check" or "payment instrument" means any  
4 check, traveler's check, draft, money order, or other  
5 instrument for the transmission or payment of money  
6 whether or not the instrument is negotiable. The term  
7 does not include a credit card voucher, a letter of credit or  
8 any instrument that is redeemable by the issuer in goods  
9 or services.

10 (3) "Currency" means a medium of exchange  
11 authorized or adopted by a domestic or foreign  
12 government.

13 (4) "Currency exchange" means the conversion of the  
14 currency of one government into the currency of another  
15 government, but does not include the issuance and sale of  
16 travelers checks denominated in a foreign currency.  
17 Transactions involving the electronic transmission of  
18 funds by licensed money transmitters which may permit,  
19 but do not require, the recipient to obtain the funds in a  
20 foreign currency outside of West Virginia are not  
21 currency exchange transactions: *Provided*, That they are  
22 not reportable as currency exchange transactions under  
23 federal laws and regulations.

24 (5) "Currency exchange, transportation, transmission  
25 business" means a person who is engaging in currency  
26 exchange, currency transportation, or currency  
27 transmission as a service or for profit.

28 (6) "Currency transmission" or "money transmission"  
29 means engaging in the business of selling or issuing  
30 checks or the business of receiving currency for the  
31 purpose of transmitting the currency or its equivalent by  
32 wire, facsimile, or other electronic means, or through the  
33 use of a financial institution, financial intermediary, the  
34 federal reserve system, or other funds transfer network. It  
35 includes the transmission of funds through the issuance  
36 and sale of stored value cards which are intended for  
37 general acceptance and use in commercial or consumer  
38 transactions.

39 (7) "Currency transportation" means knowingly  
40 engaging in the business of physically transporting  
41 currency from one location to another in a manner other  
42 than by a licensed armored car service exempted under  
43 section three of this article.

44 (8) "Licensee" means a person licensed by the  
45 commissioner under this article.

46 (9) "Money order" means any instrument for the  
47 transmission or payment of money in relation to which the  
48 purchaser or remitter appoints or purports to appoint the  
49 seller thereof as his agent for the receipt, transmission or  
50 handling of money, whether the instrument is signed by  
51 the seller, the purchaser or remitter, or some other person.

52 (10) "Person" means any individual, partnership,  
53 association, joint stock association, limited liability  
54 company, trust or corporation.

55 (11) "Principal" means a licensee's owner, president,  
56 senior officer responsible for the licensee's business, chief  
57 financial officer or any other person who performs similar  
58 functions or who otherwise controls the conduct of the  
59 affairs of a licensee. A person controlling ten percent or  
60 more of the voting stock of any corporate applicant is a  
61 principal under this provision.

62 (12) "Securities" means all bonds, debentures or other  
63 evidences of indebtedness: (a) Issued by the United States  
64 of America or any agency thereof, or guaranteed by the  
65 United States of America, or for which the credit of the  
66 United States of America or any agency thereof is pledged  
67 for the payment of the principal and interest thereof;  
68 and/or (b) which are direct general obligations of this state,  
69 or any other state if unconditionally guaranteed as to the  
70 principal and interest by the other state and if the other  
71 state has the power to levy taxes for the payment of the  
72 principal and interest thereof and is not in default in the  
73 payment of any part of the principal or interest owing by  
74 it upon any part of its funded indebtedness; and/or (c)  
75 which are general obligations of any county, school  
76 district or municipality in this state, issued pursuant to law  
77 and payable from ad valorem taxes levied on all of the

78 taxable property located therein, if the county, school  
79 district or municipality is not in default in the payment of  
80 any part of the principal or interest on any debt evidenced  
81 by its bonds, debentures or other evidences of  
82 indebtedness.

### §32A-2-2. License required.

1 (a) Except as provided by section three of this article,  
2 a person may not engage in the business of currency  
3 exchange, transportation, or transmission in this state  
4 without a license issued under this article.

5 (b) Any person who was previously licensed as a  
6 check seller under this chapter who holds a valid license  
7 on the effective date of this article shall be issued a  
8 provisional license under this article without the need of  
9 an additional application and fee. This provisional license  
10 shall expire upon six months of its issuance, during which  
11 time the licensee may continue to conduct its check selling  
12 business, provided that it maintains the net worth and  
13 security required under its previous license. The  
14 commissioner may require the licensee to obtain  
15 expanded bond coverage consistent with this article for the  
16 protection of purchasers of money transmission services  
17 and currency exchange services, as well as for covered  
18 currency transportation services, when the licensee  
19 conducts one or more of these businesses. At the  
20 expiration of a provisional license granted by this section,  
21 any person who wishes to continue to engage in any  
22 business regulated in this article shall apply for a license  
23 and meet the criteria under the provisions of this article. A  
24 provisional license granted by this section may upon  
25 hearing be suspended or revoked by the commissioner for  
26 good cause shown.

### §32A-2-3. Exemptions.

1 (a) The following are exempt from the provisions of  
2 this article:

3 (1) Banks, trust companies, foreign bank agencies,  
4 credit unions, savings banks, and savings and loan  
5 associations authorized to do business in the state, or

6 which qualify as federally insured depository institutions,  
7 whether organized under the laws of this state, any other  
8 state, or the United States;

9 (2) The United States and any department or agency  
10 thereof;

11 (3) The United States post office;

12 (4) This state and any political subdivision thereof;

13 (5) The provision of electronic transfer of government  
14 benefits for any federal, state or county governmental  
15 agency as defined in Federal Reserve Board Regulation E,  
16 by a contractor for and on behalf of the United States or  
17 any department, agency or instrumentality of the United  
18 States, or any state or any political subdivisions of a state;  
19 and

20 (6) Persons engaged in the business of currency  
21 transportation who operate an armored car service in this  
22 state pursuant to licensure under article eighteen, chapter  
23 thirty of this code: *Provided*, That the net worth of the  
24 licensee exceeds five million dollars. The term "armored  
25 car service" as used in this article means a service  
26 provided by a person transporting or offering to transport,  
27 under armed security guard, currency or other things of  
28 value in a motor vehicle specially equipped to offer a high  
29 degree of security. Persons seeking to claim this  
30 exemption shall notify the commissioner of their intent to  
31 do so and demonstrate that they qualify for its use.

32 (b) Any person who holds and maintains a valid  
33 license under this article may engage in the business of  
34 money transmission or currency exchange at one or more  
35 locations in this state through or by means of an  
36 authorized delegate or delegates as set forth in section  
37 twenty-seven of this article, as said licensee may designate  
38 and appoint from time to time, and no such authorized  
39 delegate shall be required to obtain a separate license  
40 under this article.

41 (c) The issuance and sale of stored value cards which  
42 are intended to purchase items only from the issuer or

43 seller of the stored value card is exempt from the  
44 provisions of this article.

**§32A-2-4. License application, issuance, and renewal.**

1 (a) An applicant for a license shall submit an  
2 application to the commissioner on a form prescribed by  
3 the commissioner.

4 (b) Each application shall be accompanied by a  
5 nonrefundable application fee and a license fee. If the  
6 application is approved, the application fee is the license  
7 fee for the first year of licensure.

8 (c) The commissioner shall issue a license if the  
9 commissioner finds that the applicant meets the  
10 requirements of this article and the rules adopted under  
11 this article. The commissioner shall approve or deny  
12 every application for an original license within one  
13 hundred twenty days from the date a complete application  
14 is submitted, unless the commissioner extends the period  
15 for good cause. A license is valid for one year from the  
16 date the license is issued by the commissioner.

17 (d) The licensee at each office it owns and operates in  
18 West Virginia shall prominently display, or maintain  
19 available for inspection, a copy of the license authorizing  
20 the conduct of a currency exchange business, if the  
21 location offers and provides such services. Where the  
22 currency exchange business is conducted through a  
23 licensee's authorized delegates in this state, each  
24 authorized delegate location offering such services shall  
25 maintain available for inspection, proof of their  
26 appointment by the licensee to conduct such business.

27 (e) As a condition for renewal of a license, the licensee  
28 must submit to the commissioner an application for  
29 renewal on a form prescribed by the commissioner and an  
30 annual license renewal fee.

31 (f) A license issued under this article may not be  
32 transferred or assigned.

33 (g) An applicant for a license who is not located in this  
34 state shall file an irrevocable consent, duly acknowledged,

35 that suits and actions may be commenced against the  
36 applicant in the courts of this state by service of process  
37 upon a person located within the state designated to accept  
38 service, or by service upon the secretary of state, as well as  
39 by service as set forth in this chapter.

**§32A-2-5. Fees.**

1 (a) The commissioner shall charge and collect the  
2 license application fees, license fees, license renewal fees,  
3 and examination fees in amounts reasonable and  
4 necessary to defray the cost of administering this article as  
5 follows:

6 (1) For applying for a license, an application and  
7 licensing fee of five hundred dollars, plus ten dollars for  
8 each location within the state at which the applicant and its  
9 authorized delegates are conducting business or propose  
10 to conduct business excepting the applicant's principal  
11 place of business.

12 (2) For renewal of a license, a fee of two hundred  
13 fifty dollars plus ten dollars for each location within the  
14 state at which the licensee and its authorized delegates are  
15 conducting business or propose to conduct business  
16 excepting the applicant's principal place of business.

17 (3) The total of fees required by subdivisions (1) or  
18 (2) of this subsection may not exceed two thousand five  
19 hundred dollars for any one application.

20 (4) For a change in address by the licensee of its  
21 principal place of business, a fee of one hundred dollars.

22 (5) For failure to timely submit an application of  
23 renewal or file audited financial statements required for  
24 renewal as set forth in this article, a penalty fee of ten  
25 dollars per day for each day late, unless an extension of  
26 time has been granted or the fee waived by the  
27 commissioner.

28 (b) Beginning one year after the effective date of this  
29 article, the commissioner may, by rules proposed for  
30 legislative approval in accordance with the provisions of  
31 article three, chapter twenty-nine-a of this code, amend the

32 fees set forth in this section and in subsection (b), section  
33 eleven of this article.

34 (c) Fees and moneys received and collected under this  
35 article shall be paid into the special revenue account in the  
36 state treasury for the division of banking established in  
37 section eight, article two, chapter thirty-one-a of this code.

**§32A-2-6. Denial of license or renewal of license.**

1 (a) The commissioner may deny the grant of a license  
2 or renewal of a license for a failure to comply or otherwise  
3 meet the requirements and qualifications of this article or  
4 a rule adopted under this article, including failure to  
5 submit a complete application.

6 (b) The denial of a license or denial of renewal by the  
7 commissioner and the appeal from that action are  
8 governed by the procedures for a contested case hearing  
9 under the provisions of article five, chapter twenty-nine-a  
10 of this code and shall conform to that provided for  
11 financial institutions pursuant to sections one and two,  
12 article eight, chapter thirty-one-a of this code and the rules  
13 thereunder.

14 (c) Whenever the commissioner refuses to issue a  
15 license, or refuses to renew a license, he or she shall make  
16 and enter an order to that effect and shall cause a copy of  
17 the order to be served in person or by certified mail,  
18 return receipt requested, or in any other manner in which  
19 process in a civil action in this state may be served, on the  
20 applicant or licensee, as the case may be.

**§32A-2-7. Authorization to propose rules.**

1 The commissioner may propose rules necessary to  
2 implement this article for legislative approval in  
3 accordance with the provisions of article three, chapter  
4 twenty-nine-a of this code.

**§32A-2-8. Qualifications for license or renewal of license.**

1 (a) The commissioner may issue a license to an  
2 applicant only upon first determining that the financial  
3 condition, business experience, and character and general

4 fitness of an applicant are such that the issuance of the  
5 license is in the public interest.

6 (b) An applicant for a license shall agree in writing to  
7 comply with the currency reporting and record-keeping  
8 requirements of 31 U.S.C. § 5313, as well as those set  
9 forth in 31 C.F.R. Part 103 and any other relevant federal  
10 law.

11 (c) A person is not eligible for a license or shall  
12 surrender an existing license if, during the previous ten  
13 years:

14 (1) The person or a principal of the person, if a  
15 business:

16 (A) Has been convicted of a felony or a crime  
17 involving fraud, deceit, or moral turpitude under the laws  
18 of this state, any other state, or the United States;

19 (B) Has been convicted of a crime under the laws of  
20 another country that involves fraud, deceit, or moral  
21 turpitude or would be a felony if committed in the United  
22 States; or

23 (C) Has been convicted under a state or federal law  
24 relating to currency exchange or transmission or any state  
25 or federal monetary instrument reporting requirement; or

26 (2) The person, a principal of the person, or the  
27 spouse of the person or a principal of the person has been  
28 convicted of an offense under a state or federal law  
29 relating to drug trafficking, money laundering, or a  
30 reporting requirement of the Bank Secrecy Act (Pub. L.  
31 91-508).

32 (d) The commissioner will review the application to  
33 determine whether the applicant:

34 (1) Has recklessly failed to file or evaded the  
35 obligation to file a currency transaction report as required  
36 by 31 U.S.C. Section 5313 during the previous three  
37 years;

38 (2) Has recklessly accepted currency for exchange,  
39 transport, or transmission during the previous three years

40 in which a portion of the currency was derived from an  
41 illegal transaction or activity;

42 (3) Will conduct its authorized business within the  
43 bounds of state and federal law, including, but not limited  
44 to, section forty-nine, article one, chapter thirty-one of this  
45 code;

46 (4) Warrants the trust of the community;

47 (5) Has and will maintain a minimum net worth of  
48 fifty thousand dollars computed according to generally  
49 accepted accounting principles as shown by the most  
50 recent audited financial statement filed with and  
51 satisfactory to the commissioner, and in addition has and  
52 will maintain a minimum net worth of twenty-five  
53 thousand dollars, computed according to generally  
54 accepted accounting principles for each office or delegate  
55 location in the state other than its principal office at which  
56 its licensed business is transacted, except that an applicant  
57 for a license or renewal of a license may not be required  
58 by this article to maintain a net worth of more than one  
59 million dollars, computed according to generally accepted  
60 accounting principles; and

61 (6) Does not owe delinquent taxes, fines, or fees to any  
62 local or state taxing authority or governmental agency,  
63 department, or other political subdivision of this state.

64 (e) A person is not eligible for a license, and a person  
65 who holds a license shall surrender the license to the  
66 commissioner, if the person or a principal of the person  
67 has at any time been convicted of:

68 (1) A felony involving the laundering of money that is  
69 the product of or proceeds from criminal activity under  
70 chapter sixty-one of this code, or a similar provision of the  
71 laws of another state or the United States; or

72 (2) A felony violation of 31 U.S.C. Section 5313 or  
73 5324 or a rule adopted under those sections.

74 (f) Before approving an application for a license of an  
75 applicant who has less than one year's experience in the  
76 proposed business governed by this article as a regulated

77 entity in another state, or whose license has been  
78 suspended or revoked by another state, the commissioner  
79 may, in his or her discretion, conduct an on-site  
80 investigation of an applicant at the sole expense of the  
81 applicant and may require the applicant to pay a  
82 nonrefundable payment of the anticipated expenses for  
83 conducting the investigation. Failure to make the payment  
84 or cooperate with the investigation is grounds for denying  
85 the application.

**§32A-2-9. Access to criminal history information.**

1 The commissioner may refuse to grant a license or may  
2 suspend or revoke a license if the applicant or licensee  
3 fails to provide information required by section four,  
4 article two, chapter thirty-one-a of this code, or other  
5 information sought by the commissioner relevant to  
6 conducting an adequate criminal background check.

**§32A-2-10. Bond.**

1 (a) A person who is licensed under this article shall  
2 post a bond with a qualified surety company doing  
3 business in this state that is acceptable to the  
4 commissioner. The bond shall be in the amount of one  
5 hundred thousand dollars for a licensee which issues or  
6 sells checks or money orders, or which engages in  
7 currency exchange; or three hundred thousand dollars for  
8 a licensee which engages in receiving money for  
9 transmission by wire, facsimile or electronic transfer, or  
10 which engages in currency transportation. A licensee  
11 which engages in multiple types of these activities shall  
12 post the higher amount. A merchant obtaining a license  
13 solely to engage in the check cashing business not  
14 incidental to the main business of the merchant as  
15 required by article three of this chapter shall post a bond  
16 of one hundred thousand dollars. The amount of the  
17 surety bond will be increased by twenty-five thousand  
18 dollars per licensee location or authorized delegate in the  
19 state, but in no event to exceed one million dollars.

20 (b) Instead of the bond required under subsection (a) of  
21 this section, a licensee, with the prior written permission of  
22 the commissioner, may deposit with the commissioner or a

23 federally-insured depository institution in this state  
24 designated by the licensee and approved for that purpose  
25 by the commissioner, United States currency or cash  
26 equivalent instruments or securities acceptable to the  
27 commissioner. The amount of currency or the fair market  
28 value of the instruments or securities shall be an amount  
29 equal to or exceeding the amount required for the bond  
30 under subsection (a) of this section. When securities are  
31 deposited as aforesaid, the value of the securities shall at  
32 all times be equal to the amount of bond otherwise  
33 required, computed on the basis of the principal amount  
34 or the market value thereof, whichever is lower.

35 (c) A bond posted by a licensee shall be conditioned  
36 upon compliance with the provisions of this article and  
37 any rules thereunder for as long as the person holds the  
38 license. The deposit or bond, as the case may be, shall be  
39 made to the state of West Virginia for the benefit and  
40 protection of any claimant against the applicant or  
41 licensee with respect to the receipt, handling, transmission,  
42 and payment of money by the licensee or authorized  
43 delegate in connection with the licensed operations in this  
44 state. A claimant damaged by a breach of the conditions  
45 of the bond or deposit shall, upon the assent of the  
46 commissioner, have a right of action against the bond or  
47 deposit for damages suffered thereby and may bring suit  
48 directly thereon, or the commissioner may bring suit on  
49 behalf of the claimant. The aggregate liability of the  
50 surety in no event shall exceed the principal sum of the  
51 bond. So long as the person making a deposit under this  
52 section is not in violation of any of the provisions of this  
53 article, that person is permitted to receive all interest and  
54 dividends on the deposit, and shall have the right, with the  
55 approval of the commissioner, to substitute other  
56 securities. If the deposit is made at a bank, any custodial  
57 fees therefor shall be paid by the person making the  
58 deposit.

59 (d) A penalty fee under subdivision (5), subsection (a),  
60 section five of this article, expenses under section eleven  
61 of this article, or a civil penalty under section nineteen of  
62 this article may be paid out of and collected from the  
63 proceeds of a bond or deposit under this section.

64 (e) After receiving a license, the licensee shall  
65 maintain the required bond or securities until five years  
66 after it ceases to do business in this state unless all  
67 outstanding checks/payment instruments are cleared or  
68 covered by the provisions of article eight, chapter thirty-  
69 six of this code pertaining to the distribution of unclaimed  
70 property which have become operative and are adhered to  
71 by the licensee. Notwithstanding this provision, however,  
72 the commissioner may permit the security to be reduced  
73 following cessation of business in the state to the extent  
74 the amount of the licensee's checks/payment instruments  
75 outstanding in this state are reduced.

76 (f) If the commissioner at any time reasonably  
77 determines that the required bond or deposit is insecure,  
78 deficient in amount, or exhausted, in whole or in part, he  
79 or she may in writing require the filing of a new or  
80 supplemental bond or other security in order to secure  
81 compliance with this article and may demand compliance  
82 with the requirement within thirty days following service  
83 on the licensee. The total amount of the bonds or security  
84 required of the licensee may not, however, exceed the one  
85 million dollars set forth in subsection (a) of this section.

**§32A-2-11. Examination and fraudulently structured transac-  
tions.**

1 (a) Each licensee is subject to a periodic examination  
2 of the licensee's business records by the commissioner at  
3 the expense of the licensee. For the purpose of carrying  
4 out this article, the commissioner may examine all books,  
5 records, papers, or other objects that the commissioner  
6 determines are necessary for conducting a complete  
7 examination and may also examine under oath any person  
8 associated with the license holder, including an officer,  
9 director, or employee of the licensee or authorized  
10 delegate. Unless it will interfere with the commissioner's  
11 duties under this article, reasonable notice shall be given to  
12 the licensee and any authorized delegate before any on-  
13 site examination visit. If a person required by the  
14 commissioner to submit to an examination refuses to  
15 permit the examination or to answer any question

16 authorized by this article, the commissioner may suspend  
17 the person's license until the examination is completed.

18 (b) The licensee shall bear the cost of any on-site  
19 examination made pursuant to this section, at a rate of  
20 fifty dollars for each examiner hour expended, together  
21 with all reasonable and necessary travel expenses incurred  
22 in connection with the examination.

23 (c) A person, for the purpose of evading a reporting  
24 or record-keeping requirement of 31 U.S.C. Section 5313,  
25 or 31 C.F.R. Part 103, or by this article, or a rule adopted  
26 under this article, may not with respect to a transaction  
27 with a licensee:

28 (1) Cause or attempt to cause the licensee to:

29 (A) Not maintain a record or file a report required by  
30 a law listed by this subsection; or

31 (B) Maintain a record or file a report required by a  
32 law listed by this subsection that contains a material  
33 omission or misstatement of fact; or

34 (2) Fraudulently structure the transaction.

35 (d) For the purposes of this article, a person  
36 fraudulently structures a transaction if the person conducts  
37 or attempts to conduct a transaction in any amount of  
38 currency with a licensee in a manner having the purpose  
39 of evading a record-keeping or reporting requirement of  
40 this article, or of a law listed by subsection (c) of this  
41 section, including the division of a single amount of  
42 currency into smaller amounts or the conduct of a  
43 transaction or series of transactions in amounts equal to or  
44 less than the reporting or record-keeping threshold of a  
45 law listed by subsection (c) of this section.

46 (e) A transaction is not required to exceed a record-  
47 keeping or reporting threshold of a single licensee on a  
48 single day to be a fraudulently structured transaction.

#### **§32A-2-12. Investigations and subpoenas.**

1 (a) In addition to the examinations required by section  
2 eleven of this article, the commissioner is authorized to

3 inspect, examine and audit the books, records, accounts  
4 and papers of all licensees and their authorized delegates  
5 at times that the circumstances in his or her opinion may  
6 warrant. Unless it will interfere with the commissioner's  
7 duties under this article, reasonable notice shall be given to  
8 an authorized delegate or licensee before any on-site  
9 examination visit. However, an authorized delegate is  
10 deemed to consent to the commissioner's inspection, with  
11 or without prior notice to the licensee or authorized  
12 delegate, of the books and records of the authorized  
13 delegate when the commissioner has a reasonable basis to  
14 believe that the licensee or authorized delegate is in  
15 noncompliance with this article. The commissioner may  
16 call for and require any data, reports or information from  
17 any licensees under his or her jurisdiction at any time,  
18 and in the form, content and detail the commissioner  
19 determines to be necessary in the faithful discharge of his  
20 or her duty.

21 (b) In connection with the investigations undertaken  
22 pursuant to this article, the commissioner is authorized to  
23 issue subpoenas and subpoenas duces tecum, administer  
24 oaths, examine persons under oath, and hold and conduct  
25 hearings, with any subpoenas or subpoenas duces tecum to  
26 be issued, served and enforced in the manner provided in  
27 section one, article five, chapter twenty-nine-a of this code.  
28 Any person appearing and testifying at the hearing may  
29 be accompanied by an attorney.

**§32A-2-13. Notification requirements.**

1 (a) A licensee shall notify the commissioner of any  
2 change in its principal place of business, or its  
3 headquarters office if different from its principal place of  
4 business, within fifteen days after the date of the change.

5 (b) A licensee shall notify the commissioner of any of  
6 the following significant developments within fifteen days  
7 after gaining actual notice of its occurrence:

8 (1) The filing of bankruptcy or for reorganization  
9 under the bankruptcy laws;

10           (2) The institution of license revocation or suspension  
11 procedures against the licensee in any other state;

12           (3) A felony indictment related to money  
13 transmission, currency exchange, fraud, failure to fulfill a  
14 fiduciary duty, or other activities of the type regulated  
15 under this article of the licensee or its authorized delegates  
16 in this state, or of the licensee's or authorized delegate's  
17 officers, directors, or principals; and

18           (4) A felony conviction or plea related to the money  
19 transmission, currency exchange, fraud, failure to fulfill a  
20 fiduciary duty, or other activities of the type regulated  
21 under this article of the licensee or its authorized delegates  
22 in this state, or of the licensee's or authorized delegate's  
23 officers, directors, or principals.

24           (c) A licensee shall notify the commissioner of any  
25 merger or acquisition which may result in a change of  
26 control or a change in principals of a licensee within  
27 fifteen days of announcement or publication of the  
28 proposal, or its occurrence, whichever is earlier. Upon  
29 notice of these circumstances by a corporate licensee, the  
30 commissioner may require all information necessary to  
31 determine whether it results in a transfer or assignment of  
32 the license and thus if a new application is required in  
33 order for the company to continue doing business under  
34 this article. A licensee that is an entity other than a  
35 corporation shall in these circumstances submit a new  
36 application for licensure at the time of notice.

**§32A-2-14. Records maintenance.**

1           (a) A licensee shall keep its business books, accounts,  
2 and records in accordance with generally accepted  
3 accounting principals. A licensee shall retain all of its  
4 records of final entry for the period of time as required in  
5 section thirty-five, article four, chapter thirty-one-a of this  
6 code for banking institutions. The licensee shall also  
7 preserve its general ledger, settlement sheets from its  
8 authorized delegates, bank statements, and bank  
9 reconciliation records for this said same established period  
10 of time.

11 (b) Unless the documents or data therefrom has been  
12 transmitted to the licensee for recordation, the licensee  
13 shall require its authorized delegates to preserve records  
14 relating to its licensed activities for the period set forth in  
15 subsection (a) of this section.

16 (c) Records may be kept using retention technologies,  
17 including nonerasable optical disk, as is provided for  
18 banking institutions and with the same effect as set forth in  
19 section thirty-five, article four, chapter thirty-one-a of this  
20 code.

21 (d) A licensee shall maintain records relating to its  
22 business under this article at its principal place of business,  
23 or with notice to the commissioner, at another location  
24 designated by the licensee. If the records are located  
25 outside the state, the licensee at its option shall make them  
26 available to the commissioner at a convenient location  
27 within this state within seven days, or shall pay the  
28 reasonable and necessary expenses for the commissioner  
29 or his or her representatives to examine them at the place  
30 where they are maintained.

#### **§32A-2-15. Transaction records.**

1 (a) Every check sold by the licensee or its authorized  
2 delegates shall bear the name of the licensee and a unique  
3 number clearly stamped or imprinted thereon. When an  
4 order for the transmission of money results in the issuance  
5 of a check, both the order and the check may bear the  
6 same number.

7 (b) The licensee or its authorized delegates shall  
8 record the face amount and unique number of its checks  
9 upon their sale.

10 (c) The licensee or its authorized delegates shall  
11 record the date on which money was received for  
12 transmission, the amount transmitted, the name of the  
13 customer and the intended recipient, and the location to  
14 which the money was transmitted if specified by the  
15 customer. Unless otherwise directed by the customer, the  
16 transmission of money or availability of funds shall be  
17 made by the licensee or authorized delegate within three

18 business days after the receipt of payment. The customer  
19 shall be provided a written receipt sufficient to identify the  
20 transaction, the licensee, and the amount.

21 (d) If the transaction involves the exchange of foreign  
22 currency, or the sale of travelers checks denominated in a  
23 foreign currency, the licensee or authorized delegate shall  
24 record the date of the transaction, the amount of the  
25 transaction, and the rate of exchange at the time of  
26 transaction. The customer shall be provided a written  
27 receipt sufficient to identify the transaction, the licensee,  
28 and the amount.

29 (e) Records required by this section shall be  
30 maintained by the licensee or authorized delegate as set  
31 forth in section fourteen of this article, and shall be  
32 available for examination by the commissioner.

#### **§32A-2-16. Enforcement.**

1 The commissioner, with the assistance of the West  
2 Virginia state police, may investigate violations of this  
3 article or rules adopted under this article. Based on the  
4 investigation, the commissioner or any law-enforcement  
5 agency may file a criminal referral with the prosecuting  
6 attorney of Kanawha County or with the prosecuting  
7 attorney of the county in which a violation is alleged to  
8 have occurred. In addition, the commissioner may bring  
9 civil actions to enforce the provisions of this article or the  
10 rules adopted under this article.

#### **§32A-2-17. Cooperative agreements.**

1 (a) The commissioner shall cooperate with federal and  
2 state agencies in discharging the commissioner's  
3 responsibilities under this article. The commissioner may:

4 (1) Arrange for the exchange of information among  
5 government officials concerning the regulation of a  
6 currency exchange, transportation or transmission  
7 business;

8 (2) Cooperate in and coordinate training programs  
9 concerning the regulation of currency exchange,  
10 transportation or transmission businesses; and

11 (3) Assist state and federal agencies in their  
12 enforcement and investigatory activities and supply those  
13 agencies with documentation and information.

14 (b) The commissioner may request the assistance of  
15 the West Virginia state police in enforcing this article.

**§32A-2-18. Criminal penalty.**

1 (a) A person commits a criminal offense if the person  
2 knowingly:

3 (1) Violates a requirement of this article;

4 (2) Makes a false, fictitious, or fraudulent statement,  
5 representation, or entry in a record or report required  
6 under 31 U.S.C. Section 5313 or 31 C.F.R. Part 103, or  
7 by this article, or a rule adopted under this article; or

8 (3) Fraudulently structures or attempts to fraudulently  
9 structure a transaction in violation of section eleven of this  
10 article.

11 (b) An offense under this section is a felony.

12 (c) Any officer, director, employee or agent of any  
13 licensee or any other person guilty of any felony offense  
14 as provided in this section shall, upon conviction thereof,  
15 be imprisoned in the penitentiary not less than one nor  
16 more than five years and also, in the discretion of the  
17 court, may be fined up to ten thousand dollars for each  
18 violation. Each transaction in violation of this article and  
19 each day that a violation continues is a separate offense.

**§32A-2-19. Civil penalty.**

1 The commissioner may bring civil actions to enforce  
2 this article in the circuit court of Kanawha County or the  
3 county in which the violation occurred and seek civil  
4 penalties. If, after notice and a hearing, the court finds  
5 that a person has violated this article, a rule adopted under  
6 this article, or an order of the commissioner issued under  
7 this article, the court may order the person to pay to the  
8 state a civil penalty. The amount of a civil penalty under  
9 this section may not exceed five thousand dollars for each  
10 violation or, in the case of a continuing violation, up to

11 five thousand dollars for each day that the violation  
12 continues. A civil penalty assessed may be collected from  
13 the bond or deposit required under section ten of this  
14 article.

**§32A-2-20. Injunction.**

1 If it appears to the commissioner that a person has  
2 committed or is about to commit a violation of this article,  
3 a rule promulgated thereunder, or an order of the  
4 commissioner, the commissioner may apply to the circuit  
5 court of Kanawha County or the county in which the  
6 violation occurred for an order enjoining the person from  
7 violating or continuing to violate the article, rule, or order  
8 and for injunctive or other relief that the nature of the case  
9 may require and may, in addition, request the court to  
10 assess civil penalties as provided under this article.

**§32A-2-21. Consent orders.**

1 (a) The commissioner may enter into consent orders  
2 at any time with a person to resolve a matter arising under  
3 this article. A consent order shall be signed by the person  
4 to whom it is issued and shall indicate agreement to the  
5 terms contained in it. A consent order need not constitute  
6 an admission by a person that this article or a rule or order  
7 issued or promulgated under this article has been violated,  
8 nor need it constitute a finding by the commissioner that  
9 the person has committed a violation.

10 (b) Notwithstanding the issuance of a consent order,  
11 the commissioner may seek civil or criminal penalties or  
12 compromise civil penalties concerning matters  
13 encompassed by the consent order unless by its terms the  
14 consent order expressly precludes the commissioner from  
15 doing so.

**§32A-2-22. Cease and desist orders.**

1 (a) If the commissioner, upon information, has cause  
2 to believe that a licensee or other person is engaged in  
3 practices contrary to this article or the rules adopted under  
4 this article, the commissioner may issue an order directing  
5 the licensee or person to cease and desist the violation. A  
6 cease and desist order is appropriate in any case where the

7 commissioner, upon information, reasonably believes that  
8 a principal or the licensee acting through any authorized  
9 person has:

10 (1) Violated or refused to comply with a provision of  
11 this article, a rule adopted under this article, or any other  
12 law or regulation applicable to a currency exchange,  
13 transportation or transmission business, or to the business  
14 of check cashing;

15 (2) Committed a fraudulent practice in the conduct of  
16 the licensee's business;

17 (3) Refused to submit to an examination;

18 (4) Conducted business in an unsafe or unauthorized  
19 manner; or

20 (5) Violated any condition of its license or of any  
21 agreement entered into with the commissioner.

22 (b) The commissioner shall serve notice and a copy of  
23 the cease and desist order on the affected party either  
24 personally or by certified mail, return receipt requested.  
25 Service by mail shall be deemed completed if the notice is  
26 deposited in the post office, postage prepaid, addressed to  
27 the last known address for a licensee or the person  
28 designated by the licensee to accept service in this state.

29 (c) The order shall include a statement of the alleged  
30 conduct of the licensee or principal which gave rise to the  
31 order, and set forth the facts and law on which it is based.

32 (d) A person is entitled to a hearing on the cease and  
33 desist order before the commissioner, or a hearing  
34 examiner appointed by him or her, if the person files with  
35 the commissioner a written demand for hearing within ten  
36 days after receiving written notice of the order, or within  
37 thirty days after the date of service, whichever occurs first.  
38 A person's right to a hearing as provided by this  
39 subsection shall be disclosed in the notice of service.

40 (e) Hearings and judicial review of any order shall be  
41 under procedures provided in sections one and two, article  
42 eight, chapter thirty-one-a of this code and procedural  
43 rules thereunder.

44 (f) The issuance of a cease and desist order under this  
45 section shall not be a prerequisite to the taking of any  
46 action by the commissioner or others under any other  
47 section of this article.

**§32A-2-23. Liability of licensees.**

1 Except in cases of gross negligence or intentional acts  
2 that result in harm to a person, a licensee's responsibility  
3 to a person for a money transmission conducted on that  
4 person's behalf by the licensee or the licensee's  
5 authorized delegate is limited to the amount of money  
6 transmitted or the face amount of the payment instrument  
7 purchased.

**§32A-2-24. Confidential information.**

1 (a) Reports of investigation and examination, together  
2 with related documents and financial information not  
3 normally available to the public that is submitted in  
4 confidence by a person regulated under this article, are  
5 confidential and may not be disclosed to the public by the  
6 commissioner or employees of the division of banking,  
7 and are not subject to the state's freedom of information  
8 act. The commissioner may release information if:

9 (1) The commissioner finds that immediate and  
10 irreparable harm is threatened to the licensee's customers  
11 or potential customers or the general public;

12 (2) The licensee consents before the release;

13 (3) The commissioner finds that release of the  
14 information is required in connection with a hearing  
15 under this article, in which event information may be  
16 related to the parties of that hearing; or

17 (4) The commissioner finds that the release is  
18 reasonably necessary for the protection of the public and  
19 in the interest of justice, in which event information may  
20 be distributed to representatives of an agency, department,  
21 or instrumentality of this state, any other state, or the  
22 federal government.

23 (b) Nothing herein prevents release to the public of  
24 any list of licensees or aggregated financial data for the

25 licensees, prevents disclosure of information the presiding  
26 officer deems relevant to the proper adjudication or  
27 administration of justice at public administrative or  
28 judicial hearings, or prevents disclosure of information  
29 relevant to supporting the issuance of any administrative  
30 or judicial order.

**§32A-2-25. Hearing on suspension or revocation of license.**

1 (a) A license may not be revoked or suspended except  
2 after notice and opportunity for hearing on that action.  
3 The commissioner may issue to a person licensed under  
4 this article an order to show cause why the license should  
5 not be revoked, or should not be suspended for a period  
6 not in excess of six months. The order shall state the place  
7 for a hearing and set a time for the hearing that is no less  
8 than ten days from the date of the order. After the hearing  
9 the commissioner shall revoke or suspend the license if he  
10 or she finds that:

11 (1) The licensee has knowingly or repeatedly violated  
12 this chapter or any rule or order lawfully made or issued  
13 pursuant to this article;

14 (2) The licensee has failed to remit its required  
15 renewal fees;

16 (3) Facts or conditions exist which would clearly have  
17 justified the commissioner in refusing to grant a license  
18 had these facts or conditions been known to exist at the  
19 time the application for the license was made;

20 (4) The licensee does not have available the net worth  
21 required by the provisions of section eight of this article,  
22 and after ten days' written notice from the commissioner,  
23 fails to take steps that the commissioner determines are  
24 necessary to remedy the deficiency; or

25 (5) The licensee has failed or refused to keep the bond  
26 or other security required by section ten of this article in  
27 full force and effect.

28 (b) No revocation or suspension of a license under  
29 this article is lawful unless prior to institution of  
30 proceedings by the commissioner notice is given to the

31 licensee of the facts or conduct which warrant the intended  
32 action, and the licensee is given an opportunity to show  
33 compliance with all lawful requirements for retention of  
34 the license.

35 (c) If the commissioner finds that probable cause for  
36 revocation of a license exists and that enforcement of this  
37 article to prevent imminent harm to public welfare  
38 requires immediate suspension of the license pending  
39 investigation, the commissioner may, after a hearing upon  
40 five days' written notice, enter an order suspending the  
41 license for not more than thirty days.

42 (d) Nothing in this section limits the authority of the  
43 commissioner to take action against a licensee or person  
44 under other sections of this article.

45 (e) Whenever the commissioner revokes or suspends a  
46 license, an order to that effect shall be entered and the  
47 commissioner shall forthwith notify the licensee of the  
48 revocation or suspension. Within five days after the entry  
49 of the order the commissioner shall mail by registered or  
50 certified mail, or shall provide for personal delivery to the  
51 licensee, of a copy of the order and the findings  
52 supporting the order.

53 (f) Any person holding a license under this article  
54 may relinquish the license by notifying the commissioner  
55 in writing of its relinquishment, but any relinquishment  
56 does not affect a person's liability for acts previously  
57 committed.

58 (g) No revocation, suspension, or relinquishment of a  
59 license shall impair or affect the obligation of any  
60 preexisting lawful contract between the licensee and any  
61 person.

62 (h) The commissioner may reinstate a license,  
63 terminate a suspension or grant a new license to a person  
64 whose license has been revoked or suspended if no fact or  
65 condition then exists which clearly would have justified  
66 the commissioner in refusing to grant a license.

**§32A-2-26. Deceptive name or advertising.**

1 (a) A licensee who advertises the prices to be charged  
2 by the currency exchange or currency transmission  
3 business for services that are governed by this article shall  
4 specifically state in the advertisement all fees or  
5 commissions to be charged to the consumer.

6 (b) The commissioner may propose for legislative  
7 approval rules establishing requirements for the size and  
8 type of lettering a licensee is permitted to use in an  
9 advertisement for prices or rates.

10 (c) A person who violates this section or a rule  
11 adopted under this section commits an unfair and  
12 deceptive act or practice within the meaning of section one  
13 hundred four, article six, chapter forty-six-a of this code.

14 (d) A corporate licensee may not use the same name  
15 as, or a name deceptively similar to, the name of any  
16 domestic corporation existing under the laws of this state,  
17 or the name of any foreign corporation authorized to  
18 transact business in this state, except as otherwise provided  
19 by the commissioner or secretary of state pursuant to law.

**§32A-2-27. Authorized delegates.**

1 (a) A licensee may conduct the business of money  
2 transmission and currency exchange regulated by this  
3 article at one or more locations in this state through  
4 authorized delegates designated by the licensee.

5 (b) A licensee may not knowingly authorize a person  
6 to act as its delegate who has, within the previous ten years,  
7 a disqualifying criminal conviction of the type set forth in  
8 subdivision (2), subsection (c), section eight of this article.

9 (c) A licensee shall enter into a contract with its  
10 authorized delegate detailing the nature and scope of the  
11 relationship between the licensee and the authorized  
12 delegate. The contract shall require that the authorized  
13 delegate operate in full compliance with the laws of this  
14 state and of the United States. The licensee shall, upon  
15 request, provide the commissioner with the sample written  
16 contract.

17 (d) The financial responsibility of a licensee for the  
18 actions of its authorized delegate shall not exceed the  
19 amount of funds received by the authorized delegate on  
20 behalf of its licensee for the business regulated under this  
21 article.

22 (e) An authorized delegate has an affirmative duty  
23 not to: (i) Commit fraud or misrepresentation; or (ii)  
24 submit fraudulent statements to the licensee. A licensee  
25 shall promptly report to the commissioner and to any  
26 other appropriate state or federal official when it has  
27 probable cause to believe that an authorized delegate has  
28 violated the affirmative duty set forth in this subsection.

29 (f) The licensee shall require the authorized delegate  
30 to hold in trust for the licensee from the moment of  
31 receipt of the proceeds of any business transacted under  
32 this article in an amount equal to the amount of proceeds  
33 due the licensee less the amount due the authorized  
34 delegate. The funds shall remain the property of the  
35 licensee whether or not commingled by the authorized  
36 delegate with its own funds. In the event that the license is  
37 revoked by the commissioner, all proceeds held in trust by  
38 the authorized delegate of that licensee are considered to  
39 be assigned to the commissioner. If an authorized  
40 delegate fails to remit funds to the licensee in accordance  
41 with the time specified in the contract with the licensee, the  
42 licensee may bring a civil action against the authorized  
43 delegate for three times the actual damages. The  
44 commissioner may by rule set a maximum remittance time  
45 for authorized delegates.

46 (g) An authorized delegate shall report to the licensee  
47 the theft or loss of payment instruments within twenty-  
48 four hours from the time the authorized delegate knew or  
49 should have known of the theft or loss.

50 (h) Upon any suspension or revocation of a license,  
51 the failure of a licensee to renew a license, or the denial of  
52 the renewal of a license, the licensee shall notify its  
53 authorized delegates of the event and demand that they  
54 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.

**§32A-2-28. Revocation or suspension of authorized delegates.**

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

29 reasonable to believe that the person will comply with all  
30 applicable provisions of this chapter and of any rule and  
31 order issued under this chapter if the order is modified or  
32 rescinded.

33 (c) The right of a person to whom an order is issued  
34 under this section to petition for judicial review of an  
35 order is not affected by the failure of the person to apply  
36 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.

1 (a) A merchant primarily in the business of making  
2 retail consumer sales may offer check cashing services at  
3 its stores to accommodate its customers in the course of  
4 said business, and may collect a fee for the service, if the  
5 check cashing service and any fees charged are incidental  
6 to the main business of the merchant. Except as set forth  
7 in subsection (b) of this section, the term "check cashing  
8 services" does not include a transaction where a customer  
9 presents a check for the exact amount of a purchase. Fees  
10 charged in connection with check cashing services may  
11 not exceed the greater of one dollar, or one percent of the  
12 face value of the check cashed.

13 (b) Merchants may not, in connection with providing  
14 check cashing services, agree to hold checks submitted to  
15 them for deposit at a later date for the purpose of  
16 providing a loan of money and deriving profit therefrom.

17 (c) No license is required as a condition for a  
18 merchant providing check cashing services in conformity  
19 with subsections (a) and (b) of this section.

20 (d) Where a merchant derives more than five percent  
21 of his or her gross revenues from cashing checks, the  
22 check cashing services are not considered incidental to the  
23 main business of the merchant, and the merchant is  
24 required to be licensed under article two of this chapter.

25 (e) Persons holding a license pursuant to article two  
26 of this chapter may in conjunction with their licensed  
27 business, or other lawful business, engage in the business  
28 of check cashing in West Virginia. Fees charged for  
29 check cashing services by a licensee under article two of  
30 this chapter shall be posted and conform to those  
31 permitted merchants under this section. No licensee may  
32 in connection with providing check cashing services agree  
33 to hold checks submitted to it for deposit at a later date for  
34 the purpose of providing a loan of money and deriving  
35 profit therefrom.

36 (f) Federally-insured depository institutions, foreign  
37 bank agencies, and governmental entities exempt from  
38 licensure as money transmitters under this chapter are  
39 exempt from the provisions of this article. Other financial  
40 institutions licensed by and under the jurisdiction of the  
41 commissioner of banking may upon written approval  
42 engage in the check cashing business permitted merchants  
43 under this article.

44 (g) Except as provided or allowed by this article, no  
45 person may engage in the check cashing business. As  
46 used in this article the term "check cashing business"  
47 means any person who engages in the business of cashing  
48 checks, including drafts, money orders, or other  
49 instruments for the transmission or payment of money for  
50 a fee. However, the term "check" as used in this article  
51 does not include a travelers check or a foreign  
52 denomination check.

### **§32A-3-2. Obstruction of investigations.**

1 No merchant or person subject to this article may  
2 obstruct or refuse to permit any lawful investigation into  
3 their check cashing activities by the commissioner of  
4 banking, a person acting on behalf of an agency of the  
5 state or political subdivision thereof, or a law-enforcement  
6 officer.

### **§32A-3-3. Violations and penalties.**

1 (a) The charging of fees for check cashing services in  
2 excess of those permitted under this article gives rise to a

3 cause of action by the injured party to recover twice the  
4 actual damages suffered by reason of the violation.

5 (b) The charging of fees for check cashing services in  
6 violation of the provisions of subsections (b) or (e),  
7 section one of this article, prohibiting lending through a  
8 check cashing transaction, constitutes prohibited finance  
9 charges, and gives rise to a cause of action by the party  
10 upon whom the charge was imposed to recover all fees  
11 paid and all actual damages suffered by reason of the  
12 violation. Where the transaction is of an amount and for  
13 purposes that would constitute a consumer loan, the  
14 conduct of impermissible check cashing services is  
15 considered an unfair and deceptive act and may be subject  
16 to provisions and penalties set forth in chapter forty-six-a  
17 of this code.

18 (c) Engaging in the check cashing business without  
19 the license required by this article gives rise to a cause of  
20 action by the injured party to recover all fees paid and all  
21 actual damages suffered by reason of the violation.

22 (d) Actions brought under this article by customers  
23 for recovery of actual damages shall be brought within  
24 one year of the occurrence of the transaction.

#### **§32A-3-4. Injunctions.**

1 If any merchant or person is in violation of this article,  
2 the commissioner of banking or other appropriate law-  
3 enforcement officer may apply to the circuit court of  
4 Kanawha County or the county in which the violation  
5 occurred for an order enjoining the merchant or person  
6 from violating or continuing to violate the article, rule, or  
7 order and for injunctive or other relief that the nature of  
8 the case may require. The authority to seek injunctions  
9 under this section is cumulative with any other  
10 enforcement right accruing under other provisions of law  
11 and this code.

## CHAPTER 74

(Com. Sub. for H. B. 4554—By Delegates Doyle and Manuel)

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

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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.**

1           (a) The boundary line between Jefferson County, West  
2 Virginia, and Loudoun County, Virginia, is hereby, on the  
3 part of this state, established and declared to be the  
4 watershed line of the top of the ridge of the Blue Ridge  
5 mountains, as established by the survey approved by the  
6 commission on the twenty-ninth day of April, one  
7 thousand nine hundred ninety-seven, and to be recorded  
8 in the land books in the courthouses of Jefferson County,  
9 West Virginia, and Loudoun County, Virginia.

10           (b) No vested right of any individual, partnership or  
11 corporation within the territory affected by this section  
12 may in any way be impaired, restricted or affected by this  
13 section. This section is not retrospective in its operation

14 and it does not in any way affect the rights of any  
15 individual, partnership or corporation in any suit now  
16 pending in any of the courts of this state or of the United  
17 States wherein the cause of action arose over, or is in any  
18 way based upon, the territory affected. This section in no  
19 way precludes the state of West Virginia from prosecuting  
20 any individual, partnership or corporation for violation of  
21 any of the criminal laws of this state within the territory  
22 until this section goes into effect.

23 (c) The secretary of state shall furnish a certified copy  
24 of this section to the governor of the commonwealth of  
25 Virginia and shall also furnish certified copies to the  
26 United States senators from the state of West Virginia and  
27 to the representative from the second congressional district  
28 of West Virginia in the House of Representatives, who are  
29 requested to have the section presented to the Congress of  
30 the United States.

31 (d) The commission created by section two of this  
32 article is continued and is directed, in cooperation with the  
33 like commission created by the commonwealth of  
34 Virginia, or other agency designated by the  
35 commonwealth of Virginia for the purpose, to complete its  
36 work, including: (i) The recordation of the survey in the  
37 Jefferson County courthouse not later than the first day of  
38 April, one thousand nine hundred ninety-eight, which  
39 survey shall take into account KD Map 25A Parcel 0002  
40 through which the watershed line runs and which includes  
41 such residence on the Virginia side of the boundary line;  
42 and (ii) the erection of permanent markers designating the  
43 boundary line set forth in this section. The markers shall  
44 be of the nature and kind the commission considers  
45 appropriate.

46 (e) This section shall take effect upon the adoption  
47 and approval by the General Assembly of the  
48 commonwealth of Virginia of appropriate legislation  
49 ratifying the boundary line set forth herein.

## CHAPTER 75

(H. B. 4453—By Delegates Amores, Trump and Linch)

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

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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**

### **31. Corporations.**

#### **31B. Uniform Limited Liability Company Act.**

#### **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.**

1 (a) No document which is required to be executed or  
2 verified by an officer or officers of a corporation shall be  
3 filed with the secretary of state unless:

4 (1) The officers who have executed or verified the  
5 document to be filed are the current officers of the  
6 corporation and the secretary of state has on file: (A) A  
7 current annual return of the corporation filed pursuant to  
8 section three, article twelve-c, chapter eleven of this code  
9 which identifies such officers; or (B) another corporate  
10 document which identifies such officers; or

11 (2) The document to be filed is accompanied by  
12 appropriate documentation showing that the persons  
13 executing or verifying the document are current officers  
14 of the corporation or are otherwise authorized to execute  
15 or verify the document on behalf of the current officers of  
16 the corporation.

17 (b) For purposes of subsection (a) of this section, the  
18 term "appropriate documentation" means: (1) A copy of  
19 the minutes of the board of directors of the corporation  
20 reflecting the election or appointment of new officers,  
21 which copy includes or is accompanied by a notarized  
22 statement of authenticity signed by at least one director;  
23 (2) a court order reflecting the identity of the current  
24 officers or the authorization of any person to act for any  
25 officer; or (3) any other legally authorized document  
26 assigning to the person executing or verifying the  
27 document clear authority to execute or verify documents  
28 on behalf of the corporation.

**§31-1-11. Corporate name; requirements; certain names prohibited.**

1 (a) Except for corporations in existence prior to the  
2 effective date of this article, the corporate name:

3 (1) Shall contain the word "corporation," "company,"  
4 "incorporated" or "limited," or shall contain an  
5 abbreviation of one of such words.

6 (2) Shall not contain any word or phrase which  
7 indicates or implies that it is organized for any purpose  
8 other than one or more of the purposes contained in its  
9 articles of incorporation.

10 (3) Shall not be the same as, and shall be  
11 distinguishable from: (A) The name of any domestic  
12 corporation, domestic limited partnership, domestic  
13 limited liability partnership, or domestic limited liability  
14 company existing under the laws of this state; (B) the  
15 name of any foreign corporation, foreign limited  
16 partnership, foreign limited liability partnership, foreign  
17 limited liability company, or any other foreign business  
18 entity authorized to conduct affairs or transact business  
19 in this state; (C) a name the exclusive right to which is, at  
20 the time, reserved in the manner provided by law; or (D)  
21 the name of a corporation, limited partnership, limited  
22 liability partnership, or limited liability company which  
23 has in effect a registration of its business name as provided  
24 by law. The requirements of this subdivision shall not  
25 apply if the applicant files with the secretary of state either  
26 (X) a written consent to the use and a written undertaking  
27 by the present user, registrant or owner of a reserved name  
28 submitted in a form satisfactory to the secretary of state to  
29 change the name to a name that is distinguishable from  
30 the name applied for or (Y) a certified copy of a final  
31 order of a court of competent jurisdiction establishing the  
32 prior right of the applicant to the use of such name in this  
33 state. For purposes of this subdivision, any terms or  
34 abbreviations required to be included in the business name  
35 to identify the type of business entity shall not alone be  
36 sufficient to make one name distinguishable from another.

37 (4) Shall be transliterated into letters of the English  
38 alphabet, if it is not in English.

39 (b) A corporation with which another corporation,  
40 domestic or foreign, is merged, or which is formed by the  
41 reorganization or consolidation of one or more domestic  
42 or foreign corporations or upon a sale, lease or other  
43 disposition to or exchange with, a domestic corporation of  
44 all or substantially all the assets of another corporation,  
45 domestic or foreign, including its name, may have the  
46 same name as that used in this state by any of such  
47 corporations if such other corporation was organized  
48 under the laws of, or is authorized to conduct affairs or do  
49 or transact business in this state.

50 (c) After the effective date of this section, no  
51 corporation shall be chartered in this state under any name  
52 which includes the word "engineer," "engineers,"  
53 "engineering" or any combination of same unless the  
54 purpose of the corporation is to practice professional  
55 engineering as defined in article thirteen, chapter thirty of  
56 this code, as amended, and one or more of the  
57 incorporators is a registered professional engineer as  
58 therein defined.

**§31-1-12. Reserved name.**

1 (a) The exclusive right to the use of a corporate name  
2 may be reserved by:

3 (1) Any person intending to organize a corporation  
4 under this article.

5 (2) Any domestic corporation intending to change its  
6 name.

7 (3) Any foreign corporation intending to make  
8 application for a certificate of authority to conduct affairs  
9 or do or transact business in this state.

10 (4) Any foreign corporation authorized to conduct  
11 affairs or do or transact business in this state and intending  
12 to change its name.

13 (5) Any person intending to organize a foreign  
14 corporation and intending to have such corporation make  
15 application for a certificate of authority to conduct affairs  
16 or do or transact business.

17 (b) The reservation may be made by filing with the  
18 secretary of state an application to reserve a specified  
19 corporate name executed by the applicant and by  
20 submitting the fee prescribed by section two, article one,  
21 chapter fifty-nine of this code. If the secretary of state  
22 finds that the name is available for corporate use, the name  
23 shall be reserved for the exclusive use of the applicant for  
24 a period of one hundred twenty days. A reservation may  
25 be renewed for one additional period of one hundred  
26 twenty days, but may not thereafter be reserved by the  
27 same or associated persons within one calendar year of the  
28 expiration of the last reservation period.

29 (c) A temporary reservation may be made in person  
30 or by telephone without a fee through the office of

31 business registration established under article twelve-d,  
32 chapter eleven of this code. If the secretary of state finds  
33 that the name is available for corporate use, the name shall  
34 be reserved for the exclusive use of the applicant for a  
35 period of seven days. A reservation made under this  
36 subsection shall expire on the seventh day after it is made  
37 unless the name is first reserved pursuant to subsection (b)  
38 of this section. A temporary reservation under this  
39 subsection may not be renewed by another temporary  
40 reservation. The secretary of state shall establish  
41 procedures for the making of temporary reservations  
42 under this subsection.

43 (d) The right to the exclusive use of a specified  
44 corporate name so reserved may be transferred to any  
45 other person or corporation by filing in the office of the  
46 secretary of state a notice of such transfer, executed by the  
47 applicant for whom the name was reserved, and specifying  
48 the name and address of the transferee.

### §31-1-13. Registered name.

1 Any corporation organized and existing under the  
2 laws of any state or territory of the United States may  
3 register its corporate name under this article, provided its  
4 corporate name complies with the requirements of  
5 subdivision (3), subsection (a), section eleven of this  
6 article.

7 Such registration shall be made by:

8 (a) Filing with the secretary of state: (1) An  
9 application for registration executed by the corporation  
10 by an officer thereof, setting forth the name of the  
11 corporation, the state or territory under the laws of which  
12 it is incorporated, the date of its incorporation, a statement  
13 that it is carrying on or doing business, and a brief  
14 statement of the business in which it is engaged; and (2) a  
15 certificate setting forth that such corporation is in good  
16 standing under the laws of the state or territory wherein it  
17 is organized, executed by the secretary of state of such  
18 state or territory or by such other official as may have  
19 custody of the records pertaining to corporations; and

20 (b) Paying to the secretary of state the registration fee  
21 prescribed by section two, article one, chapter fifty-nine of  
22 this code.

23       Such registration shall be effective until the close of  
24 the fiscal year in which the application for registration is  
25 filed.

**§31-1-14. Renewal of registered name.**

1       A corporation which has in effect a registration of its  
2 corporate name may renew such registration from year to  
3 year by annually filing an application for renewal setting  
4 forth the facts required to be set forth in an original  
5 application for registration and a certificate of good  
6 standing as required for the original registration and by  
7 paying the fee prescribed by section two, article one,  
8 chapter fifty-nine of this code. A renewal application may  
9 be filed between the first day of April and the thirtieth day  
10 of June in each year, and shall extend the registration for  
11 the following fiscal year.

**§31-1-51. Corporate name of foreign corporation; when  
certificate of authority shall not be issued.**

1       (a) No certificate of authority shall be issued to a  
2 foreign corporation unless the corporate name of such  
3 corporation:

4       (1) Shall contain the word "corporation," "company,"  
5 "incorporated" or "limited," or shall contain an  
6 abbreviation of one of such words, or such corporation  
7 shall, for use in this state, add at the end of its name one of  
8 such words or an abbreviation thereof.

9       (2) Shall not contain any word or phrase which  
10 indicates or implies that it is organized for any purpose  
11 other than one or more of the purposes in its articles of  
12 incorporation, or if the corporate name of such  
13 corporation indicates or implies that it is authorized or  
14 empowered to conduct the business of banking or  
15 insurance unless such corporation is so authorized or  
16 empowered under the laws of this state.

17       (3) Shall comply with subdivision (3), subsection (a),  
18 section eleven of this article.

19       (4) Shall be transliterated into letters of the English  
20 alphabet, if it is not in English.

21       (b) The provisions of subdivision (3), subsection (a) of  
22 this section shall not apply if the foreign corporation

23 applying for a certificate of authority files with the  
24 secretary of state any one of the following:

25 (1) A resolution of its board of directors adopting a  
26 fictitious name for use in conducting affairs or doing or  
27 transacting business in this state, which fictitious name  
28 complies with the requirements of subdivision (3),  
29 subsection (a), section eleven of this article, or

30 (2) A written consent to the use and a written  
31 undertaking of the present user, registrant or owner of a  
32 reserved name submitted in a form satisfactory to the  
33 secretary of state to change the name to a name that is  
34 distinguishable from the name applied for; or

35 (3) A certified copy of a final order of a court of  
36 competent jurisdiction establishing the prior right of such  
37 foreign corporation to the use of such name in this state.

## CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

### Article

1. General Provisions.

2. Organization

10. Foreign Limited Liability Companies.

### ARTICLE 1. GENERAL PROVISIONS.

§31B-1-105. Name.

§31B-1-106. Reserved name.

#### §31B-1-105. Name.

1 (a) The name of a limited liability company must  
2 contain "limited liability company" or "limited company"  
3 or the abbreviation "L.L.C.", "LLC", "L.C." or "LC".  
4 "Limited" may be abbreviated as "Ltd." and "company"  
5 may be abbreviated as "Co.".

6 (b) Except as authorized by subsections (c) and (d) of  
7 this section, the name of a limited liability company must  
8 be distinguishable upon the records of the secretary of  
9 state from:

10 (1) The name of any corporation, limited partnership,  
11 limited liability partnership or limited liability company  
12 incorporated, organized or authorized to transact business  
13 in this state;

14           (2) A name reserved or registered under sections 1-  
15 106 or 1-107 of this article or under sections twelve or  
16 thirteen of article one, chapter thirty-one of this code.

17           (3) A fictitious name approved under section 10-1005  
18 for a foreign company authorized to transact business in  
19 this state because its real name is unavailable.

20           (c) A limited liability company may apply to the  
21 secretary of state for authorization to use a name that is  
22 not distinguishable upon the records of the secretary of  
23 state from one or more of the names described in  
24 subsection (b) of this section. The secretary of state shall  
25 authorize use of the name applied for if:

26           (1) The present user, registrant or owner of a reserved  
27 name consents to the use in a record and submits an  
28 undertaking in form satisfactory to the secretary of state to  
29 change the name to a name that is distinguishable upon  
30 the records of the secretary of state from the name applied  
31 for; or

32           (2) The applicant delivers to the secretary of state a  
33 certified copy of the final judgment of a court of  
34 competent jurisdiction establishing the applicant's right to  
35 use the name applied for in this state.

36           (d) A limited liability company may use the name,  
37 including a fictitious name, of another domestic or foreign  
38 company which is used in this state if the other company  
39 is organized or authorized to transact business in this state  
40 and the company proposing to use the name has:

41           (1) Merged with the other company;

42           (2) Been formed by reorganization with the other  
43 company; or

44           (3) Acquired substantially all of the assets, including  
45 the name, of the other company.

### **§31B-1-106. Reserved name.**

1           (a) A person may reserve the exclusive use of the  
2 name of a limited liability company, including a fictitious  
3 name for a foreign company whose name is not available,  
4 by delivering an application to the secretary of state for  
5 filing. The application must set forth the name and  
6 address of the applicant and the name proposed to be  
7 reserved. If the secretary of state finds that the name

8 applied for is available, it must be reserved for the  
9 applicant's exclusive use for a one hundred twenty-day  
10 period. The reservation may be renewed for one  
11 additional period of one hundred twenty days, but may  
12 not thereafter be reserved by the same or associated  
13 persons within one calendar year of the expiration of the  
14 last reservation period.

15 (b) The owner of a name reserved for a limited  
16 liability company may transfer the reservation to another  
17 person by delivering to the secretary of state a signed  
18 notice of the transfer which states the name and address of  
19 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.

1 (a) Articles of organization of a limited liability  
2 company must set forth:

3 (1) The name of the company;

4 (2) The address of the initial designated office;

5 (3) The name and street address of the initial agent for  
6 service of process;

7 (4) The name and address of each organizer and of  
8 each member having authority to execute instruments on  
9 behalf of the limited liability company;

10 (5) Whether the company is to be a term company  
11 and, if so, the term specified;

12 (6) Whether the company is to be manager-managed,  
13 and, if so, the name and address of each initial manager;  
14 and

15 (7) Whether one or more of the members of the  
16 company are to be liable for its debts and obligations  
17 under section 3-303(c).

18 (b) Articles of organization of a limited liability  
19 company may set forth:

20 (1) Provisions permitted to be set forth in an operating  
21 agreement; or

22 (2) Other matters not inconsistent with law.

23 (c) Articles of organization of a limited liability  
24 company may not vary the nonwaivable provisions of  
25 section 1-103(b). As to all other matters, if any provision  
26 of an operating agreement is inconsistent with the articles  
27 of organization:

28 (1) The operating agreement controls as to managers,  
29 members and members' transferees; and

30 (2) The articles of organization control as to persons  
31 other than managers, members and their transferees who  
32 reasonably rely on the articles to their detriment.

**§31B-2-211. Annual report for secretary of state.**

1 (a) A limited liability company, and a foreign limited  
2 liability company authorized to transact business in this  
3 state, shall deliver to the secretary of state for filing an  
4 annual report that sets forth:

5 (1) The name of the company and the state or country  
6 under whose law it is organized;

7 (2) The address of its designated office and the name  
8 and address of its agent for service of process in this state;

9 (3) The address of its principal office; and

10 (4) The names and business addresses of any  
11 managers and the name and address of each member  
12 having authority to execute instruments on behalf of the  
13 limited liability company.

14 (b) Information in an annual report must be current as  
15 of the date the annual report is signed on behalf of the  
16 limited liability company.

17 (c) The first annual report must be delivered to the  
18 secretary of state between the first day of January and the  
19 first day of April of the year following the calendar year  
20 in which a limited liability company was organized or a  
21 foreign company was authorized to transact business.  
22 Subsequent annual reports must be delivered to the  
23 secretary of state between the first day of January and the  
24 first day of April of the ensuing calendar years.

25 (d) If an annual report does not contain the  
26 information required in subsection (a) of this section, the  
27 secretary of state shall promptly notify the reporting  
28 limited liability company or foreign limited liability  
29 company and return the report to it for correction. If the  
30 report is corrected to contain the information required in  
31 subsection (a) of this section and delivered to the secretary  
32 of state within thirty days after the effective date of the  
33 notice, it is timely filed.

#### ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.

##### §31B-10-1002. Application for certificate of authority.

1 (a) A foreign limited liability company may apply for  
2 a certificate of authority to transact business in this state  
3 by delivering an application to the secretary of state for  
4 filing, together with a fee in the amount of one hundred  
5 fifty dollars. The application must set forth:

6 (1) The name of the foreign company or, if its name is  
7 unavailable for use in this state, a name that satisfies the  
8 requirements of section 10-1005;

9 (2) The name of the state or country under whose law  
10 it is organized;

11 (3) The street address of its principal office;

12 (4) The name and address of each member having  
13 authority to execute instruments on behalf of the limited  
14 liability company;

15 (5) The address of its initial designated office in this  
16 state;

17 (6) The name and street address of its initial agent for  
18 service of process in this state;

19 (7) Whether the duration of the company is for a  
20 specified term and, if so, the period specified;

21 (8) Whether the company is manager-managed, and,  
22 if so, the name and address of each initial manager; and

23 (9) Whether the members of the company are to be  
24 liable for its debts and obligations under a provision  
25 similar to section 3-303(c).

26 (b) A foreign limited liability company shall deliver  
27 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

9. Uniform Limited Partnership Act.

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.**

1 (a) No business entity organized as a corporation,  
2 limited partnership, limited liability partnership, limited  
3 liability company, business trust or voluntary association  
4 required to register with the secretary of state in order to  
5 conduct business within the state may conduct or transact  
6 any business in this state under any assumed name, or  
7 under any designation, name or style, corporate or  
8 otherwise, other than the name established by the original  
9 certificate establishing the business entity or by an  
10 amendment thereto, unless the business entity files in the  
11 office of the secretary of state an application for  
12 registration of trade name. The application shall set forth:

13 (1) The name under which the business entity is  
14 organized and registered;

15 (2) The name under which the business of such  
16 business entity is, or is to be, conducted or transacted upon  
17 approval of the application, which name must be  
18 distinguishable from the name of any other corporation,  
19 limited partnership, limited liability partnership, limited  
20 liability company, business trust or voluntary association,

21 and from any name reserved or registered for any of those  
22 business entities;

23 (3) The address of the principal office within the state  
24 or, if no office is maintained within the state, the address  
25 of the principal office in the state in which the business  
26 entity is established; and

27 (4) The name, title and signature of a person having  
28 authority to make the application.

29 The secretary of state shall grant a certificate of  
30 registration to any applicant who has met the requirements  
31 of this subsection. A new certificate of registration is to be  
32 filed if the business entity desires to conduct or transact  
33 any business in this state under any other assumed name  
34 not on file in the office of the secretary of state.

35 (b) Two executed originals of the application for trade  
36 name registration shall be delivered to the secretary of  
37 state. If the filing officer finds that the application for  
38 trade name registration conforms to law, he or she shall,  
39 when all fees have been paid as prescribed by law: (i)  
40 Endorse on each of the originals the word "filed" and the  
41 month, day and year of the filing; (ii) file one of the  
42 originals; and (iii) issue to the applicant the certificate of  
43 registration of trade name with the other original attached.

44 (c) Upon discontinuing the use of a registered trade  
45 name the certificate of registration of trade name shall be  
46 withdrawn by filing a certificate of withdrawal with the  
47 office of the secretary of state setting forth the name to be  
48 discontinued, the real name, the address of the party  
49 transacting business and the date upon which the original  
50 certificate of registration of trade name was filed.

51 (d) Any corporation authorized to transact business in  
52 this state shall procure an amended certificate of  
53 incorporation in the event it changes its corporate name  
54 by filing articles of amendment with the office of the  
55 secretary of state as provided in article one, chapter  
56 thirty-one of this code.

57 (e) A domestic business entity having its principal  
58 office within the state shall file a certified copy of any  
59 certificate of trade name with the clerk of the county  
60 commission of the county in which the principal office is  
61 located. A foreign business entity having its principal  
62 office outside the state shall file a certified copy of any

63 such certificate with the clerk of the county commission of  
64 a county in which its principal business is transacted.

65 (f) The secretary of state shall keep an alphabetical  
66 index by trade name of all certificates issued under this  
67 section.

68 (g) Any corporation registering a trade name pursuant  
69 to the provisions of this section is subject to the limitations  
70 set forth in subsection (c), section eleven, article one,  
71 chapter thirty-one of this code regarding use of the words  
72 "engineer", "engineers", "engineering", or any combination  
73 thereof.

74 (h) Any limited liability company registering a trade  
75 name pursuant to the provisions of this section is subject  
76 to the limitations set forth in section one hundred five,  
77 article one, chapter thirty-one-b of this code.

#### **§47-8-5. Penalty for violations.**

1 Any individual, sole proprietorship, general  
2 partnership, corporation, limited partnership, limited  
3 liability partnership, limited liability company, business  
4 trust or voluntary association or other person owning,  
5 carrying on, conducting or transacting business as  
6 aforesaid who willfully fails to comply with the provisions  
7 of section two or four of this article shall be guilty of a  
8 misdemeanor and, upon conviction thereof, shall be fined  
9 not less than twenty-five nor more than one hundred  
10 dollars, or imprisoned in the county jail for a term not  
11 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.**

1 The name of each limited partnership as set forth in its  
2 certificate of limited partnership:

3 (1) Shall contain the words "limited partnership," or  
4 the abbreviation "Ltd. Partnership," "LP" or "L.P.";

5 (2) May not contain the name of a limited partner  
6 unless: (i) It is also the name of a general partner or the  
7 corporate name of a corporate general partner; or (ii) the

8 business of the limited partnership had been carried on  
9 under the name before the admission of that limited  
10 partner;

11 (3) May not be the same as, and must be  
12 distinguishable from, the name of any corporation, limited  
13 partnership, limited liability partnership, or limited liability  
14 company organized under the laws of this state or licensed  
15 or registered as a foreign corporation, limited partnership,  
16 limited liability partnership, or limited liability company  
17 in this state; and

18 (4) May not include the words "engineer", "engineers",  
19 "engineering" or any combination of those words unless  
20 the purpose of the corporation is to practice professional  
21 engineering as defined in article thirteen, chapter thirty of  
22 this code, as amended, and one or more of the  
23 incorporators is a registered professional engineer as  
24 defined therein.

#### §47-9-3. Reservation of name.

1 (a) The exclusive right to the use of a name may be  
2 reserved by:

3 (1) Any person intending to organize a limited  
4 partnership under this article and to adopt that name;

5 (2) Any domestic limited partnership or any foreign  
6 limited partnership registered in this state which, in either  
7 case, intends to adopt that name;

8 (3) Any foreign limited partnership intending to  
9 register in this state and adopt that name; and

10 (4) Any person intending to organize a foreign  
11 limited partnership and intending to have it registered in  
12 this state and adopt that name.

13 (b) The reservation shall be made by filing with the  
14 secretary of state an application, executed by the applicant,  
15 to reserve a specified name along with the fee prescribed  
16 by section two, article one, chapter fifty-nine of this code.  
17 If the secretary of state finds that the name is available for  
18 use by a domestic or foreign limited partnership, he shall  
19 reserve that name for the exclusive use of the applicant for

20 a period of one hundred twenty days. The reservation  
 21 may be renewed for one additional period of one hundred  
 22 twenty days, but may not thereafter be reserved by the  
 23 same or associated persons within one calendar year of the  
 24 expiration of the last reservation period. The right to the  
 25 exclusive use of a reserved name may be transferred to  
 26 any other person by filing in the office of the secretary of  
 27 state a notice of the transfer, executed by the applicant for  
 28 whom the name was reserved and specifying the name and  
 29 address of the transferee.

**§47-9-51. Registration of name of foreign limited partnership.**

1 A foreign limited partnership may register with the  
 2 secretary of state under any name, whether or not it is the  
 3 name under which it is registered in its state of  
 4 organization, that could be registered by a domestic  
 5 limited partnership under the provisions of section two of  
 6 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-2. Application for registration of business trust; issuance of certificate of business trust; recording of certificate in county.

§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.**

1 Any persons who are now or who have heretofore  
 2 been voluntarily associated together for the transaction or

3 doing of business under and pursuant to the terms and  
4 provisions of a declaration of trust or articles or agreement  
5 of association, commonly designated as a Massachusetts  
6 trust or business trust, or any other lawful voluntary  
7 association by whatever name known, may purchase,  
8 acquire, hold, deal in, sell, lease, convey, exchange, pledge,  
9 mortgage and encumber any real estate or personal  
10 property or interest therein within this state, and may  
11 execute all deeds, leases, contracts, or other instruments in  
12 writing with respect to real estate or personal property or  
13 interest therein as may be necessary or required, either in  
14 the name or names of the trustees for the time being  
15 designated in such declaration, articles or agreement, or  
16 their successors, or in the name or names of another  
17 person or persons designated in such declaration, articles  
18 or agreement, or by a descriptive, assumed or trade name,  
19 when signed by a duly authorized officer or officers  
20 thereof, all as may be provided for and stated in such  
21 declaration, articles or agreement: *Provided*, That such  
22 association or trust shall have qualified to do business in  
23 West Virginia, as hereinafter provided for in sections two  
24 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.**

1 (a) For the purposes of this article, a "business trust"  
2 is any trust organized for the purpose of conducting  
3 business and commonly designated as a Massachusetts  
4 trust.

5 (b) Any business trust organized in this state shall file  
6 with secretary of state: (1) Two executed original copies of  
7 an application for registration; and (2) two executed  
8 original copies of the declaration, articles or agreement of  
9 trust creating the business trust.

10 (c) Any business trust organized outside this state and  
11 operating within this state shall file with the secretary of  
12 state: (1) Two executed original copies of an application  
13 for registration; (2) two executed original copies of the  
14 declaration, articles or agreement of trust creating the  
15 business trust as recorded in the state or country of origin  
16 of the business trust; and (3) a statement or certificate

17 from the proper officer of the state or country of origin  
18 that the business trust is in good standing.

19 (d) An application for registration shall set forth:

20 (1) The name of the business trust;

21 (2) If organized within the state, a statement that it is a  
22 West Virginia business trust, or if organized outside the  
23 state, the state in which it was organized and the formation  
24 date of the business trust;

25 (3) The purpose or purposes for which the business  
26 trust is organized;

27 (4) The address of its principal office;

28 (5) The name and address of the person to whom  
29 notice of process may be sent;

30 (6) The names and addresses of all trustees having  
31 authority to act on behalf of the business trust; and

32 (7) A statement reflecting the business trust's consent  
33 to and recognition of the application to the business trust  
34 of the law of this state with respect to corporations.

35 (e) An application for registration shall contain the  
36 notarized signature of a trustee of the business trust.

37 (f) If the secretary of state determines that an  
38 application for registration has been properly filed in  
39 complete form and that the fee prescribed in section two,  
40 article one, chapter fifty-nine of this code has been paid,  
41 he or she shall stamp on each of the two executed original  
42 copies of the application the word "Filed" and the month,  
43 day and year of the filing. The secretary of state shall  
44 then issue a certificate of business trust to the applicant  
45 showing the applicant to be duly authorized and qualified  
46 to do business in this state as a business trust, to which he  
47 or she shall affix one of the stamped original copies of the  
48 application. The secretary of state shall file the other  
49 stamped original copy of the application for its records.

50 (g) A business trust shall file its certificate of business  
51 trust, together with a copy of its declaration, articles or  
52 agreement creating the business trust, in the office of the  
53 clerk of the county commission of each county in this

54 state in which its business is or will be conducted or in  
55 which it will purchase, acquire, hold, sell, lease, convey,  
56 exchange, pledge, mortgage, encumber or otherwise  
57 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.**

1 (a) For purposes of this article, a “voluntary  
2 association” is any association organized for the purpose  
3 of conducting business in this state, but does not include  
4 an organization formed as an unincorporated nonprofit  
5 association under the provisions of article eleven, chapter  
6 thirty-six of this code.

7 (b) Any voluntary association organized in this state  
8 shall file with secretary of state: (1) Two executed original  
9 copies of an application for registration; and (2) two  
10 executed original copies of the agreement of association  
11 creating the voluntary association (if such an agreement  
12 exists apart from the application for registration itself).

13 (c) Any voluntary association organized outside this  
14 state and operating within this state shall file with the  
15 secretary of state: (1) Two executed original copies of an  
16 application for registration; (2) two executed original  
17 copies of the agreement of association creating the  
18 voluntary association; and (3) a statement or certificate  
19 from the proper officer of the state or country of origin  
20 that the voluntary association is in good standing.

21 (d) An application for registration shall set forth:

22 (1) The name of the voluntary association;

23 (2) The physical address of the voluntary association;

24 (3) The mailing address of the voluntary association, if  
25 different from the physical address;

26 (4) The name and address of the person to whom  
27 notice of process may be sent;

28 (5) Whether the voluntary association is organized for  
29 profit or as a nonprofit voluntary association;

30 (6) The purpose or purposes for which the voluntary  
31 association is formed;

32 (7) The full names and addresses of one or more of  
33 the organizers of the voluntary association;

34 (8) The full names and addresses of no fewer than two  
35 officers, owners or members of the voluntary association  
36 who have signatory authority for the association;

37 (9) Any additional statements as may be required for  
38 the type of business to be conducted; and

39 (10) A statement reflecting the voluntary association's  
40 consent to and recognition of the application of the law of  
41 this state with respect to corporations to the voluntary  
42 association.

43 (e) An application for registration shall contain the  
44 notarized signature of at least one organizer or member of  
45 the voluntary association.

46 (f) If the secretary of state determines that an  
47 application for registration has been properly filed in  
48 complete form and that the fee prescribed in section two,  
49 article one, chapter fifty-nine of this code has been paid,  
50 he or she shall stamp on each of the two original copies of  
51 the application for registration the word "Filed" and the  
52 month, day and year of the filing. The secretary of state  
53 shall then issue a certificate of voluntary association to the  
54 applicant showing the applicant to be duly authorized and  
55 qualified to do business in this state as a voluntary  
56 association, to which he or she shall affix one of the  
57 stamped original copies of the application. The secretary  
58 of state shall file the other stamped original copy of the  
59 application for its records.

60 (g) A voluntary association shall file its certificate of  
61 voluntary association, together with a copy of the  
62 agreement of association creating the voluntary  
63 association (if any), in the office of the clerk of the county  
64 commission of the county or counties of this state in  
65 which its business is or will be conducted or in which it  
66 will purchase, acquire, hold, sell, lease, convey, exchange,  
67 pledge, mortgage, encumber or otherwise dispose of real  
68 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.**

1 (a) Unless otherwise specifically provided in this  
2 article, any business trust or voluntary association  
3 conducting business in this state is subject to the laws of  
4 this state with respect to corporations, including laws  
5 relating to license fees and all other taxes, to the extent  
6 such laws are applicable.

7 (b) The name of any business trust or voluntary  
8 association applying for registration shall meet the  
9 requirements for corporate names set forth in section  
10 eleven, article one, chapter thirty-one of this code, except  
11 that the name shall not contain the words "incorporated,"  
12 "corporation," "limited," or any abbreviation of these  
13 terms.

14 (c) Any business trust or voluntary association may  
15 use a trade name upon complying with the provisions of  
16 section four, article eight, chapter forty-seven of this code.  
17 Any business trust or voluntary association may adopt and  
18 use a common seal.

19 (d) Upon the adoption of an amendment to the  
20 declaration, articles or agreement of trust of a business  
21 trust or the agreement of association of a voluntary  
22 association, the business trust or voluntary association shall  
23 file two executed original copies of the amendment,  
24 containing the notarized signature of at least one trustee of  
25 the business trust or at least one organizer or member of  
26 the voluntary association, with the office of the secretary  
27 of state and with the office of the clerk of the county  
28 commission of each county in which the declaration,  
29 articles or agreement of trust or the agreement of  
30 association has been filed.

31 (e) Upon any change of trustees, organizers, members  
32 or other persons previously recorded as having authority  
33 to act on behalf of the business trust or voluntary  
34 association, or upon any change of the agent of the

35 business trust or voluntary association for service of  
36 process, a business trust or voluntary association shall file  
37 notice of the change with the secretary of state.

38 (f) Upon the determination of the majority of trustees  
39 of a business trust or a majority of members of a  
40 voluntary association that the business trust or voluntary  
41 association shall be dissolved, the business trust or  
42 voluntary association shall file with the secretary of state a  
43 statement of intent to dissolve containing the notarized  
44 signature of at least one trustee of the business trust or at  
45 least one organizer or member of the voluntary  
46 association. After all debts, liabilities and obligations of  
47 the business trust or voluntary association have been paid  
48 and discharged, the business trust or voluntary association  
49 shall distribute all of the remaining assets of the business  
50 trust or voluntary association and file articles of  
51 dissolution with the secretary of state in the manner  
52 provided for corporations in section thirty-nine, article  
53 one, chapter thirty-one of this code. Upon verification by  
54 the appropriate state agencies that the business trust or  
55 voluntary association has paid all taxes, assessments and  
56 fees due to the state, the secretary of state shall issue a  
57 certificate of dissolution to the business trust or voluntary  
58 association.

59 (g) A business trust or voluntary association organized  
60 outside the state and registered to do business within this  
61 state may withdraw from the state in the manner provided  
62 for corporations in section sixty, article one, chapter  
63 thirty-one of this code.

64 (h) No document required to be filed by this section  
65 shall be filed with the secretary of state unless the trustee  
66 of the business trust or the organizer or member of the  
67 voluntary association is currently authorized as such and  
68 the secretary of state has on file a document which  
69 identifies such trustee, organizer or member, or unless the  
70 business trust or voluntary association attaches to the  
71 document to be filed appropriate documentation showing  
72 that the person signing the document is a current trustee,  
73 organizer or member or is otherwise authorized to sign the  
74 document on behalf of a current trustee, organizer or  
75 member of the business trust or voluntary association. For  
76 purposes of this subsection, the term "appropriate

77 documentation” means: (1) A notice of change filed  
78 pursuant to subsection (e) of this section; (2) a court order  
79 reflecting the identity of the current trustees, organizers or  
80 members or the authorization of any person to act for any  
81 trustee, organizer or member; or (3) any other legally  
82 authorized document assigning to the person signing the  
83 document clear authority to execute or verify documents  
84 on behalf of the business trust or voluntary association.

**§47-9A-5. Providing for use of trade names; acknowledgment of deeds and other writings.**

1 Any declaration, articles or agreement of trust of a  
2 business trust and any agreement of association of a  
3 voluntary association which provides for the use of a trade  
4 name shall authorize and designate or shall contain  
5 provisions for the authorization or designation of persons  
6 by whom deeds, leases, contracts and other written  
7 instruments shall be executed. All such deeds, leases,  
8 contracts and other instruments in writing shall be deemed  
9 to be properly acknowledged for the purposes of  
10 recordation if acknowledged in the form provided by  
11 statute for acknowledgments by corporations, or, if  
12 executed by trustees or other persons, then in the form  
13 provided by statute therefor.

**§47-9A-6. Validation of deeds and other writings heretofore executed.**

1 All such deeds, leases, contracts and other written  
2 instruments with respect to real or personal property or  
3 any interest therein within this state heretofore made and  
4 delivered by any business trust or voluntary association  
5 which comply with the requirements of this article are  
6 hereby expressly validated.

**§47-9A-7. Repeal of conflicting acts; severability.**

1 All acts or parts of acts in conflict with this article are  
2 hereby repealed.

3 The provisions of this article shall be construed to be  
4 severable and if any are held unconstitutional or otherwise  
5 invalid, such invalidity or unconstitutionality shall not  
6 affect the operation of the remaining provisions.

## CHAPTER 76

(H. B. 4692—By Delegates Michael, Doyle and Facemyer)

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

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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.

#### §5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a  
2 single qualified company may not exceed two million  
3 dollars. Capitalization of the company may be increased  
4 pursuant to rule of the authority.

5 (b) The total credits authorized by the authority for all  
6 companies may not exceed a total of ten million dollars  
7 each fiscal year: *Provided*, That for the fiscal year  
8 beginning on the first day of July, one thousand nine  
9 hundred ninety-seven, the total credits authorized for all  
10 companies may not exceed a total of five million five  
11 hundred thousand dollars: *Provided, however*, That for  
12 the fiscal year beginning on the first day of July, one  
13 thousand nine hundred ninety-eight, the total credits  
14 authorized for all companies may not exceed a total of six  
15 million dollars: *Provided further*, That the capital base of  
16 any such qualified company shall be invested in  
17 accordance with the provisions of this article. The

18 authority shall allocate these credits to qualified  
19 companies in the order that said companies are qualified.

20 (c) Any investor, including an individual, partnership  
21 or corporation who makes a capital investment in a  
22 qualified West Virginia capital company, is entitled to a  
23 tax credit equal to fifty percent of the investment, except  
24 as otherwise provided in this section or in this article. The  
25 credit allowed by this article shall be taken after all other  
26 credits allowed by chapter eleven of this code. It shall be  
27 taken against the same taxes and in the same order as set  
28 forth in subsections (c) through (i), inclusive, section five,  
29 article thirteen-c, chapter eleven of this code. The credit  
30 for investments by a partnership or by a corporation  
31 electing to be treated as a Subchapter S corporation may  
32 be divided pursuant to election of partners or  
33 shareholders.

34 (d) The tax credit allowed under this section is to be  
35 credited against the taxpayer's tax liability for the taxable  
36 year in which the investment in a qualified West Virginia  
37 capital company is made. If the amount of the tax credit  
38 exceeds the taxpayer's tax liability for the taxable year, the  
39 amount of the credit which exceeds the tax liability for the  
40 taxable year may be carried to succeeding taxable years  
41 until used in full, or until forfeited: *Provided, That:* (i)  
42 Tax credits may not be carried forward beyond fifteen  
43 years; and (ii) tax credits may not be carried back to prior  
44 taxable years. Any tax credit remaining after the fifteenth  
45 taxable year is forfeited.

46 (e) The tax credit provided for in this section is  
47 available only to those taxpayers whose investment in a  
48 qualified West Virginia capital company occurs after the  
49 first day of July, one thousand nine hundred eighty-six.

50 (f) The tax credit allowed under this section may not  
51 be used against any liability the taxpayer may have for  
52 interest, penalties or additions to tax.

53 (g) Notwithstanding any provision in this code to the  
54 contrary, the tax commissioner shall publish in the state  
55 register the name and address of every taxpayer, and the  
56 amount, by category, of any credit asserted under this  
57 article. The categories by dollar amount of credit received  
58 shall be as follows:

- 59 (1) More than \$1.00, but not more than \$50,000;  
 60 (2) More than \$50,000, but not more than \$100,000;  
 61 (3) More than \$100,000, but not more than \$250,000;  
 62 (4) More than \$250,000, but not more than \$500,000;  
 63 (5) More than \$500,000, but not more than  
 64 \$1,000,000;  
 65 (6) More than \$1,000,000.

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## 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)

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

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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.**

- 1 (a) It is the intent of the Legislature to provide a  
 2 parking facility for the general public and to direct the

3 secretary of the department of administration to plan and  
4 construct a parking garage at the state capitol complex  
5 that will provide sufficient and additional parking for the  
6 general public.

7 (b) The secretary may regulate the parking of motor  
8 vehicles in accordance with the provisions of this section  
9 with regard to the following state-owned property in the  
10 city of Charleston, Kanawha County:

11 (1) The east side of Greenbrier street between  
12 Kanawha boulevard and Washington street, east;

13 (2) The west side of California avenue between  
14 Kanawha boulevard and Washington street, east;

15 (3) Upon the state-owned grounds upon which state  
16 office building no. 3 is located;

17 (4) Upon the state-owned grounds which state office  
18 building no. 4, 112 California avenue, is located;

19 (5) In the state-owned parking garage at 212  
20 California avenue and upon the state-owned grounds upon  
21 which such parking garage is located;

22 (6) Upon the state-owned property at Michigan  
23 avenue and Virginia terrace; and

24 (7) Upon any other property now or hereafter owned  
25 by the state and used for parking purposes in conjunction  
26 with the state capitol or state office buildings numbers  
27 three and four, including the Laidley field complex:  
28 *Provided*, That the secretary shall present to the joint  
29 committee on government and finance for its suggestions,  
30 on or before the first day of July, one thousand nine  
31 hundred ninety-eight, plans for the construction of a state  
32 capitol parking garage to be constructed, on property  
33 owned by the state or to be purchased by the state, no later  
34 than the thirtieth day of June, one thousand nine hundred  
35 ninety-nine. The submitted plans shall include proposals  
36 for general public parking, including the estimated use  
37 and cost; relocation of parking for official state vehicles;  
38 and state employee parking, including the estimated use  
39 and cost.

40 (c) The secretary shall propose rules for promulgation  
41 respecting parking and to allocate parking spaces to  
42 public officers and employees of the state upon all of the  
43 property set forth in subsection (a) of this section:

44 *Provided*, That during sessions of the Legislature,  
45 including regular, extended, extraordinary and interim  
46 sessions, parking on the east side of Greenbrier street  
47 between Kanawha boulevard and Washington street, east,  
48 in the science and culture center parking lot, on the north  
49 side of Kanawha boulevard between Greenbrier street and  
50 California avenue, and on the west side of California  
51 avenue between Kanawha boulevard and Washington  
52 street, east, is subject to rules promulgated jointly by the  
53 speaker of the House of Delegates and the president of the  
54 Senate. Any person parking any vehicle contrary to the  
55 rules promulgated under authority of this subsection is  
56 subject to a fine of not less than one dollar nor more than  
57 twenty-five dollars for each offense. In addition, the  
58 secretary or the Legislature, as the case may be, may cause  
59 the removal at owner expense of any vehicle that is parked  
60 in violation of the rules. Magistrates in Kanawha County  
61 have jurisdiction of all the offenses.

62 (d) The secretary may employ the persons as may be  
63 necessary to enforce the parking rules promulgated under  
64 the provisions of this section.

65 (e) There is created in the department of  
66 administration a special fund to be named the "Parking  
67 Garage Fund" in which shall be deposited funds that are  
68 appropriated and funds from other sources to be used for  
69 the construction and maintenance of a parking garage on  
70 the state capitol complex.

71 (f) There is created in the department of  
72 administration a special fund to be named the "Morris  
73 Square Repair Fund" in which shall be deposited funds  
74 that are appropriated and funds from other sources to be  
75 used for maintenance and repairs to the Morris square  
76 properties.

77 (g) The secretary shall include within the planning for  
78 the buildings to be constructed or remodeled pursuant to  
79 subsections (e) and (f) of this section, the location of the  
80 land division of the auditor's office. The secretary shall  
81 consult with the auditor in planning the relocation of the  
82 land division of the auditor's office.

## CHAPTER 78

(S. B. 761—By Senators Craig, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

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

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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.**

- 1 (a) The commission shall provide to manufacturers, or
- 2 applicants applying for a manufacturer's permit, the
- 3 protocol documentation data necessary to enable the
- 4 respective manufacturer's video lottery terminals to

5 communicate with the commission's central computer for  
6 transmitting auditing program information and for  
7 activation and disabling of video lottery terminals.

8 (b) The gross terminal income of a licensed racetrack  
9 shall be remitted to the commission through the electronic  
10 transfer of funds. Licensed racetracks shall furnish to the  
11 commission all information and bank authorizations  
12 required to facilitate the timely transfer of moneys to the  
13 commission. Licensed racetracks must provide the  
14 commission thirty days' advance notice of any proposed  
15 account changes in order to assure the uninterrupted  
16 electronic transfer of funds. From the gross terminal  
17 income remitted by the licensee to the commission, the  
18 commission shall deduct an amount sufficient to  
19 reimburse the commission for its actual costs and expenses  
20 incurred in administering racetrack video lottery at the  
21 licensed racetrack, and the resulting amount after such  
22 deduction shall be the net terminal income. The amount  
23 deducted for administrative costs and expenses of the  
24 commission may not exceed four percent of gross  
25 terminal income.

26 (c) Net terminal income shall be divided as set out in  
27 this subsection. The licensed racetrack's share shall be in  
28 lieu of all lottery agent commissions and is considered to  
29 cover all costs and expenses required to be expended by  
30 the licensed racetrack in connection with video lottery  
31 operations. The division shall be made as follows:

32 (1) The commission shall receive thirty percent of net  
33 terminal income, which shall be paid into the general  
34 revenue fund of the state to be appropriated by the  
35 Legislature;

36 (2) Fourteen percent of net terminal income at a  
37 licensed racetrack shall be deposited in the special fund  
38 established by the licensee, and used for payment of  
39 regular purses in addition to other amounts provided for  
40 in article twenty-three, chapter nineteen of this code;

41           (3) The county where the video lottery terminals are  
42 located shall receive two percent of the net terminal  
43 income;

44           (4) One half of one percent of net terminal income  
45 shall be paid for and on behalf of all employees of the  
46 licensed racing association by making a deposit into a  
47 special fund to be established by the racing commission to  
48 be used for payment into the pension plan for all  
49 employees of the licensed racing association;

50           (5) The West Virginia thoroughbred development  
51 fund created under section thirteen-b, article twenty-three,  
52 chapter nineteen of this code and the West Virginia  
53 greyhound breeding development fund created under  
54 section ten, article twenty-three, chapter nineteen of this  
55 code shall receive an equal share of a total of not less than  
56 one and one-half percent of the net terminal income:  
57 *Provided*, That for any racetrack which does not have a  
58 breeder's program supported by the thoroughbred  
59 development fund or the greyhound breeding  
60 development fund, the one and one-half percent provided  
61 for in this subdivision shall be deposited in the special  
62 fund established by the licensee and used for payment of  
63 regular purses, in addition to other amounts provided for  
64 in subdivision (2) of this subsection and article twenty-  
65 three, chapter nineteen of this code;

66           (6) The West Virginia thoroughbred breeders classic  
67 shall receive one percent of the net terminal income which  
68 shall be used for purses. The moneys shall be deposited  
69 in the separate account established for the classic under  
70 section thirteen, article twenty-three, chapter nineteen of  
71 this code;

72           (7) A licensee shall receive forty-seven percent of net  
73 terminal income;

74           (8) The tourism promotion fund established in section  
75 nine, article one, chapter five-b of this code shall receive  
76 three percent of the net terminal income; and

77           (9) The veterans memorial program shall receive one  
78 percent of the net terminal income until sufficient moneys  
79 have been received to complete the veterans memorial on  
80 the grounds of the state capitol complex in Charleston,  
81 West Virginia. The moneys shall be deposited in the state  
82 treasury in the division of culture and history special fund  
83 created under section three, article one-i, chapter  
84 twenty-nine of this code: *Provided*, That only after  
85 sufficient moneys have been deposited in the fund to  
86 complete the veterans memorial and to pay in full the  
87 annual bonded indebtedness on the veterans memorial, not  
88 more than twenty thousand dollars of the one percent of  
89 net terminal income provided for in this subdivision shall  
90 be deposited into a special revenue fund in the state  
91 treasury, to be known as the "John F. 'Jack' Bennett  
92 Fund". The moneys in this fund shall be expended by the  
93 division of veterans affairs to provide for the placement of  
94 markers for the graves of veterans in perpetual cemeteries  
95 in this state. The division of veterans affairs shall  
96 promulgate legislative rules pursuant to the provisions of  
97 article three, chapter twenty-nine-a of this code specifying  
98 the manner in which the funds are spent, determine the  
99 ability of the surviving spouse to pay for the placement of  
100 the marker, and setting forth the standards to be used to  
101 determine the priority in which the veterans grave markers  
102 will be placed in the event that there are not sufficient  
103 funds to complete the placement of veterans grave  
104 markers in any one year, or at all. Upon payment in full  
105 of the bonded indebtedness on the veteran's memorial,  
106 one hundred thousand dollars of the one percent of net  
107 terminal income provided for in this subdivision shall be  
108 deposited in the special fund in the division of culture and  
109 history created under section three, article one-i, chapter  
110 twenty-nine of this code and be expended by the division  
111 of culture and history to establish a West Virginia veterans  
112 memorial archives within the cultural center to serve as a  
113 repository for the documents and records pertaining to the  
114 veterans memorial, to restore and maintain the monuments  
115 and memorial on the capitol grounds, and not more than  
116 twenty thousand dollars be deposited in the "John F.

117 'Jack' Bennett Fund": *Provided, however,* That five  
118 hundred thousand dollars of the one percent of net  
119 terminal income shall be deposited in the state treasury in  
120 a special fund of the department of administration, created  
121 under section five, article four, chapter five-a of this code  
122 to be used for construction and maintenance of a parking  
123 garage on the state capitol complex: *Provided further,*  
124 That the remainder of the one percent of net terminal  
125 income shall be deposited in a special fund of the  
126 department of administration created under section five,  
127 article four, chapter five-a of this code to be used to  
128 maintain and make repairs to the Morris square properties.

129 (d) Each licensed racetrack shall maintain in its  
130 account an amount equal to or greater than the gross  
131 terminal income from its operation of video lottery  
132 machines, to be electronically transferred by the  
133 commission on dates established by the commission.  
134 Upon a licensed racetrack's failure to maintain this  
135 balance, the commission may disable all of a licensed  
136 racetrack's video lottery terminals until full payment of all  
137 amounts due is made. Interest shall accrue on any unpaid  
138 balance at a rate consistent with the amount charged for  
139 state income tax delinquency under chapter eleven of this  
140 code, which interest shall begin to accrue on the date  
141 payment is due to the commission.

142 (e) The commission's central control computer shall  
143 keep accurate records of all income generated by each  
144 video lottery terminal. The commission shall prepare and  
145 mail to the licensed racetrack a statement reflecting the  
146 gross terminal income generated by the licensee's video  
147 lottery terminals. Each licensed racetrack must report to  
148 the commission any discrepancies between the  
149 commission's statement and each terminal's mechanical  
150 and electronic meter readings. The licensed racetrack is  
151 solely responsible for resolving income discrepancies  
152 between actual money collected and the amount shown on  
153 the accounting meters or on the commission's billing  
154 statement.

155 (f) Until an accounting discrepancy is resolved in  
156 favor of the licensed racetrack, the commission may make  
157 no credit adjustments. For any video lottery terminal

158 reflecting a discrepancy, the licensed racetrack shall  
159 submit to the commission the maintenance log which  
160 includes current mechanical meter readings and the audit  
161 ticket which contains electronic meter readings generated  
162 by the terminal's software. If the meter readings and the  
163 commission's records cannot be reconciled, final  
164 disposition of the matter shall be determined by the  
165 commission. Any accounting discrepancies which cannot  
166 be otherwise resolved shall be resolved in favor of the  
167 commission.

168 (g) Licensed racetracks shall remit payment by mail if  
169 the electronic transfer of funds is not operational or the  
170 commission notifies licensed racetracks that remittance by  
171 this method is required. The licensed racetracks shall  
172 report an amount equal to the total amount of cash  
173 inserted into each video lottery terminal operated by a  
174 licensee, minus the total value of game credits which are  
175 cleared from the video lottery terminal in exchange for  
176 winning redemption tickets, and remit such amount as  
177 generated from its terminals during the reporting period.  
178 The remittance shall be sealed in a properly addressed and  
179 stamped envelope and deposited in the United States mail  
180 no later than noon on the day when the payment would  
181 otherwise be completed through electronic funds transfer.

182 (h) Licensed racetracks may, upon request, receive  
183 additional reports of play transactions for their respective  
184 video lottery terminals and other marketing information  
185 not considered confidential by the commission. The  
186 commission may charge a reasonable fee for the cost of  
187 producing and mailing any report other than the billing  
188 statements.

189 (i) The commission has the right to examine all  
190 accounts, bank accounts, financial statements and records  
191 in a licensed racetrack's possession, under its control or in  
192 which it has an interest and the licensed racetrack must  
193 authorize all third parties in possession or in control of the  
194 accounts or records to allow examination of any of those  
195 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)

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

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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-three-a, 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**

**16. Public Health.**

**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
- 3 article and all other applicable laws of this state and all
- 4 lawful rules and regulations adopted and promulgated
- 5 thereunder;

6           (2) Direct and supervise the statewide system of vital  
7 statistics and the operation of the division of vital statistics,  
8 and act as custodian of its records;

9           (3) Direct, supervise and control the activities of local  
10 registrars and the activities of public officers in relation to  
11 the operation of the vital statistics system and provide  
12 them with the postage necessary for them to carry out  
13 their duties under this article;

14           (4) Prescribe, provide and distribute, subject to the  
15 rules and regulations promulgated by the board of health,  
16 all forms necessary to carry out the provisions of this  
17 article and of the rules and regulations adopted and  
18 promulgated thereunder;

19           (5) Prepare and publish annual reports of vital  
20 statistics of this state, and such other reports as may be  
21 required by the director of the state health department;  
22 and

23           (6) Offer voluntary paternity establishment services.

24           (b) The state registrar of vital statistics may delegate  
25 such functions and duties as are hereby vested in him or  
26 her to officers and employees of the division of vital  
27 statistics and to local registrars as the state registrar may  
28 deem necessary or expedient.

29           (c) The state registrar, either personally or by a duly  
30 delegated representative, shall have authority to investigate  
31 cases of irregularity or violation of law arising under the  
32 provisions of this article, and all local registrars, deputy  
33 local registrars and subregistrars shall aid him or her, upon  
34 request, in such investigations. When he or she shall deem  
35 it necessary, he or she shall report cases of violation of any  
36 of the provisions of this article to the prosecuting attorney  
37 of the county, with a statement of the facts and  
38 circumstances. When any such case is reported to him or  
39 her by the state registrar, the prosecuting attorney shall  
40 forthwith initiate and promptly prosecute the necessary  
41 court proceedings against the person or corporation  
42 responsible for the alleged violation of law. Upon request

- 43 of the state registrar, the attorney general shall assist in the  
44 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.

1 (a) A circuit court, or a judge thereof, may, by  
2 administrative rule or order, and with the approval of the  
3 supreme court of appeals, designate an organization or  
4 agency to establish and operate education programs  
5 designed for parents who have filed an action for divorce,  
6 paternity, support or separate maintenance and who have  
7 minor children. The education programs shall be  
8 designed to instruct and educate parents about the effects  
9 of divorce and custody disputes on their children and to  
10 teach parents ways to help their children and minimize  
11 their trauma.

12 (b) The circuit court may issue an order requiring  
13 parties to an action for divorce, paternity, custody or  
14 separate maintenance to attend parental education classes  
15 established pursuant to subsection (a) of this section and  
16 may, by order, establish sanctions for failure to attend.

17 (c) The circuit court may require that each person  
18 attending a parental education class pay a fee, not to  
19 exceed twenty-five dollars, to the clerk of such court to  
20 defray the cost of materials and of hiring teachers:  
21 *Provided*, That where it is determined that a party is  
22 indigent and unable to pay for such classes, the court shall  
23 waive the payment of the fee for such party. The clerk of  
24 the circuit court shall, on or before the tenth day of each  
25 month, transmit all fees collected under this subsection to  
26 the state treasurer for deposit in the state treasury to the  
27 credit of special revenue fund to be known as the  
28 "parental education fund", which is hereby created. All

29 moneys collected and received under this subsection and  
30 paid into the state treasury and credited to the "parental  
31 education fund" shall be used by the administrative office  
32 of the supreme court of appeals solely for reimbursing the  
33 provider of parental education classes for the costs of  
34 materials and of providing such classes. Such moneys  
35 shall not be treated by the auditor and treasurer as part of  
36 the general revenue of the state.

37 (d) The administrative office of the supreme court of  
38 appeals shall submit a report to the joint committee on  
39 government and finance summarizing the effectiveness of  
40 any program of parent education no later than two years  
41 from the initiation of the program.

**§48-2-15. Relief upon ordering divorce or annulment or  
granting decree of separate maintenance.**

1 (a) Upon ordering a divorce or granting a decree of  
2 separate maintenance, the court may require either party  
3 to pay alimony in the form of periodic installments, or a  
4 lump sum, or both, for the maintenance of the other party.  
5 Payments of alimony are to be ordinarily made from a  
6 party's income, but when the income is not sufficient to  
7 adequately provide for those payments, the court may,  
8 upon specific findings set forth in the order, order the  
9 party required to make those payments to make them  
10 from the corpus of his or her separate estate. An award of  
11 alimony shall not be disproportionate to a party's ability to  
12 pay as disclosed by the evidence before the court.

13 (b) Upon ordering the annulment of a marriage or a  
14 divorce or granting of decree of separate maintenance, the  
15 court may further order all or any part of the following  
16 relief:

17 (1) The court may provide for the custody of minor  
18 children of the parties, subject to such rights of visitation,  
19 both in and out of the residence of the custodial parent or  
20 other person or persons having custody, as may be  
21 appropriate under the circumstances. In every action  
22 where visitation is awarded, the court shall specify a  
23 schedule for visitation by the noncustodial parent:  
24 *Provided*, That with respect to any existing order which

25 provided for visitation but which does not provide a  
26 specific schedule for visitation by the noncustodial parent,  
27 upon motion of any party, notice of hearing and hearing,  
28 the court shall issue an order which provides a specific  
29 schedule of visitation by the noncustodial parent;

30 (2) When the action involves a minor child or children,  
31 the court shall require either party to pay child support in  
32 the form of periodic installments for the maintenance of  
33 the minor children of the parties in accordance with  
34 support guidelines promulgated pursuant to article one-b,  
35 chapter forty-eight-a of this code. Payments of child  
36 support are to be ordinarily made from a party's income,  
37 but in cases when the income is not sufficient to  
38 adequately provide for those payments, the court may,  
39 upon specific findings set forth in the order, order the  
40 party required to make those payments to make them  
41 from the corpus of his or her separate estate;

42 (3) When the action involves a minor child or children,  
43 the court shall provide for medical support for any minor  
44 children in accordance with section fifteen-a of this article;

45 (4) As an incident to requiring the payment of  
46 alimony or child support, the court may order either party  
47 to continue in effect existing policies of insurance  
48 covering the costs of health care and hospitalization of the  
49 other party: *Provided*, That if the other party is no longer  
50 eligible to be covered by such insurance because of the  
51 granting of an annulment or divorce, the court may  
52 require a party to substitute such insurance with a new  
53 policy to cover the other party or may consider the  
54 prospective cost of such insurance in awarding alimony to  
55 be paid in periodic installments. Payments made to an  
56 insurer pursuant to this subdivision, either directly or by a  
57 deduction from wages, shall be deemed to be alimony or  
58 installment payments for the distribution of marital  
59 property, in such proportion as the court shall direct:  
60 *Provided, however*, That if the court does not set forth in  
61 the order that a portion of such payments is to be deemed  
62 installment payments for the distribution of marital  
63 property, then all such payments made pursuant to this  
64 subdivision shall be deemed to be alimony: *Provided*

65 *further*, That the designation of insurance coverage as  
66 alimony under the provisions of this subdivision shall not,  
67 in and of itself, give rise to a subsequent modification of  
68 the order to provide for alimony other than insurance for  
69 covering the costs of health care and hospitalization;

70 (5) The court may grant the exclusive use and  
71 occupancy of the marital home to one of the parties,  
72 together with all or a portion of the household goods,  
73 furniture and furnishings reasonably necessary for such  
74 use and occupancy. Such use and occupancy shall be for  
75 a definite period, ending at a specific time set forth in the  
76 order, subject to modification upon the petition of either  
77 party. Except in extraordinary cases supported by  
78 specific findings set forth in the order granting relief, a  
79 grant of the exclusive use and occupancy of the marital  
80 home shall be limited to those situations when such use  
81 and occupancy is reasonably necessary to accommodate  
82 the rearing of minor children of the parties. The court  
83 may require payments to third parties in the form of home  
84 loan installments, land contract payments, rent, property  
85 taxes and insurance coverage if the amount of such  
86 coverage is reduced to a fixed monetary amount set forth  
87 in the court's order. When such third party payments are  
88 ordered, the court shall specify whether such payments or  
89 portions of payments are alimony, child support, a partial  
90 distribution of marital property or an allocation of marital  
91 debt: *Provided*, That if the court does not set forth in the  
92 order that a portion of such payments is to be deemed  
93 child support or installment payments for the distribution  
94 of marital property, then all such payments made pursuant  
95 to this subdivision shall be deemed to be alimony. When  
96 such third party payments are ordered, the court shall  
97 specify whether such payments or portions of payments  
98 are alimony, child support, a partial distribution of marital  
99 property or an allocation of marital debt. If the payments  
100 are not designated in an order and the parties have waived  
101 any right to receive alimony, the court may designate the  
102 payments upon motion by any party. Nothing contained  
103 in this subdivision shall abrogate an existing contract  
104 between either of the parties and a third party or affect the

105 rights and liabilities of either party or a third party under  
106 the terms of such contract;

107 (6) As an incident to requiring the payment of  
108 alimony, the court may grant the exclusive use and  
109 possession of one or more motor vehicles to either of the  
110 parties. The court may require payments to third parties  
111 in the form of automobile loan installments or insurance  
112 coverage if available at reasonable rates, and any such  
113 payments made pursuant to this subdivision for the benefit  
114 of the other party shall be deemed to be alimony or  
115 installment payments for the distribution of marital  
116 property, as the court may direct. Nothing contained in  
117 this subdivision shall abrogate an existing contract  
118 between either of the parties and a third party or affect the  
119 rights and liabilities of either party or a third party under  
120 the terms of such contract;

121 (7) When the pleadings include a specific request for  
122 specific property or raise issues concerning the equitable  
123 division of marital property as defined in section one of  
124 this article, the court shall order such relief as may be  
125 required to effect a just and equitable distribution of the  
126 property and to protect the equitable interests of the  
127 parties therein;

128 (8) Unless a contrary disposition is ordered pursuant  
129 to other provisions of this section, then upon the motion  
130 of either party, the court may compel the other party to  
131 deliver to the moving party any of his or her separate  
132 estate which may be in the possession or control of the  
133 respondent party and may make such further order as is  
134 necessary to prevent either party from interfering with the  
135 separate estate of the other;

136 (9) When allegations of abuse have been proven, the  
137 court shall enjoin the offending party from molesting or  
138 interfering with the other, or otherwise imposing any  
139 restraint on the personal liberty of the other or interfering  
140 with the custodial or visitation rights of the other. Such  
141 order may permanently enjoin the offending party from  
142 entering the school, business or place of employment of  
143 the other for the purpose of molesting or harassing the  
144 other; or from contacting the other, in person or by

145 telephone, for the purpose of harassment or threats; or  
146 from harassing or verbally abusing the other in a public  
147 place;

148 (10) The court may order either party to take  
149 necessary steps to transfer utility accounts and other  
150 accounts for recurring expenses from the name of one  
151 party into the name of the other party or from the joint  
152 names of the parties into the name of one party. Nothing  
153 contained in this subdivision shall affect the liability of the  
154 parties for indebtedness on any such account incurred  
155 before the transfer of such account.

156 (c) When an annulment or divorce is denied, the court  
157 shall retain jurisdiction of the case and may order all or  
158 any portion of the relief provided for in subsections (a)  
159 and (b) of this section which has been demanded or  
160 prayed for in the pleadings.

161 (d) When a divorce or annulment is granted in this  
162 state upon constructive service of process and personal  
163 jurisdiction is thereafter obtained of the defendant in such  
164 case, the court may order all or any portion of the relief  
165 provided for in subsections (a) and (b) of this section  
166 which has been demanded or prayed for in the pleadings.

167 (e) After the entry of an order pursuant to the  
168 provisions of this section, the court may revise the order  
169 concerning the maintenance of the parties and enter a new  
170 order concerning the same, as the circumstances of the  
171 parties may require.

172 The court may also from time to time afterward, upon  
173 motion of either of the parties and upon proper service,  
174 revise such order to grant relief pursuant to subdivision  
175 (9), subsection (b) of this section, and enter a new order  
176 concerning the same, as the circumstances of the parties  
177 and the benefit of children may require. The court may  
178 also from time to time afterward, upon the motion of  
179 either of the parties or other proper person having actual  
180 or legal custody of the minor child or children of the  
181 parties, revise or alter the order concerning the custody  
182 and support of the children, and make a new order  
183 concerning the same, issuing it forthwith, as the

184 circumstances of the parents or other proper person or  
185 persons and the benefit of the children may require:  
186 *Provided*, That all orders modifying child support shall be  
187 in conformance with the requirements of support  
188 guidelines promulgated pursuant to article one-b, chapter  
189 forty-eight-a of this code: *Provided, however*, That an  
190 order providing for child support payments may be  
191 revised or altered for the reason, inter alia, that the existing  
192 order provides for child support payments in an amount  
193 that is less than eighty-five percent or more than one  
194 hundred fifteen percent of the amount that would be  
195 required to be paid under the child support guidelines  
196 promulgated pursuant to the provisions of said section:  
197 *Provided further*, That the child support enforcement  
198 division may review a child support order and, if  
199 appropriate, file a motion with the circuit court for  
200 modification of the child support order pursuant to the  
201 provisions of section thirty-five, article two, chapter forty-  
202 eight-a of this code.

203 In granting relief under this subsection, the court may,  
204 when other means are not conveniently available, alter any  
205 prior order of the court with respect to the distribution of  
206 marital property, if such property is still held by the  
207 parties, and if necessary to give effect to a modification of  
208 alimony, child support or child custody or necessary to  
209 avoid an inequitable or unjust result which would be  
210 caused by the manner in which the modification will affect  
211 the prior distribution of marital property.

212 (f) When a separation agreement is the basis for an  
213 award of alimony, the court, in approving the agreement,  
214 shall examine the agreement to ascertain whether it clearly  
215 provides for alimony to continue beyond the death of the  
216 payor party or to cease in such event. When alimony is to  
217 be paid pursuant to the terms of a separation agreement  
218 which does not state whether the payment of alimony is to  
219 continue beyond the death of the payor party or is to  
220 cease, or when the parties have not entered into a  
221 separation agreement and alimony is to be awarded, the  
222 court shall specifically state as a part of its order whether  
223 such payments of alimony are to be continued beyond the  
224 death of the payor party or cease.

225 (g) When a separation agreement is the basis for an  
226 award of alimony, the court, in approving the agreement,  
227 shall examine the agreement to ascertain whether it clearly  
228 provides for alimony to continue beyond the remarriage  
229 of the payee party or to cease in such event. When  
230 alimony is to be paid pursuant to the terms of a separation  
231 agreement which does not state whether the payment of  
232 alimony is to continue beyond the remarriage of the  
233 payee party or is to cease, or when the parties have not  
234 entered into a separation agreement and alimony is to be  
235 awarded, the court shall specifically state as a part of its  
236 order whether such payments of alimony are to be  
237 continued beyond the remarriage of the payee party or  
238 cease.

239 (h) In addition to the disclosure requirements set forth  
240 in section thirty-three of this article, the court may order  
241 accounts to be taken as to all or any part of marital  
242 property or the separate estates of the parties and may  
243 direct that the accounts be taken as of the date of the  
244 marriage, the date upon which the parties separated or any  
245 other time in assisting the court in the determination and  
246 equitable division of property.

247 (i) In determining whether alimony is to be awarded,  
248 or in determining the amount of alimony, if any, to be  
249 awarded under the provisions of this section, the court  
250 shall consider and compare the fault or misconduct of  
251 either or both of the parties and the effect of such fault or  
252 misconduct as a contributing factor to the deterioration of  
253 the marital relationship. However, alimony shall not be  
254 awarded when both parties prove grounds for divorce and  
255 are denied a divorce, nor shall an award of alimony under  
256 the provisions of this section be ordered which directs the  
257 payment of alimony to a party determined to be at fault,  
258 when, as a grounds granting the divorce, such party is  
259 determined by the court:

260 (1) To have committed adultery; or

261 (2) To have been convicted for the commission of a  
262 crime which is a felony, subsequent to the marriage if such  
263 conviction has become final; or

264 (3) To have actually abandoned or deserted his or her  
265 spouse for six months.

266 (j) Whenever under the terms of this section or section  
267 thirteen of this article a court enters an order requiring the  
268 payment of alimony or child support, if the court  
269 anticipates the payment of such alimony or child support  
270 or any portion thereof to be paid out of "disposable  
271 retired or retainer pay" as that term is defined in 10 U.S.C.  
272 §1408, relating to members or former members of the  
273 uniformed services of the United States, the court shall  
274 specifically provide for the payment of an amount,  
275 expressed in dollars or as a percentage of disposable  
276 retired or retainer pay, from the disposable retired or  
277 retainer pay of the payor party to the payee party.

278 (k) Any order which provides for the custody or  
279 support of a minor child shall include:

280 (1) The name of the custodian;

281 (2) The amount of the support payments;

282 (3) The date the first payment is due;

283 (4) The frequency of the support payments;

284 (5) The event or events which trigger termination of  
285 the support obligation;

286 (6) A provision regarding wage withholding;

287 (7) The address where payments shall be sent;

288 (8) A provision for medical support; and

289 (9) When child support guidelines are not followed, a  
290 specific written finding pursuant to section fourteen,  
291 article one-b, chapter forty-eight-a of this code.

292 (l) (1) Unless the best interests of the child require  
293 otherwise, every final order and every modification order  
294 which provides for the custody of a minor child of the  
295 parties shall also provide for the following:

296 (A) The custodial parent shall be required to authorize  
297 school authorities in the school in which the child is

298 enrolled to release to the noncustodial parent copies of  
299 any and all information concerning the child which would  
300 otherwise be properly released to the custodial parent;

301 (B) The custodial parent shall be required, promptly  
302 after receipt, to transmit to the noncustodial parent a copy  
303 of the child's grades or report card and copies of any  
304 other reports reflecting the status or progress of the child;

305 (C) The custodial parent shall be required, when  
306 practicable, to arrange appointments for parent-teacher  
307 conferences at a time when the noncustodial parent can be  
308 present;

309 (D) The custodial parent shall be required to authorize  
310 medical providers to release to the noncustodial parent  
311 copies of any and all information concerning medical care  
312 provided to the child which would otherwise be properly  
313 released to the custodial parent;

314 (E) The custodial parent shall be required to promptly  
315 inform the noncustodial parent of any illness of the child  
316 which requires medical attention; or, if the child is in the  
317 actual physical custody of the noncustodial parent during  
318 a period of visitation, the noncustodial parent shall be  
319 required to promptly inform the custodial parent of any  
320 illness of the child which requires medical attention;

321 (F) The custodial parent shall be required to consult  
322 with the noncustodial parent prior to any elective surgery  
323 being performed on the child; and in the event emergency  
324 medical procedures are undertaken for the child which  
325 require the parental consent of either parent, if time  
326 permits, the other parent shall be consulted, or if time does  
327 not permit such consultation, the other parent shall be  
328 promptly informed of such emergency medical  
329 procedures: *Provided*, That the same duty to inform the  
330 custodial parent applies to the noncustodial parent in the  
331 event that the emergency medical procedures are required  
332 while the child is in the physical custody of the  
333 noncustodial parent during a period of visitation:  
334 *Provided, however*, That nothing contained herein shall be  
335 deemed to alter or amend the law of this state as it  
336 otherwise pertains to physicians or health care facilities

337 obtaining parental consent prior to providing medical care  
338 or performing medical procedures.

339 (2) In the event a custodial parent shall fail or refuse  
340 to authorize the release of school or medical records as  
341 provided for by subdivision (1) of this subsection, then  
342 upon the ex parte application of the noncustodial parent,  
343 the family law master shall prepare an order for entry by  
344 the circuit court which appoints the family law master as a  
345 special commissioner authorized to execute a consent for  
346 the release of such records and direct it to the appropriate  
347 school authorities or medical providers.

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

1 (a) For the purposes of this section:

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

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

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

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

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

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

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

34 (1) The court shall order either parent or both parents  
35 to provide insurance coverage for a child, if such  
36 insurance coverage is available to that parent on a group  
37 basis through an employer or through an employee's  
38 union. If similar insurance coverage is available to both  
39 parents, the court shall order the child to be insured under  
40 the insurance coverage which provides more  
41 comprehensive benefits. If such insurance coverage is not  
42 available at the time of the entry of the order, the order  
43 shall require that if such coverage thereafter becomes  
44 available to either party, that party shall promptly notify  
45 the other party of the availability of insurance coverage  
46 for the child.

47 (2) If the court finds that insurance coverage is not  
48 available to either parent on a group basis through an  
49 employer, multiemployer trust or employees' union, or  
50 that the group insurer is not accessible to the parties, the  
51 court may order either parent or both parents to obtain  
52 insurance coverage which is otherwise available at a  
53 reasonable cost.

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

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

64 (5) The order shall require the obligor to continue to  
65 provide the child support enforcement division created by  
66 article two, chapter forty-eight-a of this code with  
67 information as to his or her employer's name and address  
68 and information as to the availability of employer-related  
69 insurance programs providing medical care coverage so  
70 long as the child continues to be eligible to receive  
71 support.

72 (c) The cost of insurance coverage shall be considered  
73 by the court in applying the child support guidelines  
74 provided for in article one-b, chapter forty-eight-a of this  
75 code.

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

83 (1) The name of the insurer;

84 (2) The policy number;

85 (3) An insurance card;

86 (4) The address to which all claims should be mailed;

87 (5) A description of any restrictions on usage, such as  
88 prior approval for hospital admission, and the manner in  
89 which to obtain such approval;

90 (6) A description of all deductibles; and

91 (7) Five copies of claim forms.

92 (e) The custodian for the child shall send the insurer  
93 or the obligated parent's employer the children's address  
94 and notice that the custodian will be submitting claims on  
95 behalf of the children. Upon receipt of such notice, or an  
96 order for insurance coverage under this section, the  
97 obligated parent's employer, multiemployer trust or union  
98 shall, upon the request of the custodian for the child,

99 release information on the coverage for the children,  
100 including the name of the insurer.

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

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

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

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

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

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

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

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

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

136 (2) If the parent is enrolled but fails to make  
137 application to obtain coverage of the child, to enroll the  
138 child under family coverage upon application by the  
139 child's other parent, by the state agency administering the  
140 medicaid program or by the child support enforcement  
141 division;

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

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

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

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

152 (4) To withhold from the employee's compensation  
153 the employee's share, if any, of premiums for health  
154 coverage and to pay this amount to the insurer: *Provided,*  
155 That the amount so withheld may not exceed the  
156 maximum amount permitted to be withheld under 15  
157 U.S.C. §1673, Section 303(b) of the Consumer Credit  
158 Protection Act.

159 (i) (1) The signature of the custodian for the child  
160 shall constitute a valid authorization to the insurer for the  
161 purposes of processing an insurance payment to the  
162 provider of medical care for the child.

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

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

170 (4) All insurers in this state shall comply with the  
171 provisions of section sixteen, article fifteen, chapter thirty-  
172 three of this code and section eleven, article sixteen of said

173 chapter and shall provide insurance coverage for the child  
174 of a covered employee notwithstanding the amount of  
175 support otherwise ordered by the court and regardless of  
176 the fact that the child may not be living in the home of the  
177 covered employee.

178 (j) Where an obligated parent changes employment,  
179 and the new employer provides the obligated parent's  
180 health care coverage, the child support enforcement  
181 division shall transfer to the new employer notice of the  
182 obligated parent's duty to provide health care coverage.  
183 Unless contested by the obligated parent in writing and in  
184 accordance with section eight, article five, chapter forty-  
185 eight-a of this code, the notice shall operate to enroll the  
186 child in the new employer's health care plan.

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

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

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

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

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

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

220 (4) In addition to other remedies available under law,  
221 the child support enforcement division may garnish the  
222 wages, salary or other employment income of, and  
223 withhold amounts from state tax refunds to any person  
224 who:

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

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

235 (n) Proof of failure to maintain court ordered  
236 insurance coverage for the child constitutes a showing of  
237 substantial change in circumstances or increased need  
238 pursuant to section fifteen of this article, and provides a  
239 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.
6. Establishment of Paternity.

#### ARTICLE 1A. DEFINITIONS.

##### §48A-1A-30. Support order.

1 (a) For cases being enforced pursuant to Title IV-D of  
2 the Social Security Act, "support order" means a judgment,  
3 decree or order, whether temporary, final, or subject to  
4 modification, issued by a court or an administrative  
5 agency of competent jurisdiction, for the support and  
6 maintenance of a child, including a child who has attained  
7 the age of majority under the law of the issuing state, or a  
8 child and the parent with whom the child is living, which  
9 provides for monetary support, health care, arrearage or  
10 reimbursements, and which may include related costs and  
11 fees, interest and penalties, income withholding, attorneys'  
12 fees and other relief.

13 (b) For all other cases, "support order" means an order  
14 as defined in subsection (a) of this section and, in addition,  
15 an order for the support and maintenance of a spouse or  
16 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.

1 (a) If a proportion of the obligor's social security  
2 benefit is paid directly to the custodian of his or her  
3 dependents who are the subject of the child support order,  
4 the following adjustment shall be made. The total amount  
5 of the social security benefit which includes the amounts  
6 paid to the obligor and the obligee shall be counted as  
7 gross income to the obligor. In turn, the child support  
8 order will be calculated as described in section six of this  
9 article. To arrive at the final child support amount,  
10 however, the amount of the social security benefits sent  
11 directly to the child's household will be subtracted from  
12 the child support order. If the child support order amount  
13 results in a negative amount it shall be set at zero.

14 (b) If a child is a recipient of disability payments as  
 15 supplemental security income for aged, blind and  
 16 disabled, under the provisions of 42 U.S.C. §1382, *et seq.*,  
 17 and if support furnished by an obligor would be  
 18 considered unearned income that renders the child  
 19 ineligible for disability payments or medical benefits, no  
 20 child support order shall be entered for that child. If a  
 21 support order is entered for the child's siblings or other  
 22 persons in the household, the child shall be excluded from  
 23 the calculation of support, and the amount of support for  
 24 the child shall be set at zero.

**ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COM-  
 MISSION; CHILD SUPPORT ENFORCEMENT  
 DIVISION; ESTABLISHMENT AND ORGANIZA-  
 TION.**

- §48A-2-22. Establishment of parent locator service.
- §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-2-32. Central state case registry.
- §48A-2-33. Subpoenas.
- §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-2-40. Access to records, confidentiality.
- §48A-2-41. Access to information.
- §48A-2-43. Recording of social security numbers in certain family matters.

**§48A-2-22. Establishment of parent locator service.**

1 (a) The child support enforcement division shall  
 2 establish a parent locator service to locate individuals for  
 3 the purposes of establishing parentage and of establishing,  
 4 modifying or enforcing child support obligations,  
 5 utilizing all sources of information and available records  
 6 and the parent locator service in the federal department of

7 health and human services. For purposes of obtaining  
8 information from the parent locator service, any person,  
9 agency or entity providing services to the child support  
10 enforcement division pursuant to a contract that includes a  
11 provision to ensure that the confidentiality of information  
12 is maintained shall be deemed to be an agent of the child  
13 support enforcement division.

14 (b) Upon entering into an agreement with the  
15 secretary of the federal department of health and human  
16 services for the use of that department's parent locator  
17 service, the child support enforcement division shall accept  
18 and transmit to the secretary of the federal department of  
19 health and human services requests from authorized  
20 persons for information with regard to the whereabouts of  
21 a noncustodial obligor to be furnished by such federal  
22 parent locator service. For purposes of this subsection,  
23 "authorized persons" means: (1) An attorney or agent of  
24 the child support enforcement division; (2) a family law  
25 master or circuit judge or any agent thereof; or (3) a  
26 resident parent, legal guardian, attorney or agent for a  
27 child. The child support enforcement division shall charge  
28 a reasonable fee sufficient to cover the costs to the state  
29 and to the federal department of health and human  
30 services incurred by reason of such requests, and shall  
31 transfer to that department from time to time, so much of  
32 the fees collected as are attributable to the costs incurred  
33 by that department.

34 (c) The information obtained by the child support  
35 enforcement division from the federal parent locator  
36 service shall be used for, but not limited to, the following  
37 purposes:

38 (1) Establishing parentage and establishing, setting the  
39 amount of, modifying or enforcing child support  
40 obligations;

41 (2) Obtaining and transmitting information to any  
42 family law master or circuit court or agent thereof or to an  
43 attorney or employee of the United States or of any state  
44 responsible for enforcing any federal or state law with  
45 respect to the unlawful taking or restraint of a child or

46 making or enforcing a child custody or visitation  
47 determination.

48 (d) The child support enforcement division may  
49 request from the federal parent locator service  
50 information:

51 (1) About, or which will facilitate the discovery of  
52 information about, the location of any individual: (A)  
53 Who is under an obligation to pay child support; (B)  
54 against whom such an obligation is sought; or (C) to  
55 whom such an obligation is owed, including the  
56 individual's social security number, or numbers, most  
57 recent address, and the name, address and employer  
58 identification number of the individual's employer;

59 (2) Concerning the individual's wages or other income  
60 from, and benefits of, employment, including rights to  
61 enrollment in group health care coverage; and

62 (3) Concerning the type, status, location and amount  
63 of any assets of, or debts owed by or to, any such  
64 individual.

65 (e) A circuit court shall have jurisdiction to hear and  
66 determine, upon a petition by an authorized person, as  
67 defined in subsection (b) of this section, whether the  
68 release of information from the federal parent locator  
69 service to that person could be harmful to the custodial  
70 parent or the child.

**§48A-2-24. Disbursements of amounts collected as support.**

1 (a) Amounts collected as child or spousal support by  
2 the child support enforcement division shall be distributed  
3 within two business days after receipt from the employer  
4 or other source of periodic income. Such amounts shall,  
5 except as otherwise provided under the provisions of  
6 subsection (c) of this section, be distributed as follows:

7 (1) Any amounts which are collected periodically  
8 which represent monthly support payments shall be paid  
9 by the child support enforcement division to the  
10 appropriate administrative unit of the department of health  
11 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

52 arrearages owing to the family have been paid, any  
53 amounts of support collected which are in excess of the  
54 required support payments shall be distributed in the  
55 manner provided by paragraphs (A) and (B), subdivision  
56 (3), subsection (a) of this section with respect to excess  
57 amounts described in said subsection.

58 (c) Notwithstanding the preceding provisions of this  
59 section, amounts collected by the child support  
60 enforcement division as child support for months in any  
61 period on behalf of a child for whom the department of  
62 health and human resources is making foster care  
63 maintenance payments shall:

64 (1) Be paid by the child support enforcement division  
65 to the appropriate administrative unit of the department of  
66 health and human resources to the extent necessary to  
67 reimburse the department for foster care maintenance  
68 payments made with respect to the child during such  
69 period (with appropriate reimbursement of the federal  
70 government to the extent of its participation in financing);

71 (2) Be paid to the appropriate administrative unit of  
72 the department of health and human resources to the  
73 extent that the amounts collected exceed the foster care  
74 maintenance payments made with respect to the child  
75 during such period but do not exceed the amounts  
76 required by a court order to be paid as support on behalf  
77 of the child during such period; and the department of  
78 health and human resources may use the payments in the  
79 manner it determines will serve the best interests of the  
80 child, including setting such payments aside for the child's  
81 future needs or making all or a part thereof available to  
82 the person responsible for meeting the child's day-to-day  
83 needs; and

84 (3) Be paid to the appropriate administrative unit of  
85 the department of health and human resources if any  
86 portion of the amounts collected remains after making the  
87 payments required under paragraphs (1) and (2) of this  
88 subsection, to the extent that such portion is necessary to  
89 reimburse the department of health and human resources  
90 (with appropriate reimbursement to the federal  
91 government to the extent of its participation in the

92 financing), for any past foster care maintenance payments  
93 or payments of aid to families with dependent children or  
94 temporary assistance to needy families which were made  
95 with respect to the child (and with respect to which past  
96 collections have not previously been retained);

97 (d) The commission shall establish bonding  
98 requirements for employees of the child support  
99 enforcement division who receive, disburse, handle or have  
100 access to cash.

101 (e) The director shall maintain methods of  
102 administration which are designed to assure that  
103 employees of the child support enforcement division or  
104 any persons employed pursuant to a contract who are  
105 responsible for handling cash receipts do not participate in  
106 accounting or operating functions which would permit  
107 them to conceal in the accounting records the misuse of  
108 cash receipts: *Provided*, That the director may provide for  
109 exceptions to this requirement in the case of sparsely  
110 populated areas in this state where the hiring of  
111 unreasonable additional staff in the local office would  
112 otherwise be necessary.

113 (f) No penalty or fee may be collected by or  
114 distributed to a recipient of child support enforcement  
115 division services from the state treasury or from the child  
116 support enforcement fund when child support is not  
117 distributed to the recipient in accordance with the time  
118 frames established herein.

119 (g) For purposes of this section, "business day"  
120 means a day on which state offices are open for regular  
121 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.**

1 (a) Any payment required to be made under the  
2 provisions of section twenty-four of this article to a family  
3 shall be made to the resident parent, legal guardian or

4 caretaker relative having custody of or responsibility for  
5 the child or children.

6 (b) Where physical custody of the child has been  
7 transferred from the custodial parent to another person,  
8 the child support enforcement division may redirect  
9 disbursement of support payments to such other person,  
10 on behalf of the child, in the following circumstances:

11 (1) Where the noncustodial parent has physical  
12 custody of the child, excluding visitation, upon filing with  
13 the child support enforcement division:

14 (A) An affidavit attesting that the noncustodial parent  
15 has obtained physical custody of the child, describing the  
16 circumstances under which the transfer of physical  
17 custody took place, and stating that he or she anticipates  
18 that his or her physical custody of the child will continue  
19 for the foreseeable future; and

20 (B) Documentary proof that the noncustodial parent  
21 has instituted proceedings in circuit court for a  
22 modification of legal custody.

23 (2) Where a person other than the custodial or  
24 noncustodial parent has physical custody of the child,  
25 excluding visitation, filing with the child support  
26 enforcement division:

27 (A) An affidavit attesting that the person has obtained  
28 physical custody of the child, describing the circumstances  
29 under which the transfer of physical custody took place,  
30 and stating that he or she anticipates that his or her  
31 physical custody of the child will continue for the  
32 foreseeable future; and

33 (B) Documentary proof that the person claiming  
34 physical custody is currently the person responsible for  
35 the child by producing at least one of the following:

36 (i) School records demonstrating that school  
37 authorities consider the person claiming physical custody  
38 the adult responsible for the child;

- 39 (ii) Medical records demonstrating that the person  
40 claiming physical custody is empowered to make medical  
41 decisions on behalf of the child;
- 42 (iii) Documents from another public assistance agency  
43 showing that the person claiming physical custody is  
44 currently receiving other public assistance on behalf of the  
45 child;
- 46 (iv) A notarized statement from the custodial parent  
47 attesting to the fact that he or she has transferred physical  
48 custody to the person;
- 49 (v) A verifiable order of a court of competent  
50 jurisdiction transferring physical or legal custody to the  
51 person;
- 52 (vi) Documentation that the person claiming physical  
53 custody has filed a petition in circuit court to be appointed  
54 the child's guardian;
- 55 (vii) Documentation that the child, if over the age of  
56 fourteen, has instituted proceedings in circuit court to have  
57 the person claiming physical custody nominated as his or  
58 her guardian; or
- 59 (viii) Any other official documents of a federal, state  
60 or local agency or governing body demonstrating that the  
61 person currently has physical custody of the child and has  
62 taken action indicating that he or she anticipates such  
63 physical custody to continue in the foreseeable future.
- 64 (c) The child support enforcement division shall mail,  
65 by first class mail, a copy of the affidavit and supporting  
66 documentary evidence required under subsection (b) of  
67 this section, to the circuit court which issued the support  
68 order being enforced by child support enforcement  
69 division and to the parties to the order, at their last known  
70 addresses, together with a written notice stating that any  
71 party has ten days to object to the redirection of support  
72 payments by filing an affidavit and evidence showing that  
73 the person seeking redirection of the payments does not  
74 have physical custody of the child. If no objection is  
75 received by the child support enforcement division by the  
76 end of the ten-day period, the division may order

77 payments redirected to the person claiming physical  
78 custody for the benefit of the child. If a responsive  
79 affidavit and supporting evidence is filed within the ten-  
80 day period and, in the opinion of the child support  
81 enforcement division, either disproves the claim of the  
82 person seeking redirection of support payments or raises a  
83 genuine issue of fact as to whether the person has actual  
84 physical custody of the child, the child support  
85 enforcement division shall continue to forward support  
86 payments to the custodial parent. Any person who  
87 disagrees with the determination of the child support  
88 enforcement division may petition the circuit court for  
89 modification of the child support order.

90 (d) Any person who files a false affidavit pursuant to  
91 this section shall be guilty of false swearing and, upon  
92 conviction thereof, shall be punished as provided by law  
93 for such offense.

**§48A-2-31. Providing information to consumer reporting agencies; requesting consumer credit reports for child support purposes.**

1 (a) For purposes of this section, the term "consumer  
2 reporting agency" means any person who, for monetary  
3 fees, dues, or on a cooperative nonprofit basis, regularly  
4 engages, in whole or in part, in the practice of assembling  
5 or evaluating consumer credit information or other  
6 information on consumers for the purpose of furnishing  
7 consumer reports to third parties.

8 (b) The commission shall propose and adopt a  
9 procedural rule in accordance with the provisions of  
10 sections four and eight, article three, chapter twenty-nine-a  
11 of this code, establishing procedures whereby information  
12 regarding the amount of overdue support owed by an  
13 obligor will be reported periodically by the child support  
14 enforcement division to any consumer reporting agency,  
15 after a request by the consumer reporting agency that it be  
16 provided with the periodic reports.

17 (1) The procedural rule adopted by the commission  
18 shall provide that any information with respect to an  
19 obligor shall be made available only after notice has been

20 sent to the obligor of the proposed action, and such  
21 obligor has been given a reasonable opportunity to contest  
22 the accuracy of the information.

23 (2) The procedural rule adopted shall afford the  
24 obligor with procedural due process prior to making  
25 information available with respect to the obligor.

26 (c) The information made available to a consumer  
27 reporting agency regarding overdue support may only be  
28 made available to an entity that has furnished evidence  
29 satisfactory to the division that the entity is a consumer  
30 reporting agency as defined in subsection (a) of this  
31 section.

32 (d) The child support enforcement division may  
33 impose a fee for furnishing such information, not to  
34 exceed the actual cost thereof.

35 (e) The head of the child support enforcement  
36 division, or her or his designee, may request a consumer  
37 reporting agency to prepare and furnish to the child  
38 support enforcement division a consumer report for  
39 purposes relating to child support, by certifying to the  
40 consumer reporting agency that:

41 (1) The consumer report is needed for the purpose of  
42 establishing an individual's capacity to make child support  
43 payments or determining the appropriate level of such  
44 payments in order to set an initial or modified child  
45 support award;

46 (2) The paternity of the child of the individual has  
47 been established or acknowledged by the individual in  
48 accordance with state law;

49 (3) The individual whose report is being requested has  
50 been given at least ten days' prior notice of such request  
51 by certified mail to his or her last known address that such  
52 report is being requested; and

53 (4) The consumer report will be kept confidential, will  
54 be used solely for a purpose described in subdivision (1)  
55 of this subsection and will not be used in connection with

56 any other civil, administrative or criminal proceeding or  
57 for any other purpose.

**§48A-2-32. Central state case registry.**

1 (a) The child support enforcement division shall  
2 establish and maintain a central state case registry of child  
3 support orders. All orders in cases when any party  
4 receives any service provided by the child support  
5 enforcement division shall be included in the registry.  
6 Any other support order entered or modified in this state  
7 on or after the first day of October, one thousand nine  
8 hundred ninety-eight, shall be included in the registry.  
9 The child support enforcement division, upon receipt of  
10 any information regarding a new hire provided pursuant  
11 to section thirty-four of this article shall compare  
12 information received to determine if the new hire's income  
13 is subject to wage withholding and notify the employer  
14 pursuant to that section.

15 (b) Each party to a child support proceeding shall,  
16 upon entry of an order awarding or modifying child  
17 support, complete and file with the clerk of the circuit  
18 court issuing the order a form, to be promulgated by the  
19 administrative office of the supreme court of appeals,  
20 listing information concerning the location and identity of  
21 a party including, but not limited to: The party's social  
22 security number, residential and mailing address,  
23 telephone number and driver's license number; the child's  
24 name, birth date and social security number; and the  
25 party's employer's name, address and telephone number.  
26 The clerk shall promptly forward all such information to  
27 the state case registry. The parties are required to notify  
28 the state case registry of any change in the information  
29 contained on the form, and every order for support shall  
30 so state. All information provided to the state case registry  
31 shall be subject to the privacy and confidentiality  
32 safeguards contained in section forty of this article.

33 (c) In any subsequent child support enforcement  
34 action between the parties, there shall be a presumption  
35 that the requirements for notice and service of process  
36 have been met upon a showing that the child support  
37 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.

**§48A-2-33. Subpoenas.**

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 (1) Disclosing any financial record of an individual to  
5 the child support enforcement division in response to a  
6 subpoena issued by the division pursuant to section thirty-  
7 three of this article;

8 (2) Disclosing any financial record of an individual to  
9 the child support enforcement division pursuant to the  
10 terms of an agreement with such financial institution  
11 pursuant to subsection (f) of this section;

12 (3) Encumbering or surrendering assets held by such  
13 financial institution in response to a notice of lien or levy  
14 issued by the child support enforcement division as  
15 provided in subsection (g) of this section; or

16 (4) For any other action taken in good faith to comply  
17 with the requirements of this section.

18 (b) The child support enforcement division, after  
19 obtaining a financial record of an individual from a  
20 financial institution, may disclose such financial record  
21 only for the purpose of, and to the extent necessary in,  
22 establishing, modifying or enforcing a child support  
23 obligation of such individual.

24 (c) The civil liability of a person who knowingly, or  
25 by reason of negligence, discloses a financial record of an  
26 individual in violation of subsection (b) of this section is  
27 governed by the provisions of federal law as set forth in  
28 42 U.S.C. §669A.

29 (d) For purposes of this section, the term "financial  
30 institution" means:

31 (1) Any bank or savings association;

32 (2) A person who is an institution-affiliated party, as  
33 that term is defined in the Federal Deposit Insurance Act,  
34 12 U.S.C. §1813(u);

35 (3) Any federal credit union or state-chartered credit  
36 union, including an institution-affiliated party of a credit  
37 union; and

38 (4) Any benefit association, insurance company, safe  
39 deposit company, money-market mutual fund, or similar  
40 entity authorized to do business in this state.

41 (e) For purposes of this section, the term "financial  
42 record" means an original of, a copy of, or information  
43 known to have been derived from, any record held by a

44 financial institution pertaining to a customer's relationship  
45 with the financial institution.

46 (f) Notwithstanding any provision of this code to the  
47 contrary, the child support enforcement division shall  
48 enter into agreements with financial institutions doing  
49 business in the state to develop and operate, in  
50 coordination with such financial institutions, a data match  
51 system, using automated data exchanges, to the maximum  
52 extent feasible, in which each financial institution is  
53 required to provide for each calendar quarter the name,  
54 record address, social security number or other taxpayer  
55 identification number, and other identifying information  
56 for each obligor, as defined in section twenty-three, article  
57 one-a of this chapter, who maintains an account at such  
58 institution and who owes past due support. The child  
59 support enforcement division will identify to the financial  
60 institution an obligor who owes past due support by his or  
61 her name and social security number or other taxpayer  
62 identification number. The child support enforcement  
63 division, upon written request and proof of actual costs  
64 incurred, may pay a reasonable fee to a financial  
65 institution for conducting the data match not to exceed the  
66 actual costs incurred by such financial institution.

67 (g) The financial institution, in response to a notice of  
68 a lien or levy, shall encumber or surrender, as the case  
69 may be, assets held by such institution on behalf of any  
70 noncustodial parent who is subject to a lien for child  
71 support.

**§48A-2-34. Employment and income reporting.**

1 (a) For purposes of this section:

2 (1) "Employee" means an individual who is an "em-  
3 ployee" for purposes of federal income tax withholding,  
4 as defined in 26 U.S.C. §3401;

5 (2) "Employer" means the person or entity for whom  
6 an individual performs or performed any service of  
7 whatever nature and who has control of the payment of  
8 the individual's wages for performance of such service or  
9 services, as defined in 26 U.S.C. §3401;

10 (3) An individual is considered a "new hire" on the  
11 first day in which that individual performs services for  
12 remuneration and on which an employer begins to  
13 withhold amounts for income tax purposes.

14 (b) Except as provided in subsections (c) and (d) of  
15 this section, all employers doing business in the state shall  
16 report to the child support enforcement division:

17 (1) The hiring of any person who resides or works in  
18 this state to whom the employer anticipates paying  
19 earnings; and

20 (2) The rehiring or return to work of any employee  
21 who resides or works in this state.

22 (c) Employers are not required to report the hiring,  
23 rehiring or return to work of any person who is an  
24 employee of a federal or state agency performing  
25 intelligence or counterintelligence functions if the head of  
26 such agency has determined that reporting could  
27 endanger the safety of the employee or compromise an  
28 ongoing investigation or intelligence mission.

29 (d) An employer that has employees in states other  
30 than this state and that transmits reports magnetically or  
31 electronically is not required to report to the child support  
32 enforcement division the hiring, rehiring or return to work  
33 of any employee if the employer has filed with the  
34 secretary of the federal department of health and human  
35 services, as required by 42 U.S.C. §653A, a written  
36 designation of another state in which it has employees as  
37 the reporting state.

38 (e) Employers shall report by mailing to the child  
39 support enforcement division a copy of the employee's W-  
40 4 form; however, an employer may transmit such  
41 information through another means if approved in writing  
42 by the child support enforcement division prior to the  
43 transmittal. The report shall include the employee's name,  
44 address and social security number, the employer's name  
45 and address, any different address of the payroll office  
46 and the employer's federal tax identification number. The

47 employer may report other information, such as date of  
48 birth or income information, if desired.

49 (f) Employers shall submit a report within fourteen  
50 days of the date of the hiring, rehiring or return to work  
51 of the employee. However, if the employer transmits the  
52 reports magnetically or electronically by two monthly  
53 submissions, the reports shall be submitted not less than  
54 twelve days nor more than sixteen days apart.

55 (g) An employer shall provide to the child support  
56 enforcement division, upon its written request, information  
57 regarding an obligor's employment, wages or salary,  
58 medical insurance, and location of employment.

59 (h) Any employer who fails to report in accordance  
60 with the provisions of this section shall be assessed a civil  
61 penalty of no more than twenty-five dollars per failure. If  
62 the failure to report is the result of a conspiracy between  
63 the employer and the employee not to supply the required  
64 report or to supply a false or incomplete report, the  
65 employer shall be assessed a civil penalty of no more than  
66 five hundred dollars.

67 (i) Employers required to report under this section  
68 may assess each employee so reported one dollar for the  
69 administrative costs of reporting.

70 (j) Uses for the new hire information include, but are  
71 not limited to, the following:

72 (1) The state directory of new hires shall furnish the  
73 information to the national directory of new hires;

74 (2) The child support enforcement division shall use  
75 information received pursuant to this section to locate  
76 individuals for purposes of establishing paternity and of  
77 establishing, modifying and enforcing child support  
78 obligations, and may disclose such information to any  
79 agent of the agency that is under contract with the division  
80 to carry out such purposes;

81 (3) State agencies responsible for administering a  
82 program specified in 42 U.S.C. §1320b-7(b) shall have

83 access to information reported by employers for purposes  
84 of verifying eligibility for the program; and

85 (4) The bureau of employment programs shall have  
86 access to information reported by employers for purposes  
87 of administering employment security and workers'  
88 compensation programs.

**§48A-2-35. Review and adjustment of child support orders.**

1 (a) Either parent or, if there has been an assignment of  
2 support to the department of health and human resources,  
3 the child support enforcement division shall have the right  
4 to request an administrative review of the child support  
5 award in the following circumstances:

6 (1) Where the request for review is received thirty-six  
7 months or more after the date of the entry of the order or  
8 from the completion of the previous administrative review,  
9 whichever is later, the child support enforcement division  
10 shall conduct a review to determine whether the amount of  
11 the child support award in such order varies from the  
12 amount of child support that would be awarded at the time  
13 of the review pursuant to the guidelines for child support  
14 awards contained in article one-b of this chapter. If the  
15 amount of the child support award under the existing  
16 order differs by ten percent or more from the amount that  
17 would be awarded in accordance with the child support  
18 guidelines, the child support enforcement division shall  
19 file with the circuit court a motion for modification of the  
20 child support order. If the amount of the child support  
21 award under the existing order differs by less than ten  
22 percent from the amount that would be awarded in  
23 accordance with the child support guidelines, the child  
24 support enforcement division may, if it determines that  
25 such action is in the best interest of the child or otherwise  
26 appropriate, file with the circuit court a motion for  
27 modification of the child support order.

28 (2) Where the request for review of a child support  
29 award is received less than thirty-six months after the date  
30 of the entry of the order or from the completion of the  
31 previous administrative review, the child support  
32 enforcement division shall undertake a review of the case

33 only where it is alleged that there has been a substantial  
34 change in circumstances. If the child support  
35 enforcement division determines that there has been a  
36 substantial change in circumstances and if it is in the best  
37 interests of the child, the division shall file with the circuit  
38 court a motion for modification of the child support order  
39 in accordance with the guidelines for child support awards  
40 contained in article one-b of this chapter.

41 (b) The child support enforcement division shall  
42 notify both parents at least once every three years of their  
43 right to request a review of a child support order. The  
44 notice may be included in any order granting or  
45 modifying a child support award. The child support  
46 enforcement division shall give each parent at least thirty  
47 days' notice before commencing any review, and shall  
48 further notify each parent, upon completion of a review,  
49 of the results of the review, whether of a proposal to move  
50 for modification or of a proposal that there should be no  
51 change.

52 (c) When the result of the review is a proposal to move  
53 for modification of the child support order, each parent  
54 shall be given thirty days' notice of the hearing on the  
55 motion, the notice to be directed to the last known address  
56 of each party by first class mail. When the result of the  
57 review is a proposal that there be no change, any parent  
58 disagreeing with that proposal may, within thirty days of  
59 the notice of the results of the review, file with the court a  
60 motion for modification setting forth in full the grounds  
61 therefor.

62 (d) For the purposes of this section, a "substantial  
63 change in circumstances" includes, but is not limited to, a  
64 changed financial condition, a temporary or permanent  
65 change in physical custody of the child which the court  
66 has not ordered, increased need of the child, or other  
67 financial conditions. "Changed financial conditions"  
68 means increases or decreases in the resources available to  
69 either party from any source. Changed financial  
70 conditions includes, but is not limited to, the application  
71 for or receipt of any form of public assistance payments,  
72 unemployment compensation and workers' compensation,

73 or a fifteen percent or more variance from the amount of  
74 the existing order and the amount of child support that  
75 would be awarded according to the child support  
76 guidelines.

77 (e) All child support orders shall contain a notice  
78 which contains language substantially similar to the  
79 following: "The amount of the monthly child support can  
80 be modified as provided by law based upon a change in  
81 the financial or other circumstances of the parties if those  
82 circumstances are among those considered in the child  
83 support formula. In order to make the modification a  
84 party must file a motion to modify the child support  
85 amount. Unless a motion to modify is filed, the child  
86 support amount will continue to be due and cannot later  
87 be changed retroactively even though there has been a  
88 change of circumstances since the entry of the order. Self  
89 help forms for modification can be found at the circuit  
90 clerk's office." The failure of an order to have such a  
91 provision does not alter the effectiveness of the order.

**§48A-2-40. Access to records, confidentiality.**

1 (a) All records in the possession of the child support  
2 enforcement division, including records concerning an  
3 individual case of child or spousal support, shall be kept  
4 confidential and shall not be released except as provided  
5 below:

6 (1) Records shall be disclosed or withheld as required  
7 by federal law or regulations promulgated thereunder  
8 notwithstanding other provisions of this section.

9 (2) Information as to the whereabouts of a party or the  
10 child shall not be released to a person against whom a  
11 protective order has been entered with respect to such  
12 party or child or where the state has reason to believe that  
13 the release of the information to the person making the  
14 request may result in physical or emotional harm to the  
15 party or the child.

16 (3) The phone number, address, employer and other  
17 information regarding the location of the obligor, the  
18 obligee and the child shall only be disclosed: (A) Upon

19 his or her written consent, to the person whom the consent  
20 designates; or (B) notwithstanding subdivision (4) of this  
21 subsection, to the obligee, the obligor, the child or the  
22 caretaker or representative of the child, upon order of a  
23 court if the court finds that the disclosure is for a bona  
24 fide purpose, is not contrary to the best interest of a child  
25 and does not compromise the safety of any party:  
26 *Provided*, That the identity and location of the employer  
27 may be disclosed on the letters, notices and pleadings of  
28 the division as necessary and convenient for the  
29 determination of support amounts and the establishment,  
30 investigation, modification, enforcement, collection and  
31 distribution of support.

32 (4) Information and records other than the phone  
33 number, address, employer and information regarding the  
34 location of the obligor, the obligee and the child shall be  
35 disclosed to the obligor, the obligee, the child or the  
36 caretaker of the child or his or her duly authorized  
37 representative, upon his or her written request: *Provided*,  
38 That when the obligor requests records other than  
39 collection and distribution records, financial records  
40 relevant to the determination of the amount of support  
41 pursuant to the guidelines, or records the obligor has  
42 supplied, the division shall mail a notice by first class mail  
43 to the last known address of the obligee notifying him or  
44 her of the request. The notice shall advise the obligee of  
45 his or her right to object to the release of records on the  
46 grounds that the records are not relevant to the  
47 determination of the amount of support, or the  
48 establishment, modification, enforcement, collection or  
49 distribution of support. The notice shall also advise the  
50 obligee of his or her right to disclosure of records  
51 provided in this section in order to determine what records  
52 the child support enforcement division may have. In the  
53 event of any objection, the division shall determine  
54 whether or not the information shall be released.

55 (5) Information in specific cases may be released as is  
56 necessary or to determine the identity, location,  
57 employment, income and assets of an obligor.

58 (6) Information and records may be disclosed to the  
59 bureau of vital statistics, bureau of employment programs,  
60 the workers' compensation division, state tax department  
61 and the internal revenue service, or other state or federal  
62 agencies or departments as may be necessary or desirable  
63 in obtaining any address, employment, wage or benefit  
64 information for the purpose of determining the amount of  
65 support or establishing, enforcing, collecting and  
66 distributing support.

67 (b) Any person who willfully violates this section shall  
68 be guilty of a misdemeanor and, upon conviction thereof,  
69 shall be fined not less than one hundred nor more than  
70 one thousand dollars, or confined in jail not more than six  
71 months, or both fined and imprisoned.

**§48A-2-41. Access to information.**

1 (a) All state, county and municipal agencies, offices  
2 and employers, including profit, nonprofit and  
3 governmental employers, receiving a request for  
4 information and assistance from the child support  
5 enforcement division or any out-of-state agency  
6 administering a program under Title IV-D of the Social  
7 Security Act, shall cooperate with the division or with the  
8 out-of-state agency in the location of parents who have  
9 abandoned and deserted children and shall provide the  
10 division or the out-of-state agency with all available  
11 pertinent information concerning the location, income and  
12 property of those parents.

13 (b) Notwithstanding any other provision of law to the  
14 contrary, any entity conducting business in this state or  
15 incorporated under the laws of this state shall, upon  
16 certification by the division or any out-of-state agency  
17 administering a program under Title IV-D of the Social  
18 Security Act that the information is needed to locate a  
19 parent for the purpose of collecting or distributing child  
20 support, provide the division or the out-of-state agency  
21 with the following information about the parent: Full  
22 name, social security number, date of birth, home address,  
23 wages and number of dependents listed for income tax  
24 purposes: *Provided*, That no entity may provide any

25 information obtained in the course of providing legal  
26 services, medical treatment or medical services.

27 (c) (1) The child support enforcement division shall  
28 have access, subject to safeguards on privacy and  
29 information security, and to the nonliability of entities that  
30 afford such access under this subdivision, to information  
31 contained in the following records, including automated  
32 access, in the case of records maintained in automated data  
33 bases:

34 (A) Records of other state and local government  
35 agencies including, but not limited to:

36 (i) Vital statistics, including records of marriage, birth  
37 and divorce;

38 (ii) State and local tax and revenue records, including  
39 information on residence address, employer, income and  
40 assets;

41 (iii) Records concerning real and titled personal  
42 property;

43 (iv) Records of occupational and professional licenses,  
44 and records concerning the ownership and control of  
45 corporations, partnerships, and other business entities;

46 (v) Employment security records;

47 (vi) Records of agencies administering public  
48 assistance programs;

49 (vii) Records of the division of motor vehicles; and

50 (viii) Corrections records.

51 (B) Certain records held by private entities with respect  
52 to individuals who owe or are owed support or certain  
53 individuals against, or with respect to, whom a support  
54 obligation is sought, consisting of:

55 (i) The names and addresses of such individuals and  
56 the names and addresses of the employers of such  
57 individuals, as appearing in the customer records of public  
58 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.

6 (b) The social security number of any individual who  
 7 is subject to a divorce decree, support order, or paternity  
 8 determination or acknowledgment must be placed in the  
 9 records relating to the matter.

10 (c) For the purposes of subsection (a) of this section, if  
 11 the licensing authority allows the use of a number other  
 12 than the social security number on the face of the  
 13 document while the social security number is kept on file  
 14 at the agency, the applicant shall be so advised by such  
 15 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-5-7. Increase in monthly payments.

**§48A-5-1. Action to obtain an order for support of minor  
 child.**

1 (a) An action may be brought in circuit court to  
 2 obtain an order for the support of a minor child when:

3 (1) Such child has a parent and child relationship with  
 4 an obligor;

5 (2) Such obligor is not the primary caretaker or  
 6 guardian of the child;

7 (3) The obligor is not meeting an obligation to  
 8 support the child;

9 (4) An enforceable order for the support of the child  
 10 by the obligor has not been entered by a court of  
 11 competent jurisdiction; and

12 (5) There is no pending action for divorce, separate  
13 maintenance or annulment in which the obligation of  
14 support owing from the obligor to the child is at issue.

15 (b) An action may be brought under the provisions of  
16 subsection (a) of this section by:

17 (1) A custodial parent of a child, when the divorce  
18 order or other order which granted custody did not make  
19 provision for the support of the child by the obligor;

20 (2) A primary caretaker of a child;

21 (3) A guardian of the property of a child or the  
22 committee for a child; or

23 (4) The child support enforcement division, on behalf  
24 of the state, when the department of health and human  
25 resources is providing assistance on behalf of the child in  
26 the form of temporary assistance to needy families, and  
27 any right to support has been assigned to the department  
28 or in any other case wherein a party has applied for child  
29 support enforcement services from the child support  
30 enforcement division.

31 (c) An action under the provisions of this section may  
32 be brought in the county where the obligee, the obligor or  
33 the child resides.

34 (d) When an action for child support is brought under  
35 the provisions of this section by an obligee against his or  
36 her spouse, such obligee may also seek spousal support  
37 from the obligor, unless such support has been previously  
38 waived by agreement or otherwise.

39 (e) Every order of support heretofore or hereafter  
40 entered or modified under the provisions of this section  
41 shall include a provision for the income withholding in  
42 accordance with the provisions of section fifteen-a or  
43 fifteen-b, article two, chapter forty-eight of this code.

44 (f) At any time after the entry of an order for support,  
45 the court may, upon the verified petition of an obligee or  
46 the obligor, revise or alter such order, and make a new  
47 order, as the altered circumstances or needs of a child, an

48 obligee, or the obligor may render necessary to meet the  
49 ends of justice.

**§48A-5-2. Arrearages; liens on personal property; enforcement through writ of execution, suggestion or suggestee execution.**

1 (a) The total of any matured, unpaid installments of  
2 child support required to be paid by an order entered or  
3 modified by a court of competent jurisdiction, or by the  
4 order of a magistrate court of this state, shall stand, by  
5 operation of law, as a decretal judgment against the  
6 obligor owing such support. The amount of unpaid  
7 support shall bear interest from the date it accrued, at a  
8 rate of ten dollars upon one hundred dollars per annum,  
9 and proportionately for a greater or lesser sum, or for a  
10 longer or shorter time. A child support order shall not be  
11 retroactively modified so as to cancel or alter accrued  
12 installments of support. When an obligor is in arrears in  
13 the payment of support which is required to be paid by  
14 the terms of such order, an obligee may file an abstract of  
15 the order giving rise to the support obligation and an  
16 "Affidavit of Accrued Support", setting forth the  
17 particulars of such arrearage and requesting a writ of  
18 execution, suggestion or suggestee execution. The filing  
19 of the abstract and affidavit shall give rise, by operation of  
20 law, to a lien against personal property of an obligor who  
21 resides within this state for overdue support.

22 (b) If the duty of support is based upon an order from  
23 another jurisdiction, the obligee shall first register the  
24 order in accordance with the provisions of chapter forty-  
25 eight-b of this code: *Provided*, That nothing in this  
26 subsection shall prevent the child support enforcement  
27 division from enforcing foreign orders for support  
28 without registration of the order in accordance with the  
29 provisions of section five hundred seven, article five,  
30 chapter forty-eight-b of this code.

31 (c) The affidavit may be filed with the clerk of the  
32 circuit court in the county wherein the obligee or the  
33 obligor resides, or where the obligor's source of income is  
34 located.

35 (d) The affidavit may be filed when a payment  
36 required by such order has been delinquent, in whole or in  
37 part, for a period of fourteen days.

38 (e) The affidavit shall:

39 (1) Identify the obligee and obligor by name and  
40 address, and shall list the obligor's social security number  
41 or numbers, if known;

42 (2) Name the court which entered the support order  
43 and set forth the date of such entry;

44 (3) State the total amount of accrued support which  
45 has not been paid by the obligor;

46 (4) List the date or dates when support payments  
47 should have been paid but were not, and the amount of  
48 each such delinquent payment; and

49 (5) If known, the name and address of the obligor's  
50 source of income.

51 (f) Upon receipt of the affidavit, the clerk shall issue a  
52 writ of execution, suggestion or suggestee execution, and  
53 shall mail a copy of the affidavit and a notice of the filing  
54 of the affidavit to the obligor, at his last known address. If  
55 the child support enforcement division is not acting on  
56 behalf of the obligee in filing the affidavit, the clerk shall  
57 forward a copy of the affidavit and the notice of the filing  
58 to the child support enforcement division.

59 (g) The notice provided for in subsection (f) of this  
60 section shall inform the obligor that if he or she desires to  
61 contest the affidavit on the grounds that the amount  
62 claimed to be in arrears is incorrect or that a writ of  
63 execution, suggestion or suggestee execution is not proper  
64 because of mistakes of fact, he or she must, within  
65 fourteen days of the date of the notice: (1) Inform the  
66 child support enforcement division in writing of the  
67 reasons why the affidavit is contested and request a  
68 meeting with the child support enforcement division; or  
69 (2) where a court of this state has jurisdiction over the  
70 parties, obtain a date for a hearing before the circuit court  
71 or the family law master and mail written notice of such

72 hearing to the obligee and to the child support  
73 enforcement division on a form prescribed by the  
74 administrative office of the supreme court of appeals and  
75 made available through the office of the clerk of the  
76 circuit court.

77 (h) Upon being informed by an obligor that he or she  
78 desires to contest the affidavit, the child support  
79 enforcement division shall inform the circuit court of such  
80 fact, and the circuit court shall require the obligor to give  
81 security, post a bond, or give some other guarantee to  
82 secure payment of overdue support.

83 (i) The clerk of the circuit court shall make available  
84 form affidavits for use under the provisions of this section.  
85 Such form affidavits shall be provided to the clerk by the  
86 child support enforcement division. The notice of the  
87 filing of an affidavit shall be in a form prescribed by the  
88 child support enforcement division.

89 (j) Writs of execution, suggestions or suggestee  
90 executions issued pursuant to the provisions of this section  
91 shall have priority over any other legal process under the  
92 laws of this state against the same income, except for  
93 withholding from income of amounts payable as support  
94 in accordance with the provisions of section three of this  
95 article, and shall be effective despite any exemption that  
96 might otherwise be applicable to the same income.

97 (k) Notwithstanding any other provision of this code  
98 to the contrary, the amount to be withheld from the  
99 disposable earnings of an obligor pursuant to a suggestee  
100 execution in accordance with the provisions of this section  
101 shall be the same amount which could properly be  
102 withheld in the case of a withholding order under the  
103 provisions of subsection (e), section three of this article.

104 (l) Any person who files a false affidavit shall be  
105 guilty of false swearing and, upon conviction thereof, shall  
106 be punished as provided by law for such offense.

107 (m) The provisions of this section apply to support  
108 orders issued by an out-of-state court or tribunal, as

109 defined in section one hundred one, article one, chapter  
110 forty-eight-b of this code, of any other state.

**§48A-5-3. Withholding from income of amounts payable as support.**

1 (a) The withholding from an obligor's income of  
2 amounts payable as spousal or child support shall be  
3 enforced by the child support enforcement division in  
4 accordance with the provisions of section fifteen-a or  
5 fifteen-b, article two, chapter forty-eight of this code.  
6 Every support order heretofore or hereafter entered by a  
7 circuit court or a magistrate of this state and every support  
8 order entered by a court of competent jurisdiction of  
9 another state shall be considered to provide for an order  
10 of income withholding in accordance with the provisions  
11 of said sections, notwithstanding the fact that such support  
12 order does not in fact provide for such an order of  
13 withholding.

14 (b) When immediate income withholding is not  
15 required due to the findings required by subsection (c),  
16 section fifteen-b, article two, chapter forty-eight of this  
17 code, the child support enforcement division shall mail a  
18 notice to the obligor pursuant to this section when the  
19 support payments required by the order are in arrears in  
20 an amount equal to:

21 (1) One month's support, if the order requires support  
22 to be paid in monthly installments;

23 (2) Four weeks' support, if the order requires support  
24 to be paid in weekly or biweekly installments; or

25 (3) Two biweekly installments, if biweekly payments  
26 are provided.

27 (c) When withholding is required by either subsection  
28 (a) or (b) of this section, the child support enforcement  
29 division shall send by first class mail or electronic means  
30 to the obligor notice that withholding has commenced.  
31 The notice shall inform the obligor of the following:

32 (1) The amount owed;

33           (2) That a withholding from the obligor's income of  
34 amounts payable as support has commenced;

35           (3) That the amount withheld will be equal to the  
36 amount required under the terms of the current support  
37 order, plus amounts for any outstanding arrearage;

38           (4) The definition of "gross income" as defined in  
39 section nineteen, article one-a of this chapter;

40           (5) That the withholding will apply to the obligor's  
41 present source of income and to any future source of  
42 income and, therefore, no other notice of withholding will  
43 be sent to the obligor. A copy of any new or modified  
44 withholding notice will be sent to the obligor at  
45 approximately the same time the original is sent to the  
46 source of income;

47           (6) That any action by the obligor to purposefully  
48 minimize his or her income will result in the enforcement  
49 of support being based upon potential and not just actual  
50 earnings;

51           (7) That payment of the arrearage after the date of the  
52 notice is not a bar to such withholding;

53           (8) That the obligor may contest the withholding by  
54 written request to the child support enforcement division  
55 when the obligor has information showing an error in the  
56 current or overdue support amount or a mistake as to the  
57 identity of the obligor;

58           (9) That a mistake of fact exists only when there is an  
59 error in the amount of current or overdue support claimed  
60 in the notice, or there is a mistake as to the identity of the  
61 obligor;

62           (10) That matters such as lack of visitation,  
63 inappropriateness of the support award, or changed  
64 financial circumstances of the obligee or the obligor will  
65 not be considered at any hearing held pursuant to the  
66 withholding, but may be raised by the filing of a separate  
67 petition in circuit court;

68           (11) That if the obligor contests the withholding, in  
69 writing, a meeting with the child support enforcement

70 division will be held at an arranged time and place for the  
71 purpose of attempting to settle the contested issues;

72 (12) That if the meeting with the child support  
73 enforcement division fails to resolve the contested issues,  
74 the obligor may petition the circuit court for a resolution;  
75 and

76 (13) That while the withholding is being contested  
77 through either the child support enforcement division or  
78 the court, the income withholding may not be stayed.

79 (d) Withholding shall occur and the notice to withhold  
80 shall be sent to the source of income when the support  
81 order provides for immediate income withholding, or if  
82 immediate income withholding is not so provided, when  
83 the support payments are in arrears in the amount  
84 specified in subsection (b) of this section. The source of  
85 income shall withhold so much of the obligor's income as  
86 is necessary to comply with the order authorizing such  
87 withholding, up to the maximum amount permitted under  
88 applicable law. Such withholding, unless otherwise  
89 terminated under the provisions of this section, shall apply  
90 to any subsequent source of income or any subsequent  
91 period of time during which income is received by the  
92 obligor.

93 (e) Notwithstanding any other provision of this code  
94 to the contrary which provides for a limitation upon the  
95 amount which may be withheld from earnings through  
96 legal process, the amount of an obligor's aggregate  
97 disposable earnings for any given workweek which may  
98 be withheld as support payments is to be determined in  
99 accordance with the provisions of this subsection, as  
100 follows:

101 (1) After ascertaining the status of the payment record  
102 of the obligor under the terms of the support order, the  
103 payment record shall be examined to determine whether  
104 any arrearage is due for amounts which should have been  
105 paid prior to a twelve-week period which ends with the  
106 workweek for which withholding is sought to be enforced.

107 (2) When none of the withholding is for amounts  
108 which came due prior to such twelve-week period, then:

109 (A) When the obligor is supporting another spouse or  
110 dependent child other than the spouse or child for whom  
111 the proposed withholding is being sought, the amount  
112 withheld may not exceed fifty percent of the obligor's  
113 disposable earnings for that week; and

114 (B) When the obligor is not supporting another spouse  
115 or dependent child as described in paragraph (A) of this  
116 subdivision, the amount withheld may not exceed sixty  
117 percent of the obligor's disposable earnings for that week.

118 (3) When a part of the withholding is for amounts  
119 which came due prior to such twelve-week period, then:

120 (A) Where the obligor is supporting another spouse or  
121 dependent child other than the spouse or child for whom  
122 the proposed withholding is being sought, the amount  
123 withheld may not exceed fifty-five percent of the obligor's  
124 disposable earnings for that week; and

125 (B) Where the obligor is not supporting another  
126 spouse or dependent child as described in paragraph (A)  
127 of this subdivision, the amount withheld may not exceed  
128 sixty-five percent of the obligor's disposable earnings for  
129 that week.

130 (4) In addition to the percentage limitations set forth  
131 in subdivisions (2) and (3) of this subsection, it shall be a  
132 further limitation that when the current month's obligation  
133 plus arrearages are being withheld from salaries or wages  
134 in no case shall the total amounts withheld for the current  
135 month's obligation plus arrearage exceed the amounts  
136 withheld for the current obligation by an amount greater  
137 than twenty-five percent of the current monthly support  
138 obligation.

139 (5) The provisions of this subsection shall apply  
140 directly to the withholding of disposable earnings of an  
141 obligor regardless of whether the obligor is paid on a  
142 weekly, biweekly, monthly or other basis.

143 (6) The child support enforcement division has the  
144 authority to prorate the current support obligation in  
145 accordance with the pay cycle of the source of income.  
146 This prorated current support obligation shall be known as  
147 the "adjusted support obligation". The current support  
148 obligation or the adjusted support obligation is the  
149 amount, if unpaid, on which interest will be charged.

150 (7) When an obligor acts so as to purposefully  
151 minimize his or her income and to thereby circumvent the  
152 provisions of this section which provide for withholding  
153 from income of amounts payable as support, the amount  
154 to be withheld as support payments may be based upon  
155 the obligor's potential earnings rather than his or her  
156 actual earnings, and such obligor may not rely upon the  
157 percentage limitations set forth in this subsection which  
158 limit the amount to be withheld from disposable earnings.

159 (f) The source of income of any obligor who is  
160 subject to withholding, upon being given notice of  
161 withholding, shall withhold from such obligor's income  
162 the amount specified by the notice and pay such amount  
163 to the child support enforcement division for distribution.  
164 The notice given to the source of income shall contain  
165 only such information as may be necessary for the source  
166 of income to comply with the withholding order. Such  
167 notice to the source of income shall include, at a  
168 minimum, the following:

169 (1) The amount to be withheld from the obligor's  
170 disposable earnings, and a statement that the amount to be  
171 withheld for support and other purposes, including the fee  
172 specified under subdivision (3) of this subsection, may not  
173 be in excess of the maximum amounts permitted under  
174 Section 303(b) of the federal Consumer Credit Protection  
175 Act or limitations imposed under the provisions of this  
176 code;

177 (2) That the source of income shall send the amount  
178 to be withheld from the obligor's income to the child  
179 support enforcement division, along with such identifying  
180 information as may be required by the division, the same  
181 day that the obligor is paid;

182           (3) That, in addition to the amount withheld under the  
183 provisions of subdivision (1) of this subsection, the source  
184 of income may deduct a fee, not to exceed one dollar, for  
185 administrative costs incurred by the source of income, for  
186 each withholding;

187           (4) That withholding is binding on the source of  
188 income until further notice by the child support  
189 enforcement division or until the source of income  
190 notifies the child support enforcement division of a  
191 termination of the obligor's employment in accordance  
192 with the provisions of subsection (l) of this section;

193           (5) That the source of income is subject to a fine for  
194 discharging an obligor from employment, refusing to  
195 employ, or taking disciplinary action against any obligor  
196 because of the withholding;

197           (6) That when the source of income fails to withhold  
198 income in accordance with the provisions of the notice, the  
199 source of income is liable for the accumulated amount the  
200 source of income should have withheld from the obligor's  
201 income;

202           (7) That the withholding under the provisions of this  
203 section shall have priority over any other legal process  
204 under the laws of this state against the same income, and  
205 shall be effective despite any exemption that might  
206 otherwise be applicable to the same income;

207           (8) That when an employer has more than one  
208 employee who is an obligor who is subject to wage  
209 withholding from income under the provisions of this  
210 code, the employer may combine all withheld payments to  
211 the child support enforcement division when the employer  
212 properly identifies each payment with the information  
213 listed in this section. A source of income is liable to an  
214 obligee, including the state of West Virginia or the  
215 department of health and human resources where  
216 appropriate, for any amount which the source of income  
217 fails to identify with the information required by this  
218 section and is therefore not received by the obligee;

219 (9) That the source of income shall implement  
220 withholding no later than the first pay period or first date  
221 for payment of income that occurs after fourteen days  
222 following the date the notice to the source of income was  
223 mailed; and

224 (10) That the source of income shall notify the child  
225 support enforcement division promptly when the obligor  
226 terminates his or her employment or otherwise ceases  
227 receiving income from the source of income, and shall  
228 provide the obligor's last known address and the name and  
229 address of the obligor's new source of income, if known.

230 (g) The commission shall, by administrative rule,  
231 establish procedures for promptly refunding to obligors  
232 amounts which have been improperly withheld under the  
233 provisions of this section.

234 (h) After implementation in accordance with the  
235 provisions of subsection (k) of this section, a source of  
236 income shall send the amount to be withheld from the  
237 obligor's income to the child support enforcement division  
238 and shall notify the child support enforcement division of  
239 the date of withholding, the same date that the obligor is  
240 paid.

241 (i) In addition to any amounts payable as support  
242 withheld from the obligor's income, the source of income  
243 may deduct a fee, not to exceed one dollar, for  
244 administrative costs incurred by the source of income, for  
245 each withholding.

246 (j) Withholding of amounts payable as support under  
247 the provisions of this section is binding on the source of  
248 income until further notice by the child support  
249 enforcement division or until the source of income  
250 notifies the child support enforcement division of a  
251 termination of the obligor's employment in accordance  
252 with the provisions of subsection (l) of this section.

253 (k) Every source of income who receives a notice of  
254 withholding under the provisions of this section shall  
255 implement withholding no later than the first pay period  
256 or first date for the payment of income which occurs after

257 fourteen days following the date the notice to the source  
258 of income was mailed.

259 (l) A source of income who employs or otherwise pays  
260 income to an obligor who is subject to withholding under  
261 the provisions of this section shall notify the child support  
262 enforcement division promptly when the obligor  
263 terminates employment or otherwise ceases receiving  
264 income from the source of income, and shall provide the  
265 child support enforcement division with the obligor's last  
266 known address and the name and address of the obligor's  
267 new source of income, if known.

268 (m) When an employer has more than one employee  
269 who is an obligor who is subject to wage withholding from  
270 income for amounts payable as support, the employer  
271 may combine all withheld payments to the child support  
272 enforcement division when the employer properly  
273 identifies each payment with the information listed in this  
274 section. A source of income is liable to an obligee,  
275 including the state of West Virginia or the department of  
276 health and human resources where appropriate, for any  
277 amount which the source of income fails to identify in  
278 accordance with this section and is therefore not received  
279 by the obligee.

280 (n) A source of income is liable to an obligee,  
281 including the state of West Virginia or the department of  
282 health and human resources where appropriate, for any  
283 amount which the source of income fails to withhold from  
284 income due an obligor following receipt by such source  
285 of income of proper notice under subsection (f) of this  
286 section: *Provided*, That a source of income shall not be  
287 required to vary the normal pay and disbursement cycles  
288 in order to comply with the provisions of this section.

289 (o) Any source of income who knowingly and  
290 willfully conceals the fact that the source of income is  
291 paying income to an obligor, with the intent to avoid  
292 withholding from the obligor's income of amounts  
293 payable as support, is guilty of a misdemeanor and, upon  
294 conviction thereof, shall be fined not more than one  
295 hundred dollars.

296 (p) When the child support enforcement division  
297 makes a written request to a source of income to provide  
298 information as to whether the source of income has paid  
299 income to a specific obligor, within the preceding  
300 sixty-day period, the source of income shall, within  
301 fourteen days thereafter, respond to such request,  
302 itemizing all such income, if any, paid to the obligor  
303 during such sixty-day period. A source of income shall  
304 not be liable, civilly or criminally, for providing such  
305 information in good faith.

306 (q) Support collection under the provisions of this  
307 section shall have priority over any other legal process  
308 under the laws of this state against the same income, and  
309 shall be effective despite any exemption that might  
310 otherwise be applicable to the same income.

311 (r) Any source of income who discharges from  
312 employment, refuses to employ, or takes disciplinary  
313 action against any obligor subject to income withholding  
314 required by this section because of the existence of such  
315 withholding and the obligations or additional obligations  
316 which it imposes on the source of income, shall be guilty  
317 of a misdemeanor and, upon conviction thereof, shall be  
318 fined not less than five hundred dollars nor more than one  
319 thousand dollars.

#### **§48A-5-4. Liens against real property for overdue support.**

1 (a) An order for support entered by a court of  
2 competent jurisdiction will give rise, by operation of law,  
3 to a lien against real property of an obligor who resides or  
4 owns property within this state for overdue support upon  
5 the filing by the obligee, or, when appropriate, the child  
6 support enforcement division, an abstract of the order  
7 giving rise to the support obligation and an "Affidavit of  
8 Accrued Support" setting forth the particulars of the  
9 arrearage.

10 (b) The affidavit and abstract shall be filed with the  
11 clerk of the county commission in which the real property  
12 is located. The affidavit shall:

13 (1) Identify the obligee and obligor by name and  
14 address, and shall list the obligor's social security number  
15 or numbers, if known;

16 (2) Name the court which entered the support order  
17 and set forth the date of such entry;

18 (3) Allege that the support obligor is at least thirty  
19 days in arrears in the payment of child support;

20 (4) State the total amount of accrued support which  
21 has not been paid by the obligor; and

22 (5) List the date or dates when support payments  
23 should have been paid but were not, and the amount of  
24 each such delinquent payment.

25 (c) If the duty of support is based upon a foreign  
26 order the obligee shall first register the order in  
27 accordance with the provisions of chapter forty-eight-b of  
28 this code: *Provided*, That nothing in this subsection shall  
29 prevent the child support enforcement division from  
30 enforcing foreign orders for support without registration  
31 of the order in accordance with the provisions of section  
32 five hundred seven, article five, chapter forty-eight-b of  
33 this code.

34 (d) This state will accord full faith and credit to liens  
35 described in subsection (a) of this section arising in  
36 another state, when the out-of-state agency, party, or other  
37 entity seeking to enforce such a lien complies with the  
38 procedural rules relating to recording or serving liens that  
39 arise within the other state.

40 (e) Upon satisfaction of the overdue support  
41 obligation, the obligee shall issue a release to the obligor  
42 and file a copy thereof with the clerk of the county  
43 commission in the county in which the lien arose pursuant  
44 to this section. The child support enforcement division  
45 shall issue a release in the same manner and with the same  
46 effect as liens taken by the tax commissioner pursuant to  
47 section twelve, article ten, chapter eleven of this code.

48 (f) Any person who files a false affidavit shall be  
49 guilty of false swearing and, upon conviction thereof, shall  
50 be punished as provided by law for such offense.

51 (g) The provisions of this section shall apply to  
52 support orders issued by a court or tribunal, as defined in  
53 section one hundred one, article one, chapter forty-eight-b  
54 of this code, of any other state.

**§48A-5-4a. Enforcement by the child support enforcement  
division of lien on real property.**

1 The child support enforcement division may enforce a  
2 lien upon real property pursuant to the provisions of  
3 article three, chapter thirty-eight of this code.

**§48A-5-5. Enforcement of support orders by contempt  
proceedings; penalties.**

1 (a) In addition to or in lieu of the other remedies  
2 provided by this article for the enforcement of support  
3 orders, the child support enforcement division may  
4 commence a civil or criminal contempt proceeding in  
5 accordance with the provisions of section twenty-two,  
6 article two, chapter forty-eight of this code against an  
7 obligor who is alleged to have willfully failed or refused to  
8 comply with the order of a court of competent jurisdiction  
9 requiring the payment of support. Such proceeding shall  
10 be instituted by filing with the circuit court a petition for  
11 an order to show cause why the obligor should not be held  
12 in contempt.

13 (b) If the court finds that the obligor willfully failed or  
14 refused to comply with an order requiring the payment of  
15 support, the court shall find the obligor in contempt and  
16 may do one or more of the following:

17 (1) Require additional terms and conditions consistent  
18 with the court's support order.

19 (2) After notice to both parties and a hearing, if  
20 requested by a party, on any proposed modification of the  
21 order, modify the order in the same manner and under the  
22 same requirements as an order requiring the payment of  
23 support may be modified under the provisions of

24 subsection (e), section fifteen, article two, chapter forty-  
25 eight of this code. A modification sought by an obligor,  
26 if otherwise justified, shall not be denied solely because  
27 the obligor is found to be in contempt.

28 (3) Order that all accrued support and interest thereon  
29 be paid under such terms and conditions as the court, in its  
30 discretion, may deem proper.

31 (4) Order the contemnor to pay support in accordance  
32 with a plan approved by the child support enforcement  
33 division or to participate in such work activities as the  
34 court deems appropriate.

35 (5) If appropriate under the provisions of section  
36 twenty-two, article two, chapter forty-eight of this code:

37 (A) Commit the contemnor to the county jail; or

38 (B) Commit the contemnor to the county jail with the  
39 privilege of leaving the jail, during such hours as the court  
40 determines and under such supervision as the court  
41 considers necessary, for the purpose of allowing the  
42 contemnor to go to and return from his or her place of  
43 employment.

44 (c) A commitment under subdivision (5) of subsection  
45 (b) shall not exceed forty-five days for the first  
46 adjudication of contempt or ninety days for any  
47 subsequent adjudication of contempt.

48 (d) An obligor committed under subdivision (5),  
49 subsection (b) of this section shall be released if the court  
50 has reasonable cause to believe that the obligor will  
51 comply with the court's orders.

52 (e) If an obligor is committed to jail under the  
53 provisions of paragraph (B), subdivision (5), subsection  
54 (b) of this section and violates the conditions of the court,  
55 the court may commit the person to the county jail  
56 without the privilege provided under said paragraph (B)  
57 for the balance of the period of commitment imposed by  
58 the court.

59 (f) If a person is committed to jail under the  
60 provisions of paragraph (B), subdivision (5), subsection

61 (b) of this section and willfully fails to return to the place  
62 of confinement within the time prescribed, such person  
63 shall be considered to have escaped from custody and  
64 shall be guilty of a misdemeanor, punishable by  
65 imprisonment for not more than one year.

**§48A-5-7. Increase in monthly payments.**

1 (a) For the purpose of securing overdue support, the  
2 child support enforcement division has the authority to  
3 increase the monthly support payments by as much as one  
4 hundred dollars per month to satisfy the arrearage where  
5 the obligor:

6 (1) Owes an arrearage of not less than eight thousand  
7 dollars; or

8 (2) Has not paid support for twelve consecutive  
9 months.

10 (b) This increase in monthly support will be in  
11 addition to any amounts withheld pursuant to section  
12 three, article five of this chapter.

13 (c) This increase in monthly support may be enforced  
14 through the withholding process.

15 (d) Notice of the increase shall be sent to the obligor  
16 at the time such increase is implemented. If the obligor  
17 disagrees with the increase in payments, he or she may file,  
18 within thirty days of the date of the notice, a motion with  
19 the circuit court in which the case is situated for a  
20 determination of whether there should be an increase in  
21 monthly payments and the amount of that increase, if any.

22 (e) The provisions of this section apply to support  
23 orders issued by a court or tribunal, as defined in section  
24 one hundred one, article one, chapter forty-eight-b of this  
25 code, of this or any other state.

**ARTICLE 6. ESTABLISHMENT OF PATERNITY.**

§48A-6-1. Paternity proceedings.

§48A-6-4. Establishment of paternity and duty of support.

**§48A-6-1. Paternity proceedings.**

1 (a) A civil action to establish the paternity of a child  
2 and to obtain an order of support for the child may be  
3 instituted, by verified complaint, in the circuit court of the  
4 county where the child resides: *Provided*, That if such  
5 venue creates a hardship for the parties, or either of them,  
6 or if judicial economy requires, the court may transfer the  
7 action to the county where either of the parties resides.

8 (b) A "paternity proceeding" is a summary  
9 proceeding, equitable in nature and within the domestic  
10 relations jurisdiction of the courts, wherein a circuit court  
11 upon the petition of the state or another proper party may  
12 intervene to determine and protect the respective personal  
13 rights of a child for whom paternity has not been lawfully  
14 established, of the mother of the child and of the putative  
15 father of the child. The parties to a paternity proceeding  
16 are not entitled to a trial by jury.

17 (c) The sufficiency of the statement of the material  
18 allegations in the complaint set forth as grounds for relief  
19 and the grant or denial of the relief prayed for in a  
20 particular case shall rest in the sound discretion of the  
21 court, to be exercised by the court according to the  
22 circumstances and exigencies of the case, having due  
23 regard for precedent and the provisions of the statutory  
24 law of this state.

25 (d) A decree or order made and entered by a court in  
26 a paternity proceeding shall include a determination of the  
27 filial relationship, if any, which exists between a child and  
28 his or her putative father, and, if such relationship is  
29 established, shall resolve dependent claims arising from  
30 family rights and obligations attendant to such filial  
31 relationship.

32 (e) A paternity proceeding may be brought by any of  
33 the following persons:

34 (1) An unmarried woman with physical or legal  
35 custody of a child to whom she gave birth;

36 (2) A married woman with physical or legal custody  
37 of a child to whom she gave birth, if the complaint alleges  
38 that:

39 (A) The married woman lived separate and apart from  
40 her husband preceding the birth of the child;

41 (B) The married woman did not cohabit with her  
42 husband at any time during such separation and that such  
43 separation has continued without interruption; and

44 (C) The defendant, rather than her husband, is the  
45 father of the child.

46 (3) The state of West Virginia, including the child  
47 support enforcement division defined in article two of this  
48 chapter;

49 (4) Any person who is not the mother of the child, but  
50 who has physical or legal custody of the child;

51 (5) The guardian or committee of the child;

52 (6) The next friend of the child when the child is a  
53 minor;

54 (7) By the child in his own right at any time after the  
55 child's eighteenth birthday but prior to the child's twenty-  
56 first birthday; or

57 (8) A man purporting to be the father of a child born  
58 out of wedlock, when there has been no prior judicial  
59 determination of paternity.

60 (f) Blood or tissue samples taken pursuant to the  
61 provisions of this article may be ordered to be taken in  
62 such locations as may be convenient for the parties so  
63 long as the integrity of the chain of custody of the  
64 samples can be preserved.

65 (g) A person who has sexual intercourse in this state  
66 submits to the jurisdiction of the courts of this state for a  
67 proceeding brought under this article with respect to a  
68 child who may have been conceived by that act of  
69 intercourse. Service of process may be perfected  
70 according to the rules of civil procedure.

71 (h) When the person against whom the proceeding is  
72 brought has failed to plead or otherwise defend the action  
73 after proper service has been obtained, judgment by  
74 default shall be issued by the court as provided by the  
75 rules of civil procedure.

#### §48A-6-4. Establishment of paternity and duty of support.

1 (a) When the defendant, by verified responsive  
2 pleading, admits that the man is the father of the child and

3 owes a duty of support, or if after a hearing on the merits,  
4 the court shall find, by clear and convincing evidence that  
5 the man is the father of the child, the court shall order  
6 support in accordance with the provisions of this section.

7 (b) Upon motion by a party, the court shall issue a  
8 temporary order for child support pending a judicial  
9 determination of parentage if there is clear and convincing  
10 evidence of paternity on the basis of genetic tests or other  
11 scientifically recognized evidence.

12 (c) The court shall give full faith and credit to a  
13 determination of paternity made by any other state, based  
14 on the laws of that state, whether established through  
15 voluntary acknowledgment or through administrative or  
16 judicial process.

17 (d) Bills for pregnancy, childbirth, and genetic testing  
18 are admissible as evidence of expenses incurred. Evidence  
19 so admitted shall constitute prima facie evidence of  
20 amounts incurred for such services or for testing on behalf  
21 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.**

1 The records and judicial proceedings of any court of  
2 the United States, or of any state or territory, or of any  
3 country subject to the jurisdiction of the United States,  
4 shall be proved or admitted in any court in this state, by  
5 the attestation of the clerk, and the seal of the court  
6 annexed, if there be a seal, together with a certificate of the  
7 judge, chief justice, or presiding magistrate, that the said  
8 attestation is in due form. And the said records and  
9 judicial proceedings, so authenticated, shall have such faith  
10 and credit given to them in every court within this state as  
11 they have by law or usage in the courts of the state or  
12 jurisdiction from which they are taken. Full faith and  
13 credit for child support orders shall be accorded by this  
14 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)

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[Passed March 2, 1998; in effect ninety days from passage. Approved by the Governor.]

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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.**

1           (a) Effective the first day of July, one thousand nine  
2 hundred ninety-five, there is hereby established in the  
3 department of health and human resources the child  
4 support enforcement division. The division is under the  
5 immediate supervision of the director, who is responsible  
6 for the exercise of the duties and powers assigned to the  
7 division under the provisions of this chapter. The division  
8 is designated as the single and separate organizational unit  
9 within this state to administer the state plan for child and  
10 spousal support according to 42 U.S.C. §654(3).

11           (b) The division of human services shall cooperate  
12 with the child support enforcement division. At a  
13 minimum, such cooperation shall require that the division  
14 of human services:

15 (1) Notify the child support enforcement division  
16 when the division of human services proposes to terminate  
17 or provide public assistance payable to any obligee;

18 (2) Receive support payments made on behalf of a  
19 former or current recipient to the extent permitted by Title  
20 IV-D, Part D of the Social Security Act; and

21 (3) Accept the assignment of the right, title or interest  
22 in support payments and forward a copy of the  
23 assignment to the child support enforcement division.

24 (c) Pursuant to the provisions of article ten, chapter  
25 four of this code, the child support enforcement division  
26 shall continue to exist until the first day of July, two  
27 thousand.

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## CHAPTER 81

(S. B. 773—By Senators White, Wooton, Ball, Bowman, Dittmar, Fanning,  
Hunter, Kessler, Oliverio, Ross, Schoonover,  
Snyder, Buckalew, Kimble and Scott)

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[Passed March 14, 1998; to take effect July 1, 1998. Approved by the Governor.]

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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
- 2 of child welfare for the children of this state that has goals
- 3 to:
- 4 (1) Assure each child care, safety and guidance;
- 5 (2) Serve the mental and physical welfare of the child;
- 6 (3) Preserve and strengthen the child's family ties;
- 7 (4) Recognize the fundamental rights of children and
- 8 parents;
- 9 (5) Adopt procedures and establish programs that are
- 10 family-focused rather than focused on specific family
- 11 members, except where the best interests of the child or
- 12 the safety of the community are at risk;
- 13 (6) Involve the child and his or her family or caregiver
- 14 in the planning and delivery of programs and services;

15 (7) Provide services that are community-based, in the  
16 least restrictive settings that are consonant with the needs  
17 and potentials of the child and his or her family;

18 (8) Provide for early identification of the problems of  
19 children and their families, and respond appropriately with  
20 measures and services to prevent abuse and neglect or  
21 delinquency;

22 (9) Provide a system for the rehabilitation or detention  
23 of juvenile delinquents; and

24 (10) Protect the welfare of the general public.

25 In pursuit of these goals it is the intention of the  
26 Legislature to provide for removing the child from the  
27 custody of parents only when the child's welfare or the  
28 safety and protection of the public cannot be adequately  
29 safeguarded without removal; and, when the child has to  
30 be removed from his or her family, to secure for the child  
31 custody, care and discipline consistent with the child's best  
32 interests and other goals herein set out. It is further the  
33 intention of the Legislature to require that any  
34 reunification, permanency or preplacement preventative  
35 services address the safety of the child.

36 (b) The child welfare service of the state shall be  
37 administered by the state department of health and human  
38 resources and the division of juvenile services of the  
39 department of military affairs and public safety.

40 The state department of health and human resources is  
41 designated as the agency to cooperate with the United  
42 States department of health and human services and  
43 United States department of justice in extending and  
44 improving child welfare services, to comply with  
45 regulations thereof, and to receive and expend federal  
46 funds for these services. The division of juvenile services  
47 of the department of military affairs and public safety is  
48 designated as the agency to cooperate with the United  
49 States department of health and human services and  
50 United States department of justice in operating,  
51 maintaining and improving juvenile correction facilities  
52 and centers for the predispositional detention of children,

53 to comply with regulations thereof, and to receive and  
54 expend federal funds for these services.

**§49-1-3. Definitions relating to abuse and neglect.**

1 (a) "Abused child" means a child whose health or  
2 welfare is harmed or threatened by:

3 (1) A parent, guardian or custodian who knowingly or  
4 intentionally inflicts, attempts to inflict or knowingly  
5 allows another person to inflict, physical injury or mental  
6 or emotional injury, upon the child or another child in the  
7 home; or

8 (2) Sexual abuse or sexual exploitation; or

9 (3) The sale or attempted sale of a child by a parent,  
10 guardian or custodian in violation of section sixteen,  
11 article four, chapter forty-eight of this code.

12 In addition to its broader meaning, physical injury  
13 may include an injury to the child as a result of excessive  
14 corporal punishment.

15 (b) "Abusing parent" means a parent, guardian or  
16 other custodian, regardless of his or her age, whose  
17 conduct, as alleged in the petition charging child abuse or  
18 neglect, has been adjudged by the court to constitute child  
19 abuse or neglect.

20 (c) "Child abuse and neglect" or "child abuse or  
21 neglect" means physical injury, mental or emotional  
22 injury, sexual abuse, sexual exploitation, sale or attempted  
23 sale or negligent treatment or maltreatment of a child by a  
24 parent, guardian or custodian who is responsible for the  
25 child's welfare, under circumstances which harm or  
26 threaten the health and welfare of the child.

27 (d) "Child abuse and neglect services" means social  
28 services which are directed toward:

29 (1) Protecting and promoting the welfare of children  
30 who are abused or neglected;

31 (2) Identifying, preventing and remedying conditions  
32 which cause child abuse and neglect;

33 (3) Preventing the unnecessary removal of children  
34 from their families by identifying family problems and  
35 assisting families in resolving problems which could lead  
36 to a removal of children and a breakup of the family;

37 (4) In cases where children have been removed from  
38 their families, providing services to the children and the  
39 families so as to reunify such children with their families;

40 (5) Placing children in suitable adoptive homes when  
41 reunifying the children with their families is not possible  
42 or appropriate; and

43 (6) Assuring the adequate care of children who have  
44 been placed in the custody of the department or third  
45 parties.

46 (e) "Imminent danger to the physical well-being of the  
47 child" means an emergency situation in which the welfare  
48 or the life of the child is threatened. Such emergency  
49 situation exists when there is reasonable cause to believe  
50 that any child in the home is or has been sexually abused  
51 or sexually exploited, or reasonable cause to believe that  
52 the following conditions threaten the health or life of any  
53 child in the home:

54 (1) Nonaccidental trauma inflicted by a parent,  
55 guardian, custodian, sibling or a babysitter or other  
56 caretaker; or

57 (2) A combination of physical and other signs  
58 indicating a pattern of abuse which may be medically  
59 diagnosed as battered child syndrome; or

60 (3) Nutritional deprivation; or

61 (4) Abandonment by the parent, guardian or  
62 custodian; or

63 (5) Inadequate treatment of serious illness or disease;  
64 or

65 (6) Substantial emotional injury inflicted by a parent,  
66 guardian or custodian; or

67 (7) Sale or attempted sale of the child by the parent,  
68 guardian or custodian.

69 (f) "Legal guardianship" means the relationship  
70 between a child and caretaker as established pursuant to  
71 the provisions of article ten, chapter forty-four of this  
72 code.

73 (g) "Multidisciplinary team" means a group of  
74 professionals and paraprofessionals representing a variety  
75 of disciplines who interact and coordinate their efforts to  
76 identify, diagnose and treat specific cases of child abuse  
77 and neglect. Multidisciplinary teams may include, but are  
78 not limited to, medical, educational, child care and law-  
79 enforcement personnel, social workers, psychologists and  
80 psychiatrists. Their goal is to pool their respective skills in  
81 order to formulate accurate diagnoses and to provide  
82 comprehensive coordinated treatment with continuity and  
83 follow-up for both parents and children. "Community  
84 team" means a multidisciplinary group which addresses  
85 the general problem of child abuse and neglect in a given  
86 community and may consist of several multidisciplinary  
87 teams with different functions.

88 (h) (1) "Neglected child" means a child:

89 (A) Whose physical or mental health is harmed or  
90 threatened by a present refusal, failure or inability of the  
91 child's parent, guardian or custodian to supply the child  
92 with necessary food, clothing, shelter, supervision, medical  
93 care or education, when such refusal, failure or inability is  
94 not due primarily to a lack of financial means on the part  
95 of the parent, guardian or custodian; or

96 (B) Who is presently without necessary food, clothing,  
97 shelter, medical care, education or supervision because of  
98 the disappearance or absence of the child's parent or  
99 custodian;

100 (2) "Neglected child" does not mean a child whose  
101 education is conducted within the provisions of section  
102 one, article eight, chapter eighteen of this code.

103 (i) "Parenting skills" means a parent's competencies in  
104 providing physical care, protection, supervision and

105 psychological support appropriate to a child's age and  
106 state of development.

107 (j) "Sexual abuse" means:

108 (A) As to a child who is less than sixteen years of age,  
109 any of the following acts which a parent, guardian or  
110 custodian shall engage in, attempt to engage in, or  
111 knowingly procure another person to engage in, with such  
112 child, notwithstanding the fact that the child may have  
113 willingly participated in such conduct or the fact that the  
114 child may have suffered no apparent physical injury or  
115 mental or emotional injury as a result of such conduct:

116 (i) Sexual intercourse; or

117 (ii) Sexual intrusion; or

118 (iii) Sexual contact; or

119 (B) As to a child who is sixteen years of age or older,  
120 any of the following acts which a parent, guardian or  
121 custodian shall engage in, attempt to engage in, or  
122 knowingly procure another person to engage in, with such  
123 child, notwithstanding the fact that the child may have  
124 consented to such conduct or the fact that the child may  
125 have suffered no apparent physical injury or mental or  
126 emotional injury as a result of such conduct:

127 (i) Sexual intercourse; or

128 (ii) Sexual intrusion; or

129 (iii) Sexual contact; or

130 (C) Any conduct whereby a parent, guardian or  
131 custodian displays his or her sex organs to a child, or  
132 procures another person to display his or her sex organs  
133 to a child, for the purpose of gratifying the sexual desire  
134 of the parent, guardian or custodian, of the person making  
135 such display, or of the child, or for the purpose of  
136 affronting or alarming the child.

137 (k) "Sexual contact" means sexual contact as that term  
138 is defined in section one, article eight-b, chapter sixty-one  
139 of this code.

140 (l) "Sexual exploitation" means an act whereby:

141 (1) A parent, custodian or guardian, whether for  
142 financial gain or not, persuades, induces, entices or coerces  
143 a child to engage in sexually explicit conduct as that term  
144 is defined in section one, article eight-c, chapter sixty-one  
145 of this code;

146 (2) A parent, guardian or custodian persuades,  
147 induces, entices or coerces a child to display his or her sex  
148 organs for the sexual gratification of the parent, guardian,  
149 custodian or a third person, or to display his or her sex  
150 organs under circumstances in which the parent, guardian  
151 or custodian knows such display is likely to be observed  
152 by others who would be affronted or alarmed.

153 (m) "Sexual intercourse" means sexual intercourse as  
154 that term is defined in section one, article eight-b, chapter  
155 sixty-one of this code.

156 (n) "Sexual intrusion" means sexual intrusion as that  
157 term is defined in section one, article eight-b, chapter  
158 sixty-one of this code.

159 (o) "Parental rights" means any and all rights and  
160 duties regarding a parent to a minor child, including, but  
161 not limited to, custodial rights and visitational rights and  
162 rights to participate in the decisions affecting a minor  
163 child.

164 (p) "Placement" means any temporary or permanent  
165 placement of a child who is in the custody of the state in  
166 any foster home, group home or other facility or  
167 residence.

168 (q) "Serious physical abuse" means bodily injury  
169 which creates a substantial risk of death, which causes  
170 serious or prolonged disfigurement, prolonged  
171 impairment of health or prolonged loss or impairment of  
172 the function of any bodily organ.

173 (r) "Siblings" means children who have at least one  
174 biological parent in common or who have been legally  
175 adopted by the same parents or parent.

176 (s) "Time-limited reunification services" means  
177 individual, group, and family counseling, inpatient,  
178 residential or outpatient substance abuse treatment  
179 services, mental health services, assistance to address  
180 domestic violence, services designed to provide temporary  
181 child care and therapeutic services for families, including  
182 crisis nurseries and transportation to or from any such  
183 services, provided during fifteen of the most recent  
184 twenty-two months a child has been in foster care, as  
185 determined by the earlier date of the first judicial finding  
186 that the child is subjected to abuse or neglect, or the date  
187 which is sixty days after the child is removed from home.

**ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION  
AND CARE OF CHILDREN.**

§49-2-16. State responsibility for child care.

§49-2-17. Subsidized adoption and legal guardianship.

**§49-2-16. State responsibility for child care.**

1 The division of juvenile services of the department of  
2 military affairs and public safety is hereby authorized and  
3 empowered to operate and maintain centers for juveniles  
4 needing detention pending disposition by a court having  
5 juvenile jurisdiction or temporary care following such  
6 court action.

7 The department of health and human resources is  
8 hereby authorized and empowered to provide care,  
9 support and protective services for children who are  
10 handicapped by dependency, neglect, single parent status,  
11 mental or physical disability, or who for other reasons are  
12 in need of public service. Such department is also hereby  
13 authorized and empowered in its discretion to accept  
14 children for care from their parent or parents, guardian,  
15 custodian or relatives and to accept the custody of  
16 children committed to its care by courts. The department  
17 of health and human resources or any county office of  
18 such department is also hereby authorized and empowered  
19 in its discretion to accept temporary custody of children  
20 for care from any law-enforcement officer in an  
21 emergency situation.

22           Within ninety days of the date of the signatures to a  
23 voluntary placement agreement, after receipt of physical  
24 custody, the state department of health and human  
25 resources shall file with the court a petition for review of  
26 the placement, stating the child's situation and the  
27 circumstance that gives rise to the voluntary placement. If  
28 the department intends to extend the voluntary placement  
29 agreement, the department shall file with the court a copy  
30 of the child's case plan. The court shall appoint an  
31 attorney for the child, who shall also receive a copy of the  
32 case plan. The court shall schedule a hearing and shall  
33 give notice of the time and place and right to be present at  
34 such hearing to: The child's attorney; the child, if twelve  
35 years of age or older; the child's parents or guardians; the  
36 child's foster parents; any preadoptive parent or relative  
37 providing care for the child; and any other such persons  
38 as the court may in its discretion direct. The child's  
39 presence at such hearing may be waived by the child's  
40 attorney at the request of the child or if the child would  
41 suffer emotional harm. At the conclusion of the  
42 proceedings, but no later than ninety days after the date of  
43 the signatures to the voluntary placement agreement, the  
44 court shall enter an order determining whether or not  
45 continuation of the voluntary placement is in the best  
46 interests of the child; specifying under what conditions the  
47 child's placement shall continue; and specifying whether  
48 or not the department is required to and has made  
49 reasonable efforts to preserve and to reunify the family, as  
50 set forth in subsection (d), section three, article six of this  
51 chapter and/or provide a plan for the permanent  
52 placement of the child.

**§49-2-17. Subsidized adoption and legal guardianship.**

1           From funds appropriated to the department of health  
2 and human resources, the secretary shall establish a system  
3 of assistance for facilitating the adoption or legal  
4 guardianship of children who are dependents of the  
5 department or a child welfare agency licensed to place  
6 children for adoption, legally free for adoption and in  
7 special circumstances either because they:

8 (a) Have established emotional ties with prospective  
9 adoptive parents or prospective legal guardians while in  
10 their care; or

11 (b) Are not likely to be adopted or become a ward of  
12 a legal guardian by reason of one or more of the  
13 following conditions:

14 (1) They have a physical or mental disability;

15 (2) They are emotionally disturbed; or

16 (3) They are older children; or

17 (4) They are a part of a sibling group; or

18 (5) They are a member of a racial or ethnic minority;  
19 or

20 (6) They have any combination of these conditions.

21 The department shall provide assistance in the form of  
22 subsidies or other services to parents who are found and  
23 approved for adoption or legal guardianship of a child  
24 certified as eligible for subsidy by the department, but  
25 before the final decree of adoption or order of legal  
26 guardianship is entered, there must be a written agreement  
27 between the family entering into the subsidized adoption  
28 or legal guardianship and the department. Adoption or  
29 legal guardianship subsidies in individual cases may  
30 commence with the adoption or legal guardianship  
31 placement, and will vary with the needs of the child as well  
32 as the availability of other resources to meet the child's  
33 needs. The subsidy may be for special services only, or  
34 for money payments, and either for a limited period, or  
35 for a long term, or for any combination of the foregoing.  
36 The specific financial terms of the subsidy shall be  
37 included in the agreement between the department and the  
38 adoptive parents or legal guardians. The amount of the  
39 time-limited or long-term subsidy may in no case exceed  
40 that which would be allowable from time to time for such  
41 child under foster family care, or, in the case of a special  
42 service, the reasonable fee for the service rendered. In  
43 addition, the department shall provide either medicaid or  
44 other health insurance coverage for any special needs

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.**

1           (a) If the department or a reputable person believes  
2 that a child is neglected or abused, the department or the  
3 person may present a petition setting forth the facts to the  
4 circuit court in the county in which the child resides, or to  
5 the judge of such court in vacation. The petition shall be  
6 verified by the oath of some credible person having  
7 knowledge of the facts. The petition shall allege specific  
8 conduct including time and place, how such conduct  
9 comes within the statutory definition of neglect or abuse  
10 with references thereto, any supportive services provided  
11 by the department to remedy the alleged circumstances  
12 and the relief sought. Upon filing of the petition, the  
13 court shall set a time and place for a hearing and shall  
14 appoint counsel for the child. When there is an order for  
15 temporary custody pursuant to section three of this article,  
16 such hearing shall be held within thirty days of such order,  
17 unless a continuance for a reasonable time is granted to a  
18 date certain, for good cause shown.

19           (b) The petition and notice of the hearing shall be  
20 served upon both parents and any other custodian, giving  
21 to such parents or custodian at least ten days' notice.  
22 Notice shall also be given to the department, any foster or  
23 preadoptive parent, and any relative providing care for the  
24 child. In cases wherein personal service within West  
25 Virginia cannot be obtained after due diligence upon any  
26 parent or other custodian, a copy of the petition and  
27 notice of the hearing shall be mailed to such person by  
28 certified mail, addressee only, return receipt requested, to  
29 the last known address of such person. If said person  
30 signs the certificate, service shall be complete and said  
31 certificate shall be filed as proof of said service with the  
32 clerk of the circuit court. If service cannot be obtained by  
33 personal service or by certified mail, notice shall be by

34 publication as a Class II legal advertisement in compliance  
35 with the provisions of article three, chapter fifty-nine of  
36 this code. A notice of hearing shall specify the time and  
37 place of the hearing, the right to counsel of the child and  
38 parents or other custodians at every stage of the  
39 proceedings and the fact that such proceedings can result  
40 in the permanent termination of the parental rights.  
41 Failure to object to defects in the petition and notice shall  
42 not be construed as a waiver.

43 (c) At the time of the institution of any proceeding  
44 under this article, the department shall provide supportive  
45 services in an effort to remedy circumstances detrimental  
46 to a child.

**§49-6-3. Petition to court when child believed neglected or  
abused — Temporary custody.**

1 (a) Upon the filing of a petition, the court may order  
2 that the child alleged to be an abused or neglected child  
3 be delivered for not more than ten days into the custody  
4 of the state department or a responsible person found by  
5 the court to be a fit and proper person for the temporary  
6 care of the child pending a preliminary hearing, if it finds  
7 that: (1) There exists imminent danger to the physical  
8 well-being of the child; and (2) there are no reasonably  
9 available alternatives to removal of the child, including,  
10 but not limited to, the provision of medical, psychiatric,  
11 psychological or homemaking services in the child's  
12 present custody: *Provided*, That where the alleged  
13 abusing person, if known, is a member of a household, the  
14 court shall not allow placement pursuant to this section of  
15 the child or children in said home unless the alleged  
16 abusing person is or has been precluded from visiting or  
17 residing in said home by judicial order. In a case where  
18 there is more than one child in the home, or in the  
19 temporary care, custody or control of the alleged  
20 offending parent, the petition shall so state, and  
21 notwithstanding the fact that the allegations of abuse or  
22 neglect may pertain to less than all of such children, each  
23 child in the home for whom relief is sought shall be made  
24 a party to the proceeding. Even though the acts of abuse  
25 or neglect alleged in the petition were not directed against

26 a specific child who is named in the petition, the court  
27 shall order the removal of such child, pending final  
28 disposition, if it finds that there exists imminent danger to  
29 the physical well-being of the child and a lack of  
30 reasonable available alternatives to removal. The initial  
31 order directing such custody shall contain an order  
32 appointing counsel and scheduling the preliminary  
33 hearing, and upon its service shall require the immediate  
34 transfer of custody of such child or children to the  
35 department or a responsible relative which may include  
36 any parent, guardian, or other custodian. The court order  
37 shall state: (1) That continuation in the home is contrary  
38 to the best interests of the child and why; and (2) whether  
39 or not the department made reasonable efforts to preserve  
40 the family and prevent the placement or that the  
41 emergency situation made such efforts unreasonable or  
42 impossible. The order may also direct any party or the  
43 department to initiate or become involved in services to  
44 facilitate reunification of the family.

45 (b) Whether or not the court orders immediate transfer  
46 of custody as provided in subsection (a) of this section, if  
47 the facts alleged in the petition demonstrate to the court  
48 that there exists imminent danger to the child, the court  
49 may schedule a preliminary hearing giving the  
50 respondents at least five days' actual notice. If the court  
51 finds at the preliminary hearing that there are no  
52 alternatives less drastic than removal of the child and that a  
53 hearing on the petition cannot be scheduled in the interim  
54 period, the court may order that the child be delivered into  
55 the temporary custody of the department or a responsible  
56 person or agency found by the court to be a fit and  
57 proper person for the temporary care of the child for a  
58 period not exceeding sixty days: *Provided*, That the court  
59 order shall state: (1) That continuation in the home is  
60 contrary to the best interests of the child and set forth the  
61 reasons therefor; (2) whether or not the department made  
62 reasonable efforts to preserve the family and to prevent  
63 the child's removal from his or her home; (3) whether or  
64 not the department made reasonable efforts to preserve the  
65 family and to prevent the placement or that the emergency  
66 situation made such efforts unreasonable or impossible;

67 and (4) what efforts should be made by the department, if  
68 any, to facilitate the child's return home: *Provided,*  
69 *however,* That if the court grants an improvement period  
70 as provided in section twelve of this article, the sixty-day  
71 limit upon temporary custody is waived.

72 (c) If a child or children shall, in the presence of a  
73 child protective service worker, be in an emergency  
74 situation which constitutes an imminent danger to the  
75 physical well-being of the child or children, as that phrase  
76 is defined in section three, article one of this chapter, and  
77 if such worker has probable cause to believe that the child  
78 or children will suffer additional child abuse or neglect or  
79 will be removed from the county before a petition can be  
80 filed and temporary custody can be ordered, the worker  
81 may, prior to the filing of a petition, take the child or  
82 children into his or her custody without a court order:  
83 *Provided,* That after taking custody of such child or  
84 children prior to the filing of a petition, the worker shall  
85 forthwith appear before a circuit judge or a juvenile  
86 referee of the county wherein custody was taken, or if no  
87 such judge or referee be available, before a circuit judge  
88 or a juvenile referee of an adjoining county, and shall  
89 immediately apply for an order ratifying the emergency  
90 custody of the child pending the filing of a petition. The  
91 circuit court of every county in the state shall appoint at  
92 least one of the magistrates of the county to act as a  
93 juvenile referee, who shall serve at the will and pleasure of  
94 the appointing court, and who shall perform the functions  
95 prescribed for such position by the provisions of this  
96 subsection. The parents, guardians or custodians of the  
97 child or children may be present at the time and place of  
98 application for an order ratifying custody, and if at the  
99 time the child or children are taken into custody by the  
100 worker, the worker knows which judge or referee is to  
101 receive the application, the worker shall so inform the  
102 parents, guardians or custodians. The application for  
103 emergency custody may be on forms prescribed by the  
104 supreme court of appeals or prepared by the prosecuting  
105 attorney or the applicant, and shall set forth facts from  
106 which it may be determined that the probable cause  
107 described above in this subsection exists. Upon such

108 sworn testimony or other evidence as the judge or referee  
109 deems sufficient, the judge or referee may order the  
110 emergency taking by the worker to be ratified. If  
111 appropriate under the circumstances, the order may  
112 include authorization for an examination as provided for  
113 in subsection (b), section four of this article. If a referee  
114 issues such an order, the referee shall by telephonic  
115 communication have such order orally confirmed by a  
116 circuit judge of the circuit or an adjoining circuit who  
117 shall on the next judicial day enter an order of  
118 confirmation. If the emergency taking is ratified by the  
119 judge or referee, emergency custody of the child or  
120 children shall be vested in the department until the  
121 expiration of the next two judicial days, at which time any  
122 such child taken into emergency custody shall be returned  
123 to the custody of his or her parent or guardian or  
124 custodian unless a petition has been filed and custody of  
125 the child has been transferred under the provisions of  
126 section three of this article.

127 (d) For purposes of the court's consideration of  
128 temporary custody pursuant to the provisions of  
129 subsection (a) or (b) of this section, the department is not  
130 required to make reasonable efforts to preserve the family  
131 if the court determines:

132 (1) The parent has subjected the child to aggravated  
133 circumstances which include, but are not limited to,  
134 abandonment, torture, chronic abuse and sexual abuse;

135 (2) The parent has:

136 (A) Committed murder of another child of the parent;

137 (B) Committed voluntary manslaughter of another  
138 child of the parent;

139 (C) Attempted or conspired to commit such a murder  
140 or voluntary manslaughter or been an accessory before or  
141 after the fact to either such crime; or

142 (D) Committed unlawful or malicious wounding that  
143 results in serious bodily injury to the child or to another  
144 child of the parent; or

145 (3) The parental rights of the parent to a sibling have  
146 been terminated involuntarily.

**§49-6-5. Disposition of neglected or abused children.**

1 (a) Following a determination pursuant to section two  
2 of this article wherein the court finds a child to be abused  
3 or neglected, the department shall file with the court a  
4 copy of the child's case plan, including the permanency  
5 plan for the child. The term case plan means a written  
6 document that includes, where applicable, the  
7 requirements of the family case plan as provided for in  
8 section three, article six-d of this chapter and that also  
9 includes at least the following: A description of the type  
10 of home or institution in which the child is to be placed,  
11 including a discussion of the appropriateness of the  
12 placement and how the agency which is responsible for  
13 the child plans to assure that the child receives proper care  
14 and that services are provided to the parents, child and  
15 foster parents in order to improve the conditions in the  
16 parent(s) home, facilitate return of the child to his or her  
17 own home or the permanent placement of the child, and  
18 address the needs of the child while in foster care,  
19 including a discussion of the appropriateness of the  
20 services that have been provided to the child. The term  
21 permanency plan refers to that part of the case plan which  
22 is designed to achieve a permanent home for the child in  
23 the least restrictive setting available. The plan must  
24 document efforts to ensure that the child is returned home  
25 within approximate time lines for reunification as set out  
26 in the plan. Reasonable efforts to place a child for  
27 adoption or with a legal guardian may be made at the  
28 same time reasonable efforts are made to prevent removal  
29 or to make it possible for a child to safely return home. If  
30 reunification is not the permanency plan for the child, the  
31 plan must state why reunification is not appropriate and  
32 detail the alternative placement for the child to include  
33 approximate time lines for when such placement is  
34 expected to become a permanent placement. This case  
35 plan shall serve as the family case plan for parents of  
36 abused or neglected children. Copies of the child's case  
37 plan shall be sent to the child's attorney and parent,  
38 guardian or custodian or their counsel at least five days

39 prior to the dispositional hearing. The court shall  
40 forthwith proceed to disposition giving both the petitioner  
41 and respondents an opportunity to be heard. The court  
42 shall give precedence to dispositions in the following  
43 sequence:

44 (1) Dismiss the petition;

45 (2) Refer the child, the abusing parent, or other family  
46 members to a community agency for needed assistance  
47 and dismiss the petition;

48 (3) Return the child to his or her own home under  
49 supervision of the department;

50 (4) Order terms of supervision calculated to assist the  
51 child and any abusing parent or parents or custodian  
52 which prescribe the manner of supervision and care of the  
53 child and which are within the ability of any parent or  
54 parents or custodian to perform;

55 (5) Upon a finding that the abusing parent or parents  
56 are presently unwilling or unable to provide adequately  
57 for the child's needs, commit the child temporarily to the  
58 custody of the state department, a licensed private child  
59 welfare agency or a suitable person who may be appointed  
60 guardian by the court. The court order shall state: (1)  
61 That continuation in the home is contrary to the best  
62 interests of the child and why; (2) whether or not the  
63 department has made reasonable efforts, with the child's  
64 health and safety being the paramount concern, to  
65 preserve the family and to prevent or eliminate the need  
66 for; removing the child from the child's home and to  
67 make it possible for the child to safely return home; what  
68 efforts were made or that the emergency situation made  
69 such efforts unreasonable or impossible; and (3) the  
70 specific circumstances of the situation which made such  
71 efforts unreasonable if services were not offered by the  
72 department. The court order shall also determine under  
73 what circumstances the child's commitment to the  
74 department shall continue. Considerations pertinent to the  
75 determination include whether the child should: (1) Be  
76 continued in foster care for a specified period; (2) be  
77 considered for adoption; (3) because of a child's special

78 needs or circumstances, be continued in foster care on a  
79 permanent or long-term basis; or (4) be continued in  
80 foster care until reunification is achieved. The court may  
81 order services to meet the special needs of the child.  
82 Whenever the court transfers custody of a youth to the  
83 department, an appropriate order of financial support by  
84 the parents or guardians shall be entered in accordance  
85 with section five, article seven of this chapter; or

86 (6) Upon a finding that there is no reasonable  
87 likelihood that the conditions of neglect or abuse can be  
88 substantially corrected in the near future, and when  
89 necessary for the welfare of the child, terminate the  
90 parental, custodial or guardianship rights and/or  
91 responsibilities of the abusing parent and commit the child  
92 to the permanent sole custody of the nonabusing parent, if  
93 there be one, or, if not, to either the permanent  
94 guardianship of the department or a licensed child welfare  
95 agency. If the court shall so find, then in fixing its  
96 dispositional order, the court shall consider the following  
97 factors: (1) The child's need for continuity of care and  
98 caretakers; (2) the amount of time required for the child  
99 to be integrated into a stable and permanent home  
100 environment; and (3) other factors as the court considers  
101 necessary and proper. Notwithstanding any other  
102 provision of this article, the court shall give consideration  
103 to the wishes of a child fourteen years of age or older or  
104 otherwise of an age of discretion as determined by the  
105 court, regarding the permanent termination of parental  
106 rights. No adoption of a child shall take place until all  
107 proceedings for termination of parental rights under this  
108 article and appeals thereof are final. In determining  
109 whether or not parental rights should be terminated, the  
110 court shall consider the efforts made by the department to  
111 provide remedial and reunification services to the parent.  
112 The court order shall state: (1) That continuation in the  
113 home is not in the best interest of the child and why; (2)  
114 why reunification is not in the best interests of the child;  
115 (3) whether or not the department made reasonable  
116 efforts, with the child's health and safety being the  
117 paramount concern, to preserve the family and to prevent  
118 the placement or to eliminate the need for removing the

119 child from the child's home and to make it possible for the  
120 child to safely return home, or that the emergency  
121 situation made such efforts unreasonable or impossible;  
122 and (4) whether or not the department made reasonable  
123 efforts to preserve and reunify the family including a  
124 description of what efforts were made or that such efforts  
125 were unreasonable due to specific circumstances.

126       -(7) For purposes of the court's consideration of the  
127 disposition custody of a child pursuant to the provisions  
128 of this subsection the department is not required to make  
129 reasonable efforts to preserve the family if the court  
130 determines:

131       (A) The parent has subjected the child to aggravated  
132 circumstances which include, but are not limited to,  
133 abandonment, torture, chronic abuse and sexual abuse;

134       (B) The parent has:

135       (i) Committed murder of another child of the parent;

136       (ii) Committed voluntary manslaughter of another  
137 child of the parent;

138       (iii) Attempted or conspired to commit such a murder  
139 or voluntary manslaughter or been an accessory before or  
140 after the fact to either such crime; or

141       (iv) Committed a felonious assault that results in  
142 serious bodily injury to the child or to another child of the  
143 parent; or

144       (C) The parental rights of the parent to a sibling have  
145 been terminated involuntarily.

146       (b) As used in this section, "no reasonable likelihood  
147 that conditions of neglect or abuse can be substantially  
148 corrected" shall mean that, based upon the evidence before  
149 the court, the abusing adult or adults have demonstrated  
150 an inadequate capacity to solve the problems of abuse or  
151 neglect, on their own or with help. Such conditions shall  
152 be deemed to exist in the following circumstances, which  
153 shall not be exclusive:

154 (1) The abusing parent or parents have habitually  
155 abused or are addicted to alcohol, controlled substances or  
156 drugs, to the extent that proper parenting skills have been  
157 seriously impaired and such person or persons have not  
158 responded to or followed through the recommended and  
159 appropriate treatment which could have improved the  
160 capacity for adequate parental functioning;

161 (2) The abusing parent or parents have willfully  
162 refused or are presently unwilling to cooperate in the  
163 development of a reasonable family case plan designed to  
164 lead to the child's return to their care, custody and control;

165 (3) The abusing parent or parents have not responded  
166 to or followed through with a reasonable family case plan  
167 or other rehabilitative efforts of social, medical, mental  
168 health or other rehabilitative agencies designed to reduce  
169 or prevent the abuse or neglect of the child, as evidenced  
170 by the continuation or insubstantial diminution of  
171 conditions which threatened the health, welfare or life of  
172 the child;

173 (4) The abusing parent or parents have abandoned the  
174 child;

175 (5) The abusing parent or parents have repeatedly or  
176 seriously injured the child physically or emotionally, or  
177 have sexually abused or sexually exploited the child, and  
178 the degree of family stress and the potential for further  
179 abuse and neglect are so great as to preclude the use of  
180 resources to mitigate or resolve family problems or assist  
181 the abusing parent or parents in fulfilling their  
182 responsibilities to the child; or

183 (6) The abusing parent or parents have incurred  
184 emotional illness, mental illness or mental deficiency of  
185 such duration or nature as to render such parent or parents  
186 incapable of exercising proper parenting skills or  
187 sufficiently improving the adequacy of such skills.

188 (c) The court may as an alternative disposition allow  
189 the parents or custodians an improvement period not to  
190 exceed six months. During this period the court shall  
191 require the parent to rectify the conditions upon which the

192 determination was based. The court may order the child  
193 to be placed with the parents, or any person found to be a  
194 fit and proper person for the temporary care of the child  
195 during the period. At the end of the period the court shall  
196 hold a hearing to determine whether the conditions have  
197 been adequately improved, and at the conclusion of such  
198 hearing, shall make a further dispositional order in  
199 accordance with this section.

**§49-6-5a. Permanency hearing when court determines  
- reasonable efforts to preserve families not  
required.**

1 (a) If the court finds, pursuant to the provisions of  
2 subdivision (7), subsection (a), section five of this article  
3 that the department is not required to make reasonable  
4 efforts to preserve the family, then notwithstanding any  
5 other provision, a permanency hearing must be held  
6 within thirty days following the entry of the court order so  
7 finding.

8 (b) The purpose of the permanency hearing is to  
9 determine the permanency plan for the child that includes:  
10 (1) When the child will be returned to the parent; (2) when  
11 the child will be placed for adoption, in which event the  
12 state will file a petition for termination of parental rights;  
13 or (3) when the child will be referred for legal  
14 guardianship. In cases where the department has  
15 demonstrated a compelling reason for determining it  
16 would not be in the best interests of the child to return  
17 home, the court shall determine whether the child should  
18 be referred for termination of parental rights, be placed  
19 for adoption, be placed with a fit and willing relative, be  
20 placed with a legal guardian or placed in another planned  
21 permanent living arrangement.

22 (c) Any foster parent, preadoptive parent or relative  
23 providing care for the child shall be given notice of and  
24 the opportunity to be heard at the permanency hearing  
25 provided for in this section.

**§49-6-5b. When efforts to terminate parental rights required.**

1 (a) Except as provided in subsection (b) of this  
2 section, the department shall file or join in a petition or  
3 otherwise seek a ruling in any pending proceeding to  
4 terminate parental rights:

5 (1) If a child has been in foster care for fifteen of the  
6 most recent twenty-two months as determined by the  
7 earlier of the date of the first judicial finding that the child  
8 is subjected to abuse or neglect or the date which is sixty  
9 days after the child is removed from the home;

10 (2) If a court has determined the child is abandoned;  
11 or

12 (3) If a court has determined the parent has committed  
13 murder or voluntary manslaughter of another of his or her  
14 children; has attempted or conspired to commit such  
15 murder or voluntary manslaughter or has been an  
16 accessory before or after the fact of either crime; has  
17 committed unlawful or malicious wounding resulting in  
18 serious bodily injury to the child or to another of his or  
19 her children; or the parental rights of the parent to a  
20 sibling have been terminated involuntarily.

21 (b) The department may determine not to file a  
22 petition to terminate parental rights when:

23 (1) At the option of the department, the child has been  
24 placed with a relative;

25 (2) The department has documented in the case plan  
26 made available for court review a compelling reason,  
27 including, but not limited to, the child's age and  
28 preference regarding termination or the child's placement  
29 in custody of the department based on any proceedings  
30 initiated under article five of this chapter, that filing the  
31 petition would not be in the best interests of the child; or

32 (3) The department has not provided, when reasonable  
33 efforts to return a child to the family are required, the  
34 services to the child's family as the department deems  
35 necessary for the safe return of the child to the home.

**§49-6-8. Foster care review; annual reports to the court.**

1 (a) If, twelve months after receipt by the department or  
2 its authorized agent of physical custody of a child either  
3 by a court ordered placement or by a voluntary  
4 agreement, the department has not placed a child in  
5 permanent foster care or an adoptive home or placed the  
6 child with a natural parent, the department shall file with  
7 the court a petition for review of the case. The department  
8 shall also file with the court a report detailing the efforts  
9 that have been made to place the child in a permanent  
10 home and copies of the child's case plan including the  
11 permanency plan as defined in section five, article six of  
12 this chapter. Copies of the report shall be sent to the  
13 child's attorney and be made available to the child's  
14 parent(s) or guardian. "Permanent foster care" shall mean  
15 a written arrangement with an adult or adults following a  
16 six-month trial period whereby the state department places  
17 the care, custody and control of a child until the child's  
18 emancipation with such adult or adults. The court shall  
19 schedule a hearing in chambers, giving notice and the  
20 right to be present to: The child's attorney; the child, if  
21 twelve years of age or older; the child's parents; the  
22 child's guardians; the child's foster parents; any  
23 preadoptive parent or any relative providing care for the  
24 child; and such other persons as the court may in its  
25 discretion direct. The child's presence may be waived by  
26 the child's attorney at the request of the child or if the  
27 child would suffer emotional harm. The purpose of the  
28 hearing is to review the child's case, to determine whether  
29 and under what conditions the child's commitment to the  
30 department shall continue, and to determine what efforts  
31 are necessary to provide the child with a permanent home.  
32 At the conclusion of the hearing the court shall in  
33 accordance with the best interests of the child enter an  
34 appropriate order of disposition. The court order shall  
35 state: (1) Whether or not the department made reasonable  
36 efforts to preserve the family and to prevent out-of-home  
37 placement or that the specific situation made such effort  
38 unreasonable; (2) the permanency plan for the child; and  
39 (3) services required to meet the child's needs: *Provided,*  
40 That the department is not required to make reasonable  
41 efforts to preserve the family if the court determines any  
42 of the conditions set forth in subdivision (7), subsection

43 (a), section five of this article exist. The court shall  
44 possess continuing jurisdiction over cases reviewed under  
45 this section for so long as a child remains in temporary  
46 foster care, or, when a child is returned to his or her  
47 natural parents subject to conditions imposed by the court,  
48 for so long as the conditions are effective.

49 (b) The state department shall file a supplementary  
50 petition for review with the court within twelve months and  
51 every twelve months thereafter for every child that remains  
52 in the physical or legal custody of the state department  
53 until the child is placed in an adoptive home or permanent  
54 foster care or returned to his or her parents.

55 (c) The state department shall annually report to the  
56 court the current status of the placements of children in  
57 permanent care and custody of the state department who  
58 have not been adopted.

59 (d) The state department shall file a report with the  
60 court in any case where any child in the temporary or  
61 permanent custody of the state receives more than three  
62 placements in one year no later than thirty days after the  
63 third placement. This report shall be provided to all  
64 parties and their counsel. Upon motion by any party, the  
65 court shall review these placements and determine what  
66 efforts are necessary to provide the child with a stable  
67 foster or temporary home: *Provided*, That no report shall  
68 be provided to any parent or parent's attorney whose  
69 parental rights have been terminated pursuant to this  
70 article.

71 (e) The state department shall notify, in writing, the  
72 court, the child, if over the age of twelve, the child's  
73 attorney, the parents and the parents' attorney forty-eight  
74 hours prior to the move if this is a planned move, or within  
75 forty-eight hours of the next business day after the move  
76 if this is an emergency move, except where such  
77 notification would endanger the child or the foster family.  
78 This notice shall not be required in any case where the  
79 child is in imminent danger in the child's current  
80 placement. The location of the child need not be  
81 disclosed, but the purpose of the move should be. This  
82 requirement is not waived by placement of the child in a

83 home or other residence maintained by a private provider.  
84 No notice shall be provided pursuant to this provision to  
85 any parent or parent's attorney whose parental rights have  
86 been terminated pursuant to this article.

87 (f) Nothing in this article precludes any party from  
88 petitioning the court for review of the child's case at any  
89 time. The court shall grant such petition upon a showing  
90 that there is a change in circumstance or needs of the child  
91 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.**

1 (a) The department shall develop a family case plan  
2 for every family wherein a person has been referred to the  
3 department after being allowed an improvement period  
4 under the provisions of section twelve, article six of this  
5 chapter. The department may also prepare a family case  
6 plan for any person who voluntarily seeks child abuse and  
7 neglect services from the department, or who is referred to  
8 the department by another public agency or private  
9 organization. The family case plan is to clearly set forth  
10 an organized, realistic method of identifying family  
11 problems and the logical steps to be used in resolving or  
12 lessening those problems. Every family case plan prepared  
13 by the department shall contain the following:

14 (1) A listing of specific, measurable, realistic goals to  
15 be achieved;

16 (2) An arrangement of goals into an order of priority;

17 (3) A listing of the problems that will be addressed by  
18 each goal;

19 (4) A specific description of how the assigned  
20 caseworker or caseworkers and the abusing parent,  
21 guardian or custodian will achieve each goal;

22 (5) A description of the departmental and community  
23 resources to be used in implementing the proposed actions  
24 and services;

25 (6) A list of the services, including time-limited  
26 reunification services as defined in section three, article  
27 one of this chapter, which will be provided;

28 (7) Time targets for the achievement of goals or  
29 portions of goals;

30 (8) An assignment of tasks to the abusing or  
31 neglecting parent, guardian or custodian, to the  
32 caseworker or caseworkers and to other participants in the  
33 planning process;

34 (9) A designation of when and how often tasks will be  
35 performed; and

36 (10) The safety of the placement of the child and  
37 plans for returning the child safely home.

38 (b) In cases where the family has been referred to the  
39 department by a court under the provisions of this chapter,  
40 and further action before the court is pending, the family  
41 case plan described in subsection (a) of this section shall  
42 be furnished to the court within thirty days after the entry  
43 of the order referring the case to the department, and shall  
44 be available to counsel for the parent, guardian or  
45 custodian and counsel for the child or children. The  
46 department shall encourage participation in the  
47 development of the family case plan by the parent,  
48 guardian or custodian, and, if the child is above the age of  
49 twelve years and the child's participation is otherwise  
50 appropriate, by the child. It shall be the duty of counsel  
51 for the participants to participate in the development of  
52 the family case plan. The family case plan may be  
53 modified from time to time by the department to allow for  
54 flexibility in goal development, and in each such case the  
55 modifications shall be submitted to the court in writing.  
56 Reasonable efforts to place a child for adoption or with a  
57 legal guardian may be made at the same time as  
58 reasonable efforts are being made to prevent removal or to  
59 make it possible for a child to return safely home. The  
60 court shall examine the proposed family case plan or any  
61 modification thereof, and upon a finding by the court that  
62 the plan or modified plan can be easily communicated,  
63 explained and discussed so as to make the participants

64 accountable and able to understand the reasons for any  
65 success or failure under the plan, the court shall inform  
66 the participants of the probable action of the court if goals  
67 are met or not met.

68 (c) (1) In addition to the family case plan provided for  
69 under the provisions of subsection (b) of this section, the  
70 department shall prepare, as an appendix to the family  
71 case plan, an expanded "worker's case plan". As utilized  
72 by the department under the provisions of this section, the  
73 worker's case plan shall consist of the following:

74 (A) All of the information contained in the family case  
75 plan described in subsection (c) of this section;

76 (B) A prognosis for each of the goals projected in the  
77 family case plan, assessing the capacity of the parent,  
78 guardian or custodian to achieve the goal and whether  
79 available treatment services are likely to have the desired  
80 outcome;

81 (C) A listing of the criteria to be used to assess the  
82 degree to which each goal is attained;

83 (D) A description of when and how the department  
84 will decide when and how well each goal has been  
85 attained;

86 (E) If possible, a listing of alternative methods and  
87 specific services which the caseworker or caseworkers may  
88 consider using if the original plan does not work; and

89 (F) A listing of criteria to be used in determining when  
90 the family case plan should be terminated.

91 (2) Because the nature of the information contained in  
92 the worker's case plan described in subdivision (1) of this  
93 subsection may, in some cases, be construed to be negative  
94 with respect to the probability of change, or may be  
95 viewed as a caseworker's attempt to impose personal values  
96 into the situation, or may raise barriers of hostility and  
97 resistance between the caseworker and the family  
98 members, the worker's case plan shall not be made  
99 available to the court or to persons outside of the  
100 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

140 (5) Assisting public agencies or nonprofit private  
141 organizations or combinations thereof in making  
142 applications for grants from, or in entering into contracts  
143 with, the secretary of the federal department of health and  
144 human services for demonstration programs and projects  
145 designed to identify, prevent and treat child abuse and  
146 neglect.

147 (e) Agencies, organizations and programs funded to  
148 carry out the purposes of this section shall be structured so  
149 as to comply with any applicable federal law, any  
150 regulation of the federal department of health and human  
151 services or the secretary thereof, and any final  
152 comprehensive plan of the federal advisory board on child  
153 abuse and neglect. In funding organizations, the  
154 department shall, to the extent feasible, ensure that  
155 parental organizations combating child abuse and neglect  
156 receive preferential treatment.

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## CHAPTER 82

(H. B. 4560—By Delegates Givens, Douglas, Fleischauer,  
Mezzatesta, Staton, Facemyer and Trump)

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[Passed March 14, 1998; in effect July 1, 1998. Approved by the Governor.]

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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  
3 facility maintained by the state or any county or  
4 municipality thereof, or any agency or facility maintained  
5 by an individual, firm, corporation, association or  
6 organization, public or private, to receive children for care  
7 and maintenance or for placement in residential care  
8 facilities, or any facility that provides care for unmarried  
9 mothers and their children;
  - 10 (2) "Community based," when referring to a facility,  
11 program, or service, means located near the juvenile's  
12 home or family and involving community participation in  
13 planning, operation, and evaluation, and which may  
14 include, but is not limited to, medical, educational,  
15 vocational, social and psychological guidance, training,  
16 special education, counseling, alcoholism and any  
17 treatment, and other rehabilitation services;
  - 18 (3) "Court" means the circuit court of the county with  
19 jurisdiction of the case or the judge thereof in vacation  
20 unless otherwise specifically provided;
  - 21 (4) "Custodian" means a person who has or shares  
22 actual physical possession or care and custody of a child,  
23 regardless of whether such person has been granted  
24 custody of the child by any contract, agreement or legal  
25 proceedings;
  - 26 (5) "Department" or "state department" means the state  
27 department of health and human resources;

28           (6) "Division of juvenile services" means the division  
29 within the department of military affairs and public safety  
30 pursuant to article five-e of this chapter;

31           (7) "Guardian" means a person who has care and  
32 custody of a child as a result of any contract, agreement or  
33 legal proceeding;

34           (8) "Juvenile delinquent" means a juvenile who has  
35 been adjudicated as one who commits an act which would  
36 be a crime under state law or a municipal ordinance if  
37 committed by an adult;

38           (9) "Nonsecure facility" means any public or private  
39 residential facility not characterized by construction  
40 fixtures designed to physically restrict the movements and  
41 activities of individuals held in lawful custody in such  
42 facility and which provides its residents access to the  
43 surrounding community with supervision;

44           (10) "Referee" means a juvenile referee appointed  
45 pursuant to section one, article five-a of this chapter,  
46 except that in any county which does not have a juvenile  
47 referee the judge or judges of the circuit court may  
48 designate one or more magistrates of the county to  
49 perform the functions and duties which may be performed  
50 by a referee under this chapter;

51           (11) "Secretary" means the secretary of health and  
52 human resources;

53           (12) "Secure facility" means any public or private  
54 residential facility which includes construction fixtures  
55 designed to physically restrict the movements and  
56 activities of juveniles or other individuals held in lawful  
57 custody in such facility;

58           (13) "Staff-secure facility" means any public or private  
59 residential facility characterized by staff restrictions of the  
60 movements and activities of individuals held in lawful  
61 custody in such facility and which limits its residents'  
62 access to the surrounding community, but is not  
63 characterized by construction fixtures designed to  
64 physically restrict the movements and activities of  
65 residents;

66           (14) "Status offender" means a juvenile who has been  
67 adjudicated as one;

68 (A) Who habitually and continually refuses to respond  
69 to the lawful supervision by his or her parents, guardian or  
70 legal custodian such that the child's behavior substantially  
71 endangers the health, safety, or welfare of the juvenile or  
72 any other person;

73 (B) Who has left the care of his or her parents,  
74 guardian or custodian without the consent of such person  
75 or without good cause;

76 (C) Who is habitually absent from school without  
77 good cause; or

78 (D) Who violates any West Virginia municipal, county,  
79 or state law regarding use of alcoholic beverages by  
80 minors;

81 (15) "Valid court order" means a court order given to  
82 a juvenile who was brought before the court and made  
83 subject to such order, and who received, before the  
84 issuance of such order, the full due process rights  
85 guaranteed to such juvenile by the constitutions of the  
86 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.

1 It shall be the responsibility of the state department to  
2 provide care for neglected children who are committed to  
3 its care for custody or guardianship. For purposes of this  
4 chapter, the department of health and human resources is  
5 responsible for the care of the infant child of an  
6 unmarried mother who has been committed to the custody  
7 of the department while the infant is placed in the same  
8 licensed child welfare agency as his or her mother. The  
9 state department may provide care for such children in  
10 family homes meeting required standards, at board or  
11 otherwise, through a licensed child welfare agency, or in a  
12 state institution providing care for dependent or neglected  
13 children. The department in placing any child in the care  
14 of a family or a child welfare agency shall select as far as  
15 practicable a family holding the same religious belief as  
16 the parents or relatives of the child or a child welfare  
17 agency conducted under religious auspices of the same  
18 belief as the parents or relatives.

# CHAPTER 83

(H. B. 4238—By Delegates Seacrist, Beane, Evans,  
Clements and Compton)

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

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

*Be it enacted by the Legislature of West Virginia:*

## COMPENSATION AWARDS TO VICTIMS OF CRIMES.

### §1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

1 The Legislature has duly considered the findings of  
2 fact and recommendations for awards reported to it by the  
3 court of claims in respect to the following named  
4 claimants who were innocent victims of crime within this  
5 state and entitled to compensation; and in respect to each  
6 of such named claimants the Legislature adopts those  
7 findings of fact as its own, hereby declares it to be the  
8 moral obligation of the state to pay each such claimant in  
9 the amount specified below, and directs the auditor to  
10 issue warrants for the payment thereof out of any fund  
11 appropriated and available for the purpose.

#### *Claims for crime victims compensation awards:*

12 (To be paid from Crime Victims Compensation Fund)

13 (1) Brad A. Fallecker . . . . . \$ 5,000.00

14 (2) Chad A. Fallecker . . . . . \$ 5,000.00

15 (3) Deborajean Hudson, as guardian of  
16 John W. Fallecker, III . . . . . \$ 5,000.00

17 TOTAL . . . . . \$ 15,000.00

18  
19 The Legislature finds that the above moral obligations  
20 and the appropriations made in satisfaction thereof shall  
21 be the full compensation for all claimants herein.

## CHAPTER 84

(Com. Sub. for H. B. 4252—By Delegates Seacrist, Beane,  
Evans, Clements and Compton)

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

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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.**

1       The Legislature has heretofore made findings of fact  
2       that the state has received the benefit of the commodities  
3       received and/or services rendered by certain claimants  
4       herein and has considered these claims against the state,  
5       and agencies thereof, which have arisen due to  
6       overexpenditures of the departmental appropriations by  
7       officers of such state spending units, such claims having  
8       been previously considered by the court of claims which  
9       also found that the state has received the benefit of the  
10      commodities received and/or services rendered by the  
11      claimants, but were denied by the court of claims on the  
12      purely statutory grounds that to allow such claims would  
13      be condoning illegal acts contrary to the laws of the state.  
14      The Legislature pursuant to its findings of fact and also by  
15      the adoption of the findings of fact by the court of claims  
16      as its own, and, while not condoning such illegal acts,  
17      hereby declares it to be the moral obligation of the state to  
18      pay these claims in the amounts specified below, and  
19      directs the auditor to issue warrants upon receipt of  
20      properly executed requisitions supported by itemized  
21      invoices, statements or other satisfactory documents as

22 required by section ten, article three, chapter twelve of the  
 23 code of West Virginia, one thousand nine hundred thirty-  
 24 one as amended, for the payments thereof out of any fund  
 25 appropriated and available for the purpose.

26 (a) *Claim against the Department of Administration:*

27 (TO BE PAID FROM SPECIAL REVENUE FUND)

28 (1) Division of Highways . . . . . \$ 337.09

29 (b) *Claims against the Division of Corrections:*

30 (TO BE PAID FROM GENERAL REVENUE FUND)

31 (1) Braxton County Memorial Hospital . . \$ 254.25

32 (2) Charleston Area Medical Center . . . \$ 9,833.63

33 (3) Correctional Medical Services, Inc. . . \$117,930.10

34 (4) Robert J. Crisalli, M.D. . . . . \$ 2,500.00

35 (5) Davis Memorial Hospital . . . . . \$ 92.00

36 (6) Greenbrier Anesthesia Services, Inc. . \$ 528.00

37 (7) Greenbrier Valley Urology Associates \$ 311.00

38 (8) Guardian Angel Ambulance Service . \$ 503.00

39 (9) John Henderson, M.D. . . . . \$ 1,626.00

40 (10) Henshaw Orthopedics, Inc. . . . . \$ 6,188.00

41 (11) Horizon Mobile Health Services . . . . \$ 5,630.67

42 (12) Ray L. Jones, D.O. . . . . \$ 960.00

43 (13) Kanawha County Emer. Ambulance  
 44 Authority . . . . . \$ 273.00

45 (14) Stanley S. Masilamani, M.D. . . . . \$ 92.00

46 (15) Mercer County Commission . . . . . \$ 493.68

47 (16) Joseph A. Noronha, M.D. . . . . \$ 2,640.00

48 (17) Parkersburg Anesthesia, Inc. . . . . \$ 676.00

49 (18) Preston Memorial Hospital . . . . . \$ 438.50

1	(19) Randolph County Emergency Squad . . . . .	\$ 826.66
2	(20) Samuel K. Roberts, M.D. . . . .	\$ 843.00
3	(21) Rose Associated Radiologists, Inc. . . . .	\$ 74.00
4	(22) Robert Rose, M.D. . . . .	\$ 345.00
5	(23) UHA Dental Practice . . . . .	\$ 5,560.00
6	(24) United Hospital Center . . . . .	\$ 1,642.10
7	(25) University Health Associates . . . . .	\$ 46,725.55
8	(26) West Virginia University	
9	Hospitals, Inc. . . . .	\$ 1,630.32
10	(27) Wexford Health Sources, Inc. . . . .	\$110,265.42
11	(28) C. Stephen High, M.D. . . . .	\$ 236.00
12	<i>(c) Claim against the Supreme Court of Appeals:</i>	
13	(TO BE PAID FROM GENERAL REVENUE FUND)	
14	(1) James M. Casey. . . . .	\$ 297.00

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## CHAPTER 85

(S. B. 426—By Senators Love, Helmick, Sharpe,  
Sprouse and McKenzie)

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[Passed March 11, 1998; in effect from passage. Approved by the Governor.]

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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**



22	(c) <i>Claim against the Board of Respiratory Care:</i>	
23	(TO BE PAID FROM SPECIAL REVENUE FUND)	
24	(1) Anna Parkman . . . . .	\$ 1,171.85
25	(d) <i>Claim against the Board of Trustees of the University</i>	
26	<i>System of WV:</i>	
27	(TO BE PAID FROM SPECIAL REVENUE FUND)	
28	(1) Matthew W. Wilson . . . . .	\$ 740.00
29	(e) <i>Claim against the Bureau of Senior Services:</i>	
30	(TO BE PAID FROM GENERAL REVENUE FUND)	
31	(1) WV Graduate College . . . . .	\$ 228.00
32	(f) <i>Claims against the Department of Administration:</i>	
33	(TO BE PAID FROM SPECIAL REVENUE FUND —	
34	ACCOUNT NO. 2031)	
35	(1) Archives Security, Inc. . . . .	\$ 179.31
36	(TO BE PAID FROM SPECIAL REVENUE FUND —	
37	ACCOUNT NO. 2241)	
38	(2) Archives Security, Inc. . . . .	\$ 63.72
39	(TO BE PAID FROM SPECIAL REVENUE FUND —	
40	ACCOUNT NO. 2320)	
41	(3) Bell Atlantic-West Virginia, Inc. . . . .	\$ 2,865.62
42	(TO BE PAID FROM SPECIAL REVENUE FUND —	
43	ACCOUNT NO. 2241)	
44	(4) Tyler Mountain Water Company, Inc. \$	289.70
45	(5) West Virginia Association of	
46	Rehabilitation Facilities . . . . .	\$ 303,595.91
47	(g) <i>Claim against the Department of Tax and Revenue:</i>	
48	(TO BE PAID FROM GENERAL REVENUE FUND)	
49	(1) American Decal &	
50	Manufacturing Company . . . . .	\$ 22,657.50

51 (h) *Claims against the Division of Corrections:*

52 (TO BE PAID FROM GENERAL REVENUE FUND)

53	(1) Barbara S. Bohrer . . . . .	\$ 100,000.00
54	(2) Lane S. Bohrer . . . . .	\$ 25,496.33
55	(3) Charleston Cash Register Company . .	\$ 315.00
56	(4) Marion County Commission . . . . .	\$ 44,700.00
57	(5) Janice B. Morgan . . . . .	\$ 700.00
58	(6) Regional Jail and Correctional	
59	Facility Authority . . . . .	\$ 543,900.80

60 (i) *Claim against the Division of Culture and History:*

61 (TO BE PAID FROM GENERAL REVENUE FUND)

62	(1) E & M Products, Inc. . . . .	\$ 120.00
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63 (j) *Claim against the Division of Environmental*  
64 *Protection:*

65 (TO BE PAID FROM SPECIAL REVENUE FUND)

66	(1) Division of Natural Resources . . . . .	\$ 1,064.49
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67 (k) *Claim against the Division of Forestry:*

68 (TO BE PAID FROM GENERAL REVENUE FUND)

69	(1) Division of Natural Resources . . . . .	\$ 1,900.80
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70 (l) *Claim against the Division of Health:*

71 (TO BE PAID FROM GENERAL REVENUE FUND)

72	(1) Owen Healthcare, Inc. . . . .	\$ 25,298.42
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73 (m) *Claims against the Division of Highways:*

74 (TO BE PAID FROM STATE ROAD FUND)

75	(1) Cornice and Charlene Adkins . . . . .	\$ 100.00
76	(2) Richard W. Armstrong, Jr. . . . .	\$ 451.29
77	(3) Loretta L. Baldwin . . . . .	\$ 194.03

78	(4)	Michael F. Bennett .....	\$	438.30
79	(5)	Larry Blevins .....	\$	250.00
80	(6)	Linda Bolyard .....	\$	319.36
81	(7)	Jason Shawn Bowers .....	\$	123.00
82	(8)	Roy E. Brewster .....	\$	94.05
83	(9)	Timothy and Darla Brown .....	\$	425.00
84	(10)	Bucky's Limited Auto Body, Inc. . .	\$	600.00
85	(11)	Jackie and Connie Coleman .....	\$	250.00
86	(12)	Carolyn Ann Cook .....	\$	101.74
87	(13)	Oscar J. Corbin .....	\$	100.00
88	(14)	Beverly Black Davis .....	\$	104.97
89	(15)	James Dillow .....	\$	3,300.00
90	(16)	Marie A. Dodd .....	\$	405.63
91	(17)	Kenneth Alvah East .....	\$	1,722.29
92	(18)	Anson J. Fanary .....	\$	73.14
93	(19)	Charles Fitzwater .....	\$	180.25
94	(20)	Ruby S. Foltz .....	\$	163.24
95	(21)	Tina Fulks .....	\$	140.54
96	(22)	Dorraine Gibson .....	\$	158.50
97	(23)	Andrew and Laura Gilman .....	\$	250.00
98	(24)	Paula Givens .....	\$	701.12
99	(25)	Harold M. and Sherry Gosnell . . .	\$	410.67
100	(26)	David and Marsha Gresham .....	\$	250.00
101	(27)	Michael A. Holben .....	\$	115.00
102	(28)	Richard L. James .....	\$	100.00
103	(29)	Kenneth Wayne Lacy, II .....	\$	452.06
104	(30)	Kimberly Lewis .....	\$	541.54

105	(31) Terry L. Mano .....	\$	226.31
106	(32) John W. Marshall and		
107	Jessica A. Haden .....	\$	1,612.00
108	(33) Linda McCord .....	\$	250.00
109	(34) Gilbert R. McDaniel .....	\$	100.00
110	(35) John F. Mele, Jr. ....	\$	268.58
111	(36) Stormie D. Meloy .....	\$	720.00
112	(37) Jennifer Myers .....	\$	26,590.25
113	(38) North Hill Coal Company .....	\$	408.78
114	(39) Linda O'Connor .....	\$	158.71
115	(40) Robert Palumbo .....	\$	351.79
116	(41) Leonard Wayne Riggs .....	\$	200.00
117	(42) Tina Roberts .....	\$	655.56
118	(43) John and Glenda Robinson .....	\$	250.00
119	(44) Goldie Rogers .....	\$	100.00
120	(45) Cathy B. Rorrer .....	\$	102.81
121	(46) Bradley A. and Earl D. Sandy .....	\$	106.00
122	(47) Lonnie M. Skeens .....	\$	452.61
123	(48) Linda L. Stanley .....	\$	89.31
124	(49) David S. Stevens .....	\$	377.77
125	(50) Arthur M. and Carol L. Stewart .....	\$	500.00
126	(51) Teddy and Linda Stull .....	\$	100.00
127	(52) Linda Syslo .....	\$	69.94
128	(53) Helen E. Tolley .....	\$	26.18
129	(54) Shirley Trent .....	\$	141.92
130	(55) Steven S. Voytek .....	\$	204.42
131	(56) Dawn Widmeyer .....	\$	114.36

132	(57) Rose Marie Wirtz . . . . .	\$	132.48
133	(n) <i>Claims against Division of Human Services:</i>		
134	(TO BE PAID FROM GENERAL REVENUE FUND)		
135	(1) Burke Funeral Home . . . . .	\$	325.00
136	(2) Frey Home for Funerals, Inc. . . . .	\$	400.00
137	(3) Lambert-Tatman Funeral Home . . . .	\$	400.00
138	(4) Robert M. Vincent Funeral Home . . .	\$	400.00
139	(5) Shanklin Funeral Home, Inc. . . . .	\$	400.00
140	(o) <i>Claims against the Division of Labor:</i>		
141	(TO BE PAID FROM GENERAL REVENUE FUND)		
142	(1) Archives Security, Inc. . . . .	\$	176.53
143	(2) Bell Atlantic-West Virginia, Inc. . . . .	\$	696.72
144	(3) WV American Water Company . . . . .	\$	108.69
145	(p) <i>Claims against Division of Motor Vehicles:</i>		
146	(TO BE PAID FROM STATE ROAD FUND)		
147	(1) Patricia Goeddel . . . . .	\$	599.75
148	(2) James and Jane Hepner . . . . .	\$	975.00
149	(q) <i>Claims against the Division of Natural Resources:</i>		
150	(TO BE PAID FROM GENERAL REVENUE FUND)		
151	(1) Jim Canada . . . . .	\$	400.00
152	(2) Rebecca and David Jones . . . . .	\$	1,992.80
153	(r) <i>Claims against the Division of Rehabilitation Services:</i>		
154	(TO BE PAID FROM FEDERAL REVENUE FUND)		
155	(1) M. Amrik Chattha, M.D. . . . .	\$	150.00
156	(2) West Virginia Association of		
157	Rehabilitation Facilities . . . . .	\$	19,197.41
158	(s) <i>Claim against the Education and State Employees</i>		
159	<i>Grievance Board:</i>		
160	(TO BE PAID FROM GENERAL REVENUE FUND)		

486		CLAIMS	[Ch. 85
161	(1)	Officemax, Inc. . . . .	\$ 155.83
162	(t)	<i>Claim against the Governor's Office:</i>	
163		(TO BE PAID FROM GENERAL REVENUE FUND)	
164	(1)	Kroger Company . . . . .	\$ 124.12
165	(u)	<i>Claim against the Human Rights Commission:</i>	
166		(TO BE PAID FROM GENERAL REVENUE FUND)	
167	(1)	Tel-Tex Communications, Inc. . . . .	\$ 779.00
168	(v)	<i>Claims against the Public Service Commission:</i>	
169		(TO BE PAID FROM SPECIAL REVENUE FUND)	
170	(1)	Division of Highways . . . . .	\$ 159.91
171	(2)	Elco Mechanical Contractors . . . . .	\$ 464.24
172	(3)	Goodyear Tire and Rubber	
173		Company, Inc. . . . .	\$ 253.72
174	(4)	U.S. Dairy Company . . . . .	\$ 102.02
175	(w)	<i>Claims against the Regional Jail and Correctional</i>	
176		<i>Facility Authority:</i>	
177		(TO BE PAID FROM SPECIAL REVENUE FUND)	
178	(1)	Leroy Buzzard . . . . .	\$ 210.00
179	(2)	Kenhill Construction Company, Inc. .	\$ 489,519.39
180	(x)	<i>Claim against the State Rail Authority:</i>	
181		(TO BE PAID FROM GENERAL REVENUE FUND)	
182	(1)	Charles E. Williams, Jr. . . . .	\$ 425.00
183	(y)	<i>Claim against the State of West Virginia:</i>	
184		(TO BE PAID FROM GENERAL REVENUE FUND)	
185	(1)	AT & T . . . . .	\$ 179,892.93
186	(z)	<i>Claims against the Supreme Court of Appeals:</i>	
187		(TO BE PAID FROM GENERAL REVENUE FUND)	
188	(1)	James M. Casey . . . . .	\$ 341.00
189	(2)	Randolph County Commission . . . . .	\$ 1,463.31

190	(3) Spectrum Reporting Services . . . . .	\$ 2,675.48
191	(4) Patricia Williams, M.D. . . . .	\$ 1,319.00
192	(5) Shirley Adkins . . . . .	\$ 514.06
193	(6) William D. Anderson . . . . .	\$ 100.00
194	(7) Ernest F. Backus . . . . .	\$ 1,743.75
195	(8) Marjorie L. Baker . . . . .	\$ 514.06
196	(9) Linda L. Bixby . . . . .	\$ 514.06
197	(10) Teresa Bruno . . . . .	\$ 522.32
198	(11) David M. Buzzard . . . . .	\$ 1,506.05
199	(12) Philip G. Conley . . . . .	\$ 1,536.30
200	(13) John L. Daniels . . . . .	\$ 4,500.00
201	(14) Marian A. Darby . . . . .	\$ 3,304.43
202	(15) J.V. DeMarco . . . . .	\$ 1,506.05
203	(16) Kimberly J. Roach Farmer . . . . .	\$ 1,538.06
204	(17) Norman D. Ferrari . . . . .	\$ 1,530.25
205	(18) Judith P. Goontz . . . . .	\$ 1,506.05
206	(19) Lorie L. Green . . . . .	\$ 524.39
207	(20) Jeanette Grimes . . . . .	\$ 514.06
208	(21) Sonja L. Johns Hackney . . . . .	\$ 514.06
209	(22) Anita Hager . . . . .	\$ 1,104.43
210	(23) Tammy J. Halsey . . . . .	\$ 1,538.06
211	(24) Edward Harless, Jr. . . . .	\$ 4,500.00
212	(25) Sue Hedstrom . . . . .	\$ 595.21
213	(26) Edward S. Hicks . . . . .	\$ 1,743.75
214	(27) Beverly C. Booth Justice . . . . .	\$ 514.06
215	(28) Mark A. Kerwood . . . . .	\$ 1,506.05
216	(29) Teresa E. King . . . . .	\$ 1,278.76
217	(30) Wilma L. Kocher . . . . .	\$ 514.06
218	(31) Shirley Laxton . . . . .	\$ 223.80
219	(32) Ruth D. Lemon . . . . .	\$ 1,104.43
220	(33) Robert Lightner . . . . .	\$ 1,282.30
221	(34) Louis E. Longanacre . . . . .	\$ 1,743.75

222	(35) Mary E. Loucas .....	\$	1,045.03
223	(36) Mickey M. Mallas .....	\$	1,530.25
224	(37) Franchesia McClung .....	\$	595.21
225	(38) Helen McCormick .....	\$	1,506.05
226	(39) Tamela D. Bailey McCurdy .....	\$	1,538.06
227	(40) Mary S. McCutcheon .....	\$	524.39
228	(41) D.L. McKnight as Executor of the		
229	Estate of Nina L. McKnight .....	\$	595.21
230	(42) Barbara Minor .....	\$	514.06
231	(43) John D. Morton .....	\$	1,536.30
232	(44) John Moses .....	\$	1,506.05
233	(45) Pamela Newsome .....	\$	514.06
234	(46) Walter Nogay .....	\$	1,530.25
235	(47) Agnes D. Riffel .....	\$	1,126.61
236	(48) Deloris Sidebottom .....	\$	514.06
237	(49) Jerry P. Turner .....	\$	595.21
238	(50) Bill Webb .....	\$	1,506.05
239	(51) Tamera Webster .....	\$	522.32
240	(52) Connie White .....	\$	1,538.06
241	(53) Mary F. Wiedebusch .....	\$	1,104.43
242	(54) Doris Zagula .....	\$	522.32

243       The Legislature finds that the above moral obligations  
244 and the appropriations made in satisfaction thereof shall  
245 be the full compensation for all claimants, and that prior  
246 to the payments to any claimant provided for in this bill,  
247 the court of claims shall receive a release from said  
248 claimant releasing any and all claims for moral obligations  
249 arising from the matters considered by the Legislature in  
250 the finding of the moral obligations and the making of the  
251 appropriations for said claimant. The court of claims shall  
252 deliver all releases obtained from claimants to the  
253 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)

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[Passed February 9, 1998; in effect ninety days from passage. Approved by the Governor.]

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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.

1       The court may appoint a clerk, chief deputy clerk and  
2 deputy clerks. The salaries of the clerk, the chief deputy  
3 clerk and the deputy clerks shall be fixed by the joint  
4 committee on government and finance, and shall be paid  
5 out of the regular appropriation for the court. The clerk  
6 shall have custody of and maintain all records and  
7 proceedings of the court, shall attend meetings and  
8 hearings of the court, shall administer oaths and  
9 affirmations and shall issue all official summonses,  
10 subpoenas, orders, statements and awards. The chief  
11 deputy clerk or another deputy clerk shall act in the place  
12 and stead of the clerk in the clerk's absence.

13       The joint committee on government and finance may  
14 employ other persons whose services are necessary to the  
15 orderly transaction of the business of the court and fix  
16 their compensation.

**§14-2-7. Meeting place of the court.**

1       The regular meeting place of the court shall be at the  
2 state capitol, and the joint committee on government and  
3 finance shall provide adequate quarters therefor. When  
4 deemed advisable, in order to facilitate the full hearing of  
5 claims arising elsewhere in the state, the court may  
6 convene at any county seat or other location in the state,  
7 including a correctional institution: *Provided*, That the  
8 court will make reasonable efforts to meet in appropriate  
9 public or private buildings in keeping with the dignity and  
10 decorum of the state.

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## CHAPTER 87

(Com. Sub. for H. B. 4564—By Mr. Speaker, Mr. Kiss, and  
Delegates Michael, Martin and Varner)

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[Passed March 14, 1998; in effect July 1, 1998. Approved by the Governor.]

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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.**

1       The coal and energy research bureau, heretofore  
2 established at West Virginia university shall be abolished  
3 and a new coal and energy research bureau is hereby

4 created. Subject to such rules as may be prescribed by  
5 the university of West Virginia board of trustees and West  
6 Virginia university, the bureau shall conduct investigations  
7 and research into the development of new, safer and more  
8 economical ways to mine, transport and use coal, consider  
9 environmental problems created through the use and  
10 production of coal, develop new uses and markets for coal,  
11 other energy fuels and allied minerals, develop new  
12 methods of combustion of coal and new uses of coal in  
13 the chemical industry, develop greater efficiency and  
14 conservation in the mining and mineral industries, and  
15 make such tests and investigations as may be required by  
16 the office of miner's health, safety and training in the  
17 prosecution of its work. The bureau shall conduct such  
18 experiments, tests and activities as will promote the  
19 development of the mineral industries in the state, and  
20 shall cooperate with the office of miner's health, safety  
21 and training and other state and federal agencies dealing  
22 with issues related to coal and its uses, in the investigation  
23 of the causes of mine disasters and common mine  
24 accidents. It shall also initiate and carry on a program of  
25 research designed to discover and develop new uses and  
26 new processes for the utilization of West Virginia coal and  
27 other mineral resources.

28 The costs of financing the research program shall be  
29 paid from any funds appropriated by the Legislature for  
30 the bureau, from any grants or gifts received by the  
31 university or the bureau, and from any income received  
32 for research carried on under contract with any federal or  
33 state agency, or with any private corporation, association  
34 or individual. Within the limits of available funds,  
35 research activities may be conducted by the bureau, or  
36 under contract with some other research group,  
37 corporation or individual.

38 In order to avoid wasteful duplication, the research  
39 program shall be carried on in close cooperation with the  
40 federal departments of energy and the interior, the federal  
41 environmental protection agency, the federal energy  
42 technology center, the national institute for occupational  
43 safety and health, other appropriate federal agencies,  
44 research organizations and establishments, the West

45 Virginia geological and economic survey, the West  
46 Virginia development office, the West Virginia division of  
47 environmental protection, and other appropriate state  
48 agencies, research organizations and establishments and  
49 industry and academic institutions. The university shall  
50 from time to time, but at least annually, publish and  
51 distribute to the governor, the Legislature, and to  
52 interested persons and agencies reports of the bureau's  
53 activities, findings and recommendations.

54 The "advisory committee on coal and energy  
55 research," heretofore existing, is abolished. The bureau  
56 shall advise and counsel with West Virginia university  
57 concerning the programs of the coal and energy research  
58 bureau and make recommendations to the university of  
59 West Virginia board of trustees, the governor and the  
60 Legislature concerning the support of the programs of the  
61 coal and energy research bureau.

62 The bureau shall consist of nine appointed members.  
63 The chairperson of the bureau shall be the chairperson of  
64 the department of mining engineering in the college of  
65 engineering and mineral resources at West Virginia  
66 university. The remaining members of the bureau shall  
67 include the director of the national research center for  
68 coal and energy; the director of the national mine land  
69 reclamation center; the president of West Virginia  
70 university or his or her designee; one member  
71 representing union labor and one member representing  
72 the coal industry, each to be appointed jointly by the  
73 president of the Senate and the speaker of the House of  
74 Delegates; one member appointed by the president of the  
75 Senate; one member appointed by the speaker of the  
76 House of Delegates; and one member appointed by the  
77 governor. For the purpose of the original appointments,  
78 the member appointed by the president of the Senate shall  
79 serve for a term of one year and until his or her successor  
80 has been appointed and qualified, the member appointed  
81 by the speaker of the House of Delegates shall serve for a  
82 term of two years and until his or her successor has been  
83 appointed and qualified, and the member appointed by  
84 the governor shall serve for a term of three years and until  
85 his or her successor has been appointed and qualified.

86 Except for the original appointments, those members who  
87 are appointees shall serve for a term of three years and  
88 until such members' respective successors have been  
89 appointed and qualified. Members may be reappointed  
90 for any number of terms. Vacancies shall be filled by  
91 appointment for the unexpired term by the official who  
92 appointed such member for the term vacated. To these  
93 members may be added specialists as deemed desirable  
94 and appropriate by a majority vote of the bureau.

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## CHAPTER 88

(H. B. 4330—By Delegates Johnson, Amores, Rowe,  
Underwood, Mahan and Thomas)

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

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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.**

1 Section twelve, article four, chapter fifty-one of the  
2 code of West Virginia, one thousand nine hundred thirty-  
3 one, as amended, is hereby repealed.

## CHAPTER 89

(S. B. 734—By Senator Plymale)

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

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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  
2 clearly appears from the context:

3 (1) "Beneficiaries" means those individuals entitled to  
4 benefits from the consolidated pension plan;

5 (2) "Board" means the governing body for the West  
6 Virginia investment management board, and any reference  
7 elsewhere in this code to board of investments or West  
8 Virginia trust fund means the board as defined herein;

9 (3) "Consolidated fund" means the investment fund  
10 managed by the board and established pursuant to  
11 subsection (a), section eight of this article;

12 (4) "Consolidated pension plan" means the public  
13 employees retirement system established in article ten,  
14 chapter five of this code, the teachers retirement system  
15 established in article seven-a, chapter eighteen of this code,  
16 the West Virginia state police retirement system established

17 in article two-a, chapter fifteen of this code, the death,  
18 disability and retirement fund of the state police  
19 established in article two, chapter fifteen of this code, the  
20 judges' retirement system established in article nine,  
21 chapter fifty-one of this code, the workers' compensation  
22 fund established in article three, chapter twenty-three of  
23 this code, the wildlife endowment fund established in  
24 article two-b, chapter twenty of this code, and the  
25 coal-workers' pneumoconiosis plan established in article  
26 four-b, chapter twenty-three of this code;

27 (5) "Local government funds" means the moneys of a  
28 political subdivision, including policemen's pension and  
29 relief funds, firemen's pension and relief funds and  
30 volunteer fire departments, transferred to the board for  
31 deposit;

32 (6) "Participant plan" means any component system,  
33 plan or fund of the consolidated pension plan within the  
34 definition set forth in subdivision (4) of this section;

35 (7) "Political subdivision" means and includes a  
36 county, municipality or any agency, authority, board,  
37 county board of education, commission or instrumentality  
38 of a county or municipality and regional councils created  
39 pursuant to the provisions of section five, article twenty-  
40 five, chapter eight of this code;

41 (8) "Trustee" means any member serving on the West  
42 Virginia investment management board: *Provided*, That  
43 in section nine-a of this article wherein the terms of the  
44 trust indenture are set forth, "trustee" means the West  
45 Virginia investment management board;

46 (9) "Securities" means all bonds, notes, debentures or  
47 other evidences of indebtedness, and other lawful  
48 investment instruments; and

49 (10) "State funds" means all moneys of the state which  
50 may be lawfully invested except the "school fund"  
51 established by section four, article XII of the state  
52 constitution.

## CHAPTER 90

(Com. Sub. for H. B. 4529—By Delegates Rowe, Hutchins, Thompson,  
Kominar, Trump, Spencer and Miller)

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

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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  
 2 installment obligation or any other secured obligation for  
 3 five days for failure to make a scheduled payment or  
 4 otherwise perform pursuant to such a consumer credit sale,  
 5 consumer lease or consumer loan other than with respect  
 6 to a covenant to provide insurance for or otherwise to  
 7 protect and preserve the property covered by a security  
 8 interest, the creditor may give him or her notice of such  
 9 fact in the manner provided for herein. Actual delivery of  
 10 such notice to a consumer or delivery or mailing of same  
 11 to the last known address of the consumer is sufficient for  
 12 the purpose of this section. If given by mail, notice is  
 13 given when it is deposited in a mailbox properly addressed  
 14 and postage prepaid. Notice shall be in writing and shall  
 15 conspicuously state the name, address and telephone  
 16 number of the creditor to whom payment or other  
 17 performance is owed, a brief description of the transaction,  
 18 the consumer's right to cure such default and the amount  
 19 of payment and other required performance and date by  
 20 which it must be paid or accomplished in order to cure the  
 21 default. A copy of the notice required by this section

22 shall be: (i) Delivered or mailed to the last known address  
23 of any cosigner of the obligation in the manner set forth  
24 in this section unless the cosigner has waived in writing his  
25 or her right to receive copies of the notice: *Provided*, That  
26 a waiver of notice contained in the consumer credit sales  
27 agreement or consumer loan agreement does not  
28 constitute effective waiver of notice of the cosigner's right  
29 to receive notice of the consumer's default for purposes  
30 of this section; (ii) retained by the creditor; (iii) certified  
31 in the manner prescribed by this section by an officer or  
32 other authorized representative of such creditor; and (iv)  
33 notarized by a person licensed as a notary under the laws  
34 of the state of West Virginia or any other state or territory  
35 of the United States. The certification required by this  
36 section shall substantially conform to the following  
37 language:

38 "I, \_\_\_\_\_ (name of person certifying),  
39 the \_\_\_\_\_ (title of person certifying)  
40 of \_\_\_\_\_ (creditor's name),  
41 hereby certify that the notice of the consumer's right to  
42 cure default on which this certification appears (or to  
43 which this certification is attached) was on this \_\_\_\_\_  
44 day of \_\_\_\_\_, 19\_\_\_\_\_, mailed to the  
45 person(s) whose name(s) appear herein (therein) at the  
46 address(es) set forth herein (therein).

47 \_\_\_\_\_"  
48 (Signature)

49 Failure to send notice to a cosigner as required by this  
50 section does not, in and of itself, give rise to a cause of  
51 action against the creditor.

52 Except as hereinafter provided in this section, after a  
53 default on any installment obligation or any other secured  
54 obligation other than with respect to a covenant to provide  
55 insurance for or otherwise to protect and preserve the  
56 property covered by a security interest or lease, a creditor  
57 may not accelerate maturity of the unpaid balance of any  
58 such installment obligation or any other such secured  
59 obligation, commence any action or demand or take  
60 possession of collateral on account of default until ten  
61 days after notice has been given to the consumer of his or  
62 her right to cure such default. Until such period expires,  
63 the consumer shall have the right to cure any default by  
64 tendering the amount of all unpaid sums due at the time

65 of the tender, without acceleration, plus any unpaid  
66 delinquency or deferral charges and by tendering any  
67 other performance necessary to cure such default. Any  
68 such cure shall restore a consumer to all his or her rights  
69 under the agreement the same as if there had been no  
70 default. A consumer who has been in default three or  
71 more times on the same obligation and who has been  
72 given notice of such fact three or more times shall not  
73 have the right to cure a default under this section even  
74 though previous defaults have been cured and his or her  
75 creditor's right to proceed against him or her and his or  
76 her collateral shall not be impaired or limited in any way  
77 by this section. There shall be no acceleration of the  
78 maturity of all or part of any amount owing in such a  
79 consumer credit sale, consumer lease or consumer loan,  
80 except where nonperformance specified in the agreement  
81 as constituting default has occurred.

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## CHAPTER 91

(H. B. 4285—By Delegates Azinger, Thompson, H. White,  
L. White, Beane and Gillespie)

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

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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.**

1           (a) In addition to the sales finance charge or loan  
2 finance charge permitted by this chapter, a creditor may  
3 contract for and receive the following additional charges  
4 in connection with a consumer credit sale or a consumer  
5 loan:

6           (1) Official fees and taxes;

7           (2) Charges for insurance as described in subsection  
8 (b) of this section: *Provided*, That nothing contained in  
9 this section with respect to insurance in any way limits the  
10 power and jurisdiction of the insurance commissioner of  
11 this state in the premises;

12           (3) Annual charges, payable in advance, for the  
13 privilege of using a lender credit card or similar  
14 arrangement which entitles the user to purchase goods or  
15 services from at least one hundred persons not related to  
16 the issuer of the lender credit card or similar arrangement,  
17 under an arrangement pursuant to which the debts  
18 resulting from the purchases are payable to the issuer;

19           (4) Charges for other benefits, including insurance,  
20 conferred on the consumer, if the benefits are of value to  
21 him or her and if the charges are reasonable in relation to  
22 the benefits, are of a type which is not for credit, and are  
23 excluded as permissible additional charges from the sales  
24 finance charge or loan finance charge by rule adopted by  
25 the commissioner: *Provided*, That as to insurance, the  
26 policy as distinguished from a certificate of coverage

27 thereunder may only be issued by an individual licensed  
28 under the laws of this state to sell the insurance and the  
29 determination of whether the charges therefor are  
30 reasonable in relation to the benefits shall be determined  
31 by the insurance commissioner of this state;

32 (5) Reasonable closing costs with respect to a debt  
33 secured by an interest in land; and

34 (6) Documentary charge or any other similar charge  
35 for documentary services in relation to securing a title, so  
36 long as said charge is applied equally to cash customers  
37 and credit customers alike and so long as such  
38 documentary charge does not exceed fifty dollars.

39 (b) A creditor may take, obtain or provide reasonable  
40 insurance on the life and earning capacity of any  
41 consumer obligated on the consumer credit sale or  
42 consumer loan, reasonable insurance on any real or  
43 personal property offered as security subject to the  
44 provisions of this subsection and section one hundred  
45 nine-a of this article, and vendor's or creditor's single  
46 interest insurance with respect to which the insurer has no  
47 right of subrogation. Only one policy of life insurance  
48 and/or one policy of health and accident insurance and/or  
49 one policy of accident insurance and/or one policy of loss  
50 of income insurance on any one consumer may be in  
51 force with respect to any one contract or agreement at any  
52 one time, but one policy may cover both a consumer and  
53 his or her spouse:

54 (1) The amount, terms and conditions of property  
55 insurance shall have a reasonable relation to the existing  
56 hazards or risk of loss, damage or destruction and be  
57 reasonable in relation to the character and value of the  
58 property insured or to be insured; and the term of the  
59 insurance shall be reasonable in relation to the terms of  
60 credit: *Provided*, That nothing may prohibit the  
61 consumer from obtaining, at his or her option, greater  
62 coverages for longer periods of time if he or she so  
63 desires;

64 (2) Life insurance shall be in an initial amount not to  
65 exceed the total amount repayable under the consumer

66 credit agreement, and where a consumer credit sale or  
67 consumer loan is repayable in installments, such insurance  
68 may at no time exceed the scheduled or actual amount of  
69 unpaid indebtedness, whichever is greater. Life insurance  
70 authorized by this subdivision shall provide that the  
71 benefits be paid to the creditor to reduce or extinguish the  
72 unpaid indebtedness: *Provided*, That if a separate charge  
73 is made for the insurance and the amount of insurance  
74 exceeds the unpaid indebtedness, where not prohibited,  
75 then the excess is payable to the estate of the consumer.  
76 The initial term of the life insurance in connection with a  
77 consumer credit sale, other than a sale pursuant to a  
78 revolving charge account, or in connection with a  
79 consumer loan, other than a loan pursuant to a revolving  
80 loan account, may not exceed the scheduled term of the  
81 consumer credit agreement by more than fifteen days.  
82 The aggregate amount of periodic benefits payable by  
83 credit accident and health insurance in the event of  
84 disability, as defined in the policy, and loss of income  
85 insurance in the event of involuntary loss of employment,  
86 as defined in the policy, may not exceed the unpaid  
87 amount of such indebtedness; periodic benefits payable in  
88 connection with a consumer credit sale pursuant to a  
89 revolving charge account or of a consumer loan pursuant  
90 to a revolving loan account may be based upon the  
91 authorized credit limit;

92 (3) When the insurance is obtained or provided by or  
93 through a creditor, the creditor may collect from the  
94 consumer or include as part of the cash price of a  
95 consumer credit sale or as part of the principal of a  
96 consumer loan, or deduct from the proceeds of any  
97 consumer loan the premium, or in the case of group  
98 insurance, the identifiable charge. The premium or  
99 identifiable charge for the insurance required or obtained  
100 by a creditor may equal, but may not exceed the premium  
101 rate filed by the insurer with the insurance commissioner.  
102 In any case, when the creditor collects the entire premium  
103 for such insurance in advance, the premium shall be  
104 remitted by the creditor to the insurer or the insurance  
105 agent, as specified by the insurer, within ten days from or

106 after the end of the month in which the collection was  
107 made;

108 (4) With respect to insurance against loss of or damage  
109 to property, or against liability, the creditor shall furnish a  
110 clear and specific statement in writing to the debtor, setting  
111 forth the cost of the insurance if obtained from or through  
112 the creditor, and stating that the debtor may choose the  
113 person through whom the insurance is to be obtained;

114 (5) With respect to consumer credit insurance  
115 providing life, accident, health or loss of income coverage,  
116 no creditor may require a consumer to purchase the  
117 insurance or to purchase the insurance from the creditor  
118 or any particular agent, broker or insurance company as a  
119 condition precedent to extending credit to or on behalf of  
120 such consumer;

121 (6) When a consumer credit sale or consumer loan,  
122 refinancing or consolidation is paid in full, the creditor  
123 receiving the payment shall inform the debtor of the  
124 cancellation of any consumer credit insurance providing  
125 life, accident, health or loss of income coverage and advise  
126 the debtor of the application of any unearned premiums  
127 to the loan balance. Notices required by this subdivision  
128 shall be made in the following manner:

129 (A) If the insurance was not sold or provided by the  
130 creditor, the creditor receiving the payment shall notify  
131 the debtor that he or she may have the right to receive a  
132 refund of unearned premiums from any other seller or  
133 provider of the insurance, and advise the debtor of his or  
134 her obligation to notify any other insurer of the payment  
135 of the loan balance and the cancellation of the consumer  
136 credit insurance, and request a refund or credit of  
137 unearned premiums, if applicable. Such notice shall be  
138 sent on a form as prescribed by the insurance  
139 commissioner as provided in chapter twenty-nine-a of this  
140 code and shall contain the name and address of the seller  
141 and the insurer; or

142 (B) If the creditor was the seller or provider of the  
143 consumer credit insurance, the creditor shall:

144 (i) Notify the insurer or shall cause the insurer to be  
145 notified of the cancellation of such insurance; and

146 (ii) Notify the debtor of the cancellation of the  
147 insurance and of the application of any unearned  
148 premiums to the loan balance, which notice may be on a  
149 form consistent with the general course of business of the  
150 creditor;

151 (7) Upon receipt by the insurer of notification of the  
152 cancellation of consumer credit insurance, the insurer shall  
153 cancel the insurance effective no later than thirty days  
154 from the date of receipt of the notice. Within forty-five  
155 days following the date of notification of cancellation of  
156 the insurance, the insurer shall pay any refund of  
157 unearned premiums to the debtor-insurer or such other  
158 person as directed by the debtor-insurer; and

159 (8) An insurer, seller or creditor who fails to refund  
160 any unused insurance premium or provide the proper  
161 notification of payoff is liable for civil damages up to  
162 three times the amount of the unused premium as well as  
163 other remedies as provided by section one hundred nine,  
164 article seven of this chapter.

165 (c) The insurance commissioner of this state shall  
166 promulgate legislative rules in accordance with the  
167 provisions of chapter twenty-nine-a of this code to  
168 implement the provisions of this article relating to  
169 insurance, and the authority of the insurance  
170 commissioner to promulgate the rules is exclusive  
171 notwithstanding any other provisions of this code to the  
172 contrary.

#### **§46A-3-109a. Collateral protection insurance.**

1 (a) As used in this section:

2 (1) "Collateral" means any or all property pledged to  
3 secure payment, repayment or performance under a credit  
4 agreement, whether personal property, real property,  
5 fixtures, inventory, receivables, rights, privileges or  
6 otherwise.

7       (2) (A) "Collateral protection insurance" means  
8 insurance coverage that: (i) Is purchased unilaterally by a  
9 creditor subsequent to the date of a consumer credit  
10 agreement; (ii) provides monetary protection against loss  
11 of or damage to the collateral or against liability arising  
12 out of the ownership or use of the collateral; and (iii) is  
13 purchased according to the terms of a credit agreement as  
14 a result of a consumer's failure to provide evidence of  
15 insurance or failure to maintain adequate insurance  
16 covering the collateral, with the costs of the collateral  
17 protection insurance, including interest and any other  
18 charges imposed by the creditor in connection with the  
19 placement of the collateral protection insurance, payable  
20 by the consumer. Collateral protection insurance includes  
21 insurance coverage that is purchased to protect only the  
22 interest of the creditor and insurance coverage that is  
23 purchased to protect both the interest of the creditor and  
24 some or all of the interest of the consumer. The term of a  
25 collateral protection insurance policy may, but need not,  
26 extend to the full term of the credit transaction.

27       (B) Collateral protection insurance does not include  
28 insurance coverage that is: (i) Purchased by the creditor  
29 for which the consumer is not charged; (ii) purchased at  
30 the inception of a credit transaction to which the consumer  
31 is a party or agrees, whether or not the costs are included  
32 in any payment plan under the credit transaction; (iii)  
33 purchased by the creditor following foreclosure,  
34 repossession, or a similar event wherein the creditor gains  
35 possession or control over the collateral; (iv) maintained  
36 by the creditor for the protection of any or all collateral  
37 which may come into the possession or control of the  
38 creditor through foreclosure, repossession or a similar  
39 event; (v) credit insurance, mortgage protection insurance,  
40 insurance issued to cover the life or health of the  
41 consumer or any other insurance maintained to cover the  
42 inability or failure of the consumer to make payment  
43 under the credit agreement; (vi) title insurance; or (vii)  
44 flood insurance required to be placed by creditors by 42  
45 U.S.C. §4012(a), as amended, pursuant to the National  
46 Flood Insurance Reform Act of 1994.

47 (3) "Credit agreement" means the written document or  
48 documents that set forth the terms of the credit  
49 transaction.

50 (4) "Credit transaction" means any consumer credit  
51 transaction, the terms of which require the payment or  
52 repayment of money, goods, services, property, rights or  
53 privileges, which is to be made on one or more future  
54 dates, where the obligation is secured by collateral.

55 (5) "Creditor" shall mean, for purposes of this  
56 section only, an institution, the deposits of which are  
57 insured by the federal deposit insurance agency, the  
58 national credit union share insurance fund, or a subsidiary  
59 of such an institution, or a subsidiary of a holding  
60 company owning such an institution, and this section  
61 applies and is available only to such creditors.

62 (b) A creditor may place collateral protection  
63 insurance if the following conditions are met:

64 (1) The consumer has entered into a credit transaction  
65 with the creditor;

66 (2) The credit transaction has been reduced to a credit  
67 agreement and the credit agreement requires the consumer  
68 to maintain insurance on the collateral; and

69 (3) A notice substantially similar to the following has  
70 been included in the credit agreement or on a separate  
71 document provided to the consumer and to any cosigner,  
72 guarantor or other person liable with the consumer for the  
73 obligation, at the time the credit agreement is entered:

74 "Unless you provide us with evidence of the insurance  
75 coverage required by your agreement with us, we may  
76 purchase insurance at your expense to protect our interests  
77 in your collateral. This insurance may, but need not,  
78 protect your interests. The coverage that we purchase may  
79 not pay any claim that you make or any claim that is  
80 made against you in connection with the collateral. You  
81 may later cancel any insurance purchased by us, but only  
82 after providing us with evidence that you have obtained  
83 insurance as required by our agreement. If we purchase  
84 insurance for the collateral, you will be responsible for the

85 costs of that insurance, including interest and any other  
86 charges we may impose in connection with the placement  
87 of the insurance, until the effective date of the cancellation  
88 or expiration of the insurance. The costs of the insurance  
89 may be added to your total outstanding balance or  
90 obligation. The costs of the insurance may be more than  
91 the cost of insurance you may be able to obtain on your  
92 own."

93 (c) (1) Within thirty calendar days following the  
94 placement of collateral protection insurance, the creditor  
95 shall mail to the consumer and to any cosigner, guarantor  
96 or other person liable with the consumer for the  
97 obligation, at the last known address of the person, a  
98 notice entitled "Notice of Placement of Insurance" in a  
99 form substantially similar to the following:

'00 **"NOTICE OF PLACEMENT OF INSURANCE**

01 Your credit agreement with us requires you to  
02 maintain adequate insurance on your collateral until you  
103 pay off your loan. You have not given us proof that you  
104 have adequate insurance on your collateral. Under the  
105 terms of your credit agreement, we have purchased  
106 insurance at your expense to protect our interests in your  
107 collateral.

108 The insurance we purchased will pay claims made by  
109 us as the creditor. The insurance we purchased may not  
110 pay any claims made by you or against you in connection  
111 with your collateral.

112 You are responsible for the costs of this insurance,  
113 including interest and any other charges we may impose  
114 in connection with the purchase of this insurance. The  
115 costs of this insurance may be more than insurance you  
116 can buy on your own.

117 You still may obtain insurance on your own choosing  
118 on the collateral. If you provide us with proof that you  
119 have obtained adequate insurance on your collateral, we  
120 will cancel the insurance that we purchased and refund or  
121 credit any unearned premiums to you.

122 If, within thirty days after the date this notice was sent  
123 to you, you provide us with proof that you had adequate  
124 insurance on your collateral as of the date we also  
125 purchased insurance and that you continue to have the  
126 insurance that you purchased yourself, we will cancel the  
127 insurance that we purchased without charging you any  
128 costs, interest or other charges in connection with the  
129 insurance that we purchased."

130 (2) The terms for repayment of the costs of the  
131 collateral protection insurance, which include interest and  
132 any other charges imposed by the creditor in connection  
133 with the placement of the collateral protection insurance,  
134 shall include one or more of the following:

135 (A) Full payment within thirty days after the date of  
136 the notice of placement of insurance;

137 (B) A final balloon payment within thirty days after  
138 the last scheduled payment required by the credit  
139 agreement; or

140 (C) Full amortization over the term of the credit  
141 transaction, the term of the collateral protection insurance  
142 policy, or the term for which amortization is used by the  
143 creditor.

144 (d) If any form of amortization is used by the creditor  
145 for the costs of collateral protection insurance and a  
146 coupon book was sent to the consumer at the inception of  
147 the credit transaction, the creditor shall send to the  
148 consumer either:

149 (1) Reprinted coupon book with revised calculations  
150 of the consumer's payments that includes the amortized  
151 costs of the collateral protection insurance; or

152 (2) Supplemental coupon book with calculations of  
153 the consumer's additional payments based upon the  
154 amortized costs of the collateral protection insurance, for  
155 use by the consumer in addition to the original coupon  
156 book.

157 (e) A consumer may at any time cancel the collateral  
158 protection insurance by providing proper evidence to the  
159 creditor that the consumer has obtained insurance as  
160 required by the credit agreement. If, within thirty days  
161 after notice is sent pursuant to subdivision (1), subsection  
162 (c) of this section, a consumer provides the creditor with  
163 proper evidence that the consumer had insurance on the  
164 collateral as required by the credit agreement on the date  
165 the creditor purchased insurance and that the consumer  
166 continues to have insurance on the collateral as required  
167 by the credit agreement, the creditor shall cancel the  
168 insurance that it purchased and may not charge the  
169 consumer any costs, interest or other charges in  
170 connection with the insurance.

171 (f) Upon cancellation or expiration of collateral  
172 protection insurance, the amount of unearned premiums,  
173 if any, as calculated in accordance with the policy, shall be  
174 refunded to the consumer. A refund of unearned  
175 premiums may be credited to the consumer's obligation  
176 under the credit agreement or distributed directly to the  
177 consumer by check or other means.

178 (g) Collateral protection insurance may be placed with  
179 any insurance carrier selected by the creditor that is  
180 licensed to underwrite the insurance by the division of  
181 insurance. The insurance shall be evidenced by an  
182 individual policy or a certificate of insurance.

183 (h) A creditor that places collateral protection  
184 insurance in substantial compliance with the terms of this  
185 section is not directly or indirectly liable in any manner to  
186 a consumer, cosignor, guarantor or any other person, in  
187 connection with the placement of the collateral protection  
188 insurance. Notices and coupon books required to be  
189 mailed to a consumer under this section are not required  
190 to be mailed to any person other than to the consumer and  
191 shall be mailed by United States mail, first class, postage  
192 prepaid, to the consumer's last known address on file with  
193 the creditor.

194 (i) This section does not impose a fiduciary  
195 relationship between the creditor and the consumer.  
196 Placement of collateral protection insurance is for the sole  
197 purpose of protecting the interest of the creditor when the  
198 consumer fails to insure collateral as required by the credit  
199 agreement.

200 (j) A creditor is not, by virtue of this section, required  
201 to purchase collateral protection insurance or to otherwise  
202 insure collateral. A creditor is not, by virtue of this  
203 section, liable to a consumer or to any other person for  
204 not purchasing collateral protection insurance, as a result  
205 of the amount or level of coverage of collateral protection  
206 insurance purchased by the creditor, or because the  
207 creditor purchased collateral protection insurance that  
208 protects only the interests of the creditor or less than all of  
209 the interests of the consumer. This section does not create  
210 a cause of action for damages on behalf of the consumer  
211 or any other person in connection with the placement of  
212 collateral protection insurance.

213 (k) The obligations and rights of the creditor and the  
214 consumer with respect to the collateral, as provided by the  
215 uniform commercial code, chapter forty-six of this code,  
216 are not affected by this section.

217 (l) Substantial compliance with the provisions of this  
218 section is mandatory for the placement of collateral  
219 protection insurance in this state by a creditor pursuant to  
220 a credit agreement entered into on or after the first day of  
221 July, one thousand nine hundred ninety-nine. No  
222 provision of this section may be held or applied against a  
223 creditor in connection with collateral protection insurance  
224 placed prior to the first day of July, one thousand nine  
225 hundred ninety-eight. A creditor that places collateral  
226 protection insurance pursuant to a credit agreement  
227 entered into prior to the first day of July, one thousand  
228 nine hundred ninety-eight, has available to it all of the  
229 rights provided by this section if the creditor is in  
230 substantial compliance with the provisions of this section,  
231 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)

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

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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.

§46A-6E-2. Express warranty requirement; express warranty duration; implied warranty.

§46A-6E-3. Warranty remedies; procedures for obtaining remedies.

§46A-6E-4. Lease enforcement.

§46A-6E-5. Disclosure upon further sale or lease.

§46A-6E-6. Arbitration.

§46A-6E-7. Limitations; waiver of rights; action for damages; punitive damages.

#### **§46A-6E-1. Definitions.**

- 1 (a) "Assistive device" means any device enabling a
- 2 person with a disability to communicate, see, hear or
- 3 maneuver, which a consumer purchases or accepts transfer
- 4 of in this state. This definition includes a demonstrator.
- 5 Examples of assistive devices include, but are not limited
- 6 to, manual and motorized wheelchairs, motorized scooters,
- 7 hearing aids, telephone communication devices for the

8 deaf (TTY), assistive listening devices, voice synthesized  
9 computer modules, optical scanners, talking software and  
10 braille printers.

11 (b) "Assistive device dealer" means a person who is in  
12 the business of selling assistive devices.

13 (c) "Assistive device lessor" means a person who leases  
14 an assistive device to a consumer, or who holds the lessor's  
15 rights, under a written lease.

16 (d) "Collateral costs" means expenses incurred by a  
17 consumer in connection with the repair of a  
18 nonconformity, including the costs of obtaining an  
19 alternative assistive device.

20 (e) "Consumer" means any of the following:

21 (1) The purchaser of an assistive device, if the assistive  
22 device was purchased from an assistive device dealer or  
23 manufacturer for purposes other than resale;

24 (2) A person to whom the assistive device is  
25 transferred for purposes other than resale, if the transfer  
26 occurs before the expiration of an express warranty  
27 applicable to the assistive device;

28 (3) A person who may enforce the warranty; and

29 (4) A person who leases an assistive device from an  
30 assistive device lessor under a written lease.

31 (f) "Current value of the written lease" means the total  
32 amount for which that lease obligates the consumer during  
33 the period of the lease remaining after its early  
34 termination, plus the assistive device dealer's early  
35 termination costs and the value of the assistive device at  
36 the lease expiration date if the lease sets forth that value,  
37 less the assistive device lessor's early termination savings.

38 (g) "Demonstrator" means an assistive device used  
39 primarily for the purpose of demonstration to the public.

40 (h) "Early termination cost" means any expense or  
41 obligation that an assistive device lessor incurs as a result  
42 of both the termination of a written lease before the

43 termination date set forth in that lease and the return of an  
44 assistive device to a manufacturer pursuant to this section.  
45 Early termination cost includes a penalty for prepayment  
46 under finance arrangement.

47 (i) "Early termination saving" means any expense or  
48 obligation that an assistive device lessor avoids as a result  
49 of both the termination of a written lease before that  
50 termination date set forth in that lease and the return of an  
51 assistive device to a manufacturer pursuant to this section.  
52 Early termination saving includes an interest charge that  
53 the assistive device lessor would have paid to finance the  
54 assistive device or, if the assistive device lessor does not  
55 finance the assistive device, the difference between the  
56 total amount for which the lease obligates the consumer  
57 during the period of the lease term remaining after the  
58 early termination and the present value of that amount at  
59 the date of the early termination.

60 (j) "Manufacturer" means a person who manufactures  
61 or assembles assistive devices and agents of that person,  
62 including an importer, a distributor, factory branch,  
63 distributor branch and any warrantor of the  
64 manufacturer's assistive device, but does not include an  
65 assistive device dealer.

66 (k) "Nonconformity" means a condition or defect that  
67 substantially impairs the use, value or safety of an assistive  
68 device and is covered by a warranty applicable to the  
69 assistive device or to a component of the assistive device.

70 (l) "Reasonable allowance for use" means an amount  
71 obtained by multiplying the total amount for which the  
72 lease obligates the consumer by a fraction, the  
73 denominator of which is one thousand eight hundred  
74 twenty-five and the numerator of which is the number of  
75 days that the consumer used the assistive device before  
76 first reporting the nonconformity to the manufacturer,  
77 assistive device lessor or assistive device dealer.

78 (m) "Reasonable attempt to repair" means within the  
79 terms of a warranty applicable to a new assistive device:

80 (1) A nonconformity within the manufacturer's  
81 warranty continues after three attempts at repair by the  
82 manufacturer, assistive device lessor, or any of the  
83 manufacturer's authorized assistive device dealers; or

84 (2) The assistive device is out of service for thirty  
85 cumulative days because of warranty nonconformity.

**§46A-6E-2. Express warranty requirement; express warranty duration; implied warranty.**

1 (a) A manufacturer who sells an assistive device to a  
2 consumer, either directly or through an assistive device  
3 dealer, shall furnish the consumer with an express  
4 warranty for the assistive device. The duration of the  
5 express warranty shall be not less than one year after first  
6 delivery of the assistive device to the consumer. In the  
7 absence of an express warranty from the manufacturer, the  
8 manufacturer shall be deemed to have expressly warranted  
9 to the consumer of an assistive device that, for a period of  
10 one year from the date of first delivery to the consumer,  
11 the assistive device will be free from any condition or  
12 defect which substantially impairs the value of the assistive  
13 device to the consumer.

14 (b) Notwithstanding any other provision of law to the  
15 contrary with respect to assistive devices subject to the  
16 provisions of this article, no manufacturer, assistive device  
17 dealer or assistive device lessor shall:

18 (1) Exclude, modify or otherwise attempt to limit any  
19 warranty, express or implied, including the warranties of  
20 merchantability and fitness for a particular purpose; or

21 (2) Exclude, modify or attempt to limit any remedy  
22 provided by law, including the measure of damages  
23 available, for a breach of warranty, express or implied.

24 Any such exclusion, modification or attempted  
25 limitation shall be void.

**§46A-6E-3. Warranty remedies; procedures for obtaining remedies.**

1 (a) *Repair.* — If a new assistive device does not  
2 conform to an express or implied warranty and the

3 consumer reports the nonconformity to the manufacturer,  
4 the assistive device lessor, or a manufacturer's authorized  
5 assistive device dealer and makes the assistive device  
6 available for repair on or before one year after return  
7 delivery of the assistive device to a consumer, the  
8 nonconformity shall be repaired at no charge to the  
9 consumer.

10 (b) *Return, refund, reimbursement, replacement.* —  
11 After a reasonable attempt to repair, if the nonconformity  
12 in an assistive device is not repaired, the consumer may  
13 request remedies within this section by offering to transfer  
14 possession of the assistive device to the manufacturer. No  
15 later than thirty days after the consumer's offer, the  
16 manufacturer shall provide to the consumer as many of  
17 the following remedies as are applicable and elected by  
18 the consumer, whereupon the consumer shall return to the  
19 manufacturer the assistive device and any endorsements  
20 necessary to transfer its possession to the manufacturer:

21 (1) Accept return of the assistive device;

22 (2) Replace the assistive device with a comparable new  
23 assistive device;

24 (3) Refund collateral costs to the consumer;

25 (4) Refund to the consumer and to any holder of a  
26 perfected security interest in the assistive device the full  
27 purchase price, plus any finance charge paid by the  
28 consumer, plus collateral costs, less a reasonable allowance  
29 for use; or

30 (5) Refund to the lessor and to any holder of a  
31 perfected security interest in the assistive device the  
32 current value of the written lease, and refund to the  
33 consumer the amount paid by the consumer pursuant to  
34 the written lease, plus collateral costs, less a reasonable  
35 allowance for use.

#### **§46A-6E-4. Lease enforcement.**

1 No person may enforce the lease of an assistive device  
2 against the consumer after the consumer receives a refund  
3 pursuant to section three of this article.

**§46A-6E-5. Disclosure upon further sale or lease.**

1 No assistive device returned by a consumer or assistive  
2 device lessor in this state, or by a consumer or assistive  
3 device lessor in another state under a similar law of that  
4 state, may be sold or leased again in this state unless full  
5 disclosure of the reasons for return is made to any  
6 prospective buyer or lessee.

**§46A-6E-6. Arbitration.**

1 (a) Each consumer shall have the option of submitting  
2 any dispute arising under this section upon the payment  
3 of a prescribed filing fee to an alternate arbitration  
4 mechanism established by the attorney general. Upon  
5 application of the consumer and payment of the filing fee,  
6 all manufacturers shall submit to such alternate arbitration.

7 (b) Such alternate arbitration shall be conducted by a  
8 professional arbitrator or arbitration firm appointed by the  
9 attorney general. The arbitration process shall ensure that  
10 personal objectivity of its arbitrators and the right of each  
11 party to present its case, to be in attendance during any  
12 presentation made by the other party and to rebut or  
13 refute such presentation.

14 (c) The attorney general shall propose a legislative  
15 rule or rules for promulgation in accordance with the  
16 provisions of chapter twenty-nine-a of this code to  
17 establish the arbitration mechanism provided for in this  
18 section.

**§46A-6E-7. Limitations; waiver of rights; action for damages;  
punitive damages.**

1 (a) This section does not limit rights or remedies  
2 available to a consumer under any other law.

3 (b) Any waiver by a consumer of rights under this  
4 article is void.

5 (c) In addition to pursuing any other remedy, a  
6 consumer may bring an action to recover for any damages  
7 caused by a violation of this section. The court shall  
8 award a consumer who prevails in such an action twice the  
9 amount of any pecuniary loss, together with costs,  
10 disbursements and reasonable attorney fees, and any  
11 equitable relief that the court determines appropriate.

## CHAPTER 93

(Com. Sub. for H. B. 2168—By Delegate Border)

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[Passed February 10, 1998; in effect ninety days from passage. Approved by the Governor.]

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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.

1 (a) Schedule I 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) *Opiates*. Unless specifically excepted or unless  
6 listed in another schedule, any of the following opiates,  
7 including their isomers, esters, ethers, salts and salts of  
8 isomers, esters and ethers, whenever the existence of such  
9 isomers, esters, ethers and salts is possible within the  
10 specific chemical designation (for purposes of subdivision

11 (34) of this subsection only, the term isomer includes the  
12 optical and geometric isomers):

13 (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-  
14 phenethyl) -4-piperidiny]-N-phenylacetamide);

15 (2) Acetylmethadol;

16 (3) Allylprodine;

17 (4) Alphacetylmethadol (except levoalphacetyl-  
18 methadol also known as levo-alpha-acetylmethadol,  
19 levomethadyl acetate, or LAAM);

20 (5) Alphameprodine;

21 (6) Alphamethadol;

22 (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-  
23 phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-  
24 phenylethyl)-4-(N-propanilido) piperidine);

25 (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-  
26 thienyl) ethyl-4-piperidiny]-N-phenylpropanamide);

27 (9) Benzethidine;

28 (10) Betacetylmethadol;

29 (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-  
30 phenethyl) -4-piperidiny]-N-phenylpropanamide);

31 (12) Beta-hydroxy-3-methylfentanyl (other name: N-  
32 [1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidiny]-N-  
33 phenylpropanamide);

34 (13) Betameprodine;

35 (14) Betamethadol;

36 (15) Betaprodine;

37 (16) Clonitazene;

38 (17) Dextromoramide;

39 (18) Diampromide;

40 (19) Diethylthiambutene;

- 41 (20) Difenoxin;
- 42 (21) Dimenoxadol;
- 43 (22) Dimepheptanol;
- 44 (23) Dimethylthiambutene;
- 45 (24) ·Dioxaphetyl butyrate;
- 46 (25) Dipipanone;
- 47 (26) Ethylmethylthiambutene;
- 48 (27) Etonitazene;
- 49 (28) Etoxidine;
- 50 (29) Furethidine;
- 51 (30) Hydroxypethidine;
- 52 (31) Ketobemidone;
- 53 (32) Levomoramide;
- 54 (33) Levophenacymorphan;
- 55 (34) 3-Methylfentanyl (N-[3-methyl-1-(2-  
56 phenylethyl)-4-piperidyl]-N-phenylpropanamide);
- 57 (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)-  
58 ethyl-4-piperidyl]-N-phenylpropanamide);
- 59 (36) Morpheridine;
- 60 (37) MPPP (1-methyl-4-phenyl-4-propionoxypiper-  
61 idine);
- 62 (38) Noracymethadol;
- 63 (39) Norlevorphanol;
- 64 (40) Normethadone;
- 65 (41) Norpipanone;
- 66 (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-  
67 (2-phenethyl)-4-piperidyl] propanamide);

- 68 (43) PEPAP(1-(2-phenethyl)-4-phenyl-4-  
69 acetoxypiperidine);
- 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-  
80 piperidinyl]-propanamide);
- 81 (54) Tilidine;
- 82 (55) Trimeperidine.

83 (c) *Opium derivatives*. — Unless specifically excepted  
84 or unless listed in another schedule, any of the following  
85 opium derivatives, its salts, isomers and salts of isomers  
86 whenever the existence of such salts, isomers and salts of  
87 isomers is possible within the specific chemical  
88 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;

- 97 (9) Drotebanol;
- 98 (10) Etorphine (except HCl Salt);
- 99 (11) Heroin;
- 100 (12) Hydromorphanol;
- 101 (13) Methyldesorphine;
- 102 (14) Methyldihydromorphine;
- 103 (15) Morphine methylbromide;
- 104 (16) Morphine methylsulfonate;
- 105 (17) Morphine-N-Oxide;
- 106 (18) Myrophine;
- 107 (19) Nicocodeine;
- 108 (20) Nicomorphine;
- 109 (21) Normorphine;
- 110 (22) Pholcodine;
- 111 (23) Thebacon.

112 (d) *Hallucinogenic substances.* — Unless specifically  
113 excepted or unless listed in another schedule, any material,  
114 compound, mixture or preparation, which contains any  
115 quantity of the following hallucinogenic substances, or  
116 which contains any of its salts, isomers and salts of  
117 isomers, whenever the existence of such salts, isomers, and  
118 salts of isomers is possible within the specific chemical  
119 designation (for purposes of this subsection only, the term  
120 "isomer" includes the optical, position and geometric  
121 isomers):

122 (1) Alpha-ethyltryptamine; some trade or other  
123 names: etryptamine; Monase; alpha-ethyl-1H-indole-3-  
124 ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and  
125 AET;

126 (2) 4-bromo-2, 5-dimethoxy-amphetamine; some  
127 trade or other names: 4-bromo-2, 5-dimethoxy-alpha-  
128 methylphenethylamine; 4-bromo-2,5-DMA;

- 129 (3) 4-Bromo-2,5-dimethoxyphenethylamine; some  
130 trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-  
131 1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;
- 132 (4) 2,5-dimethoxyamphetamine; some trade or other  
133 names: 2,5-dimethoxy-alpha-methylphenethylamine;  
134 2,5-DMA;
- 135 (5) 2,5-dimethoxy-4-ethylamphetamine; some trade  
136 or other names: DOET;
- 137 (6) 4-methoxyamphetamine; some trade or other  
138 names: 4-methoxy-alpha-methylphenethylamine; para-  
139 methoxyamphetamine; PMA;
- 140 (7) 5-methoxy-3, 4-methylenedioxy- amphetamine;
- 141 (8) 4-methyl-2,5-dimethoxy-amphetamine; some  
142 trade and other names: 4-methyl-2,5-dimethoxy-alpha-  
143 methylphenethylamine; "DOM"; and "STP";
- 144 (9) 3,4-methylenedioxy amphetamine;
- 145 (10) 3,4-methylenedioxymethamphetamine (MDMA);
- 146 (11) 3,4-methylenedioxy-N-ethylamphetamine (also  
147 known as N-ethyl-alpha-methyl-3,4 (methylenedioxy)  
148 phenethylamine, N-ethyl MDA, MDE, MDEA);
- 149 (12) N-hydroxy-3,4-methylenedioxyamphetamine  
150 (also known as N-hydroxy-alpha-methyl-3,4  
151 (methylenedioxy) phenethylamine, and N-hydroxy  
152 MDA);
- 153 (13) 3,4,5-trimethoxy amphetamine;
- 154 (14) Bufotenine; some trade and other names:  
155 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-  
156 dimethylaminoethyl) -5-indolol; N, N-dimethylserotonin;  
157 5-hydroxy-N,N-dimethyltryptamine; mappine;
- 158 (15) Diethyltryptamine; some trade and other  
159 names: N, N-Diethyltryptamine; DET;
- 160 (16) Dimethyltryptamine; some trade or other names:  
161 DMT;

- 162 (17) Ibogaine; some trade and other names: 7-  
163 Ethyl-6, 6 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-  
164 6, 9-methano-5H-pyrido [1', 2': 1, 2] azepino [5,4-b]  
165 indole; Tabernanthe iboga;
- 166 (18) Lysergic acid diethylamide;
- 167 (19) Marihuana;
- 168 (20) Mescaline;
- 169 (21) Parahexyl-7374; some trade or other names:  
170 3-Hexyl -1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-  
171 trimethyl-6H-dibenzo [b,d] pyran; Synhexyl;
- 172 (22) Peyote; meaning all parts of the plant presently  
173 classified botanically as *Lophophora williamsii* Lemaire,  
174 whether growing or not, the seeds thereof, any extract  
175 from any part of such plant, and every compound,  
176 manufacture, salts, derivative, mixture or preparation of  
177 such plant, its seeds or extracts;
- 178 (23) N-ethyl-3-piperidyl benzilate;
- 179 (24) N-methyl-3-piperidyl benzilate;
- 180 (25) Psilocybin;
- 181 (26) Psilocyn;
- 182 (27) Tetrahydrocannabinols; synthetic equivalents of  
183 the substances contained in the plant, or in the resinous  
184 extractives of *Cannabis*, sp. and/or synthetic substances,  
185 derivatives and their isomers with similar chemical  
186 structure and pharmacological activity such as the  
187 following:
- 188 delta-1 Cis or trans tetrahydrocannabinol, and their  
189 optical isomers;
- 190 delta-6 Cis or trans tetrahydrocannabinol, and their  
191 optical isomers;
- 192 delta-3,4 Cis or trans tetrahydrocannabinol, and its  
193 optical isomers;
- 194 (Since nomenclature of these substances is not  
195 internationally standardized, compounds of these

196 structures, regardless of numerical designation of atomic  
197 positions covered.)

198 (28) Ethylamine analog of phencyclidine; some trade  
199 or other names: N-ethyl-1-phenylcyclohexylamine, (1-  
200 phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)  
201 ethylamine, cyclohexamine, PCE;

202 (29) Pyrrolidine analog of phencyclidine; some trade  
203 or other names: 1-(1-phenylcyclohexyl)-pyrrolidine,  
204 PCPy, PHP;

205 (30) Thiophene analog of phencyclidine; some trade  
206 or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine,  
207 2-thienylanalog of phencyclidine; TPCP, TCP;

208 (31) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some  
209 other names: TCPy.

210 (e) *Depressants*. Unless specifically excepted or  
211 unless listed in another schedule, any material, compound,  
212 mixture, or preparation which contains any quantity of the  
213 following substances having a depressant effect on the  
214 central nervous system, including its salts, isomers and salts  
215 of isomers whenever the existence of such salts, isomers  
216 and salts of isomers is possible within the specific chemical  
217 designation:

218 (1) Mecloqualone;

219 (2) Methaqualone.

220 (f) *Stimulants*. Unless specifically excepted or unless  
221 listed in another schedule, any material, compound,  
222 mixture, or preparation which contains any quantity of the  
223 following substances having a stimulant effect on the  
224 central nervous system, including its salts, isomers, and  
225 salts of isomers:

226 (1) Aminorex; some other names: aminoxaphen; 2-  
227 amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-  
228 oxazolamine;

229 (2) Cathinone; some trade or other names: 2-amino-1-  
230 phenyl-1-propanone, alpha-aminopropiophenone, 2-  
231 aminopropiophenone, and norephedrone;

232 (3) Fenethylline;

233 (4) Methcathinone, its salts, optical isomers and salts of  
234 optical isomers; some other names: (2-(methylamino)-  
235 propiophenone; alpha-(methylamino)propiophenone; 2-  
236 (methylamino)-1-phenylpropan-1-one; alpha-N-methyla  
237 minopropiophenone; monomethylpropion; ephedrone; N-  
238 methylcathinone; methylcathinone; AL-464; AL-422;  
239 AL-463 and UR1432;

240 (5) (+-) cis-4-methylaminorex; ((+)-cis-4,5-dihydro-  
241 4-methyl-5-phenyl-2-oxazolamine);

242 (6) N-ethylamphetamine;

243 (7) N,N-dimethylamphetamine; also known as N,N-  
244 alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethyl  
245 phenethylamine.

246 (g) *Temporary listing of substances subject to*  
247 *emergency scheduling.* Any material, compound, mixture  
248 or preparation which contains any quantity of the  
249 following substances:

250 (1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide  
251 (benzylfentanyl), its optical isomers, salts, and salts of  
252 isomers.

253 (2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-  
254 phenylpropanamide (thenylfentanyl), its optical isomers,  
255 salts and salts of isomers.

#### §60A-2-206. Schedule II.

1 (a) Schedule II 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) *Substances, vegetable origin or chemical synthesis.*  
6 Unless specifically excepted or unless listed in another  
7 schedule, any of the following substances whether  
8 produced directly or indirectly by extraction from  
9 substances of vegetable origin, or independently by means  
10 of chemical synthesis, or by a combination of extraction  
11 and chemical synthesis:

12 (1) Opium and opiate, and any salt, compound,  
13 derivative or preparation of opium or opiate excluding  
14 apomorphine, thebaine-derived butorphanol, dextrorphan,  
15 nalbuphine, nalmefene, naloxone and naltrexone, and  
16 their respective salts, but including the following:

- 17 (A) Raw opium;
- 18 (B) Opium extracts;
- 19 (C) Opium fluid;
- 20 (D) Powdered opium;
- 21 (E) Granulated opium;
- 22 (F) Tincture of opium;
- 23 (G) Codeine;
- 24 (H) Ethylmorphine;
- 25 (I) Etorphine hydrochloride;
- 26 (J) Hydrocodone;
- 27 (K) Hydromorphone;
- 28 (L) Metopon;
- 29 (M) Morphine;
- 30 (N) Oxycodone;
- 31 (O) Oxymorphone;
- 32 (P) Thebaine;

33 (2) Any salt, compound, derivative or preparation  
34 thereof which is chemically equivalent or identical with  
35 any of the substances referred to in subdivision (1) of this  
36 subsection, except that these substances shall not include  
37 the isoquinoline alkaloids of opium;

38 (3) Opium poppy and poppy straw;

39 (4) Coca leaves and any salt, compound, derivative or  
40 preparation of coca leaves (including cocaine and  
41 ecgonine and their salts, isomers, derivatives and salts of  
42 isomers and derivatives), and any salt, compound,

43 derivative, or preparation thereof which is chemically  
44 equivalent or identical with any of these substances, except  
45 that the substances shall not include decocainized coca  
46 leaves or extractions of coca leaves, which extractions do  
47 not contain cocaine or ecgonine;

48 (5) Concentrate of poppy straw (the crude extract of  
49 poppy straw in either liquid, solid or powder form which  
50 contains the phenanthrene alkaloids of the opium poppy).

51 (c) *Opiates*. — Unless specifically excepted or unless  
52 in another schedule, any of the following opiates,  
53 including its isomers, esters, ethers, salts and salts of  
54 isomers, esters and ethers whenever the existence of such  
55 isomers, esters, ethers and salts is possible within the  
56 specific chemical designation, dextrorphan and  
57 levopropoxyphene excepted:

58 (1) Alfentanil;

59 (2) Alphaprodine;

60 (3) Anileridine;

61 (4) Bezitramide;

62 (5) Bulk dextropropoxyphene (nondosage forms);

63 (6) Carfentanil;

64 (7) Dihydrocodeine;

65 (8) Diphenoxylate;

66 (9) Fentanyl;

67 (10) Isomethadone;

68 (11) Levo-alpha-acetylmethadol; some other names:  
69 levo-alpha-acetylmethadol, levomethadyl acetate, LAAM;

70 (12) Levomethorphan;

71 (13) Levorphanol;

72 (14) Metazocine;

73 (15) Methadone;

- 74 (16) Methadone-Intermediate,  
75 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- 76 (17) Moramide-Intermediate, 2-methyl-3-  
77 morpholino-1, 1-diphenylpropane-carboxylic acid;
- 78 (18) Pethidine; (meperidine);
- 79 (19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-  
80 phenylpiperidine;
- 81 (20) Pethidine-Intermediate-B, ethyl-4-  
82 phenylpiperidine 4-carboxylate;
- 83 (21) Pethidine-Intermediate-C, 1-methyl-4-  
84 phenylpiperidine-4-carboxylic acid;
- 85 (22) Phenazocine;
- 86 (23) Piminodine;
- 87 (24) Racemethorphan;
- 88 (25) Racemorphan;
- 89 (26) Remifentanil;
- 90 (27) Sufentanil.
- 91 (d) *Stimulants*. — Unless specifically excepted or  
92 unless listed in another schedule, any material, compound,  
93 mixture or preparation which contains any quantity of the  
94 following substances having a stimulant effect on the  
95 central nervous system:
- 96 (1) Amphetamine, its salts, optical isomers and salts of  
97 its optical isomers;
- 98 (2) Methamphetamine, its salts, isomers and salts of its  
99 isomers;
- 100 (3) Methylphenidate;
- 101 (4) Phenmetrazine and its salts.
- 102 (e) *Depressants*. — Unless specifically excepted or  
103 unless listed in another schedule, any material, compound,  
104 mixture or preparation which contains any quantity of the

105 following substances having a depressant effect on the  
106 central nervous system, including its salts, isomers and salts  
107 of isomers whenever the existence of such salts, isomers  
108 and salts of isomers is possible within the specific chemical  
109 designation:

110 (1) Amobarbital;

111 (2) Glutethimide;

112 (3) Pentobarbital;

113 (4) Phencyclidine;

114 (5) Secobarbital.

115 (f) *Hallucinogenic substances:*

116 (1) Dronabinol (synthetic) in sesame oil and encap-  
117 sulated in a soft gelatin capsule in a United States food  
118 and drug administration approved drug product. (Some  
119 other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-  
120 tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b,d]  
121 pyran-1-ol or (-) -delta-9-(trans)-tetrahydrocannabinol);

122 (2) Nabilone: [Another name for nabilone: (+-)-trans-  
123 3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-  
124 hydroxy-6, 6-dimethyl-9H-dibenzo [b,d] pyran-9-one].

125 (g) *Immediate precursors.* Unless specifically  
126 excepted or unless listed in another schedule, any material,  
127 compound, mixture, or preparation which contains any  
128 quantity of the following substances:

129 (1) Immediate precursor to amphetamine and  
130 methamphetamine:

131 (A) Phenylacetone;

132 Some trade or other names: phenyl-2-propanone;

133 P2P; benzyl methyl ketone; methyl benzyl ketone;

134 (2) Immediate precursors to phencyclidine (PCP):

135 (A) 1-phenylcyclohexylamine;

136 (B) 1-piperidinocyclohexanecarbonitrile (PCC).

**§60A-2-208. Schedule III.**

1 (a) Schedule III 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) *Stimulants*. — Unless specifically excepted or  
6 unless listed in another schedule, any material, compound,  
7 mixture or preparation which contains any quantity of the  
8 following substances having a stimulant effect on the  
9 central nervous system, including its salts, isomers  
10 (whether optical, position or geometric), and salts of such  
11 isomers whenever the existence of such salts, isomers and  
12 salts of isomers is possible within the specific chemical  
13 designation:

14 (1) Those compounds, mixtures or preparations in  
15 dosage unit form containing any stimulant substances  
16 listed in Schedule II which compounds, mixtures or  
17 preparations were listed on the twenty-fifth day of August,  
18 one thousand nine hundred seventy-one, as excepted  
19 compounds under §1308.32, and any other drug of the  
20 quantitative composition shown in that list for those drugs  
21 or which is the same except that it contains a lesser  
22 quantity of controlled substances;

23 (2) Benzphetamine;

24 (3) Chlorphentermine;

25 (4) Clortermine;

26 (5) Phendimetrazine;

27 (6) Hydrocodone.

28 (c) *Depressants*. — Unless specifically excepted or  
29 unless listed in another schedule, any material, compound,  
30 mixture or preparation which contains any quantity of the  
31 following substances having a depressant effect on the  
32 central nervous system:

33 (1) Any compound, mixture or preparation  
34 containing:

- 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,

66 mixture or preparation containing any of the following  
67 narcotic drugs, or their salts calculated as the free  
68 anhydrous base or alkaloid, in limited quantities as set  
69 forth below:

70 (1) Not more than 1.8 grams of codeine per 100  
71 milliliters and not more than 90 milligrams per dosage  
72 unit, with an equal or greater quantity of an isoquinoline  
73 alkaloid of opium;

74 (2) Not more than 1.8 grams of codeine per 100  
75 milliliters or not more than 90 milligrams per dosage unit,  
76 with one or more active, nonnarcotic ingredients in  
77 recognized therapeutic amounts;

78 (3) Not more than 300 milligrams of  
79 dihydrocodeinone (hydrocodone) per 100 milliliters or  
80 not more than 15 milligrams per dosage unit, with a  
81 fourfold or greater quantity of an isoquinoline alkaloid of  
82 opium;

83 (4) Not more than 300 milligrams of  
84 dihydrocodeinone (hydrocodone) per 100 milliliters or  
85 not more than 15 milligrams per dosage unit, with one or  
86 more active, nonnarcotic ingredients in recognized  
87 therapeutic amounts;

88 (5) Not more than 1.8 grams of dihydrocodeine per  
89 100 milliliters and not more than 90 milligrams per  
90 dosage unit, with one or more active, nonnarcotic  
91 ingredients in recognized therapeutic amounts;

92 (6) Not more than 300 milligrams of ethylmorphine  
93 per 100 milliliters or not more than 15 milligrams per  
94 dosage unit, with one or more active, nonnarcotic  
95 ingredients in recognized therapeutic amounts;

96 (7) Not more than 500 milligrams of opium per 100  
97 milliliters or per 100 grams or not more than 25  
98 milligrams per dosage unit, with one or more active,  
99 nonnarcotic ingredients in recognized therapeutic  
100 amounts;

101 (8) Not more than 50 milligrams of morphine per 100  
102 milliliters or per 100 grams with one or more active,

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;

- 53 (31) Meprobamate;  
54 (32) Methohexital;  
55 (33) Methyphenobarbital (mephobarbital);  
56 (34) Midazolam;  
57 (35) Nimetazepam;  
58 (36) Nitrazepam;  
59 (37) Nordiazepam;  
60 (38) Oxazepam;  
61 (39) Oxazolam;  
62 (40) Paraldehyde;  
63 (41) Petrichloral;  
64 (42) Phenobarbital;  
65 (43) Pinazepam;  
66 (44) Prazepam;  
67 (45) Quazepam;  
68 (46) Temazepam;  
69 (47) Tetrazepam;  
70 (48) Triazolam;  
71 (49) Zolpidem.

72 (d) *Fenfluramine*. Any material, compound, mixture  
73 or preparation which contains any quantity of the  
74 following substance, including its salts, isomers (whether  
75 optical, position or geometric) and salts of such isomers  
76 whenever the existence of such salts, isomers and salts of  
77 isomers is possible: Fenfluramine.

78 (e) *Stimulants*. Unless specifically excepted or unless  
79 listed in another schedule, any material, compound,  
80 mixture or preparation which contains any quantity of the  
81 following substances having a stimulant effect on the

82 central nervous system, including its salts, isomers and salts  
83 of isomers:

84 (1) Cathine ((+)- norpseudoephedrine);

85 (2) Diethylpropion;

86 (3) Fencamfamin;

87 (4) Fenproporex;

88 (5) Mazindol;

89 (6) Mefenorex;

90 (7) Pemoline (including organometallic complexes  
91 and chelates thereof);

92 (8) Phentermine;

93 (9) Pipradrol;

94 (10) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

95 (f) *Other substances.* — Unless specifically excepted  
96 or unless listed in another schedule, any material,  
97 compound, mixture or preparation which contains any  
98 quantity of the following substances, including its salts:

99 (1) Pentazocine;

100 (2) Butorphanol.

101 Amyl nitrite, butyl nitrite, isobutyl nitrite and the other  
102 organic nitrites are controlled substances and no product  
103 containing these compounds as a significant component  
104 shall be possessed, bought or sold other than pursuant to a  
105 bona fide prescription or for industrial or manufacturing  
106 purposes.

#### §60A-2-212. Schedule V.

1 (a) Schedule V 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 and their salts, as set forth below:

9 (1) Buprenorphine.

10 (c) Narcotic drugs containing nonnarcotic active  
11 medicinal ingredients. Any compound, mixture or  
12 preparation containing any of the following narcotic  
13 drugs or their salts calculated as the free anhydrous base  
14 or alkaloid in limited quantities as set forth below, which  
15 shall include one or more nonnarcotic active medicinal  
16 ingredients in sufficient proportion to confer upon the  
17 compound, mixture or preparation valuable medicinal  
18 qualities other than those possessed by the narcotic drug  
19 alone:

20 (1) Not more than 200 milligrams of codeine per 100  
21 milliliters or per 100 grams;

22 (2) Not more than 100 milligrams of dihydrocodeine  
23 per 100 milliliters or per 100 grams;

24 (3) Not more than 100 milligrams of ethylmorphine  
25 per 100 milliliters or per 100 grams;

26 (4) Not more than 2.5 milligrams of diphenoxylate  
27 and not less than 25 micrograms of atropine sulfate per  
28 dosage unit;

29 (5) Not more than 100 milligrams of opium per 100  
30 milliliters or per 100 grams;

31 (6) Not more than 0.5 milligrams of difenoxin and  
32 not less than 25 micrograms of atropine sulfate per dosage  
33 unit.

34 (d) *Stimulants*. Unless specifically exempted or  
35 excluded or unless listed in another schedule, any material,  
36 compound, mixture, or preparation which contains any  
37 quantity of the following substances having a stimulant  
38 effect on the central nervous system, including its salts,  
39 isomers and salts of isomers:

40 (1) Pyrovalerone.

## CHAPTER 94

(Com. Sub. for H. B. 4119—By Delegates Caputo, Staton, Prunty,  
Claypole, Seacrist, Fleischauer and Fragale)

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

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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.

§21-13-2. Definitions.

§21-13-3. Convenience food store regulations.

§21-13-4. Penalties and enforcement.

§21-13-5. Tax credit.

#### §21-13-1. Purpose.

- 1 The Legislature finds that it is necessary to the safety,
- 2 health, public interest and general welfare of the people of
- 3 the state of West Virginia that convenience food stores
- 4 operating in the state be regulated to prevent the ever-
- 5 present danger to the safety, health, life and general
- 6 welfare of its citizens and the employees of these stores.

#### §21-13-2. Definitions.

- 1 As used in this article, except where a different
- 2 meaning is provided in section five of this article:

3 (1) "Convenience food store" means a business  
4 establishment that:

5 (A) Derives fifty percent or more of its gross income  
6 from the sale of goods, merchandise or other articles of  
7 value in their original containers or gasoline and other  
8 petroleum products with gross annual sales of one million  
9 dollars or more; and

10 (B) Offers a limited quantity and variety of food,  
11 household and sundry items; and

12 (C) Operates at any time between the hours of twelve  
13 o'clock a.m. and five o'clock a.m.; and

14 (D) Does not sell or offer for sale prescription drug  
15 items.

16 (2) "Owner" means the person, corporation,  
17 partnership, joint venture or other group enterprise having  
18 an ownership or proprietary interest in a convenience food  
19 store.

20 (3) "Employee" means any person permitted to work  
21 by a person, corporation, partnership, joint venture or  
22 group enterprise legally responsible for the operation of  
23 the convenience food store.

### **§21-13-3. Convenience food store regulations.**

1 All convenience food stores shall comply with the  
2 following provisions:

3 (1) If open for business after twelve o'clock a.m., the  
4 convenience food store must employ two persons who are  
5 continuously on duty on the premises from twelve o'clock  
6 a.m. until closing or five o'clock a.m., whichever occurs  
7 first, or employ one person during these hours and install  
8 the security camera system provided for in subdivision (3)  
9 of this section, or install a security booth for one person to  
10 occupy during these hours or lock their doors and allow  
11 customers to be served through a pass-through device.

12 (2) The entire area of the parking area used by  
13 customers of convenience food stores must be lighted  
14 during all hours of darkness when employees or

15 customers, or both employees and customers are on the  
16 premises. Minimum average maintained illuminance must  
17 be two footcandles or greater with a uniformity ratio  
18 (average to minimum) of no more than five to one unless  
19 such lighting violates applicable municipal lighting code  
20 requirements or creates a public or private nuisance.

21 (3) If only one person is employed on duty on the  
22 premises from twelve o'clock a.m. until closing or five  
23 o'clock a.m., the store shall install, by the first day of  
24 January, one thousand nine hundred ninety-nine, a  
25 security camera capable of producing a retrievable image  
26 on film or tape that can be enlarged through projection or  
27 other means. The cameras shall be maintained in proper  
28 working order at all times.

29 (4) Any owner or employee who works between the  
30 hours of twelve o'clock a.m. and five o'clock a.m. at a  
31 convenience food store shall be trained in robbery  
32 prevention by the owner. Owners shall develop a written  
33 robbery prevention program which shall be available for  
34 inspection during regular business hours at each  
35 convenience food store, and shall base the training on the  
36 program.

37 (5) Provide height markers at the door or doors  
38 exiting the premise which display measurements from the  
39 floor: *Provided*, That any owner who is in compliance with  
40 this section and certifies such compliance to the  
41 superintendent of state police or the superintendents  
42 designee, or the county sheriff's department or the  
43 municipal police department, on or before the first day of  
44 January, one thousand nine hundred ninety-nine, shall be  
45 exempt from the provisions of section four of this article.

#### §21-13-4. Penalties and enforcement.

1 Any owner who fails to comply with this article, upon  
2 the first violation, shall be assessed a civil fine of not less  
3 than one hundred dollars nor more than five hundred  
4 dollars; and, upon a second violation shall be fined not  
5 less than five hundred dollars nor more than one thousand  
6 dollars. For third and subsequent violations, an owner  
7 shall be fined not less than one thousand dollars nor more  
8 than five thousand dollars. If noncompliance is corrected  
9 within ten days after a violation, no fine may be assessed.

**§21-3-5. Tax credit.**

1 (a) For purposes of this section, an owner of a  
2 convenience food store means an owner, as defined in  
3 subdivision (2), section two of this article, of a conve-  
4 nience food store that meets all the requirements  
5 contained within the definition of a convenience food  
6 store set forth in subdivision (1), section two of this article  
7 except that the annual gross sales of the convenience food  
8 store is less than one million dollars.

9 (b) An owner of a convenience food store within the  
10 meaning prescribed in subsection (a) of this section is  
11 entitled to receive a tax credit against the owner's tax  
12 liability on taxable income earned from conducting the  
13 business of the convenience food store for each conve-  
14 nience food store that meets the requirements of  
15 subdivision (3), section three of this article.

16 (c) The tax credit available under this section is an  
17 amount equal to the cost to the owner of meeting the  
18 requirements of subdivision (3), section three of this  
19 article, or five hundred dollars, whichever is less.

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## CHAPTER 95

(H. B. 4702—By Delegates Michael, Mezzatesta, Doyle,  
Clements, Leggett and Frederick)

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

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AN ACT to amend article six, 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-one; to amend and reenact sections one-a, two, three, four, five, eight, nine, ten and twenty-six, article twenty, chapter thirty-one of said code; to further amend said article by adding thereto three new sections, designated sections five-c, eight-a and nine-a; and to amend and reenact sections fourteen, fifteen and seventeen, article three, chapter

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**

**12. Public Moneys and Securities.**

**31. Corporations.**

**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.**

1 (a) The Legislature finds and declares:

2 (1) That the supreme court of appeals has determined  
3 and ordered that the constitution of this state imposes a  
4 duty on behalf of the state to make significant improve-  
5 ments in the jail and correctional facility system, including  
6 the duty to make capital improvements to facilities and to  
7 pay for the cost of those improvements;

8 (2) That construction of capital improvements requires  
9 that the cost of the facilities be financed over time; that  
10 capital improvements cannot be funding out of the current  
11 year appropriations of the Legislature; and that section  
12 fifty-one, article six of the constitution prohibits the  
13 Legislature amending the budget bill so as to create a  
14 deficit;

15 (3) That while the supreme court of appeals is  
16 empowered to interpret the laws, including the constitution  
17 of the state, section one, article ten of the constitution  
18 grants to the Legislature the power of taxation; section  
19 fifty-one, article six of the constitution grants to the  
20 Legislature the power of appropriation; and section one,  
21 article five of the constitution prohibits any branch of  
22 government from exercising powers properly belonging  
23 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

64 to this section. Prior to the expenditure of any of the  
65 funds, the regional jail and correctional facility authority  
66 shall certify to the joint committee on government and  
67 finance a list of projects that are to be funded from the  
68 invested funds. This certified list may not thereafter be  
69 altered or amended other than by legislative enactment.  
70 Funds shall be invested with the regional jail and  
71 correctional facility authority as requested by the regional  
72 jail and correctional facility authority. The money  
73 invested shall earn a return at a rate equal to the annual-  
74 ized rate of return earned by the core fixed-income  
75 portfolio of the public employees retirement system over  
76 the previous five years, plus one tenth of one percent:  
77 *Provided*, That in all events this rate of return may not be  
78 less than five percent per annum. The monthly rate of  
79 return shall be calculated every quarter. The manner and  
80 timing of the investment shall be determined by the board.  
81 The total of the amounts invested may not exceed a total  
82 of one hundred fifty million dollars during fiscal year one  
83 thousand nine hundred ninety-eight, and fiscal year one  
84 thousand nine hundred ninety-nine, cumulatively. The  
85 authority to make the investment authorized by this  
86 section expires on the thirtieth day of June, one thousand  
87 nine hundred ninety-nine.

88 (c) There is created in the state treasury a regional jail  
89 and correctional facility investment fund dedicated to the  
90 payment of investment earnings and the return of capital  
91 invested under this section. The treasurer shall administer  
92 the fund. The fund is an interest-bearing account with  
93 interest earned credited to and deposited back into the  
94 fund. The fund consists of amounts required to be  
95 deposited by section fourteen, article three, chapter  
96 thirty-three of this code.

97 (d) The treasurer shall, monthly, transfer amounts  
98 from the regional jail and correctional facility investment  
99 fund to the board that are sufficient to allow investment  
100 earnings to be paid and the capital invested returned in  
101 substantially equal amounts by the thirty-first day of  
102 August, two thousand twenty-three: *Provided*, That the  
103 amount of investment earnings paid and the capital  
104 invested returned during the fiscal year beginning the first

105 day of July, one thousand nine hundred ninety-eight, may  
106 not exceed ten million dollars. Payment representing  
107 investment earnings and the return of capital invested shall  
108 begin six months from the date the initial funds are  
109 invested, or by the tenth day of January, one thousand  
110 nine hundred ninety-nine, whichever is later.

111 (e) The board shall calculate the amount of the  
112 projected annual investment earnings to be paid and the  
113 capital invested to be returned and certify the amount to  
114 the treasurer on the first day of December of each year,  
115 until all investment earnings are paid and the total capital  
116 invested is returned.

117 (f) As a condition precedent to the transfer and  
118 investment of moneys by the investment management  
119 board pursuant to subsection (b) of this section, either the  
120 investment management board or the regional jail and  
121 correctional authority shall have first caused a judicial  
122 determination to be made by an appropriate action  
123 initiated in the West Virginia supreme court of appeals  
124 regarding the transfer of moneys by the investment  
125 management board to the regional jail and correctional  
126 facility authority as an investment from funds available for  
127 investment from the public employees retirement system,  
128 and to otherwise determine the constitutionality of the  
129 provisions of Enrolled House Bill 4702, as enacted by the  
130 Legislature in the year one thousand nine hundred  
131 ninety-eight. This judicial determination shall be brought  
132 as soon as practicable, but not later than thirty days  
133 following the effective date of the amendments to this  
134 section made by the Legislature in the year one thousand  
135 nine hundred ninety-eight.

136 (g) The Legislature recognizes the fiduciary liability  
137 and responsibility imposed on the board by this article  
138 and by article six, chapter forty-four of this code. The  
139 board, its trustees and employees, have no liability, either  
140 personally or corporately with respect to the investment  
141 provided for in this section and the loans made under  
142 section nineteen of this article, if the investment and loans  
143 are made in accordance with the respective provisions of  
144 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.

§31-20-9. Jail facilities standards commission: purpose, powers and duties.

§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

12 development and implementation of new, innovative and  
13 effective programs dealing with incarcerated persons;

14 (3) That the physical condition of some existing jails,  
15 adult correctional facilities and juvenile facilities  
16 contribute to a frustration of efforts to provide  
17 rehabilitation, education, vocational training, and social  
18 and psychological adjustment and improvement for  
19 incarcerated persons, with the result that those existing  
20 facilities are utilized largely for the limited purposes of  
21 confinement;

22 (4) That there is a need to examine, understand and  
23 implement various new and innovative trends which are  
24 being advanced in the area of correctional institution  
25 design, and to explore the developing alternatives to  
26 incarceration which are being experimented with in other  
27 jurisdictions; and

28 (5) That the revenues of this state, insofar as they are  
29 currently used to maintain a traditional penal system, are  
30 not efficiently utilized to provide facilities or produce  
31 programs which could direct an adult or juvenile inmate's  
32 or detainee's time and effort to prepare him or her for life  
33 outside of confinement; nor do the revenues provide  
34 corrections officials with the resources necessary to  
35 address the issues and problems with which they are  
36 confronted.

37 (b) The purposes of this article are as follows:

38 (1) To provide a cost-efficient system within this state  
39 for the construction, maintenance and operation of adult  
40 jails and correctional facilities;

41 (2) To develop and implement plans for the  
42 renovation and improvement of existing facilities and the  
43 design and construction of new facilities to better serve the  
44 incarcerated and detained juvenile and adult populations  
45 and the citizens of this state;

46 (3) To provide an environment in which new and  
47 innovative corrections programs may be considered and  
48 undertaken, and in which opportunities may be offered to  
49 incarcerated persons to overcome personal deficiencies

50 which are educational, vocational, social or psychological  
51 in nature; and

52 (4) To investigate the feasibility of individualizing and  
53 classifying adult inmates according to their psychological  
54 and physical conditions at the time they are incarcerated,  
55 and the feasibility of designing for each such inmate a  
56 plan for self-improvement and rehabilitation.

**§31-20-2. Definitions.**

1 Unless the context indicates clearly otherwise, as used  
2 in this article:

3 (a) "Adjacent regional juvenile detention facility"  
4 means a facility constructed or maintained on property  
5 owned or controlled by the regional jail authority and  
6 designed for the short term preadjudicatory detention of  
7 juveniles, for the confinement of juveniles who are  
8 awaiting transportation to or placement at another juvenile  
9 detention facility or juvenile correctional facility and for  
10 juveniles who are awaiting trial as an adult pursuant to  
11 section ten, article five, chapter forty-nine of this code.

12 (b) "Authority" or "West Virginia Regional Jail  
13 Authority" means the West Virginia regional jail and  
14 correctional facility authority created by this article.

15 (c) "Board" means the governing body of the  
16 authority.

17 (d) "Bonds" means bonds of the authority issued  
18 under this article.

19 (e) "Cost of construction or renovation of a local jail  
20 facility, regional jail facility or juvenile facility" means  
21 the cost of all lands, water areas, property rights and  
22 easements, financing charges, interest prior to and during  
23 construction and for a period not exceeding six months  
24 following the completion of construction, equipment,  
25 engineering and legal services, plans, specifications and  
26 surveys, estimates of costs and other expenses necessary or  
27 incidental to determining the feasibility or practicability of  
28 any project, together with any other expenses as may be  
29 necessary or incidental to the financing and the

30 construction or renovation of the facilities and the placing  
31 of the facilities in operation.

32 (f) "County" means any county of this state.

33 (g) "Federal agency" means the United States of  
34 America and any department, corporation, agency or  
35 instrumentality created, designated or established by the  
36 United States of America.

37 (h) "Fund" means the regional jail and correctional  
38 facility development fund provided in section ten of this  
39 article, including those accounts that may be established  
40 by the authority for accurate accounting of the  
41 expenditure of public funds by that agency.

42 (i) "Government" means state and federal  
43 government, and any political subdivision, agency or  
44 instrumentality of the state or federal government,  
45 corporate or otherwise.

46 (j) "Inmate" means any adult person properly  
47 committed to a local or regional jail facility or a  
48 correctional facility.

49 (k) "Local jail facility" means any county facility for  
50 the confinement, custody, supervision or control of adult  
51 persons convicted of misdemeanors, awaiting trial or  
52 awaiting transportation to a state correctional facility.

53 (l) "Municipality" means any city, town or village in  
54 this state.

55 (m) "Notes" means any notes as defined in section  
56 one hundred four, article three, chapter forty-six of this  
57 code issued under this article by the authority.

58 (n) "Correctional facility" means any correctional  
59 facility, penitentiary or other correctional institution  
60 operated by the division of corrections for the  
61 incarceration of adults.

62 (o) "Regional jail facility" or "regional jail" means  
63 any facility operated by the authority and used jointly by  
64 two or more counties for the confinement, custody,  
65 supervision or control of adult persons convicted of

66 misdemeanors or awaiting trial or awaiting transportation  
67 to a state correctional facility.

68 (p) "Regional jail commission" means the  
69 commission established in section eight of this article.

70 (q) "Revenues" means all fees, charges, moneys,  
71 profits, payments of principal of, or interest on, loans and  
72 other investments, grants, contributions and all other  
73 income received by the authority.

74 (r) "Security interest" means an interest in the loan  
75 portfolio of the authority which is secured by an  
76 underlying loan or loans and is evidenced by a note issued  
77 by the authority.

78 (s) "Work farm" has the same meaning as that term is  
79 used in section twelve, article eight, chapter seven of this  
80 code authorizing work farms for individual counties.

81 (t) "Juvenile detention facility" or "juvenile  
82 detention center" means a facility operated by the  
83 division of juvenile services for the short term  
84 preadjudicatory detention of juveniles, for the  
85 confinement of juveniles who are awaiting transportation  
86 to or placement at another juvenile detention facility or  
87 juvenile correctional facility and for juveniles who are  
88 awaiting trial as an adult pursuant to section ten, article  
89 five, chapter forty-nine of this code.

90 (u) "Juvenile correctional facility" means a facility  
91 operated by the division of juvenile services for the post-  
92 dispositional confinement of juveniles adjudicated of  
93 offenses that would be criminal offenses if committed by  
94 an adult.

**§31-20-3. West Virginia regional jail and correctional facility  
authority; composition; appointment; terms;  
compensation and expenses.**

1 There is hereby created the West Virginia regional jail  
2 and correctional facility authority which shall be a body  
3 corporate and a government instrumentality. The  
4 authority shall have and is hereby granted all of the  
5 powers and authority and shall perform all of the

6 functions and services heretofore vested in and performed  
7 by the West Virginia regional jail and prison authority.  
8 The West Virginia regional jail and prison authority is  
9 hereby abolished. Wherever in this chapter and elsewhere  
10 in law reference is made to the West Virginia regional jail  
11 and prison authority, such reference shall henceforth be  
12 construed and understood to mean the West Virginia  
13 regional jail and correctional facility authority.

14 The authority shall be governed by a board of nine  
15 members, seven of whom are entitled to vote on matters  
16 coming before the authority. The complete governing  
17 board shall consist of the commissioner of the division of  
18 corrections; the director of the division of juvenile  
19 services; the secretary of the department of military affairs  
20 and public safety; the secretary of the department of  
21 administration, or his or her designated representative;  
22 three county officials appointed by the governor, no more  
23 than two of which may be of the same political party; and  
24 two citizens appointed by the governor to represent the  
25 areas of law and medicine. The commissioner of the  
26 division of corrections and the director of the division of  
27 juvenile services shall serve in an advisory capacity and are  
28 not entitled to vote on matters coming before the  
29 authority. Members of the Legislature are not eligible to  
30 serve on the board.

31 The governor shall nominate and, by and with the  
32 advice and consent of the Senate, appoint the five  
33 appointed members of the authority for staggered terms  
34 of four years beginning the first day of July, one thousand  
35 nine hundred eighty-nine. Of the members of the board  
36 first appointed, one shall be appointed for a term ending  
37 the thirtieth day of June, one thousand nine hundred  
38 ninety-one, two shall be appointed for terms ending the  
39 thirtieth day of June, one thousand nine hundred  
40 ninety-two, and two shall be appointed for terms ending  
41 the thirtieth day of June, one thousand nine hundred  
42 ninety-three. As these original appointments expire, each  
43 subsequent appointment shall be for a full four-year term.

44 Any appointed member whose term has expired shall  
45 serve until his successor has been duly appointed and

46 qualified. Any person appointed to fill a vacancy shall  
47 serve only for the unexpired term. Any appointed  
48 member is eligible for reappointment. Members of the  
49 authority are not entitled to compensation for services  
50 performed as members but are entitled to reimbursement  
51 for all reasonable and necessary expenses actually  
52 incurred in the performance of their duties.

53 All members of the board of the authority shall  
54 execute an official bond in a penalty of ten thousand  
55 dollars, conditioned as required by law. Premiums on  
56 such bond shall be paid from funds accruing to the  
57 authority. Such bond shall be approved as to form by the  
58 attorney general and as to sufficiency by the governor  
59 and, when fully executed and approved, shall be filed in  
60 the office of the secretary of state.

**§31-20-4. Governing body; organization and meetings;  
quorum; administrative expenses.**

1 The governing body of the authority shall consist of  
2 the voting members of the board as provided for in  
3 section three of this article and shall exercise all the  
4 powers given to the authority in this article. On the  
5 second Monday of July of each odd-numbered year, the  
6 board shall meet to elect a chairman and a secretary from  
7 among its own members. The secretary of the department  
8 of administration or his or her designated representative  
9 shall serve as treasurer of the board. The board shall  
10 otherwise meet quarterly, unless a special meeting is called  
11 by its chairman.

12 A majority of the members of the board constitute a  
13 quorum, and a quorum must be present for the board to  
14 conduct business. Unless the bylaws require a larger  
15 number, action may be taken by majority vote of the  
16 members present.

17 The board shall prescribe, amend and repeal bylaws  
18 and rules governing the manner in which the business of  
19 the authority is conducted and shall review and approve  
20 the budget prepared by the executive director annually.

21       The governor shall, with the advice and consent of the  
22 Senate, appoint an executive director to act as its chief  
23 executive officer, to serve at the will and pleasure of the  
24 governor. The executive director is empowered to employ  
25 any other personnel he or she determines necessary and  
26 may appoint counsel and legal staff for the authority and  
27 retain such temporary engineering, financial and other  
28 consultants or technicians as may be required for any  
29 special study or survey consistent with the provisions of  
30 this article. The executive director is further empowered  
31 to engage in negotiations and carry out plans to  
32 implement the provisions of this article and to exercise  
33 those powers listed in section five of this article on behalf  
34 of the authority. The executive director shall prepare  
35 annually a budget to be submitted to the board for its  
36 review and approval.

37       All costs incidental to the administration of the  
38 authority, including office expense, personal services  
39 expense and current expense, shall be paid from the  
40 regional jail and correctional facility development fund in  
41 accordance with guidelines issued by the board of the  
42 authority.

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

1       Public hearings pursuant to this section shall be held  
2 by the authority in convenient locations for public  
3 comment on the establishment of regional jails. The  
4 authority shall cause to be published at least two weeks in  
5 advance of a hearing a Class II-0 legal advertisement, as  
6 provided in section two, article three, chapter fifty-nine of  
7 this code, setting forth the reason for the hearing and the  
8 time, place and date thereof. The publication area shall be  
9 each county which may be included in a region for the  
10 purposes of a regional jail with the county in which the  
11 public hearing is held.

12       In addition to the hearing requirements above, before  
13 beginning construction of a new facility for use as a  
14 regional jail or correctional facility or before beginning  
15 renovation or acquisition of an existing facility for use as  
16 a regional jail facility, which existing facility is not already

17 a jail, correctional facility or secure facility for the  
18 detention of juveniles or persons otherwise involuntarily  
19 committed or confined, the authority shall hold a hearing  
20 for comment by all members of the public on all aspects  
21 relating to the advisability of the use of the site for that  
22 regional jail facility. The authority shall promulgate  
23 legislative rules pursuant to chapter twenty-nine-a of this  
24 code for the requirements for notice and other procedures  
25 of said public hearings, which requirements shall be as  
26 similar as practicable to those hearings conducted  
27 regarding the construction of bridges by the West Virginia  
28 department of highways.

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

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

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

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

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

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

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

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

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

58 (i) To make rules for the management and regulation  
59 of its affairs pursuant to article three, chapter  
60 twenty-nine-a of this code.

61 (j) To appoint officers, agents and employees.

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

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

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

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

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

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

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

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

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

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

127 (s) To the extent permitted under its contracts with the  
128 holders of bonds, security interests or notes of the  
129 authority, to consent to any modification of the rate of  
130 interest, time of payment of any installment of principal or

131 interest, security or any other term of any bond, security  
132 interest, note or contract or agreement of any kind to  
133 which the authority is a party.

134 (t) To sell security interests in the loan portfolio of the  
135 authority. The security interests shall be evidenced by  
136 instruments issued by the authority. Proceeds from the  
137 sale of security interests may be issued in the same manner  
138 and for the same purposes as bond and note revenues.

139 (u) To propose legislative rules for promulgation, in  
140 accordance with the provisions of article three, chapter  
141 twenty-nine-a of this code, to implement and make  
142 effective the powers, duties and responsibilities invested in  
143 the authority by the provisions of this article and otherwise  
144 by law.

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

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

155 (x) To exercise all power and authority provided in  
156 this article necessary and convenient to plan, finance,  
157 construct, renovate, repair and replace juvenile detention  
158 facilities and juvenile correctional facilities.

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

**§31-20-5c. Additional powers and duties of the authority;  
juvenile detention facilities.**

1           (a) The regional jail and correctional facility authority  
2 shall complete a comprehensive study of all existing  
3 juvenile detention facilities in the state of West Virginia no  
4 later than the first day of October, one thousand nine  
5 hundred ninety-eight. During the conduct of this study, all  
6 state agencies shall provide the authority with any relevant  
7 information and materials that the authority requests. This  
8 study shall include an assessment of the physical  
9 conditions of confinement within the existing juvenile  
10 detention facilities and the relative need for facilities of  
11 that type, taking into account the broad range of  
12 alternatives that are available for juveniles who are in the  
13 custody of the division of juvenile services.

14           (b) After completing this study, the authority shall  
15 submit a report to the governor proposing a plan for the  
16 establishment of regional juvenile detention facilities.

17           (c) The authority shall consider, but is not limited to,  
18 the following when in developing the regional juvenile  
19 detention facilities plan:

20           (1) All federal statutes and mandates concerning the  
21 location, construction, operation, administration and  
22 staffing of juvenile detention facilities;

23           (2) The relative physical condition of the juvenile  
24 detention facilities located within the state;

25           (3) The transportation costs associated with the  
26 establishment of centralized and regional juvenile  
27 detention facilities, including, but not limited to, the costs  
28 of transporting detained juveniles to court appearances  
29 and for other necessary absences from the facility;

30           (4) The availability of medical services and  
31 educational and recreational opportunities;

32           (5) Information received from public hearings;

33           (6) The relative savings in cost and efficiency of  
34 providing regional juvenile detention services at facilities  
35 located adjacent to existing regional jail facilities,  
36 including moneys saved by the sharing of certain staff and  
37 services, including food services, to the extent that such

38 sharing of resources is permitted by federal law and  
39 guidelines;

40 (7) Available facilities located adjacent to existing  
41 regional jails which may be used as regional juvenile  
42 detention facilities, including, but not limited to, existing  
43 county and state owned properties: *Provided*, That if the  
44 authority determines that an existing facility meets  
45 applicable standards, including all federal standards, or  
46 could reasonably be made to meet the standards for a  
47 regional juvenile detention facility, the authority may  
48 proceed to acquire that existing facility and compensate  
49 the owner thereof in an amount that may not exceed fair  
50 market value.

**§31-20-8. Jail facilities standards commission; appointment;  
compensation; vacancies; quorum.**

1 (a) A jail facilities standards commission of twelve  
2 members is hereby created. The superintendent of the  
3 state police or his or her designee shall serve as  
4 chairperson of the commission and is eligible to vote on  
5 matters before the commission. The governor shall  
6 appoint two county sheriffs, to be chosen from a list of  
7 three names provided by the president of the West  
8 Virginia sheriffs' association, three county commissioners,  
9 to be chosen from a list of five names provided by the  
10 president of the West Virginia county commissioners'  
11 association, and one chief of police, to be chosen from a  
12 list of three names provided by the president of the West  
13 Virginia police chiefs' association. Each of the  
14 appointed members shall serve for a term of three years, is  
15 eligible for reappointment and may vote on matters before  
16 the commission. The executive director of the regional  
17 jail and correctional facility authority, the commissioner  
18 of the division of corrections, the commissioner of the  
19 bureau of public health, the state fire marshal, and the  
20 superintendent of schools or their designees shall be  
21 members ex officio in an advisory capacity.

22 (b) Members of the commission shall serve without  
23 compensation, but may be reimbursed by the regional jail  
24 and correctional facility authority for reasonable and  
25 necessary expenses incurred in the performance of their

26 duties. The regional jail and correctional facility authority  
27 shall provide the commission with secretarial and other  
28 necessary services.

29 (c) A vacancy among the appointed members of the  
30 commission shall be filled, within thirty days, in the same  
31 manner as the original appointment. A quorum consists  
32 of four of the seven voting members.

**§31-20-8a. Juvenile facilities standards commission; appointment; compensation; vacancies; quorum.**

1 (a) A juvenile facilities standards commission  
2 consisting of nine members is hereby created. The  
3 governor shall appoint two citizen members who are  
4 experienced and knowledgeable in the field of law  
5 enforcement; one citizen member who is experienced and  
6 knowledgeable in the field of juvenile development; and  
7 one lay member. Each of these appointed members shall  
8 serve for a term of three years and be eligible for  
9 reappointment. The secretary of the department of  
10 military affairs and public safety shall be a member ex  
11 officio and shall serve as the commission's chairman. The  
12 state fire marshal and the chairman of the juvenile justice  
13 subcommittee of the governor's committee on crime,  
14 delinquency and correction shall be members ex officio.  
15 The director of the division of juvenile services and the  
16 executive director of the regional jail and correctional  
17 facility authority shall be members ex officio but shall  
18 serve in an advisory capacity and are not entitled to vote  
19 on matters coming before the commission.

20 (b) Members of the commission shall serve without  
21 compensation, but may be reimbursed by the division of  
22 juvenile services for reasonable and necessary expenses  
23 incurred in the performance of their duties. The division  
24 of juvenile services shall provide the commission with  
25 secretarial and other necessary services.

26 (c) A vacancy among the appointed members of the  
27 commission shall be filled, within thirty days, in the same  
28 manner as the original appointment. A quorum consists  
29 of four of the seven voting members.

**§31-20-9. Jail facilities standards commission; purpose, powers and duties.**

1 (a) The purpose of the jail facilities standards  
2 commission is to assure that proper minimum standards  
3 and procedures are developed for jail facility operation,  
4 maintenance and management of inmates for regional jails  
5 and local jail facilities used as temporary holding facilities.  
6 In order to accomplish this purpose, the commission shall:

7 (1) Prescribe standards for the maintenance and  
8 operation of county and regional jails. The standards  
9 shall include, but not be limited to, requirements assuring  
10 adequate space, lighting and ventilation; fire protection  
11 equipment and procedures; provision of specific personal  
12 hygiene articles; bedding, furnishings and clothing; food  
13 services; appropriate staffing and training; sanitation,  
14 safety and hygiene; isolation and suicide prevention;  
15 appropriate medical, dental and other health services;  
16 indoor and outdoor exercise; appropriate vocational and  
17 educational opportunities; classification; inmate rules and  
18 discipline; inmate money and property; religious services;  
19 inmate work programs; library services; visitation, mail  
20 and telephone privileges; and other standards necessary to  
21 assure proper operation: *Provided*, That the standards  
22 developed for the construction, operation and  
23 maintenance of jails apply only to jail facilities completed  
24 after the fifth day of April, one thousand nine hundred  
25 eighty-eight, and that the standards serve only as  
26 guidelines for any jail facility in operation prior to that  
27 date: *Provided, however*, That the commission shall  
28 establish standards and procedures permitting and  
29 implementing in those facilities the double bunking of  
30 inmates in all appropriate cases to the extent that this  
31 practice does not violate federal law;

32 (2) Propose legislative rules for promulgation  
33 pursuant to the provisions of article three, chapter  
34 twenty-nine-a of this code that are necessary to implement  
35 the provisions of this article relating to jail facilities,  
36 including, without limitation, minimum jail and work farm  
37 standards which shall be proposed for promulgation on or  
38 before the first day of July, one thousand nine hundred

39 ninety-nine: *Provided*, That rules filed by the jail and  
40 correctional facilities standards commission and  
41 authorized by the Legislature to be promulgated before  
42 the amendment to this section enacted in the regular  
43 session of the Legislature in the year one thousand nine  
44 hundred ninety-eight remain in force except that such  
45 previously promulgated rules no longer apply to: (i)  
46 Correctional facilities; and (ii) jail facilities that were  
47 originally constructed for use as a jail which were  
48 completed and placed in operation before the fifth day of  
49 April, one thousand nine hundred ninety-eight: *Provided*,  
50 *however*, That such previously promulgated rules shall  
51 serve as guidelines for those facilities that fall within the  
52 specifications of (ii) herein;

53 (3) Develop a process for reviewing and updating the  
54 jail and work farm standards pursuant to the provisions of  
55 article three, chapter twenty-nine-a of this code as  
56 necessary to assure that they conform to current law; and

57 (4) Report periodically to the regional jail and  
58 correctional facility authority and the appropriate county  
59 and municipal authorities to advise, recommend, and  
60 direct actions to be taken by the authority, the county or  
61 the municipality to implement proper minimum jail and  
62 work farm standards.

63 (b) Notwithstanding any other provision of this code  
64 to the contrary, any county commission providing and  
65 maintaining a jail on the effective date of this article may  
66 not be required to provide and maintain a jail after a  
67 regional jail becomes available pursuant to the provisions  
68 of article twenty, chapter thirty-one of this code, unless the  
69 county commission determines that a facility is necessary:  
70 *Provided*, That the county commission may provide and  
71 maintain a holding facility which complies with the  
72 standards set forth for holding facilities in legislative rules  
73 promulgated by the jail facilities standards commission or  
74 its predecessor, the jail and correctional facilities standards  
75 commission.

**§31-20-9a. Juvenile facilities standards commission; purpose;  
powers; and duties.**

1 The purpose of the commission is to assure that  
2 proper minimum standards and procedures are developed  
3 for juvenile detention and juvenile correctional facility  
4 operation, maintenance and management. To this end,  
5 the commission shall:

6 (1) Develop standards for the maintenance and  
7 operation of juvenile detention and correctional facilities.  
8 These standards shall include, but not be limited to,  
9 requirements assuring adequate space, lighting and  
10 ventilation; fire protection equipment and procedures;  
11 provision of specific personal hygiene articles; bedding,  
12 furnishings and clothing; food services; appropriate  
13 staffing and training; sanitation, safety and hygiene;  
14 isolation and suicide prevention; appropriate medical,  
15 dental and other health services; indoor and outdoor  
16 exercise; appropriate vocational and educational  
17 opportunities; rules and discipline; religious services;  
18 vocational programs; library services; visitation, mail and  
19 telephone privileges; and other standards necessary to  
20 assure proper operation.

21 (2) Propose legislative rules for promulgation  
22 pursuant to article three, chapter twenty-nine-a of this  
23 code, including, without limitation, the minimum standards  
24 for juvenile detention and correctional facilities as  
25 provided in subdivision (1) of this section not later than  
26 the first day of January, one thousand nine hundred  
27 ninety-nine.

28 (3) Develop a process for reviewing and updating  
29 these standards as necessary to assure that they conform to  
30 current law.

31 (4) Report periodically to the authority to advise and  
32 recommend actions to be taken by the authority, if  
33 necessary, to implement proper standards in the state's  
34 juvenile detention and correctional facilities.

**§31-20-10. Regional jail and correctional facility development fund.**

1 (a) The regional jail and correctional facility  
2 development fund is hereby created and shall be

3 composed of special accounts in the state treasury. The  
4 fund shall operate as a revolving fund whereby all  
5 appropriations and payments to the fund may be applied  
6 and reapplied by the authority for the purposes of this  
7 article. Separate accounts may be established within the  
8 fund for the purpose of identification of various revenue  
9 resources and payment of specific obligations. These  
10 separate accounts may be used for purposes that include,  
11 but are not limited to, the construction, renovation or  
12 repair of specific facilities, cash control, facility  
13 maintenance and for the individual operating accounts of  
14 facilities operated by the authority. The authority may  
15 create other separate accounts within the fund that it  
16 determines are necessary for the efficient operation of the  
17 authority.

18 (b) Revenues deposited into the fund shall be used to  
19 make payments of interest and shall be pledged as security  
20 for bonds, security interests or notes issued or  
21 lease-purchase obligations entered into with another state  
22 entity by the authority pursuant to this article.

23 (c) Whenever the authority determines that the balance  
24 in the fund is in excess of the immediate requirements of  
25 this article, it may request that the excess be invested until  
26 needed. In this case the excess shall be invested in a  
27 manner consistent with the investment of temporary state  
28 funds. Interest earned on any money invested pursuant to  
29 this section shall be credited to the fund.

30 (d) If the authority determines that funds held in the  
31 fund are in excess of the amount needed to carry out the  
32 purposes of this article, it shall take any action that is  
33 necessary to release the excess and transfer it to the  
34 general revenue fund of the state treasury.

35 (e) The fund shall consist of the following:

36 (1) Amounts raised by the authority by the sale of  
37 bonds or other borrowing authorized by this article;

38 (2) Moneys collected and deposited in the state  
39 treasury which are specifically designated by acts of the  
40 Legislature for inclusion into the fund;

41 (3) Contributions, grants and gifts from any source,  
42 both public and private, which may be used by the  
43 authority for any project or projects;

44 (4) All sums paid by the counties pursuant to  
45 subsection (h) of this section; and

46 (5) All interest earned on investments made by the  
47 state from moneys deposited in this fund.

48 (f) The amounts deposited in the fund shall be  
49 accounted for and expended in the following manner:

50 (1) Amounts raised by the sale of bonds or other  
51 borrowing authorized by this article shall be deposited in a  
52 separate account within the fund and expended for the  
53 purpose of construction, renovation and repair of  
54 correctional facilities, regional jails and juvenile detention  
55 and correctional facilities for which need has been  
56 determined by the authority;

57 (2) Amounts deposited from all other sources shall be  
58 pledged first to the debt service on any bonded  
59 indebtedness, including lease-purchase obligations entered  
60 into by the authority with another state entity or other  
61 obligation incurred by borrowing of the authority;

62 (3) After any requirements of debt service have been  
63 satisfied, the authority shall requisition from the fund the  
64 amounts that are necessary to provide for payment of the  
65 administrative expenses of this article;

66 (4) The authority shall requisition from the fund after  
67 any requirements of debt service have been satisfied the  
68 amounts that are necessary for the maintenance and  
69 operation of the correctional facilities or regional jails or  
70 both that are constructed pursuant to the provisions of this  
71 article and shall expend those amounts for that purpose.  
72 The fund shall make an accounting of all amounts  
73 received from each county by virtue of any filing fees,  
74 court costs or fines required by law to be deposited in the  
75 fund and amounts from the jail improvement funds of the  
76 various counties. After the expenses of administration  
77 have been deducted, the amounts expended in the  
78 respective regions from those sources shall be in

79 proportion to the percentage the amount contributed to  
80 the fund by the counties in each region bears to the total  
81 amount received by the fund from those sources;

82 (5) Notwithstanding any other provisions of this  
83 article, sums paid into the fund by each county pursuant  
84 to subsection (h) of this section for each inmate shall be  
85 placed in a separate account and shall be requisitioned  
86 from the fund to pay for costs incurred at the regional jail  
87 facility at which each inmate was incarcerated; and

88 (6) Any amounts deposited in the fund from other  
89 sources permitted by this article shall be expended in the  
90 respective regions based on particular needs to be  
91 determined by the authority.

92 (g) After a regional jail facility becomes available  
93 pursuant to this article for the incarceration of inmates,  
94 each county within the region shall incarcerate all persons  
95 whom the county would have incarcerated in any jail prior  
96 to the availability of the regional jail facility in the  
97 regional jail facility except those whose incarceration in a  
98 local jail facility used as a local holding facility is  
99 specified as appropriate under the standards and  
100 procedures developed pursuant to section nine of this  
101 article and who the sheriff or the circuit court elects to  
102 incarcerate therein.

103 (h) When inmates are placed in a regional jail facility  
104 pursuant to subsection (g) of this section, the county shall  
105 pay into the regional jail and correctional facility  
106 development fund a cost per day for each incarcerated  
107 inmate to be determined by the regional jail and  
108 correctional facility authority according to criteria and by  
109 procedures established by legislative rules proposed for  
110 promulgation pursuant to article three, chapter  
111 twenty-nine-a of this code to cover the costs of operating  
112 the regional jail facilities of this state to maintain each  
113 inmate. The per diem costs for incarcerating inmates may  
114 not include the cost of construction, acquisition or  
115 renovation of the regional jail facilities: *Provided*, That  
116 each regional jail facility operating in this state shall keep  
117 a record of the date and time that an inmate is  
118 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.**

1 The president of the Senate and the speaker of the  
2 House of Delegates shall each designate five members of  
3 their respective houses, at least one of whom shall be a  
4 member of the minority party, to serve on a legislative  
5 oversight committee charged with immediate and ongoing  
6 oversight of the authority and the commissions, and  
7 functions and duties of the authority and the commissions  
8 created by this article. This committee shall report  
9 regularly at each legislative session on the implementation  
10 of the purposes set forth in section one-a of this article. It  
11 shall regularly investigate all matters relating to integrity,  
12 probity and foresight in funding, operating and planning  
13 the correctional system on state, regional and county  
14 levels, and may include the planning, funding,  
15 constructing and operating of juvenile detention and  
16 correctional facilities. Specifically, the committee shall  
17 study and make recommendations to the Legislature as to  
18 the revision of the system of classifying adult inmates, with  
19 a view variously to decreasing the prison population  
20 confined in "maximum security" facilities and to  
21 designating and meeting the needs of inmates classified as  
22 elderly, disabled or otherwise handicapped. In addition,  
23 the committee may study and make recommendations to  
24 the Legislature relating to the system of juvenile detention  
25 and juvenile corrections.

26 The committee shall further study and inform the state  
27 judiciary of the impact of sentencing on the composition  
28 of the prison population in proportion to the use of  
29 facilities. It shall recommend alternatives to long-term  
30 sentencing, and shall recommend measures to improve the  
31 quality of correctional staff and facilitate  
32 nonconfrontational contacts with inmates. The committee  
33 shall investigate means to structure inmates' time to ensure

34 genuine and willing reaccommodations to societal norms;  
35 shall probe and coordinate all available means for funding  
36 state, regional and county correctional facilities; and shall  
37 contract with penal experts to study these issues in  
38 appropriate depth and perspective. Annually, to predict a  
39 prudent use of available funds, the committee shall study  
40 the profile of the inmate population with regard to its age  
41 and social background and needs.

42 The committee shall recommend to the Legislature the  
43 funding required to execute these functions. It shall meet  
44 regularly with the governing body of the authority  
45 established in this article to determine what may be  
46 required for full and timely compliance with all federal  
47 mandates and court-ordered changes in the correctional  
48 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.**

1 (a) Every insurer transacting insurance in West  
2 Virginia shall file with the commissioner, on or before the  
3 first day of March, each year, a financial statement made  
4 under oath of its president or secretary and on a form  
5 prescribed by the commissioner. The insurer shall also,  
6 on or before the first day of March of each year subject to  
7 the provisions of section fourteen-c of this article, under  
8 the oath of its president or secretary, make a premium tax  
9 return for the previous calendar year, on a form  
10 prescribed by the commissioner showing the gross amount  
11 of direct premiums, whether designated as a premium or  
12 by some other name, collected and received by it during  
13 the previous calendar year on policies covering risks  
14 resident, located or to be performed in this state and

15 compute the amount of premium tax chargeable to it in  
16 accordance with the provisions of this article, deducting  
17 the amount of quarterly payments as required to be made  
18 pursuant to the provisions of section fourteen-c of this  
19 article, if any, less any adjustments to the gross amount of  
20 the direct premiums made during such calendar year, if  
21 any, and transmit with the return to the commissioner a  
22 remittance in full for the tax due. The tax is the sum  
23 equal to two percent of the gross direct premiums,  
24 including dividends, by whatever name called, on  
25 participating policies applied in reduction of premiums,  
26 less premiums returned to policyholders because of  
27 cancellation of policies, and also includes any additional  
28 tax due under section fourteen-a of this article. All taxes  
29 received by the commissioner shall be paid into the  
30 insurance tax fund created in subsection (b) of this  
31 section.

32 (b) There is created a special revenue fund in the state  
33 treasury which is designated the "insurance tax fund."  
34 This fund is not part of the general revenue fund of the  
35 state. It consists of all amounts deposited in the fund  
36 pursuant to subsection (a) of this section, sections fifteen  
37 and seventeen of this article, any appropriations to the  
38 fund, all interest earned from investment of the fund and  
39 any gifts, grants or contributions received by the fund.  
40 The treasurer shall administer the fund.

41 (c) The treasurer shall dedicate and transfer from the  
42 insurance tax fund to the regional jail and correctional  
43 facility investment fund created under the provisions of  
44 section twenty, article six, chapter twelve of this code, on  
45 or before the tenth day of each month, an amount equal to  
46 one twelfth of the projected annual investment earnings to  
47 be paid and the capital invested to be returned, as certified  
48 to the treasurer by the investment management board:  
49 *Provided*, That the amount dedicated and transferred may  
50 not exceed twenty million dollars in any fiscal year. In  
51 the event there are insufficient funds available in any  
52 month to transfer the amount required pursuant to this  
53 subsection to the regional jail and correctional facility  
54 investment fund, the deficiency shall be added to the  
55 amount transferred in the next succeeding month in which

56 revenues are available to transfer the deficiency. Each  
57 month a lien on the revenues generated from the  
58 insurance premium tax, the annuity tax and the minimum  
59 tax, provided in this section and sections fifteen and  
60 seventeen of this article, up to a maximum amount equal  
61 to one twelfth of the projected annual principal and return  
62 is granted to the investment management board to secure  
63 the investment made with the regional jail and correctional  
64 facility authority pursuant to section twenty, article six,  
65 chapter twelve of this code. The treasurer shall, no later  
66 than the last business day of each month, transfer amounts  
67 the treasurer determines are not necessary for making  
68 refunds under this article to meet the requirements of  
69 subsection (d), section twenty, article six, chapter twelve of  
70 this code, to the credit of the general revenue fund.

71 (d) The amendment to this section enacted during the  
72 regular session of the Legislature in the year one thousand  
73 nine hundred ninety-eight is effective on the first day of  
74 July, one thousand nine hundred ninety-eight.

### §33-3-15. Annuity tax.

1 (a) Every life insurer transacting insurance in West  
2 Virginia shall make a return to the commissioner annually  
3 on a form prescribed by the commissioner, on or before  
4 the first day of March, under the oath of its president or  
5 secretary, of the gross amount of annuity considerations  
6 collected and received by it during the previous calendar  
7 year on business transacted in this state and stating the  
8 amount of tax due under this section, together with  
9 payment in full for the tax due. The tax is the sum equal  
10 to one per centum of the gross amount of the annuity  
11 considerations, less annuity considerations returned and  
12 less termination allowances on group annuity contracts.  
13 All the taxes received by the commissioner shall be paid  
14 into the insurance tax fund created in subsection (b),  
15 section fourteen of this article.

16 (b) The amendment to this section enacted during the  
17 regular session of the Legislature in the year one thousand  
18 nine hundred ninety-eight is effective on the first day of  
19 July, one thousand nine hundred ninety-eight.

**§33-3-17. Minimum tax payable.**

1 (a) The minimum amount of tax payable by any  
2 insurer licensed in the state of West Virginia when  
3 considering the aggregate payments due from all of the  
4 taxes imposed by this article is two hundred dollars for  
5 any calendar year. This minimum tax is payable annually  
6 on or before the first day of March and shall be calculated  
7 on a form prescribed by the commissioner. Except as  
8 otherwise provided in this section, all provisions of this  
9 article relating to the levy, imposition and collection of the  
10 regular premium tax are applicable to the levy, imposition  
11 and collection of this minimum tax. All moneys received  
12 by the commissioner from this minimum tax shall be paid  
13 into the insurance tax fund created in subsection (b),  
14 section fourteen of this article.

15 (b) The amendment to this section enacted during the  
16 regular session of the Legislature in the year one thousand  
17 nine hundred ninety-eight is effective on the first day of  
18 July, one thousand nine hundred ninety-eight.

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## CHAPTER 96

(S. B. 548—By Senators Wooton, Ball, Bowman, Dittmar, Kessler, Ross,  
Schoonover, Snyder, Buckalew, Deem and Kimble)

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[Passed March 5, 1998; to take effect July 1, 1998. Approved by the Governor.]

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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.**

1       The commissioner of corrections shall manage, direct,  
2 control and govern the following penal or correctional  
3 institutions and any others placed under his or her  
4 jurisdiction or control:

5       Mount Olive correctional complex;

6       Huttonsville correctional center;

7       Anthony correctional center;

8       Denmar correctional center;

9       Pruntytown correctional center;

10      Northern West Virginia correctional center; and

11      St. Marys correctional center.

12      Jurisdiction of and title to the West Virginia children's  
13 home at Elkins are hereby transferred to the department  
14 of health and human resources, which shall be the  
15 custodian of all deeds and other muniments of title to the  
16 property and record those that are susceptible of  
17 recordation to be recorded in the proper offices.  
18 Notwithstanding any provision of this code to the  
19 contrary, the West Virginia children's home shall be  
20 managed and controlled by a superintendent appointed by  
21 the commissioner of health and human resources.

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

28      The commissioner is hereby authorized to serve as a  
29 member of the commission for distribution of surplus

30 foods and exercise all powers and authority otherwise  
31 granted to him or her in this article to implement the pilot  
32 program for delivery of leftover prepared foods at any  
33 institution under his or her control and supervision,  
34 pursuant to section seventeen, article two, chapter eighteen  
35 of this code.

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

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## CHAPTER 97

(Com. Sub. for H. B. 2895—By Delegates Leach, Beane, Seacrist,  
Kelley and Proudfoot)

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

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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.

1       The commissioner of corrections is authorized to  
2 make rules for the proper execution of his or her duties  
3 and powers; adopt rules for the government of the  
4 institutions named or referred to in section three of this  
5 article; adopt rules for the administration of the financial  
6 and business affairs of the institutions named or referred  
7 to in section four of this article; and establish policies  
8 regarding the treatment of mentally ill inmates, which  
9 reflect the safety and security concerns specific to  
10 correctional facilities. Notwithstanding any provisions of  
11 law to the contrary, the division of corrections is not  
12 subject to the rules promulgated by the board of health  
13 for the treatment of mentally ill patients nor the mandates  
14 developed pursuant to *E. H. v. Matin*.

15       Consistent with the provisions of this article, the  
16 commissioner shall prescribe the duties of the persons  
17 connected with the management of institutions. When any  
18 of the guards, attendants, or other employees are  
19 uniformed, the commissioner shall prescribe the design, or  
20 designs, of the uniforms, which shall be dissimilar to the  
21 design of the uniform worn by the members of the state  
22 police. When the institution is located in, or in close  
23 proximity to, a municipality, no guard, attendant or other  
24 employee may wear the cap or caps designed by the  
25 commissioner as part of the uniform, when not actually on  
26 duty connected with his or her employment, nor shall the  
27 municipality adopt for its police officers or other  
28 employees a uniform which is similar in design to the  
29 uniform adopted by the commissioner.

30       Any person violating the provisions of this article is  
31 guilty of a misdemeanor and, upon conviction, shall be  
32 punished by a fine of not more than ten dollars, or by  
33 imprisonment for ten days, or both.

## CHAPTER 98

(Com. Sub. for H. B. 4221—By Delegates Cann, Kominar, Coleman,  
Michael, Martin, Pino and Border)

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[Passed March 11, 1998; in effect ninety days from passage. Approved by the Governor.]

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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.

1 (a) The commissioner is authorized to assess inmates  
2 serving a sentence in any state penal or correctional  
3 facility reasonable charges for health care and treatment  
4 services provided to them by the state. The charges  
5 assessed against an inmate may be deducted directly from  
6 the inmate's trustee account without the inmate's consent.  
7 The inmate shall be notified of the amount deducted and  
8 the charges to which it has been applied.

9 (b) As used in this section, a "reasonable charge"  
10 may not exceed the sum of five dollars for any billable  
11 service. Inmates shall be notified of the fee schedule,  
12 billable services, and exempt services. Services initiated by  
13 the inmate shall be assessed a fee, except that no charge  
14 may be assessed for: (1) A specific health care service  
15 required under the law of this state, including, by way of  
16 illustration, tuberculin testing; (2) an emergency service  
17 following a traumatic injury other than a self-induced

18 injury, or necessary to prevent death or severe or  
19 permanent disability; (3) diagnosis and treatment of  
20 communicable diseases, including, by way of illustration,  
21 tuberculosis or hepatitis; (4) treatment of diagnosed  
22 severe mental illness; (5) treatment of specific chronic  
23 conditions identified by the commissioner, including heart  
24 disease and diabetes; (6) staff-initiated care, including  
25 follow-up and referral visits; (7) preventive services that  
26 the commissioner determines are to be provided or made  
27 available to all inmates, including services related to  
28 disease prevention and promotion of proper health habits;  
29 or (8) such other services as may be exempted by rule of  
30 the commissioner. No inmate may be denied any  
31 necessary billable medical service because of inability to  
32 pay the charge.

33 (c) Each inmate shall be afforded an opportunity at  
34 least quarterly to review all deposits into, withdrawals from  
35 and balance remaining in the inmate's trustee account  
36 during the preceding three months.

37 (d) The commissioner shall promulgate interpretive  
38 rules implementing this section pursuant to article three,  
39 chapter twenty-nine-a of this code prior to making any  
40 assessment under this section. The rules may establish the  
41 fee schedule and list of billable services and further define  
42 services to be exempted.

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## CHAPTER 99

(H. B. 2698—By Delegates Ashley and Staton)

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

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AN ACT to amend and reenact section ten, article five, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to private prisons and removing the former Spencer state hospital as a potential site for a private prison facility.

*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  
2       the proposed facility. Approval shall be in accordance  
3       with legislative rules promulgated in accordance with  
4       chapter twenty-nine-a of this code. One such legislative  
5       rule shall establish criteria for identifying and evaluating  
6       potential sites for private prisons and shall provide for a  
7       public hearing or hearings to allow reasonable  
8       participation in the selection process by the citizens of the  
9       area to be affected by the construction and operation of a  
10      private prison.

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## CHAPTER 100

(S. B. 757—By Senators Wooton, Ball, Bowman, Hunter, Kessler,  
Oliverio, Ross, Snyder, White, Buckalew and Deem)

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

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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.**

1 Section one, article five, chapter twenty-eight of the  
 2 code of West Virginia, one thousand nine hundred thirty-  
 3 one, as amended, is hereby repealed.

**§2. Repeal of section relating to qualifications of officers and employees.**

1 Section twenty-two, article five, chapter twenty-eight of  
 2 the code of West Virginia, one thousand nine hundred  
 3 thirty-one, as amended, is hereby repealed.

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## CHAPTER 101

(S. B. 581—By Senators Wooton, Ball, Bowman, Dittmar, Fanning,  
 Hunter, Kessler, Oliverio, Ross, Schoonover,  
 Snyder, White, Buckalew, Kimble and Scott)

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

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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.**

**§62-12-19. Violation of parole.**

1 (a) If at any time during the period of parole, there  
 2 shall be reasonable cause to believe that the parolee has  
 3 violated any of the conditions of his release on parole, the  
 4 parole officer may arrest him with or without an order or

5 warrant, or the commissioner of corrections may issue its  
6 written order or warrant for his arrest, which written order  
7 or warrant shall be sufficient for his arrest by any officer  
8 charged with the duty of executing an ordinary criminal  
9 process. The commissioner's written order or warrant  
10 delivered to the sheriff against the paroled prisoner shall  
11 be a command to keep custody of the parolee for the  
12 jurisdiction of the division of corrections, and during the  
13 period of custody, the parolee may be admitted to bail by  
14 the court before which the parolee was sentenced. If the  
15 parolee is not released on a bond, the costs of confining  
16 such paroled prisoner shall be paid out of the funds  
17 appropriated for the division of corrections.

18 (b) When a parolee is under arrest for violation of the  
19 conditions of his parole, he shall be given a prompt and  
20 summary hearing, at which the parolee and his counsel  
21 shall be given an opportunity to attend. If at the hearing,  
22 it shall appear to the satisfaction of the board that the  
23 parolee has violated any condition of his release on parole,  
24 or any rules and regulations for his supervision, the board  
25 may revoke his parole and may require him to serve in  
26 prison the remainder or any portion of his maximum  
27 sentence for which, at the time of his release, he was  
28 subject to imprisonment: *Provided*, That if the violation  
29 of the conditions of parole or rules and regulations for his  
30 supervision is not a felony as set out in section eighteen of  
31 this article, the board may, if in its judgment the best  
32 interests of justice do not require that the parole be  
33 revoked, release him from custody and continue him on  
34 parole.

35 (c) When a parolee has violated the conditions of his  
36 release on parole by confession to, or being convicted of  
37 any of the crimes set forth in section eighteen of this  
38 article, he shall be returned to the custody of the division  
39 of corrections to serve the remainder of his maximum  
40 sentence, during which remaining part of his sentence he  
41 shall be ineligible for further parole.

42 (d) Whenever the parole of a paroled prisoner has

43 been revoked, the commissioner shall upon receipt of the  
44 board's written order of revocation, convey and transport  
45 the paroled prisoner to a state penal institution from which  
46 he was granted a release on parole. A paroled prisoner  
47 whose parole has been revoked shall remain in custody of  
48 the sheriff until delivery to a corrections officer sent and  
49 duly authorized by the commissioner for the removal of  
50 the paroled prisoner to a state penal institution; the cost of  
51 confining such paroled prisoner shall be paid out of the  
52 funds appropriated for the penitentiary from which he was  
53 paroled.

54 (e) When a paroled prisoner is convicted of, or  
55 confesses to, any one of the crimes enumerated in section  
56 eighteen of this article, it shall be the duty of the board to  
57 cause him to be returned to this state for a summary  
58 hearing as provided by this article. A warrant filed by the  
59 commissioner shall stop the running of his sentence until  
60 the paroled prisoner is returned to custody. Whenever a  
61 paroled prisoner has absconded supervision, the  
62 commissioner shall issue a warrant for his apprehension  
63 and return to this state for the hearing provided for in this  
64 article: *Provided*, That the board may, if it be of opinion  
65 the best interests of justice do not require such hearing,  
66 cause the paroled absconder to be released to continue on  
67 parole.

68 (f) Whenever a parolee, who has absconded  
69 supervision or has been transferred out of this state for  
70 supervision pursuant to section one, article six, chapter  
71 twenty-eight of this code is returned to West Virginia due  
72 to a violation of parole and costs are incurred by the  
73 division of corrections, the commissioner may assess  
74 reasonable costs from the parolee's inmate funds as  
75 reimbursement to the division of corrections for the costs  
76 of returning him to the state of West Virginia.

## CHAPTER 102

(Com. Sub. for S. B. 422—By Senators Hunter, Love, Buckalew and Ball)

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

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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.

1 Every commissioner of a county commission and  
2 every clerk of a circuit court shall give bond with good  
3 security, to be approved by the circuit court, or the judge  
4 thereof in vacation; and every sheriff, deputy sheriff,  
5 surveyor of lands, clerk of a county commission, assessor,  
6 county superintendent of schools, notary public and  
7 magistrate shall give bond with good security, to be  
8 approved, unless otherwise provided by law, by the county  
9 commission of the county in which such officer is to act.  
10 The penalty of the bond of each commissioner of a  
11 county commission shall be not less than twenty thousand  
12 dollars and not more than two hundred thousand dollars,  
13 the amount to be fixed by the circuit court of the county,  
14 or the judge thereof in vacation, by order entered of  
15 record on the proper order books of both the county and  
16 circuit courts; of the clerk of the circuit court, not less than  
17 ten thousand nor more than fifty thousand dollars; of the  
18 sheriff, not less than one hundred thousand dollars nor  
19 more than the aggregate amount of all state, county,  
20 district, school, municipal and other moneys which will  
21 probably come into his hands during any one year of his  
22 term of office; of the deputy sheriff, not less than thirty-

23 five thousand nor more than one hundred thousand  
24 dollars; of the surveyor of lands, not less than one  
25 thousand nor more than three thousand dollars; of the  
26 clerk of the county commission, not less than ten thousand  
27 nor more than fifty thousand dollars; of the assessor, not  
28 less than two thousand nor more than five thousand  
29 dollars; of the county superintendent of schools, not less  
30 than ten thousand nor more than fifty thousand dollars; of  
31 a notary public, not less than two hundred fifty nor more  
32 than one thousand dollars. Any public body required to  
33 pay the premiums on official bonds may provide a  
34 blanket bond policy for two or more such official bonds:  
35 *Provided*, That the bond herein required to be given by a  
36 notary public may be given before the clerk of the county  
37 commission, in the vacation of said commission, and  
38 approved by it at its next regular session.

39 For the purposes of this section, "deputy sheriff" shall  
40 mean a person appointed by a sheriff as his deputy whose  
41 primary duty as such deputy is within the scope of active,  
42 general law enforcement and as such is authorized to carry  
43 deadly weapons, patrol the highways, perform police  
44 functions, make arrests or safeguard prisoners.

45 The bond described in this section is not required for  
46 deputy sheriffs if a county purchases professional liability  
47 insurance pursuant to the provisions of section three,  
48 article fourteen-a, chapter seven of this code.

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## CHAPTER 103

(Com. Sub. for S. B. 228—By Senators Love, Snyder, Hunter and Buckalew)

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

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AN ACT to amend and reenact section three-ff, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of county commissions to adopt ordinances regulating the repair, alteration, improvement, vacating,

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.**

1 (a) Plenary power and authority are hereby conferred  
2 upon every county commission to adopt ordinances  
3 regulating the repair, alteration or improvement, or the  
4 vacating and closing or removal or demolition, or any  
5 combination thereof, of any dwellings or other buildings,  
6 except for buildings utilized for farm purposes on land  
7 actually being used for farming, unfit for human  
8 habitation due to dilapidation, defects increasing the  
9 hazard of fire, accidents or other calamities, lack of  
10 ventilation, light or sanitary facilities or any other  
11 conditions prevailing in any dwelling or building, whether  
12 used for human habitation or not, which would cause such  
13 dwellings or other buildings to be unsafe, unsanitary,  
14 dangerous or detrimental to the public safety or welfare,  
15 whether the result of natural or manmade force or effect.

16 (b) Plenary power and authority are hereby conferred  
17 upon every county commission to adopt ordinances  
18 regulating the removal and clean up of any accumulation  
19 of refuse or debris, overgrown vegetation or toxic spillage  
20 or toxic seepage located on private lands which is deemed  
21 to be unsafe, unsanitary, dangerous or detrimental to the  
22 public safety or welfare whether the result of natural or  
23 manmade force or effect.

24 (c) The county commission in formally adopting such  
25 ordinances shall designate an enforcement agency, which  
26 shall consist of the county engineer (or other technically  
27 qualified county employee or consulting engineer),  
28 county health officer or his or her designee, a fire chief  
29 from a county fire company, and two members at large  
30 selected by the county commission to serve two-year  
31 terms. The county sheriff shall serve as an ex officio

32 member of such enforcement agency and the county  
33 officer charged with enforcing the orders of the county  
34 commission under this section.

35 (d) Any ordinance adopted pursuant to the provisions  
36 of this section shall provide fair and equitable rules of  
37 procedure and any other standards deemed necessary to  
38 guide the enforcement agency, or its agents, in the  
39 investigation of dwelling or building conditions,  
40 accumulation of refuse or debris, overgrown vegetation or  
41 toxic spillage or toxic seepage, and shall provide for fair  
42 and equitable rules of procedure for instituting and  
43 conducting hearings in such matters before the county  
44 commission. Any entrance upon premises for the purpose  
45 of making examinations shall be made in such manner as  
46 to cause the least possible inconvenience to the persons in  
47 possession.

48 (e) Any county commission adopting ordinances  
49 authorized by this section shall hear and determine  
50 complaints of the enforcement agency. Complaints shall  
51 be initiated by petition of the county engineer (or other  
52 technically qualified county employee or consulting  
53 engineer) on behalf of and at the direction of the  
54 enforcement agency, but only after that agency has  
55 investigated and determined that any dwelling, building,  
56 accumulation of refuse or debris, overgrown vegetation or  
57 toxic spillage or toxic seepage is unsafe, unsanitary,  
58 dangerous or detrimental to the public safety or welfare  
59 and should be repaired, altered, improved, vacated,  
60 removed, closed, cleaned or demolished. The county  
61 commission shall cause the owner or owners of the private  
62 land in question to be served with a copy of the complaint.  
63 Service shall be accomplished in the manner provided in  
64 rule four of the West Virginia rules of civil procedure. The  
65 complaint shall state the findings and recommendations of  
66 the enforcement agency and that unless the owner or  
67 owners of the property file with the clerk of the county  
68 commission a written request for a hearing within ten days

69 of receipt of the complaint, an order will be issued by the  
70 county commission implementing the recommendations  
71 of the enforcement agency. If the owner or owners of the  
72 property file a request for a hearing, the county  
73 commission shall issue an order setting this matter down  
74 for hearing within twenty days. Hearings shall be  
75 recorded by electronic device or by court reporter. The  
76 West Virginia rules of evidence do not apply to such  
77 proceedings, but each party has the right to present  
78 evidence and examine and cross examine all witnesses.  
79 The enforcement agency has the burden of proving its  
80 allegation by a preponderance of the evidence and has the  
81 duty to go forward with the evidence. At the conclusion  
82 of the hearing the county commission shall make findings  
83 of fact, determinations and conclusions of law as to  
84 whether the dwelling or building: Is unfit for human  
85 habitation due to dilapidation; has defects that increase the  
86 hazard of fire, accidents or other calamities, lacks  
87 ventilation, light or sanitary facilities; or any other  
88 conditions prevailing in the dwelling or building, whether  
89 used for human habitation or not, and whether the result  
90 of natural or manmade force or effect, which would cause  
91 such dwelling or other building to be unsafe, unsanitary,  
92 dangerous or detrimental to the public safety or welfare;  
93 or whether there is an accumulation of refuse or debris;  
94 overgrown vegetation; toxic spillage or toxic seepage on  
95 private lands which is deemed to be unsafe, unsanitary,  
96 dangerous or detrimental to the public safety or welfare,  
97 whether the result of natural or manmade force or effect.  
98 The county commission has authority to order the owner  
99 or owners thereof to repair, alter, improve, vacate, remove,  
100 close, clean up or demolish the dwelling or building in  
101 question or to remove or clean up any accumulation of  
102 refuse or debris, overgrown vegetation or toxic spillage or  
103 toxic seepage within a reasonable time and to impose daily  
104 civil monetary penalties on the owner or owners who fail  
105 to obey such an order. Appeals from the county  
106 commission to the circuit court shall be in accordance with

107 the provisions of article three, chapter fifty-eight of this  
108 code.

109 (f) Upon the failure of the owner or owners of the  
110 private land to perform the ordered duties and obligations  
111 as set forth in the order of the county commission, the  
112 county commission may advertise for and seek contractors  
113 to make the ordered repairs, alterations or improvements,  
114 or the ordered demolition, removal or clean up. The  
115 county commission may enter into any contract with any  
116 such contractor to accomplish the ordered repairs,  
117 alterations or improvements, or the ordered demolition,  
118 removal or clean up.

119 (g) A civil proceeding may be brought in circuit court  
120 by the county commission against the owner or owners of  
121 the private land which is the subject matter of the order of  
122 the county commission to subject the private land in  
123 question to a lien for the amount of the contractor's costs  
124 in making these ordered repairs, alterations or  
125 improvements, or ordered demolition, removal or clean up  
126 together with any daily civil monetary penalty imposed  
127 and reasonable attorney fees and court costs and to order  
128 and decree the sale of the private land in question to  
129 satisfy the lien, and to order and decree that the contractor  
130 may enter upon the private land in question at any and all  
131 times necessary to make improvements, or ordered repairs,  
132 alterations or improvements, or ordered demolition,  
133 removal or clean up. In addition, the county commission  
134 shall have the authority to institute a civil action in a court  
135 of competent jurisdiction against the landowner or other  
136 responsible party for all costs incurred by the county with  
137 respect to the property and for reasonable attorney fees  
138 and court costs incurred in the prosecution of the action.

139 (h) County commissions have the power and authority  
140 to receive and accept grants, subsidies, donations and  
141 services in kind consistent with the objectives of this  
142 section.

# CHAPTER 104

(S. B. 209—By Senator Helmick)

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[Passed February 20, 1998; in effect ninety days from passage. Approved by the Governor.]

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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.

1       On or before the thirtieth day of June, of each year,  
2       the county commission of every county shall, by order of  
3       record, designate all of the banking institutions, as defined  
4       in section two, article one, chapter thirty-one-a of this  
5       code, situated in the county and duly incorporated under  
6       the laws of any state, or organized under the laws of the  
7       United States, as depositories of public moneys: *Provided,*  
8       That in any county where no such banking institutions  
9       exist, or where such banking institutions fail, refuse or  
10      neglect to comply with all the provisions and conditions of  
11      this article, the county commission shall designate some  
12      qualified banking institution in some other county of this  
13      state convenient to the county seat. Risk and expense of  
14      making deposits in county depositories located outside of  
15      the county seat shall be borne by the banking institution  
16      in which the deposits are made. When any banking  
17      institution, designated by the county commission as  
18      provided by this section, has complied with all of the  
19      requirements and provisions of this article, the commission  
20      shall declare it a county depository.

## CHAPTER 105

(Com. Sub. for H. B. 4307—By Mr. Speaker, Mr. Kiss, and Delegates Ashley, Staton and Trump)

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

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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.

#### §7-12-7. Powers generally.

1       The development authority is hereby given power and  
2 authority as follows: (1) To make and adopt all necessary  
3 bylaws and rules for its organization and operations not  
4 inconsistent with laws; (2) to elect its own officers, to  
5 appoint committees and to employ and fix compensation  
6 for personnel necessary for its operation; (3) to enter into  
7 contracts with any person, agency, governmental  
8 department, firm or corporation, including both public  
9 and private corporations, and generally to do any and all  
10 things necessary or convenient for the purpose of  
11 promoting, developing and advancing the business  
12 prosperity and economic welfare of the county in which it  
13 is intended to operate, its citizens and industrial complex,

14 including, without limiting any of the foregoing, the  
15 construction of any building or structure for lease to the  
16 federal government or any of its agencies or departments,  
17 and in connection therewith to prepare and submit bids  
18 and negotiate with the federal government or such  
19 agencies or departments in accordance with plans and  
20 specifications and in the manner and on the terms and  
21 conditions and subject to any requirements, regulations,  
22 rules and laws of the United States of America for the  
23 construction of said buildings or structures and the leasing  
24 thereof to the federal government or such agencies or  
25 departments; (4) to amend or supplement any contracts or  
26 leases or to enter into new, additional or further contracts  
27 or leases upon such terms and conditions, for such  
28 consideration and for such term of duration, with or  
29 without option of renewal, as may be agreed upon by the  
30 authority and such person, agency, governmental  
31 department, firm or corporation; (5) unless otherwise  
32 provided for in, and subject to the provisions of, such  
33 contracts, or leases, to operate, repair, manage, and  
34 maintain such buildings and structures and provide  
35 adequate insurance of all types, and in connection with the  
36 primary use thereof and incidental thereto to provide such  
37 services, such as barber shops, newsstands, drugstores and  
38 restaurants, and to effectuate such incidental purposes,  
39 grant leases, permits, concessions or other authorizations  
40 to any person or persons, upon such terms and conditions,  
41 for such consideration and for such term of duration as  
42 may be agreed upon by the authority and such person,  
43 agency, governmental department, firm or corporation;  
44 (6) to delegate any authority given to it by law to any of  
45 its officers, committees, agents or employees; (7) to apply  
46 for, receive and use grants-in-aid, donations and  
47 contributions from any source or sources, and to accept  
48 and use bequests, devises, gifts and donations from any  
49 person, firm or corporation; (8) to acquire real property  
50 by gift, purchase, or construction, or in any other lawful  
51 manner, and hold title thereto in its own name and to sell,  
52 lease or otherwise dispose of all or part of such real  
53 property which it may own, either by contract or at public  
54 auction, upon the approval by the board of directors of  
55 the development authority; (9) to purchase or otherwise

56 acquire, own, hold, sell, lease and dispose of all or part of  
57 any personal property which it may own, either by  
58 contract or at public auction; (10) pursuant to a  
59 determination by the board that there exists a continuing  
60 need for programs to alleviate and prevent unemployment  
61 within the county in which the authority is intended to  
62 operate or aid in the rehabilitation of areas in said county  
63 which are underdeveloped, decaying or otherwise  
64 economically depressed, and that moneys or funds of the  
65 authority are necessary therefor, to borrow money and  
66 execute and deliver the authority's negotiable notes,  
67 mortgage bonds, other bonds, debentures, and other  
68 evidences of indebtedness therefor, on such terms as the  
69 authority shall determine, and give such security therefor  
70 as shall be requisite, including giving a mortgage or deed  
71 of trust on its real or personal property and facilities in  
72 connection with the issuance of mortgage bonds; (11) to  
73 raise funds by the issuance and sale of revenue bonds in  
74 the manner provided by the applicable provisions of  
75 article sixteen, chapter eight of this code, it being hereby  
76 expressly provided that a development authority created  
77 under this article is a "governing body" within the  
78 definition of that term as used in said article sixteen,  
79 chapter eight of this code; and (12) to expend its funds in  
80 the execution of the powers and authority herein given,  
81 which expenditures, by the means authorized herein, are  
82 hereby determined and declared as a matter of legislative  
83 finding to be for a public purpose and use, in the public  
84 interest, and for the general welfare of the people of West  
85 Virginia, to alleviate and prevent economic deterioration  
86 and to relieve the existing critical condition of  
87 unemployment existing within the state.

88 The amendment of this section enacted in the year one  
89 thousand nine hundred ninety-eight, is intended to clarify  
90 the intent of the Legislature as to the manner in which an  
91 authority may sell, lease or otherwise dispose of real and  
92 personal property owned by an authority, and shall be  
93 retroactive to the date of the prior enactment of this  
94 section.

**§7-12-13. Sale or lease of property; reversion of assets upon  
dissolution.**

1 In the event the board of the authority shall so  
2 determine, the authority may lease or sell all of its  
3 property and equipment, either by contract or at public  
4 auction, on such terms and conditions as the authority  
5 may fix and determine. Upon the dissolution of the  
6 authority, all of its assets and property shall revert to and  
7 become the property of the county or municipality for  
8 which said authority was created.

9 The amendment of this section in the year one  
10 thousand nine hundred ninety-eight, is intended to clarify  
11 the intent of the Legislature as to the manner in which an  
12 authority may sell, lease or otherwise dispose of real and  
13 personal property owned by an authority, and shall be  
14 retroactive to the date of the prior enactment of this  
15 section.

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## CHAPTER 106

(H. B. 4254—By Delegates Mahan, Dalton, Tomblin,  
Stemple, Smirl and L. White)

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

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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.

§2-2-3. Computation of time.

**§2-2-1. Legal holidays; official acts or court proceedings.**

1 (a) The following days are legal holidays:

2 (1) The first day of January is "New Year's Day";

3 (2) The third Monday of January is "Martin Luther  
4 King's Birthday";

5 (3) The twelfth day of February is "Lincoln's  
6 Birthday";

7 (4) The third Monday of February is "Washington's  
8 Birthday";

9 (5) The last Monday in May is "Memorial Day";

10 (6) The twentieth day of June is "West Virginia Day";

11 (7) The fourth day of July is "Independence Day";

12 (8) The first Monday of September is "Labor Day";

13 (9) The second Monday of October is "Columbus  
14 Day";

15 (10) The eleventh day of November is "Veterans'  
16 Day";

17 (11) The fourth Thursday of November is  
18 "Thanksgiving Day";

19 (12) The twenty-fifth day of December is "Christmas  
20 Day";

21 (13) Any day on which a general, primary or special  
22 election is held is a holiday throughout the state, a political  
23 subdivision of the state, a district or an incorporated city,  
24 town or village in which the election is conducted; and

25 (14) Any day proclaimed or ordered by the governor  
26 or the president of the United States as a day of special  
27 observance or Thanksgiving, or a day for the general  
28 cessation of business, is a holiday.

29       (b) If a holiday otherwise described in subsection (a)  
30 of this section falls on a Sunday, then the following  
31 Monday is the legal holiday. If a holiday otherwise  
32 described in subsection (a) of this section falls on a  
33 Saturday, then the preceding Friday is the legal holiday:  
34 *Provided*, That this subsection (b) shall not apply to  
35 subdivision (13), subsection (a) of this section.

36       (c) Any day or part thereof designated by the  
37 governor as time off, without charge against accrued  
38 annual leave, for state employees statewide may also be  
39 time off for county employees if the county commission  
40 elects to designate the day or part thereof as time off,  
41 without charge against accrued annual leave for county  
42 employees. Any entire or part statewide day off  
43 designated by the governor may, for all courts, be treated  
44 as if it were a legal holiday.

45       (d) In computing any period of time prescribed by  
46 any applicable provision of this code or any legislative  
47 rule or other administrative rule or regulation  
48 promulgated pursuant to the provisions of this code, the  
49 day of the act, event, default or omission from which the  
50 applicable period begins to run is not included. The last  
51 day of the period so computed is included, unless it is a  
52 Saturday, a Sunday, a legal holiday or a designated day  
53 off in which event the prescribed period of time runs until  
54 the end of the next day that is not a Saturday, Sunday,  
55 legal holiday or designated day off.

56       (e) If any applicable provision of this code or any  
57 legislative rule or other administrative rule or regulation  
58 promulgated pursuant to the provisions of this code  
59 designates a particular date on, before or after which an  
60 act, event, default or omission is required or allowed to  
61 occur, and if the particular date designated falls on a  
62 Saturday, Sunday, legal holiday or designated day off,  
63 then the date on which the act, event, default or omission is  
64 required or allowed to occur is the next day that is not a  
65 Saturday, Sunday, legal holiday or designated day off.

66       (f) With regard to the courts of this state, the

67 computation of periods of time, the specific dates or days  
68 when an act, event, default or omission is required or  
69 allowed to occur and the relationship of those time periods  
70 and dates to Saturdays, Sundays, legal holidays, or days  
71 designated as weather or other emergency days pursuant  
72 to section two of this article are governed by rules  
73 promulgated by the supreme court of appeals.

74 (g) The provisions of this section do not increase or  
75 diminish the legal school holidays provided for in section  
76 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.**

1 (a) When a proceeding is directed to take place or any  
2 act to be done on any particular day of the month or  
3 within any period of time prescribed or allowed, including  
4 those provided by article two, chapter fifty-five, of this  
5 code, if that day or the last day falls on a Saturday,  
6 Sunday, legal holiday, or a weather or other emergency  
7 day, the next day that is not a Saturday, Sunday, legal  
8 holiday, or a weather or other emergency day shall be  
9 deemed to be the one intended, and when the day upon  
10 which a term of court is directed by law to commence,  
11 falls on a Saturday, Sunday, legal holiday, or a weather or  
12 other emergency day, the following day that is not a  
13 Saturday, Sunday, legal holiday, or a weather or other  
14 emergency day shall be deemed to be the day intended.  
15 When an adjournment is authorized from day to day, an  
16 adjournment from Friday to Monday will be legal.

17 (b)(1) For purposes of this section, "weather or other  
18 emergency day" means a day designated for a county in  
19 accordance with the provisions of subdivision (2) of this  
20 subsection as a day upon which weather or other  
21 emergency conditions in that county prevent the general  
22 transaction of court business in that county.

23 (2) A weather or other emergency day is designated  
24 by order of the chief justice of the supreme court of  
25 appeals or by order of the chief judge of the circuit court  
26 of the county in which the proceeding is directed to take  
27 place or in which the act is to be done.

**§2-2-3. Computation of time.**

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.

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## CHAPTER 107

(S. B. 239—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter,  
 Kessler, Oliverio, Ross, Schoonover, Snyder, White, Buckalew, Deem,  
 Kimble and Scott )

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[Passed February 20, 1998; in effect ninety days from passage. Approved by the Governor.]

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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

7 constitutes a quorum for the conduct of the institute's  
8 business.

9 (b) There is hereby created the executive council of  
10 the West Virginia prosecuting attorneys institute which  
11 shall consist of five prosecuting attorneys elected by the  
12 membership of the West Virginia prosecuting attorneys  
13 institute at its annual meeting and two persons appointed  
14 annually by the county commissioner's association of West  
15 Virginia. The executive council shall elect one member of  
16 the council to serve as chairman of the institute for a term  
17 of one year without compensation. The executive council  
18 shall serve as the regular executive body of the institute.

19 (c) There is hereby created the position of executive  
20 director of the West Virginia prosecuting attorneys  
21 institute to be employed by the executive council of the  
22 institute. The executive director of the West Virginia  
23 prosecuting attorneys institute shall serve at the will and  
24 pleasure of the executive council of the institute at an  
25 annual salary of fifty thousand dollars per year. The  
26 executive director shall be licensed to practice law in the  
27 state of West Virginia and shall devote full time to his or  
28 her official duties and may not engage in the private  
29 practice of law.

30 (d) The duties and responsibilities of the institute, as  
31 implemented by and through its executive council and its  
32 executive director, shall include the following:

33 (1) To provide for special prosecuting attorneys to  
34 pursue a criminal matter in any county upon the request  
35 of a circuit court judge of that county and upon the  
36 approval of the executive council;

37 (2) To establish and to implement general and  
38 specialized training programs for prosecuting attorneys  
39 and their professional staffs;

40 (3) To provide materials for prosecuting attorneys and  
41 their professional staffs, including legal research, technical  
42 assistance and technical and professional publications;

43 (4) To compile and disseminate information on behalf  
44 of prosecuting attorneys and their professional staffs on

45 current developments and changes in the law and the  
46 administration of criminal justice;

47 (5) To establish and to implement uniform reporting  
48 procedures for prosecuting attorneys and their  
49 professional staffs in order to maintain and to provide  
50 accurate and timely data and information relative to  
51 criminal prosecutorial matters;

52 (6) To accept and expend funds, grants and gifts and  
53 accept services from any public or private source;

54 (7) To enter into agreements and contracts with public  
55 or private agencies or educational institutions;

56 (8) To identify experts and other resources for use by  
57 prosecutors in criminal matters;

58 (9) To make recommendations to the Legislature or  
59 the supreme court of appeals of the state of West Virginia  
60 on measures required, or procedural rules to be  
61 promulgated, to make uniform the processing of juvenile  
62 cases in the fifty-five counties of the state; and

63 (10) To develop a written handbook for prosecutors  
64 and their assistants to use which delineates relevant  
65 information concerning the elements of various crimes in  
66 West Virginia and other information as the institute deems  
67 appropriate.

68 (e) Each prosecuting attorney is subject to  
69 appointment by the institute to serve as a special  
70 prosecuting attorney in any county where the prosecutor  
71 for that county or his or her office has been disqualified  
72 from participating in a particular criminal case. The  
73 circuit judge of any county of this state, who disqualifies  
74 the prosecutor or his or her office from participating in a  
75 particular criminal case in that county, shall seek the  
76 appointment by the institute of a special prosecuting  
77 attorney to substitute for the disqualified prosecutor. The  
78 executive director of the institute shall, upon written  
79 request to the institute by any circuit judge as a result of  
80 disqualification of the prosecutor or for other good cause  
81 shown, and upon approval of the executive council,  
82 appoint a prosecuting attorney to serve as a special

83 prosecuting attorney. The special prosecuting attorney  
 84 appointed shall serve without any further compensation  
 85 other than that paid to him or her by his or her county,  
 86 except that he or she is entitled to be reimbursed for his or  
 87 her legitimate expenses associated with travel, mileage and  
 88 room and board from the county to which he or she is  
 89 appointed as a prosecutor. The county commission in  
 90 which county he or she is special prosecutor is responsible  
 91 for all expenses associated with the prosecution of the  
 92 criminal action.

93 (f) The executive director of the institute shall  
 94 maintain an appointment list that shall include the names  
 95 of all fifty-five prosecuting attorneys and that shall also  
 96 include the names of any assistant prosecuting attorney  
 97 who wishes to serve as a special prosecuting attorney upon  
 98 the same terms and conditions as set forth in this section.  
 99 The executive director of the institute, with the approval of  
 100 the executive council, shall appoint special prosecuting  
 101 attorneys from the appointment list for any particular  
 102 matter giving due consideration to the proximity of the  
 103 proposed special prosecuting attorney's home county to  
 104 the county requesting a special prosecutor and giving due  
 105 consideration to the expertise of the special prosecuting  
 106 attorney.

107 (g) Commencing on the first day of July, one  
 108 thousand nine hundred ninety-six, each county  
 109 commission shall pay, on a monthly basis, a special  
 110 prosecution premium to the treasurer of the state for the  
 111 funding of the West Virginia prosecuting attorneys  
 112 institute. The monthly premiums shall be paid according  
 113 to the following schedule:

114

**MONTHLY PREMIUMS**

115

Assessed Valuation of Property  
 of All Classes in the County

116

117	Category	Minimum	Maximum	Premium
118	A	\$1,500,000,000	Unlimited	\$400
119	B	\$1,000,000,000	\$1,499,999,000	\$375

120	C	\$ 800,000,000	\$ 999,999,000	\$350
121	D	\$ 700,000,000	\$ 799,999,000	\$325
122	E	\$ 600,000,000	\$ 699,999,000	\$300
123	F	\$ 500,000,000	\$ 599,999,000	\$250
124	G	\$ 400,000,000	\$ 499,999,000	\$200
125	H	\$ 300,000,000	\$ 399,999,000	\$150
126	I	\$ 200,000,000	\$ 299,999,000	\$100
127	J	. -0-	\$ 199,999,000	\$ 50

128       Upon receipt of a premium, the treasurer shall deposit  
 129 the premium into a special revenue fund to be known as  
 130 the "West Virginia Prosecuting Attorneys Institute Fund".  
 131 All costs of operating the West Virginia prosecuting  
 132 attorneys institute shall be paid from the West Virginia  
 133 prosecuting attorneys institute fund upon proper  
 134 authorization by the executive council or by the executive  
 135 director of the institute and subject to annual  
 136 appropriation by the Legislature of the amounts contained  
 137 within the fund.

138       (h) The West Virginia prosecuting attorneys institute  
 139 shall continue to exist until the first day of July, two  
 140 thousand one, unless continued by an act of the  
 141 Legislature. The institute shall annually by the first day of  
 142 the regular legislative session provide the joint committee  
 143 on government and finance with a report setting forth the  
 144 activities of the institute and suggestions for legislative  
 145 action.

146       (i) Neither the institute nor its employees acting in  
 147 their employment capacity shall engage in activities before  
 148 governmental bodies which advocate positions on issues  
 149 other than those issues consistent with the duties of the  
 150 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)

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

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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  
2 competency to stand trial, the defendant shall be present  
3 and he or she shall have the right to be represented by  
4 counsel and introduce evidence and cross-examine  
5 witnesses. The defendant shall be afforded timely and  
6 adequate notice of the issues at the hearing and shall have  
7 access to a summary of the medical evidence to be  
8 presented by the state. The defendant shall have the right  
9 to an examination by an independent expert of his or her  
10 choice and testimony from such expert as a medical

11 witness on his or her behalf. All rights generally afforded  
12 a defendant in criminal proceedings shall be afforded to a  
13 defendant in such competency proceedings except trial by  
14 jury.

15 (b) At the termination of such hearing the court of  
16 record shall make a finding of fact upon a preponderance  
17 of the evidence as to the defendant's competency to stand  
18 trial based on whether or not the defendant is capable of  
19 participating substantially in his or her defense and  
20 understanding the nature and consequences of a criminal  
21 trial. If the defendant is found competent, the court of  
22 record shall forthwith proceed with the criminal  
23 proceedings. If the defendant is found incompetent to  
24 stand trial, the court of record shall upon the evidence  
25 make further findings as to whether or not there is a  
26 substantial likelihood that the defendant will attain  
27 competency within the next ensuing six months, and if the  
28 court of record so finds, the defendant may be committed  
29 to a mental health facility for an improvement period not  
30 to exceed six months. If requested by the chief medical  
31 officer of the mental health facility on the grounds that  
32 additional time is necessary for the defendant to attain  
33 competency, the court of record may, prior to the  
34 termination of the six-month period, extend the period for  
35 an additional three months. Within ten days of the  
36 termination of such period, the court of record shall  
37 ascertain by hearing in accordance with subsection (a) of  
38 this section whether or not the defendant has attained  
39 competency to stand trial.

40 (c) If the defendant has been indicted or charged with  
41 a misdemeanor or felony in which the misdemeanor or  
42 felony does not involve an act of violence against a person  
43 and is found to be incompetent to stand trial with no  
44 substantial likelihood of obtaining competency, or if after  
45 such improvement period the defendant is found to be  
46 incompetent to stand trial, the criminal charges shall be  
47 dismissed. The dismissal order may be stayed for ten days

48 to allow civil commitment proceedings to be instituted  
49 pursuant to article five of this chapter.

50 (d) If the defendant has been indicted or charged with  
51 a misdemeanor or felony in which the misdemeanor or  
52 felony does involve an act of violence against a person  
53 and upon hearing: (1) The defendant is found initially to  
54 be incompetent to stand trial with no substantial likelihood  
55 of obtaining competency and is found not to be a danger  
56 to self or others; or (2) after an improvement period  
57 pursuant to subsection (b) of this section, the defendant is  
58 found to be incompetent to stand trial and is found not to  
59 be a danger to self or others, then the court shall maintain  
60 jurisdiction over the defendant.

61 (e) If the defendant has been indicted or charged with  
62 a misdemeanor or felony in which the misdemeanor or  
63 felony does involve an act of violence against a person  
64 and, upon hearing: (1) The defendant is found initially to  
65 be incompetent to stand trial with no substantial likelihood  
66 of obtaining competency and is found to be a danger to  
67 self or others; or (2) after an improvement period  
68 pursuant to subsection (b) of this section, the defendant is  
69 found to be incompetent to stand trial and is found to be a  
70 danger to self or others, then the court shall maintain  
71 jurisdiction over the defendant and shall commit the  
72 defendant to a mental health facility under the authority  
73 of the department of health and human resources. The  
74 defendant's supervising physician or psychologist shall  
75 cause the defendant's competency to stand trial and  
76 dangerousness to self or others to be reviewed every six  
77 months during the period of his or her inpatient  
78 hospitalization.

79 (f) If the defendant has been indicted or charged with  
80 a misdemeanor or felony in which the misdemeanor or  
81 felony does involve an act of violence against a person,  
82 upon notice from the medical director of the mental  
83 health facility that the defendant no longer constitutes a  
84 danger to self or others along with an alternative

85 disposition plan which sets forth in detail a treatment plan  
86 for the defendant designed to allow his or her release  
87 without endangering the public, the court shall promptly  
88 conduct a hearing. The clerk shall give notice of the  
89 hearing to the prosecuting attorney and the victim or next  
90 of kin of the victim of the offense for which the person  
91 was committed. The burden shall be on the victim or next  
92 of kin of the victim to keep the court apprised of that  
93 person's current mailing address.

94 After hearing, the court may order the release from  
95 hospitalization of a defendant found incompetent to stand  
96 trial due to mental illness, addiction or retardation prior to  
97 the expiration of the court's jurisdiction only when the  
98 court finds that the defendant is no longer a danger to self  
99 or others: *Provided*, That a defendant may be released  
100 from inpatient hospitalization by the court when the  
101 defendant's mental illness is in remission solely as a result  
102 of medication or hospitalization or other mode of  
103 treatment only if it can be determined by clear and  
104 convincing evidence that with continued outpatient  
105 therapy or other mode of outpatient treatment, the  
106 defendant's mental illness does not make him or her a  
107 danger to self or others. When a defendant's mental  
108 illness is in remission solely as a result of medication or  
109 hospitalization or other mode of treatment, the court in its  
110 discretion, may make the continuance of the medication  
111 or other mode of treatment a condition of the defendant's  
112 release. Upon notice that a defendant who is released on  
113 the condition that he or she continues medication or other  
114 mode of treatment does not continue his medication or  
115 other mode of treatment, the prosecuting attorney shall, by  
116 motion, cause the court to reconsider the defendant's  
117 release. Upon a showing that defendant is in violation of  
118 the conditions of his or her release, the court shall  
119 recommit the defendant to the mental health facility.

120 (g) The prosecuting attorney shall, by motion, cause  
121 the competency to stand trial of a defendant subject to the

122 court's jurisdiction pursuant to subsection (d) of this  
123 section or released pursuant to subsection (f) of this  
124 section to be determined at least every six months while  
125 the defendant remains under the jurisdiction of the court.  
126 A defendant placed under the jurisdiction of the court  
127 pursuant to the provisions of subsections (d) or (e) of this  
128 section shall remain under the court's jurisdiction until the  
129 expiration of the maximum possible sentence the  
130 defendant could have received if convicted unless the  
131 defendant regains competency and the criminal charges  
132 reach resolution or the court, upon motion of the  
133 prosecuting attorney, dismisses the indictment or charge.

**§27-6A-4. Release from jurisdiction of the court; discharge.**

1 (a) No later than thirty days prior to the release of a  
2 defendant because of the expiration of the court's  
3 jurisdiction, if the defendant's supervising physician or  
4 psychologist believes that the defendant's mental illness or  
5 mental retardation or addiction causes the defendant to be  
6 dangerous to self or others, the supervising physician or  
7 psychologist shall notify the prosecuting attorney in the  
8 county of the court having jurisdiction of such opinion  
9 and the basis therefor. Following this notification, the  
10 prosecuting attorney shall file a civil commitment  
11 application against the defendant, pursuant to article five  
12 of this chapter.

13 (b) Except as provided in subsection (g), section two  
14 of this article, the court may discharge a mentally ill or  
15 addicted defendant from the court's jurisdiction prior to  
16 the expiration of the period specified in this section only  
17 when the court finds that the person is no longer mentally  
18 ill or addicted and that the person is no longer a danger to  
19 self or others: *Provided*, That a defendant may not be  
20 released from the court's jurisdiction when the  
21 defendant's mental illness is in remission solely as a result  
22 of medication or hospitalization or other mode of  
23 treatment only if it can be determined by clear and  
24 convincing evidence that with continued outpatient

25 therapy or other mode of outpatient treatment, the  
26 defendant's mental illness does not make him or her a  
27 danger to self or others. When a defendant's mental  
28 illness is in remission solely as a result of medication or  
29 hospitalization or other mode of treatment, the court in its  
30 discretion, may make the continuance of the medication  
31 or other mode of treatment a condition of the defendant's  
32 release. Upon notice that a defendant who is released on  
33 the condition that he or she continues medication or other  
34 mode of treatment does not continue his medication or  
35 other mode of treatment, the prosecuting attorney shall, by  
36 motion, cause the court to reconsider the defendant's  
37 release. Upon a showing that defendant is in violation of  
38 the conditions of his or her release, the court shall reinstate  
39 its jurisdiction over the defendant. The court may  
40 discharge a mentally retarded defendant from the court's  
41 jurisdiction prior to the expiration of the period specified  
42 in this section only when the court finds that the person is  
43 no longer a danger to self or others.

44 (c) Those persons committed under the provisions of  
45 this article may be released or discharged from the  
46 inpatient mental health facility only upon entry of an  
47 order from the court of record which committed the  
48 defendant, finding that the defendant will not be a danger  
49 to self or others if so released, based upon the evidence  
50 admitted at the hearing.

51 (d) The court shall promptly conduct a hearing after  
52 receipt of the physician's or psychologist's notification  
53 referred to in subsection (a) of this section. The clerk  
54 shall notify the prosecuting attorney and the victim or  
55 next of kin of the victim of the offense for which the  
56 defendant was committed of the hearing. The burden  
57 shall be on the victim or next of kin of the victim to keep  
58 the court apprised of the defendant's current mailing  
59 address.

## CHAPTER 109

(S. B. 193—By Senators Bowman, Dittmar, Kessler,  
Snyder, White, Deem and Kimble)

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[Passed February 26, 1998; in effect from passage. Approved by the Governor.]

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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.

§55-15-3. Compensation and expenses of commission members; expenses of commission.

§55-15-4. Powers and duties of the commission.

§55-15-5. Meetings of the commission; quorum.

§55-15-6. Interpretation of article; termination of commission.

#### §55-15-1. Legislative findings and purpose.

1 (a) The Legislature hereby finds and declares:

2 (1) That due to growing concern with limits on access  
3 to justice arising from court case backlog, delays and  
4 costs, that it has been beneficial to implement an  
5 alternative dispute resolution program in various circuit  
6 courts of our state and in certain administrative  
7 proceedings;

8           (2) That since implementation, these procedures have  
9 proven to be a highly-effective method for resolving  
10 disputes without resorting to adjudicatory measures,  
11 thereby easing the burden of cases pending in the judicial  
12 system;

13           (3) That alternative dispute resolution is continually  
14 changing the perceptions regarding the appropriateness  
15 and effectiveness of court procedures, and that the  
16 continuation and growth of these procedures is important  
17 in enhancing the quality of life for the citizens of this  
18 state;

19           (4) That the effectiveness of the alternative dispute  
20 resolution programs implemented in the state and in other  
21 states has increased but more definition and synthesis is  
22 necessary to better serve the citizens; and

23           (5) That the purpose of this article is to create a  
24 commission, as hereinafter constituted and appointed, to  
25 study various facets of alternative dispute resolution  
26 including, but not limited to, defining the objectives and  
27 goals of the programs, the types of disputes to be resolved,  
28 the promulgation of a system to ensure appropriate  
29 uniformity of alternative dispute resolution programs  
30 statewide, certification or licensure of persons engaged in  
31 providing services in alternative methods of resolving  
32 disputes and the structuring and funding of such  
33 programs.

34           (b) The Legislature further declares that it recognizes  
35 that the provisions of section 1, article V of the  
36 constitution of West Virginia prohibit any person from  
37 exercising the powers of more than one branch or  
38 department of government at the same time; however, it is  
39 the express purpose, intent and finding of the Legislature  
40 that those members of the commission who are members  
41 of the Legislature are acting as such while serving on the  
42 commission and in the furtherance of the Legislature's  
43 inherent right and power to investigate and inquire into  
44 and report on those matters which are legitimately within  
45 its powers, and that since the commission's role and duties

46 are investigative and reportive in nature, the service upon  
47 the commission by its legislative members is not violative  
48 of nor inimical to the constitutional mandate with respect  
49 to the separation of governmental powers.

**§55-15-2. Alternative dispute resolution commission created;  
composition; appointment of members; chairman.**

1 The West Virginia alternative dispute resolution  
2 commission is hereby created. The commission shall  
3 consist of eleven members, who are designated or to be  
4 appointed as follows:

5 (a) The chief justice of the supreme court of appeals  
6 of West Virginia, or his or her designee, shall serve as the  
7 chair of the commission, and shall appoint two additional  
8 members, one of whom is currently serving as a circuit  
9 court judge;

10 (b) The speaker of the House of Delegates and the  
11 president of the Senate, or their respective designee, shall  
12 be members, and the speaker of the House of Delegates  
13 and the president of the Senate shall appoint one  
14 additional member;

15 (c) Two members shall be appointed by the governor  
16 who shall be representative private citizens;

17 (d) The dean of the West Virginia university college of  
18 law shall appoint one faculty member to the commission  
19 who possesses knowledge and experience unique in  
20 alternative dispute resolution processes; and

21 (e) The executive director of the West Virginia state  
22 bar.

**§55-15-3. Compensation and expenses of commission  
members; expenses of commission.**

1 (a) Members of the commission shall be reimbursed  
2 for their reasonable and necessary travel and other  
3 expenses actually incurred in connection with the  
4 performance of their duties as members of the

5 commission including, but not limited to, their attendance  
6 at meetings thereof.

7 (b) The expenses of the members of the commission  
8 shall be paid from legislative appropriations.

9 (c) Members of the commission shall receive no other  
10 compensation for their services on or with the commission  
11 other than the reimbursement of expenses as provided in  
12 this section.

13 (d) The president of the Senate and the speaker of the  
14 House of Delegates shall designate a member of the  
15 legislative staff to serve as counsel and reporter to the  
16 commission.

**§55-15-4. Powers and duties of the commission.**

1 The commission shall have the following powers,  
2 duties and responsibilities:

3 (a) To conduct a thorough and comprehensive study  
4 into the various ways and means of financing and  
5 structuring the alternative dispute resolution programs,  
6 define the goals and objectives of alternative methods of  
7 resolving disputes in the state, determine types of disputes  
8 to be included within any alternative dispute resolution  
9 programs, evaluate the advantages of establishing  
10 certification or licensure of persons engaged in providing  
11 services in alternative methods of resolving disputes and  
12 propose a system to ensure appropriate uniformity of  
13 alternative dispute resolution programs statewide;

14 (b) To request such information and data from any  
15 state officer or agency or from any political subdivision of  
16 the state as the commission may deem necessary to assist it  
17 in the performance of its duties and it shall be the duty of  
18 all such officers and agencies to cooperate with and assist  
19 the commission in and about the completion of its studies  
20 and deliberations;

21 (c) To confer with representative citizens, the judiciary,  
22 the legal profession and other groups of the private and

23 business sectors with respect to all matters deemed relevant  
24 to the duties of the commission;

25 (d) To notify the chair of the commission on the  
26 future of the judiciary so that the commission established  
27 herein may share information with such commission on  
28 the future of the judiciary;

29 (e) To perform every other act necessary or desirable  
30 to carry out any of the other powers, duties or  
31 responsibilities enumerated in this article; and

32 (f) To file its final report with respect to its findings  
33 and conclusions, together with any legislation it deems  
34 appropriate to recommend and as it deems necessary to  
35 carry its findings and conclusions into effect with the  
36 president of the Senate and the speaker of the House of  
37 Delegates not later than the thirtieth day of November, one  
38 thousand nine hundred ninety-eight.

**§55-15-5. Meetings of the commission; quorum.**

1 The commission shall meet at such times and places as  
2 its chair shall deem to be proper and expedient. Such  
3 meetings shall be coordinated with and be in conjunction  
4 with the monthly meeting of the joint committee on  
5 government and finance insofar as the same may be  
6 practicable. Nothing herein shall preclude the commission  
7 from meeting with such frequency or at such times and  
8 places as it may determine. The presence of no less than  
9 six members of the commission shall constitute a quorum  
10 for the purposes of conducting any business.

**§55-15-6. Interpretation of article; termination of commission.**

1 (a) The provisions of this article shall be liberally  
2 construed in order to permit the commission sufficient  
3 latitude for the orderly completion of its studies and  
4 duties.

5 (b) The commission shall cease its existence on the  
6 thirty-first day of December, one thousand nine hundred  
7 ninety-eight.

## CHAPTER 110

(Com. Sub. for H. B. 4060—By Delegates Staton, Trump, Underwood, Amores, Buchanan, Hunt and Rowe)

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

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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.**

##### **§29A-5-4. Judicial review of contested cases.**

1       (a) Any party adversely affected by a final order or  
2       decision in a contested case is entitled to judicial review  
3       thereof under this chapter, but nothing in this chapter shall

4 be deemed to prevent other means of review, redress or  
5 relief provided by law.

6 (b) Proceedings for review shall be instituted by filing  
7 a petition, at the election of the petitioner, in either the  
8 circuit court of Kanawha County, West Virginia or in the  
9 circuit court of the county in which the petitioner or any  
10 one of the petitioners resides or does business, or with the  
11 judge thereof in vacation, within thirty days after the date  
12 upon which such party received notice of the final order  
13 or decision of the agency. A copy of the petition shall be  
14 served upon the agency and all other parties of record by  
15 registered or certified mail. The petition shall state  
16 whether the appeal is taken on questions of law or  
17 questions of fact, or both. No appeal bond shall be  
18 required to effect any such appeal.

19 (c) The filing of the petition shall not stay  
20 enforcement of the agency order or decision or act as a  
21 supersedeas thereto, but the agency may stay such  
22 enforcement, and the appellant, at any time after the filing  
23 of his petition, may apply to such circuit court for a stay  
24 of or supersedeas to such final order or decision. Pending  
25 the appeal, the court may grant a stay or supersedeas upon  
26 such terms as it deems proper.

27 (d) Within fifteen days after receipt of a copy of the  
28 petition by the agency, or within such further time as the  
29 court may allow, the agency shall transmit to such circuit  
30 court the original or a certified copy of the entire record  
31 of the proceeding under review, including a transcript of  
32 all testimony and all papers, motions, documents, evidence  
33 and records as were before the agency, all agency staff  
34 memoranda submitted in connection with the case, and a  
35 statement of matters officially noted; but, by stipulation of  
36 all parties to the review proceeding, the record may be  
37 shortened. The expense of preparing such record shall be  
38 taxed as a part of the costs of the appeal. The appellant  
39 shall provide security for costs satisfactory to the court.  
40 Any party unreasonably refusing to stipulate to limit the  
41 record may be taxed by the court for the additional costs  
42 involved. Upon demand by any party to the appeal, the  
43 agency shall furnish, at the cost of the party requesting

44 same, a copy of such record. In the event the complete  
45 record is not filed with the court within the time provided  
46 for in this section, the appellant may apply to the court to  
47 have the case docketed, and the court shall order such  
48 record filed.

49 (e) Appeals taken on questions of law, fact or both,  
50 shall be heard upon assignments of error filed in the cause  
51 or set out in the briefs of the appellant. Errors not argued  
52 by brief may be disregarded, but the court may consider  
53 and decide errors which are not assigned or argued. The  
54 court or judge shall fix a date and time for the hearing on  
55 the petition, but such hearing, unless by agreement of the  
56 parties, shall not be held sooner than ten days after the  
57 filing of the petition, and notice of such date and time  
58 shall be forthwith given to the agency.

59 (f) The review shall be conducted by the court without  
60 a jury and shall be upon the record made before the  
61 agency, except that in cases of alleged irregularities in  
62 procedure before the agency, not shown in the record,  
63 testimony thereon may be taken before the court. The  
64 court may hear oral arguments and require written briefs.

65 (g) The court may affirm the order or decision of the  
66 agency or remand the case for further proceedings. It  
67 shall reverse, vacate or modify the order or decision of the  
68 agency if the substantial rights of the petitioner or  
69 petitioners have been prejudiced because the  
70 administrative findings, inferences, conclusions, decision  
71 or order are:

72 (1) In violation of constitutional or statutory  
73 provisions; or

74 (2) In excess of the statutory authority or jurisdiction  
75 of the agency; or

76 (3) Made upon unlawful procedures; or

77 (4) Affected by other error of law; or

78 (5) Clearly wrong in view of the reliable, probative and  
79 substantial evidence on the whole record; or

80 (6) Arbitrary or capricious or characterized by abuse  
81 of discretion or clearly unwarranted exercise of discretion.

82 (h) The judgment of the circuit court shall be final  
83 unless reversed, vacated or modified on appeal to the  
84 supreme court of appeals of this state in accordance with  
85 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.

§58-5-2. Certification to supreme court of appeals.

§58-5-3. Presentation of petition.

§58-5-4. Time for appeal.

§58-5-5. Stay of proceedings pending appeal; supersedeas bond; post-conviction bail.

§58-5-6. Filing of petition.

§58-5-7. Contents of transcript of record.

§58-5-14. Appeal bond generally.

§58-5-30. Appeal by state of judgment quashing indictment.

#### §58-5-1. When appeal lies.

1 A party to a civil action may appeal to the supreme  
2 court of appeals from a final judgment of any circuit  
3 court or from an order of any circuit court constituting a  
4 final judgment as to one or more but fewer than all claims  
5 or parties upon an express determination by the circuit  
6 court that there is no just reason for delay and upon an  
7 express direction for the entry of judgment as to such  
8 claims or parties. The defendant in a criminal action may  
9 appeal to the supreme court of appeals from a final  
10 judgment of any circuit court in which there has been a  
11 conviction or which affirms a conviction obtained in an  
12 inferior court.

#### §58-5-2. Certification to supreme court of appeals.

1 Any question of law, including, but not limited to,  
2 questions arising upon the sufficiency of a summons or  
3 return of service, upon a challenge of the sufficiency of a  
4 pleading or the venue of the circuit court, upon the

5 sufficiency of a motion for summary judgment where  
6 such motion is denied, or a motion for judgment on the  
7 pleadings, upon the jurisdiction of the circuit court of a  
8 person or subject matter, or upon failure to join an  
9 indispensable party, may, in the discretion of the circuit  
10 court in which it arises, be certified by it to the supreme  
11 court of appeals for its decision, and further proceedings  
12 in the case stayed until such question shall have been  
13 decided and the decision thereof certified back. The  
14 procedure for processing questions certified pursuant to  
15 this section shall be governed by rules of appellate  
16 procedure promulgated by the supreme court of appeals.

**§58-5-3. Presentation of petition.**

1 A party desiring to appeal, seeking the original  
2 jurisdiction of the supreme court of appeals, or seeking an  
3 opinion of the court on certified questions may file a  
4 petition in accordance with rules of appellate procedure  
5 promulgated by the supreme court of appeals.

**§58-5-4. Time for appeal.**

1 No petition shall be presented for an appeal from any  
2 judgment rendered more than four months before such  
3 petition is filed with the clerk of the court where the  
4 judgment being appealed was entered: *Provided*, That the  
5 judge of the circuit court may, prior to the expiration of  
6 such period of four months, by order entered of record  
7 extend and reextend such period for such additional  
8 period or periods, not to exceed a total extension of two  
9 months, for good cause shown, if the request for  
10 preparation of the transcript was made by the party  
11 seeking such appellate review within thirty days of the  
12 entry of such judgment, decree or order.

**§58-5-5. Stay of proceedings pending appeal; supersedeas bond; post-conviction bail.**

1 A petition for stay of proceedings pending appeal,  
2 supersedeas bond or post-conviction bail relief shall be  
3 filed and processed in accordance with rules of appellate  
4 procedure promulgated by the supreme court of appeals.

**§58-5-6. Filing of petition.**

1       Petitions for appeal shall be filed and processed in  
2 accordance with rules of appellate procedure promulgated  
3 by the supreme court of appeals.

**§58-5-7. Contents of transcript of record.**

1       The contents of the transcript of record shall be  
2 governed in accordance with rules of appellate procedure  
3 promulgated by the supreme court of appeals.

**§58-5-14. Appeal bond generally.**

1       When required by the court, an appeal shall not take  
2 effect until bond is given by the appellants or petitioners,  
3 or one of them, or some other person, in a penalty to be  
4 fixed by the court or judge by or in which the appeal is  
5 allowed or entered with condition: If a supersedeas be  
6 awarded, to abide by and perform the judgment and to  
7 pay to the opposite party, and to any person injured all  
8 such costs and damages as they, or either of them, may  
9 incur or sustain by reason of said appeal, in case such  
10 judgment, or such part, be affirmed, or the appeal be  
11 dismissed, and also, to pay all damages, costs and fees,  
12 which may be awarded against or incurred by the  
13 appellant or petitioners; and if it is an appeal from a  
14 judgment dissolving an injunction, or dismissing a bill of  
15 injunction, with a further condition, to indemnify and save  
16 harmless the surety in the injunction bond against loss or  
17 damage in consequence of his suretyship; and with  
18 condition when no supersedeas is awarded to pay such  
19 specific damages, and such costs and fees as may be  
20 awarded or incurred: *Provided*, That whenever an appeal  
21 is awarded in any action or suit wherein a judgment for  
22 the payment of money has been entered against an  
23 insured in an action which is defended by an insurance  
24 corporation, or other insurer, on behalf of the insured  
25 under a policy of insurance, the limit of liability of which  
26 is less than the amount of said judgment, execution on the  
27 judgment to the extent of the policy coverage shall be  
28 stayed until final determination of such appeal, and no  
29 execution shall be issued, or action brought, maintained or  
30 continued against such insured, insurance corporation, or  
31 other insurer, for the amount of such judgment so stayed,  
32 by either the injured party, the insured, or the legal

33 representative, heir or assigns of any of them, during the  
34 pendency of such proceeding, provided such insurance  
35 corporation, or other insurer, shall:

36 (1) File with the clerk of the court in which the  
37 judgment was entered, a sworn statement of one of its  
38 officers, describing the nature of the policy and the  
39 amount of coverage thereof;

40 (2) Give or cause to be given by the judgment debtor  
41 or some other person for him a bond in a penalty to be  
42 fixed by the court or judge by or in which the appeal is  
43 allowed or entered, not to exceed the amount of such  
44 insurance coverage set out in the sworn statement above  
45 required, with condition to pay the amount of such  
46 coverage upon said judgment if the judgment or such part  
47 is affirmed or the appeal is dismissed, plus interest on said  
48 sum and cost;

49 (3) Serve a copy of such sworn statement and bond  
50 upon the judgment creditor or his attorney;

51 (4) Deliver or mail to the insured at the latest address  
52 of the insured appealing upon the records of such  
53 insurance corporation, or other insurer, written notice that  
54 execution on such judgment to the extent that it is not  
55 covered by such insurance is not stayed in respect to the  
56 insured: *Provided*, That the filing of a bond by the  
57 insured or someone for him, conditioned upon the  
58 payment of the balance of the judgment and interest not  
59 stayed by the insured as aforesaid if the judgment is  
60 affirmed or the appeal is dismissed, shall stay execution on  
61 the balance of said judgment not covered by such  
62 insurance: *Provided, however*, That the filing of such  
63 statement and bond hereunder by an insurance  
64 corporation or other insurer shall not thereby make such  
65 insurance corporation or other insurer a party to such  
66 action, either in the trial court or in the appellate court.

**§58-5-30. Appeal by state of judgment quashing indictment.**

1 Whenever in any criminal case an indictment is held  
2 bad or insufficient by the judgment of a circuit court, the  
3 state, on the application of the attorney general or the

4 prosecuting attorney, may appeal such judgment to the  
5 supreme court of appeals. No such appeal shall be allowed  
6 unless the state presents its petition therefor to the supreme  
7 court of appeals within thirty days after the entry of such  
8 judgment. No such judgment shall finally discharge, or  
9 have the effect of finally discharging, the accused from  
10 further proceedings on the indictment unless the state fails,  
11 within such period of thirty days, to file a petition for  
12 appeal with the clerk of the court in which judgment was  
13 entered; but after the entry of such judgment or order the  
14 accused shall not be kept in custody or required to give  
15 bail pending the hearing and determination of the case by  
16 the supreme court of appeals.

17 Except as herein otherwise provided, all the provisions  
18 of the other sections of this article shall, so far as  
19 appropriate, be applicable to a petition for an appeal  
20 under this section, and to all subsequent proceedings  
21 thereon in the supreme court of appeals in case such  
22 appeal is granted.

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## CHAPTER 111

(Com. Sub. for H. B. 4098—By Delegates Leach, Pino and Clements)

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[Passed March 11, 1998; in effect ninety days from passage. Approved by the Governor.]

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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.**

1           (a) *Malicious assault.* — Any person who maliciously  
2 shoots, stabs, cuts or wounds or by any means causes  
3 bodily injury with intent to maim, disfigure, disable or kill  
4 a police officer, conservation officer, humane officer,  
5 emergency medical service personnel, firefighter, state fire  
6 marshal or employee, county correctional employee or  
7 state correctional employee acting in his or her official  
8 capacity and the person committing the malicious assault  
9 knows or has reason to know that the victim is a police  
10 officer, conservation officer, humane officer, emergency  
11 medical service personnel, firefighter, state fire marshal or  
12 employee, county correctional employee, or state  
13 correctional employee acting in his or her official  
14 capacity, is guilty of a felony and, upon conviction, shall  
15 be confined in a correctional facility for not less than  
16 three nor more than fifteen years.

17           (b) *Unlawful assault.* — Any person who unlawfully  
18 but not maliciously shoots, stabs, cuts or wounds or by any  
19 means causes a police officer, conservation officer,  
20 humane officer, emergency medical service personnel,  
21 firefighter, state fire marshal or employee, county  
22 correctional employee or state correctional employee  
23 acting in his or her official capacity, bodily injury with  
24 intent to maim, disfigure, disable or kill said person and  
25 the person committing the unlawful assault knows or has  
26 reason to know that the victim is a police officer,  
27 conservation officer, humane officer, emergency medical  
28 service personnel, firefighter, state fire marshal or  
29 employee, county correctional employee or state  
30 correctional employee acting in his or her official  
31 capacity, is guilty of a felony and, upon conviction, shall  
32 be confined in a correctional facility for not less than two  
33 years nor more than five years.

34           (c) *Battery.* — Any person who unlawfully, knowingly  
35 and intentionally makes physical contact of an insulting or  
36 provoking nature with a police officer, conservation  
37 officer, humane officer, emergency medical service

38 personnel, firefighter, state fire marshal or employee,  
39 county correctional employee or state correctional  
40 employee acting in his or her official capacity, or  
41 unlawfully and intentionally causes physical harm to a  
42 police officer, conservation officer, humane officer,  
43 emergency medical service personnel, firefighter, state fire  
44 marshal or employee, county correctional employee, or  
45 state correctional employee acting in such capacity, is  
46 guilty of a misdemeanor and, upon conviction thereof,  
47 shall be confined in the county or regional jail for not less  
48 than one month nor more than twelve months, fined the  
49 sum of five hundred dollars, or both. If any person  
50 commits a second such offense, he or she is guilty of a  
51 felony and, upon conviction thereof, shall be confined in a  
52 correctional facility for not less than one year nor more  
53 than three years or fined the sum of one thousand dollars  
54 or both fined and confined. Any person who commits a  
55 third violation of this subsection is guilty of a felony and,  
56 upon conviction, shall be confined in a correctional  
57 facility not less than two years nor more than five years or  
58 fined not more than two thousand dollars or both fined  
59 and confined.

60 (d) *Assault.* — Any person who unlawfully attempts to  
61 commit a violent injury to the person of a police officer,  
62 conservation officer, humane officer, emergency medical  
63 service personnel, firefighter, state fire marshal or  
64 employee, county correctional employee, or state  
65 correctional employee unlawfully commits an act which  
66 places a police officer, conservation officer, humane  
67 officer, emergency medical service personnel, firefighter,  
68 county correctional employee, or state correctional  
69 employee acting in his or her official capacity in  
70 reasonable apprehension of immediately receiving a  
71 violent injury, is guilty of a misdemeanor and, upon  
72 conviction, shall be confined in the county or regional jail  
73 for not less than twenty-four hours nor more than six  
74 months, fined not more than two hundred dollars, or both.

75 (e) For purposes of this section, “police officer”  
76 means any person employed by the state police, any  
77 person employed by the state to perform law-enforcement  
78 duties, any person employed by a political subdivision of  
79 this state who is responsible for the prevention or detection  
80 of crime and the enforcement of the penal, traffic or  
81 highway laws of this state or employed as a special police  
82 officer as such is defined in section forty-one, article three,  
83 chapter sixty-one of this code.

## CHAPTER 112

(Com. Sub. for H. B. 2285—By Delegates Stalnaker, Everson, Riggs,  
Williams, Willison and Ashley)

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

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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,

4 draft or order. The payee or holder of any dishonored  
 5 check may impose a fee of up to fifteen dollars. This fee  
 6 may not be imposed or collected after a complaint for  
 7 warrant has been delivered to magistrate court. No payee  
 8 or holder of a check, draft or order which has been  
 9 dishonored because of insufficient funds or credit shall  
 10 incur any civil or criminal liability for the sending of a  
 11 notice substantially in the form provided herein, other  
 12 provisions of law notwithstanding. The form of the notice  
 13 shall be substantially as follows:

14 "You are hereby notified that a check, number  
 15 ....., issued by you on (date of check), drawn upon  
 16 (name of bank), and payable to ....., has  
 17 been dishonored. Pursuant to West Virginia law, you have  
 18 ten days from the date of this notice to tender payment of  
 19 the full amount of the check plus a fee of \$.....  
 20 (not to exceed fifteen dollars) to the undersigned at  
 21 ..... You are further notified that in the  
 22 event the above amount is timely paid in full you will not  
 23 be subject to legal proceedings, civil or criminal.

24 Dated ....., 19.....

25 .....  
 26 (Signed)."

27 The provisions of this section do not authorize the  
 28 making of any other written or oral threats of prosecution  
 29 to enforce or enhance the collection or honoring of the  
 30 dishonored check, draft or order.

31 The holder or payee of any check, draft or order shall  
 32 relinquish the check, draft or order to the maker upon  
 33 tender of the full amount due at any time before a  
 34 complaint for warrant has been presented to magistrate  
 35 court. In the event complaint for warrant has been  
 36 presented to magistrate court, payment may be made only  
 37 through the court and any holder or payee unlawfully  
 38 accepting payment after that time shall be liable for all  
 39 costs which may be imposed by the magistrate court in the  
 40 matter, including all costs which may have accrued by the  
 41 time the magistrate court is notified of the payment.

**§61-3-39f. Manner of filing complaint for warrant; form.**

1 Notwithstanding the provisions of section one, article  
 2 one, chapter sixty-two of this code, a complaint for  
 3 warrant for violations of section thirty-nine-a of this article  
 4 need not be made upon oath before a magistrate but may  
 5 be made upon oath before any magistrate court clerk or  
 6 other court officer authorized to administer oaths or  
 7 before a notary public in any county of the state and may  
 8 be delivered by mail or otherwise to the magistrate court  
 9 of the county wherein venue lies.

10 A complaint for warrant for violations of section  
 11 thirty-nine-a of this article shall be deemed sufficient if it  
 12 is in form substantially as follows:

13 "State of West Virginia

14 County of ....., to wit:

15 ....., upon oath complains that:

16 (a) Within one year past, on the ..... day of .....,  
 17 19..., in the county stated above, ..... ('the  
 18 maker') unlawfully issued and delivered to  
 19 ..... a check, draft or order with the  
 20 following words and figures:

21 ..... 19..... No.....

22 .....

23 (Name of Bank)

24 Pay to the Order of ..... \$..... Dollars

25 For..... when the  
 26 maker did not have funds on deposit in or credit with this  
 27 bank with which to pay the check, draft or order upon  
 28 presentation against the peace and dignity of the State of  
 29 West Virginia. The complainant therefore prays a warrant  
 30 issue and that the maker be apprehended and held to  
 31 answer the warrant and dealt with in relation thereto  
 32 according to the law.

33 (b) At the time the check, draft or order was delivered  
 34 and before it was accepted there was either on the check or  
 35 on a record in the possession of the complainant the  
 36 following information regarding the identity of the maker:

37 (1) Name .....

- 38 (2) Residence address .....
- 39 (3) Business address .....
- 40 (4) Mailing address .....
- 41 (5) Motor vehicle operator's number .....
- 42 (6) Home phone .....
- 43 (7) Work phone .....
- 44 (8) Place of employment .....

45 That since the time the check, draft or order was  
 46 delivered the complainant has ascertained to the best of his  
 47 or her knowledge and belief the following facts  
 48 concerning the maker:

- 49 Full name .....
- 50 Home address .....
- 51 Home phone no..... Business phone no. ....
- 52 Place of employment .....
- 53 Race ..... Sex ..... Height .....

54 Date of birth .....

Day	Month	Year
-----	-------	------

56 ....., Complainant

57 .....

Address	Phone No.
---------	-----------

59 (c) The complainant's bank or financial institution has  
 60 imposed on or collected from the complainant a service  
 61 charge in the amount of \$..... in connection  
 62 with the check, draft or order described above.

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

65 .....

66 .....

67 (Title)

68 My commission expires the ..... day of .....,  
 69 19...."

70       The failure to supply information indicated in parts  
71 (b) or (c) of the foregoing complaint for warrant shall not  
72 affect the sufficiency thereof.

**§61-3-39g. Complaint; notice of complaint; issuance of  
warrant; payment procedures; costs.**

1       After receipt of a complaint for warrant for a violation  
2 of section thirty-nine or thirty-nine-a of this article the  
3 magistrate court shall proceed with the issuance of the  
4 warrant as is provided by law: *Provided*, That no warrant  
5 may issue for an offense under section thirty-nine or  
6 thirty-nine-a of this article which, upon conviction, would  
7 be punishable as a misdemeanor, unless the payee or  
8 holder of the check, draft or order which has been  
9 dishonored has sent notice thereof to the drawer of the  
10 check, draft or order in accordance with the provisions of  
11 section thirty-nine-e of this article, or unless notice has  
12 been sent by the magistrate as hereinafter provided. Proof  
13 that the notice was sent by the payee or holder may be  
14 evidenced by presentation of a return receipt indicating  
15 that the notice was mailed to the drawer by certified mail,  
16 or, in the event the mailed notice was not received or was  
17 refused by the drawer, by presentation of the mailed  
18 notice itself. The magistrate court shall receive and hold  
19 the check, draft or order.

20       Upon receipt of a complaint for a misdemeanor  
21 warrant unaccompanied by proof that notice was sent by  
22 the payee or holder, the magistrate court shall immediately  
23 prepare and mail to the drawer of the check, draft or order  
24 a notice in form substantially as follows. The magistrate  
25 court shall impose any service charge reflected in the  
26 complaint as having been imposed on the payee or holder  
27 by the payee's or holder's bank or financial institution in  
28 connection with the check, draft or order and additional  
29 court costs in the amount of ten dollars. This notice shall  
30 be mailed to the drawer by United States mail, first class  
31 and postpaid, at the address provided at the time of  
32 presenting the check, draft or order. Service of this notice  
33 is complete upon mailing. The notice shall be in form  
34 substantially as follows:

35       "You are hereby notified that a complaint for a  
36 warrant for your arrest has been filed with this office to

37 the following effect and purpose by ..... who upon  
 38 oath complains that on the ..... day of ....., 19....,  
 39 you did unlawfully issue and deliver unto him a certain  
 40 check, draft or order in the amount of .....  
 41 drawn on ..... (name of  
 42 bank or financial institution) ..... where you did  
 43 not have funds on deposit in or credit with the bank or  
 44 financial institution with which to pay the check, draft or  
 45 order upon presentation and pray that a warrant issue and  
 46 that you be apprehended wherever you may be found by  
 47 an officer authorized to make an arrest and dealt with in  
 48 accordance with the laws of the state of West Virginia.

49 "A warrant for arrest will be issued on or after the  
 50 ..... day of ....., 19....

51 "You can nullify the effect of this complaint and  
 52 avoid arrest by paying to the magistrate court clerk at  
 53 ..... the amount due on the check, draft or  
 54 order; service charges imposed on the payee or holder by  
 55 the payee's or holder's bank or financial institution in  
 56 connection with the check, draft or order in the amount of  
 57 .....; and the costs of this proceeding in the amount of  
 58 ten dollars on or before the ..... day of .....,  
 59 19...., at which time you will be given a receipt with  
 60 which you can obtain the check, draft or order from the  
 61 magistrate court. The complainant is forbidden by law to  
 62 accept payment after the complaint is filed.

63 Magistrate Court of ..... County  
 64 .....

65 Date: ....."

66 This notice shall give the drawer of any such check,  
 67 draft or order ten days within which to make payment to  
 68 magistrate court. In the event the drawer pays the total  
 69 amount set forth in the notice to the magistrate court  
 70 within the ten-day period, no warrant may issue. The  
 71 payment may be made to the magistrate court in person or  
 72 by mail by cash, certified check, bank draft or money  
 73 order and, in the event the payment is made by mail, the  
 74 magistrate court clerk shall immediately mail to the maker  
 75 of the check, draft or order the receipt required by this  
 76 section. In the event the total amount is not so paid the

77 court shall proceed with the issuance of the warrant as is  
78 provided by law.

79 Upon receipt of payment of the total amount the  
80 magistrate court clerk shall issue to the drawer a receipt  
81 sufficiently describing the check, draft or order with which  
82 receipt the drawer is entitled to receive the dishonored  
83 check, draft or order from the magistrate court holding it.  
84 The magistrate court clerk shall forward the amount of the  
85 check, draft or order, together with any service charge  
86 reflected on the complaint as having been imposed on the  
87 payee or holder by the payee's or holder's bank or  
88 financial institution in connection with the check, draft or  
89 order, to the payee or holder thereof, along with a  
90 description of the check, draft or order sufficient to enable  
91 the person filing the complaint to identify it and the  
92 transaction involved. Costs collected shall be dealt with as  
93 is provided by law for other criminal proceedings.

94 The drawer of a check, draft or order against whom a  
95 warrant has been issued may at any time prior to trial pay  
96 to the court the amount of the check, draft or order; any  
97 service charge reflected in the complaint as having been  
98 imposed on the payee or holder by the payee's or  
99 holder's bank or financial institution in connection with  
100 the check, draft or order; and the court costs which would  
101 be assessed if the person were found guilty of the offense  
102 charged. These costs shall be imposed in accordance with  
103 the provisions of section two, article three, chapter fifty of  
104 this code.

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## CHAPTER 113

(Com. Sub. for H. B. 2726—By Delegates C. White, Proudfoot, Underwood,  
Shelton, Campbell and Coleman)

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

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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-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.**

1           (a) Any person who without authorization dumps  
2 garbage or trash, or assists in the unauthorized dumping  
3 of garbage or trash, in a dumpster or other solid waste  
4 container which is located on the property of another  
5 person and leased or otherwise owned or maintained by  
6 another person is guilty of a misdemeanor and, upon  
7 conviction thereof, shall be punished in accordance with  
8 subsection (b) of this section. The act of throwing isolated  
9 objects into a dumpster or other solid waste container in  
10 the prevention or elimination of litter is specifically  
11 excepted from any penalties under this section.

12           (b) Any person convicted of a misdemeanor under  
13 subsection (a) of this section shall be subject to the  
14 following penalties:

15           (1) Upon a first conviction under this section, the  
16 defendant shall be fined not less than fifty dollars nor  
17 more than two hundred fifty dollars.

18           (2) Upon a second conviction under this section, the  
19 defendant shall be fined not less than two hundred fifty  
20 dollars nor more than five hundred dollars.

21           (3) Upon any subsequent conviction in excess of a  
22 second conviction under this section, the defendant shall  
23 be fined not less than five hundred dollars nor more than  
24 one thousand dollars, or imprisoned in the county jail not  
25 less than thirty days nor more than sixty days, or both  
26 fined and imprisoned.

27 Notwithstanding the provisions of section four, article  
28 eleven-a of this chapter or section two-a, article three,  
29 chapter fifty of this code, the magistrate or court may  
30 order restitution not to exceed the value of unauthorized  
31 solid waste services received.

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## CHAPTER 114

(Com. Sub. for H. B. 4234—By Delegates L. White, Staton, Hunt, Trump,  
Beane, Smirl and Manuel)

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

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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.

1 Any person who knowingly takes the name, birth date,  
2 social security number or other identifying information of  
3 another person, without the consent of that other person,  
4 with the intent to fraudulently represent that he or she is  
5 the other person for the purpose of making financial or  
6 credit transactions in the other person's name, is guilty of  
7 a felony, and upon conviction, shall be punished by  
8 confinement in the penitentiary not more than five years,  
9 or fined not more than one thousand dollars, or both:  
10 *Provided*, That the provisions of this section do not apply  
11 to any person who obtains another person's drivers license  
12 or other form of identification for the sole purpose of  
13 misrepresenting his or her age.

## CHAPTER 115

(H. B. 4106—By Delegates Rowe, Johnson, Staton, Faircloth and Martin)

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

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.

1 (a) As used in this section:

2 (1) "Person" means an individual, proprietorship,  
3 partnership, corporation, club or other legal entity;

4 (2) "Shooting range" or "range" means an area  
5 designed and operated for the use of rifles, shotguns,  
6 pistols, silhouettes, skeet, trap, black powder or any other  
7 similar shooting.

8 (b) Except as provided in this section, a person may  
9 not maintain a nuisance action for noise against a shooting  
10 range located in the vicinity of that person's property if  
11 the range was established as of the date of the person  
12 acquiring the property. If there is a substantial change in  
13 use of the range after the person acquires the property, the  
14 person may maintain a nuisance action if the action is  
15 brought within two years from the beginning of the  
16 substantial change in use of the range.

17 (c) A person who owned property in the vicinity of a  
18 shooting range that was established after the person  
19 acquired the property may maintain a nuisance action for  
20 noise against that range only if the action is brought  
21 within four years after establishment of the range or two  
22 years after a substantial change in use of the range.

23 (d) If there has been no shooting activity at a range  
24 for a period of two years, resumption of shooting is  
25 considered establishment of a new range for the purposes  
26 of this section.

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## CHAPTER 116

(H. B. 4296—By Delegates Smirl, Trump, Thomas,  
Staton, Kominar and Martin)

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

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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.**

1 The licensure provisions set forth in this article shall  
2 not apply to:

3 (1) Any person carrying a deadly weapon upon his  
4 own premises; nor shall anything herein prevent a person  
5 from carrying any firearm, unloaded, from the place of  
6 purchase to his or her home, residence or place of  
7 business or to a place of repair and back to his or her  
8 home, residence or place of business, nor shall anything  
9 herein prohibit a person from possessing a firearm while  
10 hunting in a lawful manner or while traveling from his or  
11 her home, residence or place of business to a hunting site,  
12 and returning to his or her home, residence or place of  
13 business;

14 (2) Any person who is a member of a properly  
15 organized target-shooting club authorized by law to  
16 obtain firearms by purchase or requisition from this state,  
17 or from the United States for the purpose of target  
18 practice, from carrying any pistol, as defined in this article,  
19 unloaded, from his home, residence or place of business to  
20 a place of target practice, and from any such place of  
21 target practice back to his home, residence or place of  
22 business, for using any such weapon at such place of  
23 target practice in training and improving his skill in the  
24 use of such weapons;

25 (3) Any law-enforcement officer or law-enforcement  
26 official as such are defined in section one, article  
27 twenty-nine, chapter thirty of this code;

28 (4) Any employee of the West Virginia department of  
29 corrections duly appointed pursuant to the provisions of  
30 section five, article five, chapter twenty-eight of this code  
31 while such employee is on duty;

32 (5) Any member of the armed forces of the United  
33 States or the militia of this state while such member is on  
34 duty;

35 (6) Any circuit judge, including any retired circuit  
36 judge designated senior status by the supreme court of  
37 appeals of West Virginia, prosecuting attorney, assistant  
38 prosecuting attorney or a duly appointed investigator  
39 employed by a prosecuting attorney;

40 (7) Any resident of another state, who has been issued  
41 a license to carry a concealed weapon by a state or a  
42 political subdivision which has entered into a reciprocity  
43 agreement with this state, shall be exempt from the  
44 licensing requirements of section four of this article. The  
45 governor may execute reciprocity agreements on behalf  
46 of the state of West Virginia with states or political  
47 subdivisions which have similar gun permitting laws and  
48 which recognize and honor West Virginia licenses issued  
49 pursuant to section four of this article.

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## CHAPTER 117

(Com. Sub. for S. B. 148—By Senators Tomblin, Mr. President, and Buckalew)  
[By Request of the Executive]

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

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AN ACT to amend and reenact section five, article eight-d, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to criminal penalties for engaging or procuring another to engage in sexual misconduct with a child; adding parents to persons to whom the criminal penalties apply; and increasing the penalties against a parent, guardian or custodian who engages or procures another person to engage in sexual misconduct with a child.

*Be it enacted by the Legislature of West Virginia:*

That section five, article eight-d, 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 8D. CHILD ABUSE.

**§61-8D-5. Sexual abuse by a parent, guardian or custodian; parent, guardian or custodian allowing sexual abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian or custodian; penalties.**

1 (a) In addition to any other offenses set forth in this  
2 code, the Legislature hereby declares a separate and  
3 distinct offense under this subsection, as follows: If any  
4 parent, guardian or custodian of a child under his or her  
5 care, custody or control, shall engage in or attempt to  
6 engage in sexual exploitation of, or in sexual intercourse,  
7 sexual intrusion or sexual contact with, a child under his  
8 or her care, custody or control, notwithstanding the fact  
9 that the child may have willingly participated in such  
10 conduct, or the fact that the child may have consented to  
11 such conduct or the fact that the child may have suffered  
12 no apparent physical injury or mental or emotional injury  
13 as a result of such conduct, then such parent, guardian or  
14 custodian shall be guilty of a felony and, upon conviction  
15 thereof, shall be imprisoned in the penitentiary not less  
16 than ten nor more than twenty years, or fined not less than  
17 five hundred nor more than five thousand dollars and  
18 imprisoned in the penitentiary not less than ten years nor  
19 more than twenty years.

20 (b) If any parent, guardian or custodian shall  
21 knowingly procure another person to engage in or attempt  
22 to engage in sexual exploitation of, or sexual intercourse,  
23 sexual intrusion or sexual contact with, a child under the  
24 care, custody or control of such parent, guardian or  
25 custodian when such child is less than sixteen years of age,  
26 notwithstanding the fact that the child may have willingly  
27 participated in such conduct or the fact that the child may  
28 have suffered no apparent physical injury or mental or  
29 emotional injury as a result of such conduct, such parent,  
30 guardian or custodian shall be guilty of a felony and,  
31 upon conviction thereof, shall be imprisoned in the  
32 penitentiary not less than five years nor more than fifteen  
33 years, or fined not less than one thousand nor more than  
34 ten thousand dollars and imprisoned in the penitentiary  
35 not less than five years nor more than fifteen years.

36 (c) If any parent, guardian or custodian shall  
37 knowingly procure another person to engage in or attempt  
38 to engage in sexual exploitation of, or sexual intercourse,  
39 sexual intrusion or sexual contact with, a child under the  
40 care, custody or control of such parent, guardian or  
41 custodian when such child is sixteen years of age or older,

42 notwithstanding the fact that the child may have consented  
43 to such conduct or the fact that the child may have  
44 suffered no apparent physical injury or mental or  
45 emotional injury as a result of such conduct, then such  
46 parent, guardian or custodian shall be guilty of a felony  
47 and, upon conviction thereof, shall be imprisoned in the  
48 penitentiary not less than one year nor more than five  
49 years.

50 (d) The provisions of this section shall not apply to a  
51 custodian whose age exceeds the age of the child by less  
52 than four years.

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## CHAPTER 118

(Com. Sub. for S. B. 158—By Senators Tomblin, Mr. President, and Buckalew)  
[By Request of the Executive]

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

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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.**

**62. Criminal Procedure.**

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

**ARTICLE 8F. SEX OFFENDER REGISTRATION ACT.**

§61-8F-1a. Intent.

§61-8F-2. Registration.

§61-8F-2a. Court determination of sexually violent predator.

§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-9. Registration of out-of-state offenders.

§61-8F-10. Address verification.

**§61-8F-1a. Intent.**

1       It is the intent of this article to provide a law-  
2 enforcement tool to protect the public from child  
3 molesters and violent sexual offenders by registration of  
4 persons who have demonstrated by their criminal conduct  
5 that they may constitute a continuing threat to the public  
6 safety.

**§61-8F-2. Registration.**

1       (a) Any person who has been convicted of a violation  
2 of the provisions of article eight-b, eight-c, or sections five  
3 and six, article eight-d of this chapter, or of section  
4 fourteen, article two, or of sections twelve and thirteen,

5 article eight of this chapter, or of a felony violation  
6 involving a minor of sections six or seven, article eight,  
7 chapter sixty-one of this code, or of a similar provision in  
8 another state, federal or military jurisdiction shall be  
9 required to be registered as set forth in this article. Any  
10 person who has been convicted of an attempt to commit  
11 any of the offenses set forth in this section shall also be  
12 required to register as set forth in this article.

13 (b) On the date that any person convicted of any of  
14 the crimes listed herein, including those persons  
15 continuing under some post conviction supervisory status  
16 for crimes committed prior to the date of this law, is  
17 released, is granted probation, is granted a suspended  
18 sentence, is released on parole, probation, home detention,  
19 work release or any other release from incarceration, the  
20 commissioner of corrections, regional jail administrator or  
21 city or sheriff operating a jail which releases such person  
22 and any parole or probation officer who releases such  
23 person or supervises such person following the release  
24 shall obtain all information required by this subsection  
25 prior to the release of the person, inform the person that  
26 he or she must register within three days of release with  
27 the state police detachment in the county where he or she  
28 shall reside, and shall send written notice of the release of  
29 the person to the state police within three days of receiving  
30 the information. The notice shall include:

- 31 (1) The full name of the person;
- 32 (2) The address where the person shall reside;
- 33 (3) The person's social security number;
- 34 (4) A recent photograph of the person;
- 35 (5) A brief description of the crime for which the  
36 person was convicted;
- 37 (6) Fingerprints; and
- 38 (7) For any person determined to be a sexually violent  
39 predator, the notice shall also include:
  - 40 (i) Identifying factors, including physical character-  
41 istics;
  - 42 (ii) History of the offense; and

43 (iii) Documentation of any treatment received for the  
44 mental abnormality or personality disorder.

45 Persons who have been convicted for any of the  
46 offenses contained in subsection (a) of this section and  
47 released from incarceration or correctional supervision  
48 shall be required to register as provided herein if that  
49 person is arrested on any new criminal charge within a  
50 period of ten years from release from correctional  
51 supervision of the original sexual offense. The arresting  
52 agency shall inform the person of his or her duty to  
53 register and shall send written notice of the person's arrest  
54 and of this notification to the state police.

55 (c) At the time the person is convicted of the crimes  
56 set forth in subsection (a) of this section, the person shall  
57 sign in open court, a statement acknowledging that he or  
58 she understands the requirements imposed by this article.  
59 The court shall inform the person so convicted of the  
60 requirements to register imposed by this article and shall  
61 further satisfy itself by interrogation of the defendant or  
62 his or her counsel that the defendant has received notice  
63 of the provisions of this article and that the defendant  
64 understands such provisions. Such statement, when signed  
65 and witnessed, shall constitute prima facie evidence that  
66 the person had knowledge of the requirements of this  
67 article.

68 (d) When a person required to register under this  
69 article is released following incarceration, the  
70 commissioner of corrections, the regional jail supervisor  
71 or the city or sheriff or any other person supervising the  
72 operation of the place of confinement shall, within three  
73 days, inform the state police of such release and provide  
74 such further information as is required by this article.

75 (e) The state police shall maintain a central registry of  
76 all persons who register under this article and shall release  
77 information only as provided in this article. The  
78 information required to be made public by the state police  
79 by subdivision (2), subsection (b), section five of this  
80 article shall be accessible through the internet.

81 (f) For the purposes of this article, sexually violent  
82 offenses shall be defined as any criminal offenses set forth  
83 in article eight-b of this chapter which include forcible  
84 compulsion, bodily injury or the use of deadly weapons.

84 (g) The term "sexually violent predator" means a  
85 person who has been convicted of a sexually violent  
86 offense and who suffers from a mental abnormality or  
87 personality disorder that makes the person likely to  
88 engage in predatory sexually violent offenses.

89 (h) The term "mental abnormality" means a  
90 congenital or acquired condition of a person that affects  
91 the emotional or volitional capacity of the person in a  
92 manner that predisposes that person to the commission of  
93 criminal sexual acts to a degree that makes the person a  
94 menace to the health and safety of other persons.

95 (i) The term "predatory act" means an act directed at a  
96 stranger or at a person with whom a relationship has been  
97 established or promoted for the primary purpose of  
98 victimization.

**§61-8F-2a. Court determination of sexually violent predator.**

1 (a) The circuit court that has sentenced a person for  
2 having committed a sexually violent offense shall make a  
3 determination whether:

4 (1) A person is a sexually violent predator; or

5 (2) A person is no longer a sexually violent predator.

6 (b) A hearing to make a determination as provided for  
7 in subsection (a) of this section is a summary proceeding,  
8 triable before the court without a jury.

9 (c) A proceeding seeking to establish that a person is a  
10 sexually violent predator is initiated by the filing of a  
11 written information by the prosecuting attorney. The  
12 information shall describe the record of the judgment of  
13 the court on the person's conviction of a sexually violent  
14 offense, and shall set forth a short and plain statement of  
15 the prosecutor's claim that the person suffers from a  
16 mental abnormality or personality disorder that makes the  
17 person likely to engage in predatory sexually violent  
18 offenses.

19 (d) A proceeding seeking to establish that a person is  
20 no longer a sexually violent predator is initiated by the  
21 filing of a petition by the person who has been determined  
22 to be a sexually violent predator.

23 (e) Prior to making a determination pursuant to the  
24 provisions of this section, the sentencing court may order  
25 a psychiatric or other clinical examination and, after such  
26 examination, may further order a period of observation in  
27 an appropriate facility within this state designated by the  
28 court after consultation with the director of the division of  
29 health.

30 (f) Prior to making a determination pursuant to the  
31 provisions of this section, the sentencing court shall  
32 request and receive a report by the board established  
33 pursuant to section two-b of this article. The report shall  
34 set forth the findings and recommendation of the board  
35 on the issue of whether the person is a sexually violent  
36 predator.

37 (g) At a hearing to determine whether a person is a  
38 sexually violent predator, the person shall be present and  
39 shall have the right to be represented by counsel and  
40 introduce evidence and cross-examine witnesses. The  
41 offender shall have access to a summary of the medical  
42 evidence to be presented by the state. The offender shall  
43 have the right to an examination by an independent expert  
44 of his choice and testimony from such expert as a medical  
45 witness on his behalf. At the termination of such hearing  
46 the court shall make a finding of fact upon a  
47 preponderance of the evidence as to whether the person is  
48 a sexually violent predator.

49 (h) If a person is determined by the circuit court to be  
50 a sexually violent predator, the clerk of the court shall  
51 forward a copy of the order to the state police in the  
52 manner prescribed by the superintendent of state police in  
53 procedural rules promulgated in accordance with the  
54 provisions of article three, chapter twenty-nine-a of this  
55 code.

**§61-8F-2b. Creation of sex offender registration advisory board.**

1 (a) There is hereby created within the department of  
2 military affairs and public safety a sex offender  
3 registration advisory board consisting of a minimum of  
4 five members appointed by the secretary of the  
5 department of military affairs and public safety. At least  
6 two of the members shall be experts in the field of the

7 behavior and treatment of sexual offenders, and each shall  
8 be a physician, psychologist or social worker in the  
9 employ of this state appointed by the secretary in  
10 consultation with the director of the division of health.  
11 The remaining members shall be victims rights advocates  
12 and representatives of law-enforcement agencies.  
13 Members of the board shall be reimbursed their  
14 reasonable expenses pursuant to the rules promulgated by  
15 the department of administration for the reimbursement of  
16 expenses of state officials and employees, and shall receive  
17 no other compensation for their services. The board shall  
18 utilize the staff of the division or office within the  
19 department of military affairs and public safety designated  
20 by the secretary thereof in carrying out its duties and  
21 responsibilities as set forth in this article.

22 (b) The board shall assist the circuit courts of this state  
23 in determining whether persons convicted of sexually  
24 violent offenses are sexually violent predators.

#### **§61-8F-3. Change of address.**

1 When any person required to register under this article  
2 changes his or her residence or address, he or she shall,  
3 within ten days, inform the West Virginia state police of  
4 his or her new address in the manner prescribed by the  
5 superintendent of state police in procedural rules  
6 promulgated in accordance with the provisions of article  
7 three, chapter twenty-nine-a of this code.

#### **§61-8F-4. Duration.**

1 (a) A person required to register under terms of this  
2 article shall continue to comply with this section, except  
3 during ensuing periods of incarceration, until:

4 (1) Ten years have elapsed since the person was  
5 released from prison or jail, or from the time the person  
6 was placed upon probation, parole or supervised release;  
7 or

8 (2) For the life of that person if that person: (A) Has  
9 one or more prior convictions for any qualifying offense  
10 described in this article; or (B) has been convicted of a  
11 sexually violent offense; or (C) has been determined to be  
12 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; community information programs by prosecuting attorney and state police; petition to circuit 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

31 the state police conduct a community notification  
32 program which shall include publication of the offender's  
33 name and place of residence, and information concerning  
34 the legal rights and obligations of both the offender and  
35 the community. The prosecuting attorney and state police  
36 may conduct a community notification program in the  
37 county of residence of any person who is required to  
38 register for life under the terms of subdivision (2),  
39 subsection (a), section four of this article. Community  
40 notification may be repeated when determined appropriate  
41 by the prosecuting attorney;

42 (2) The state police shall maintain and make available  
43 to the public at least quarterly the list of all persons who  
44 are required to register for life according to the terms of  
45 subdivision (2), subsection (a), section four of this article.  
46 The method of publication and access to this list shall be  
47 determined by the superintendent; and

48 (3) A resident of a county may petition the circuit  
49 court for an order requiring the state police to release  
50 information about persons residing in that county who are  
51 required to register under section two of this article. The  
52 court shall determine whether information contained on  
53 the list and relevant to public safety outweighs the  
54 importance of confidentiality, and if the court orders  
55 information to be released, it may further order limitations  
56 upon secondary dissemination by the resident seeking the  
57 information.

58 In no event shall information concerning the identity  
59 of a victim of an offense requiring registration be  
60 released.

61 (c) The state police may furnish information and  
62 documentation required in connection with the  
63 registration to authorized law-enforcement and  
64 governmental agencies of the United States and its  
65 territories, of foreign countries duly authorized to receive  
66 the same, of other states within the United States and of the  
67 state of West Virginia upon proper request stating that the  
68 records will be used solely for law-enforcement related  
69 purposes. The state police may disclose information  
70 collected under this article to federal, state and local

71 governmental agencies responsible for conducting pre-  
72 employment checks.

73 (d) An elected public official, public employee or  
74 public agency is immune from civil liability for damages  
75 arising out of any action relating to the provisions of this  
76 section except when the official, employee or agency  
77 acted with gross negligence or in bad faith.

**§61-8F-7. Information shall be released when person moves  
out of state.**

1 A person who is required to register pursuant to the  
2 provisions of this article, who intends to move to another  
3 state or country shall at least ten days prior to such move  
4 notify the state police of his or her intent to move and of  
5 the location to which he or she intends to move, or if that  
6 person is incarcerated he or she shall notify correctional  
7 officials of his or her intent to reside in some other state or  
8 country upon his or her release, and of the location to  
9 which he or she intends to move. Upon such notification,  
10 the state police shall notify law-enforcement officials of  
11 the jurisdiction where the person indicates he or she  
12 intends to reside of the information provided by the  
13 person under the provisions of this article.

**§61-8F-8. Failure to register; penalty.**

1 (a) Except as outlined below, any person required to  
2 register under this article who knowingly provides false  
3 identity or address information or who refuses to provide  
4 such accurate information when so required by terms of  
5 this article, or who knowingly fails to register or  
6 knowingly fails to provide a change of address as required  
7 by this article, is guilty of a misdemeanor and, upon  
8 conviction thereof, shall be fined not less than two  
9 hundred fifty dollars nor more than ten thousand dollars,  
10 or imprisoned in the county jail not more than one year,  
11 or both fined and imprisoned: *Provided*, That each time  
12 such person changes residence and fails to register, such  
13 failure shall constitute a separate offense.

14 (b) Any person required to register under this article  
15 who is convicted of a second or subsequent offense of  
16 failing to register or provide a change of address as  
17 required, or any person who has one or more prior

18 convictions for qualifying sexual offenses under this  
19 article and who fails to register or has any conviction for a  
20 sexually violent offense and who fails to register is guilty  
21 of a felony and, upon conviction thereof, shall be  
22 imprisoned in a state penal facility for not less than one  
23 year nor more than five years.

24 (c) Any person required to register as a sexual  
25 predator as defined by section two of this article, who fails  
26 to register or provide a change of address as required by  
27 this article is guilty of a felony and, upon conviction  
28 thereof, shall, for a first offense, be imprisoned in a state  
29 correctional facility not less than two years nor more than  
30 ten years, and for a second or subsequent offense, be  
31 imprisoned in a state correctional facility not less than five  
32 years nor more than twenty years.

33 (d) In addition to any other penalty specified for  
34 failure to register under this article, any person under the  
35 supervision of a probation officer, parole officer or any  
36 other sanction short of confinement in jail or prison, who  
37 knowingly refuses to register, or who knowingly gives  
38 false information concerning his or her residence, or who  
39 knowingly fails to provide a change of address as required  
40 by this article, shall be subject to immediate revocation of  
41 probation or parole and returned to confinement for the  
42 remainder of any suspended or unserved portion of his or  
43 her original sentence.

**§61-8F-9. Registration of out-of-state offenders.**

1 (a) When any probation or parole officer accepts  
2 supervision of and has legal authority over any person  
3 required to register under this article from another state  
4 under the terms and conditions of the uniform act for out-  
5 of-state parolee supervision established under article six,  
6 chapter twenty-eight of this code, such officer shall give  
7 the person written notice of the registration requirements  
8 of this section and obtain a signed statement from the  
9 person required to register acknowledging the receipt of  
10 the notice. The officer shall obtain and submit to the state  
11 police the identical information required of persons  
12 convicted in this state under subsection (b), section two of  
13 this article.

14 (b) Any person:

15 (1) Who resides in another state;

16 (2) Who is employed, carries on a vocation or is a  
17 student in this state; and

18 (3) Who is required by the state in which he or she  
19 resides to register in that state under provisions of the law  
20 of that state that are similar to the provisions of this article,  
21 shall register in this state and otherwise comply with the  
22 provisions of this article.

#### **§61-8F-10. Address verification.**

1 The state police shall verify addresses of those persons  
2 registered as sexually violent predators every ninety days  
3 and all other registered persons once a year. The state  
4 police may require registrants to periodically submit to  
5 new fingerprints and photographs as part of the  
6 verification process. The method of verification shall be  
7 in accordance with internal management rules and  
8 regulations pertaining thereto promulgated by the  
9 superintendent under authority of section twenty-five,  
10 article two, chapter fifteen of this code.

### **CHAPTER 62. CRIMINAL PROCEDURE.**

#### **ARTICLE 12. PROBATION AND PAROLE.**

##### **§62-12-2. Eligibility for probation.**

1 (a) All persons who are found guilty of or plead guilty  
2 to any felony, the maximum penalty for which is less than  
3 life imprisonment, and all persons who are found guilty of  
4 or plead guilty to any misdemeanor, shall be eligible for  
5 probation, notwithstanding the provisions of sections  
6 eighteen and nineteen, article eleven, chapter sixty-one of  
7 this code.

8 (b) The provisions of subsection (a) of this section to  
9 the contrary notwithstanding, any person who commits or  
10 attempts to commit a felony with the use, presentment or  
11 brandishing of a firearm shall be ineligible for probation.  
12 Nothing in this section shall apply to an accessory before  
13 the fact or a principal in the second degree who has been  
14 convicted as if he or she were a principal in the first  
15 degree if, in the commission of or in the attempted

16 commission of the felony, only the principal in the first  
17 degree used, presented or brandished a firearm.

18 (c) (1) The existence of any fact which would make  
19 any person ineligible for probation under subsection (b)  
20 of this section because of the commission or attempted  
21 commission of a felony with the use, presentment or  
22 brandishing of a firearm shall not be applicable unless  
23 such fact is clearly stated and included in the indictment  
24 or presentment by which such person is charged and is  
25 either: (i) Found by the court upon a plea of guilty or  
26 nolo contendere; or (ii) found by the jury, if the matter be  
27 tried before a jury, upon submitting to such jury a special  
28 interrogatory for such purpose; or (iii) found by the court,  
29 if the matter be tried by the court, without a jury.

30 (2) The amendments to this subsection adopted in the  
31 year one thousand nine hundred eighty-one:

32 (A) Shall apply to all applicable offenses occurring on  
33 or after the first day of August of that year;

34 (B) Shall apply with respect to the contents of any  
35 indictment or presentment returned on or after the first  
36 day of August of that year irrespective of when the  
37 offense occurred;

38 (C) Shall apply with respect to the submission of a  
39 special interrogatory to the jury and the finding to be  
40 made thereon in any case submitted to such jury on or  
41 after the first day of August of that year or to the requisite  
42 findings of the court upon a plea of guilty or in any case  
43 tried without a jury: *Provided*, That the state shall give  
44 notice in writing of its intent to seek such finding by the  
45 jury or court, as the case may be, which notice shall state  
46 with particularity the grounds upon which such finding  
47 shall be sought as fully as such grounds are otherwise  
48 required to be stated in an indictment, unless the grounds  
49 therefor are alleged in the indictment or presentment upon  
50 which the matter is being tried;

51 (D) Shall not apply with respect to cases not affected  
52 by such amendment and in such cases the prior provisions  
53 of this section shall apply and be construed without  
54 reference to such amendment; and

55       Insofar as such amendments relate to mandatory  
56 sentences without probation, all such matters requiring  
57 such sentence shall be proved beyond a reasonable doubt  
58 in all cases tried by the jury or the court.

59       (d) For the purpose of this section, the term "firearm"  
60 shall mean any instrument which will, or is designed to, or  
61 may readily be converted to, expel a projectile by the  
62 action of an explosive, gunpowder, or any other similar  
63 means.

64       (e) In the case of any person who has been found  
65 guilty of, or pleaded guilty to, a felony or misdemeanor  
66 under the provisions of section twelve or twenty-four,  
67 article eight, chapter sixty-one of this code, or under the  
68 provisions of article eight-c or eight-b of said chapter,  
69 such person shall only be eligible for probation after  
70 undergoing a physical, mental and psychiatric study and  
71 diagnosis which shall include an on-going treatment plan  
72 requiring active participation in sexual abuse counseling at  
73 a mental health facility or through some other approved  
74 program: *Provided*, That nothing disclosed by the person  
75 during such study or diagnosis shall be made available to  
76 any law-enforcement agency, or other party without that  
77 person's consent, or admissible in any court of this state,  
78 unless such information disclosed shall indicate the  
79 intention or plans of the probationer to do harm to any  
80 person, animal, institution or property, in which case such  
81 information may be released only to such persons as  
82 might be necessary for protection of the said person,  
83 animal, institution or property.

84       (f) Any person who has been convicted of a violation  
85 of the provisions of article eight-b, eight-c or sections five  
86 and six, article eight-d, chapter sixty-one of this code, or  
87 of section fourteen, article two, or of sections twelve and  
88 thirteen, article eight, chapter sixty-one of this code, or of  
89 a felony violation involving a minor of section six or  
90 seven, article eight, chapter sixty-one of this code, or of a  
91 similar provision in another jurisdiction shall be required  
92 to be registered upon release on probation. Any person  
93 who has been convicted of an attempt to commit any of  
94 the offenses set forth in this subsection shall also be  
95 registered upon release on probation.

- 96 (g) The probation officer shall within three days of  
97 release of the offender, send written notice to the state  
98 police of the release of the offender. The notice shall  
99 include:
- 100 (1) The full name of the person;
- 101 (2) The address where the person shall reside;
- 102 (3) The person's social security number;
- 103 (4) A recent photograph of the person;
- 104 (5) A brief description of the crime for which the  
105 person was convicted;
- 106 (6) Fingerprints; and
- 107 (7) For any person determined to be a sexually violent  
108 predator as defined in section two, article eight-f, chapter  
109 sixty-one of this code, the notice shall also include:
- 110 (i) Identifying factors, including physical characteris-  
111 tics;
- 112 (ii) History of the offense; and
- 113 (iii) Documentation of any treatment received for the  
114 mental abnormality or personality disorder.

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## CHAPTER 119

(Com. Sub. for S. B. 105—Senators Jackson, Kessler and Sharpe)

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

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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**

**4. Recovery of Fines in Criminal Cases.**

**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.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, a municipal judge may substitute in lieu of the  
3 imposition of a sentence of incarceration or imposition of  
4 a fine, substitute community service work for such  
5 incarceration or fine. Where community service work is  
6 ordered as a substitute on a sentence of incarceration an  
7 eight hour work day shall extinguish one day of any  
8 sentence of incarceration. The minimum wage established  
9 by the prevailing federal minimum wage in effect at the  
10 time of sentencing is imposed shall be used to compute  
11 the amount of community service work necessary to  
12 extinguish the fine. In the discretion of the court, the  
13 sentence credits may run concurrently or consecutively.

14 (b) Any community service ordered pursuant to the  
15 provisions of this section shall be performed for  
16 government entities or charitable or nonprofit entities and  
17 be supervised by the chief of police of the municipality or  
18 his or her designee.

19 (c) Persons sentenced under the provisions of this  
20 section remain under the jurisdiction of the municipal  
21 court. The court may withdraw the community service  
22 sentence at any time by order entered with or without  
23 notice and order a person previously sentenced to  
24 community service to serve the term of incarceration or to  
25 pay the fine available to the court upon the person's  
26 conviction: *Provided*, That any community service work  
27 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.**

**§62-11A-1a. Other sentencing alternatives.**

1 (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

35 the prevailing federal minimum wage at the time the  
36 sentence was imposed. In the discretion of the court, the  
37 sentence credits may run concurrently or consecutively.  
38 Persons sentenced under this program may be required to  
39 provide their own transportation to and from the work site,  
40 lunch and work clothes.

41 (b) In no event may the duration of the alternate  
42 sentence exceed the maximum period of incarceration  
43 otherwise allowed.

44 (c) In imposing a sentence under the provisions of this  
45 section, the court shall first make the following findings of  
46 fact and incorporate them into the court's sentencing  
47 order:

48 (1) The person sentenced was not convicted of an  
49 offense for which a mandatory period of confinement is  
50 imposed by statute;

51 (2) In circuit court cases, that the person sentenced is  
52 not a habitual criminal within the meaning of sections  
53 eighteen and nineteen, article eleven, chapter sixty-one of  
54 this code;

55 (3) In circuit court cases, that the offense underlying  
56 the sentence is not a felony offense for which violence or  
57 the threat of violence to the person is an element of the  
58 offense;

59 (4) In circuit court cases, that adequate facilities for  
60 the administration and supervision of alternative  
61 sentencing programs are available through the court's  
62 probation officers or the county sheriff or, in magistrate  
63 court cases, that adequate facilities for the administration  
64 and supervision of alternative sentencing programs are  
65 available through the county sheriff; and

66 (5) That an alternative sentence under provisions of  
67 this article will best serve the interests of justice.

68 (d) Persons sentenced by the circuit court under the  
69 provisions of this article shall remain under the  
70 administrative custody and supervision of the court's  
71 probation officers or the county sheriff. Persons

72 sentenced by a magistrate shall remain under the  
73 administrative custody and supervision of the county  
74 sheriff.

75 (e) Persons sentenced under the provisions of this  
76 section may be required to pay the costs of their  
77 incarceration, including meal costs, at the discretion of the  
78 court.

79 (f) Persons sentenced under the provisions of this  
80 section remain under the jurisdiction of the court. The  
81 court may withdraw any alternative sentence at any time  
82 by order entered with or without notice and require that  
83 the remainder of the sentence be served in the county jail,  
84 regional jail or penitentiary: *Provided*, That no alternative  
85 sentence directed by the sentencing judge or magistrate or  
86 administered under the supervision of the sheriff, his or  
87 her deputies, a jailer or a guard, shall require the convicted  
88 person to perform duties which would be considered  
89 detrimental to the convicted person's health as attested by  
90 a physician.

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## CHAPTER 120

(H. B. 4121—By Delegates Douglas, Mahan and Manuel)

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

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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.**

1           (a) The division of culture and history and the office  
2 of commissioner of culture and history heretofore created  
3 are hereby continued. The governor shall nominate, and  
4 by and with the advice and consent of the Senate, appoint  
5 the commissioner, who shall be the chief executive officer  
6 of the division and shall be paid an annual salary of  
7 forty-five thousand dollars per year, notwithstanding the  
8 provisions of section two-a, article seven, chapter six of  
9 this code. The commissioner so appointed shall have: (1)  
10 A bachelor's degree in one of the fine arts, social sciences,  
11 library science or a related field; or (2) four years'  
12 experience in the administration of museum management,  
13 public administration, arts, history or a related field.

14           (b) The division shall consist of five sections as  
15 follows:

- 16           (1) The arts section;  
17           (2) The archives and history section;  
18           (3) The museums section;  
19           (4) The historic preservation section; and  
20           (5) The administrative section.

21           (c) The division shall also consist of two citizens  
22 commissions as follows:

- 23           (1) A commission on the arts; and  
24           (2) A commission on archives and history.

25           (d) The commissioner shall exercise control and  
26 supervision of the division and shall be responsible for the

27 projects, programs and actions of each of its sections. The  
28 purpose and duty of the division is to advance, foster and  
29 promote the creative and performing arts and crafts,  
30 including both indoor and outdoor exhibits and  
31 performances; to advance, foster, promote, identify,  
32 register, acquire, mark and care for historical, prehistorical,  
33 archaeological and significant architectural sites, structures  
34 and objects in the state; to encourage the promotion,  
35 preservation and development of significant sites,  
36 structures and objects through the use of economic  
37 development activities such as loans, subsidies, grants and  
38 other incentives; to coordinate all cultural, historical and  
39 artistic activities in state government and at state-owned  
40 facilities; to acquire, preserve and classify books,  
41 documents, records and memorabilia of historical interest  
42 or importance; and, in general, to do all things necessary  
43 or convenient to preserve and advance the culture of the  
44 state.

45 (e) The division shall have jurisdiction and control and  
46 may set and collect fees for the use of all space in the  
47 building presently known as the West Virginia science and  
48 culture center, including the deck and courtyards forming  
49 an integral part thereof; the building presently known as  
50 West Virginia Independence Hall in Wheeling, including  
51 all the grounds and appurtenances thereof; "Camp  
52 Washington Carver" in Fayette County, as provided for in  
53 section fourteen of this article; and any other sites as may  
54 be transferred to or acquired by the division.  
55 Notwithstanding any provision of this code to the  
56 contrary, including the provisions of article one of chapter  
57 five-b of this code, beginning on and after the first day of  
58 July, one thousand nine hundred ninety-three, the division  
59 shall have responsibility for, and control of, all visitor  
60 touring and visitor tour guide activities within the state  
61 capitol building at Charleston.

62 (f) For the purposes of this article, "commissioner"  
63 means the commissioner of culture and history, and  
64 "division" means the division of culture and history.

### §29-1-3. Commission on the arts.

1 The commission on the arts heretofore created is  
2 hereby continued and shall be composed of fifteen  
3 appointed members.

4 The governor shall appoint, by and with the advice  
5 and consent of the Senate, the members of the commission  
6 for staggered terms of three years. A person appointed to  
7 fill a vacancy shall be appointed only for the remainder of  
8 that term.

9 No more than eight members may be of the same  
10 political party. Members of the commission shall be  
11 appointed so as to fairly represent both sexes, the ethnic  
12 and cultural diversity of the state and the geographic  
13 regions of the state.

14 The commission shall elect one of its members as  
15 chair. It shall meet at such times as shall be specified by  
16 the chair. Notice of each meeting shall be given to each  
17 member by the chair in compliance with the open  
18 meetings laws of the state. A majority of the members  
19 shall constitute a quorum for the transaction of business.  
20 The director of the arts section shall be an ex officio  
21 nonvoting member of the commission and shall serve as  
22 secretary. The director or a majority of the members may  
23 also call a meeting upon such notice as provided in this  
24 section.

25 Each member or ex officio member of the  
26 commission shall serve without compensation, but shall be  
27 reimbursed for all reasonable and necessary expenses  
28 actually incurred in the performance of the duties of the  
29 office; except that in the event the expenses are paid, or  
30 are to be paid, by a third party, the member or ex officio  
31 member, as the case may be, shall not be reimbursed by  
32 the state.

33 Upon recommendation of the commissioner, the  
34 governor may also appoint such officers of the state as  
35 may be appropriate to serve on the commission as ex  
36 officio nonvoting members.

37 The commission shall have the following powers:

38 (1) To advise the commissioner and the director of the  
39 arts section concerning the accomplishment of the  
40 purposes of that section and to establish a state plan with  
41 respect thereto;

42 (2) To approve and distribute grants-in-aid and awards  
43 from federal and state funds relating to the purposes of  
44 the arts section;

45 (3) To request, accept or expend federal funds to  
46 accomplish the purposes of the arts section when federal  
47 law or regulations would prohibit the same by the  
48 commissioner or section director, but would permit the  
49 same to be done by the commission on the arts;

50 (4) To otherwise encourage and promote the purposes  
51 of the arts section;

52 (5) To approve rules and regulations concerning the  
53 professional policies and functions of the section as  
54 promulgated by the director of the arts section; and

55 (6) To advise and consent to the appointment of the  
56 director by the commissioner.

#### §29-1-4. Arts section; director.

1 The purposes and duties of the arts section are to  
2 stimulate, encourage, assist, promote, foster and develop  
3 the performing and creative arts and crafts in the state; and  
4 in furtherance thereof to make awards, prizes and grants to  
5 individual performers, artists or craftsmen and to public or  
6 private corporations or associations in the field of either  
7 the performing or creative arts and crafts that would tend  
8 to encourage and foster the advancement of such arts and  
9 crafts; to support cultural, artistic or craft exhibits or  
10 performances at the division's facilities or on tour; and to  
11 perform such other duties as may be assigned to said  
12 section by the commissioner.

13 With the advice and consent of the commission on the  
14 arts, the commissioner shall appoint a director of the arts  
15 section, who shall have: (1) A bachelor's degree in the  
16 fine arts or related field or equivalent training and  
17 experience; or (2) three years' experience in  
18 administration of the fine arts or a related field.

19 With the approval of the commissioner, the director  
20 shall establish professional positions within the section.  
21 The director shall employ the personnel within these  
22 professional positions for the section.

23 The director may propose rules for legislative  
24 promulgation, in accordance with the provisions of  
25 chapter twenty-nine-a of this code, concerning the  
26 professional policies and functions of the arts section,  
27 subject to the approval of the commission on the arts.

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## CHAPTER 121

(Com. Sub. for H. B. 2823—By Delegates Laird and Campbell)

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

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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.**

1 (a) Within ninety days following the end of each  
2 fiscal year, each spending unit within state government  
3 shall submit a detailed report and accounting of all  
4 substantial unbudgeted contingent liabilities that may have  
5 a substantial and material impact on spending obligations  
6 in subsequent fiscal years. Each report is to include, but  
7 not be limited to, pending legal actions, unresolved audit  
8 findings and any other activities that are reasonably  
9 predicted to have an impact on future expenditures by the  
10 state.

11 (b) All reports are to be submitted to the secretary on  
12 forms and in the manner prescribed by the secretary.  
13 Within thirty days of receipt of each final report, the  
14 secretary shall forward a copy to the joint committee on  
15 government and finance.

16 (c) The secretary shall propose for promulgation all  
17 rules required for the implementation of this section in  
18 accordance with the provisions of article three, chapter  
19 twenty-nine-a of this code. The rules are to include, but  
20 not be limited to, definitions of the types of substantial  
21 unbudgeted contingent liabilities that are reportable under  
22 the provisions of this section.

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## CHAPTER 122

(S. B. 248—By Senators Bowman, Bailey, Ball, Kessler,  
Plymale, White, Boley, Buckalew, Minear and Scott)

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[Passed February 16, 1998; in effect ninety days from passage. Approved by the Governor.]

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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.**

1       There is hereby created the purchasing division of the  
2 department of administration for the purpose of  
3 establishing centralized offices to provide purchasing,  
4 travel and leasing services to the various state agencies.

5       No person shall be appointed director of the  
6 purchasing division unless that person is, at the time of  
7 appointment, a graduate of an accredited college or  
8 university and shall have spent a minimum of ten of the  
9 fifteen years immediately preceding his appointment  
10 employed in an executive capacity in purchasing for any  
11 unit of government or for any business, commercial or  
12 industrial enterprise.

13       The provisions of this article shall apply to all of the  
14 spending units of state government, except as is otherwise  
15 provided by this article or by law: *Provided*, That the  
16 provisions of this article shall not apply to the legislative  
17 branch unless otherwise provided or the Legislature or  
18 either house thereof requests the director to render  
19 specific services under the provisions of this chapter, nor  
20 to purchases of stock made by the alcohol beverage  
21 control commissioner, nor to purchases of textbooks for  
22 the state board of education.

23       Pursuant to the provisions of article ten, chapter four  
24 of this code, the purchasing division within the department  
25 of administration shall continue to exist until the first day  
26 of July, one thousand nine hundred ninety-nine.

## CHAPTER 123

(Com. Sub. for H. B. 4530—By Delegates Trump, Staton, Ashley,  
Buchanan, Webb and Fleischauer)

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

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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.**

1           (a) A circuit court, or a judge thereof, may, by  
2 administrative rule or order, and with the approval of the  
3 supreme court of appeals, designate an organization or  
4 agency to establish and operate education programs  
5 designed for parents who have filed an action for divorce,  
6 paternity, support or separate maintenance and who have  
7 minor children. The education programs shall be  
8 designed to instruct and educate parents about the effects  
9 of divorce and custody disputes on their children and to  
10 teach parents ways to help their children and minimize  
11 their trauma.

12           (b) The circuit court may issue an order requiring  
13 parties to an action for divorce, paternity, custody or  
14 separate maintenance to attend parental education classes  
15 established pursuant to subsection (a) of this section and  
16 may, by order, establish sanctions for failure to attend.

17 (c) The circuit court may require that each person  
18 attending a parental education class pay a fee, not to  
19 exceed twenty-five dollars, to the clerk of such court to  
20 defray the cost of materials and of hiring teachers:  
21 *Provided*, That where it is determined that a party is  
22 indigent and unable to pay for such classes, the court shall  
23 waive the payment of the fee for such party. The clerk of  
24 the circuit court shall, on or before the tenth day of each  
25 month, transmit all fees collected under this subsection to  
26 the state treasurer for deposit in the state treasury to the  
27 credit of special revenue fund to be known as the  
28 "parental education fund", which is hereby created. All  
29 moneys collected and received under this subsection and  
30 paid into the state treasury and credited to the "parental  
31 education fund" shall be used by the administrative office  
32 of the supreme court of appeals solely for reimbursing the  
33 provider of parental education classes for the costs of  
34 materials and of providing such classes. Such moneys  
35 shall not be treated by the auditor and treasurer as part of  
36 the general revenue of the state.

37 (d) The administrative office of the supreme court of  
38 appeals shall submit a report to the joint committee on  
39 government and finance summarizing the effectiveness of  
40 any program of parent education no later than two years  
41 from the initiation of the program.

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## CHAPTER 124

(Com. Sub. for H. B. 2817—By Delegates Fleischauer, Amores, Laird,  
Caputo, Capito, Osborne and Mahan)

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[Passed March 4, 1998; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact 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; to further amend said article by adding thereto a new section, designated section

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-2. Definitions.
- §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-6. Protective orders.
- §48-2A-7. Conditions of visitation in cases involving domestic or family violence.
- §48-2A-9. Law enforcement response to domestic or family violence.
- §48-2A-10. Filing of orders with law-enforcement agency.
- §48-2A-10a. Civil contempt; violation of protective orders; order to show cause.
- §48-2A-12. Registration of order.
- §48-2A-14. Arrest in domestic violence matters; conditions.

**§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  
3 violence. All people have a right to be safe in their homes  
4 and in their families;

5           (2) Children are often physically assaulted or witness  
6 violence against one of their parents or other family or  
7 household members, violence which too often ultimately  
8 results in death. These children may suffer deep and  
9 lasting emotional harm from victimization and from  
10 exposure to domestic or family violence;

11           (3) Domestic or family violence is a major health and  
12 law-enforcement problem in this state with enormous costs  
13 to the state in both dollars and human lives. It affects  
14 people of all racial and ethnic backgrounds and all  
15 socioeconomic classes; and

16           (4) Domestic or family violence can be deterred,  
17 prevented or reduced by legal intervention that treats this  
18 problem with the seriousness that it deserves.

19           (b) This article shall be liberally construed and applied  
20 to promote the following purposes:

21           (1) To assure victims of domestic or family violence  
22 the maximum protection from abuse that the law can  
23 provide;

24           (2) To create a speedy remedy to discourage violence  
25 against family or household members with whom the  
26 perpetrator of domestic or family violence has continuing  
27 contact;

28           (3) To expand the ability of law-enforcement officers  
29 to assist victims, to enforce the domestic or family violence  
30 law more effectively, and to prevent further abuse;

31           (4) To facilitate equal enforcement of criminal law by  
32 deterring and punishing violence against family and  
33 household members as diligently as violence committed  
34 against strangers;

35           (5) To recognize that domestic or family violence  
36 constitutes serious criminal behavior with potentially tragic  
37 results and that it will no longer be excused or tolerated;  
38 and

39           (6) To recognize that the existence of a former or on-  
40 going familial or other relationship should not serve to  
41 excuse, explain or mitigate acts of domestic or family

42 violence which are otherwise punishable as crimes under  
43 the laws of this state.

**§48-2A-2. Definitions.**

1 As used in this article, unless the context clearly  
2 requires otherwise:

3 (a) "Family violence", "domestic violence", "domestic  
4 or family violence" or "abuse" means the occurrence of  
5 one or more of the following acts between family or  
6 household members, as that term is defined in subsection  
7 (b) of this section:

8 (1) Attempting to cause or intentionally, knowingly or  
9 recklessly causing physical harm to another with or  
10 without dangerous or deadly weapons;

11 (2) Placing another in reasonable apprehension of  
12 physical harm;

13 (3) Creating fear of physical harm by harassment,  
14 psychological abuse or threatening acts;

15 (4) Committing either sexual assault or sexual abuse as  
16 those terms are defined in articles eight-b and eight-d,  
17 chapter sixty-one of this code; and

18 (5) Holding, confining, detaining or abducting  
19 another person against that person's will.

20 (b) "Family or household member" means current or  
21 former spouses, persons living as spouses, persons who  
22 formerly resided as spouses, parents, children and  
23 stepchildren, current or former sexual or intimate partners,  
24 persons who are dating or who have dated, persons who  
25 are presently residing or cohabiting together or in the past  
26 have resided or cohabited together or a person with whom  
27 the victim has a child in common.

28 (c) "Program for victims of domestic or family  
29 violence" means a licensed program for victims of  
30 domestic or family violence and their children, which  
31 program provides advocacy, shelter, crisis intervention,  
32 social services, treatment, counseling, education or  
33 training.

34 (d) "Program of intervention for perpetrators" means a  
35 licensed program, where available, or if no licensed  
36 program is available, a program that:

37 (1) Accepts perpetrators of domestic or family  
38 violence into educational intervention groups or  
39 counseling pursuant to a court order; or

40 (2) Offers educational intervention groups to  
41 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.**

1 (a) *Jurisdiction.* — Circuit courts and magistrate  
2 courts, as constituted under chapter fifty of this code, have  
3 concurrent jurisdiction over proceedings under this article.

4 (b) *Venue.* — The action may be heard in the county  
5 in which the domestic or family violence occurred, in the  
6 county in which the respondent is living or in the county  
7 in which the petitioner is living, either temporarily or  
8 permanently. If the parties are married to each other, the  
9 action may also be brought in the county in which an  
10 action for divorce between the parties may be brought as  
11 provided by section eight, article two of this chapter.

12 (c) *Petitioner's rights.* — The petitioner's right to relief  
13 under this article shall not be affected by his or her  
14 leaving a residence or household to avoid further abuse.

15 (d) *Priority of petitions.* — Any petition filed under  
16 the provisions of this article shall be given priority over  
17 any other civil action before the court, except actions in  
18 which trial is in progress, and shall be docketed  
19 immediately upon filing. Any appeal to the circuit court  
20 of a magistrate's judgment on a petition for relief under  
21 this article shall be heard within ten working days of the  
22 filing of the appeal.

23 (e) *Full faith and credit.* — Any temporary or final  
24 protective order issued pursuant to this article shall be  
25 effective throughout the state in every county. Any

26 protective order issued by any other state, territory or  
27 possession of the United States, Puerto Rico, the District of  
28 Columbia or Indian tribe shall be accorded full faith and  
29 credit and enforced as if it were an order of this state  
30 whether or not such relief is available in this state. A  
31 protective order from another jurisdiction is presumed to  
32 be valid if the order appears authentic on its face and shall  
33 be enforced in this state. If the validity of the order is  
34 contested, the court or law enforcement to which the order  
35 is presented shall, prior to the final hearing, determine the  
36 existence, validity and terms of such order in the issuing  
37 jurisdiction. A protective order from another jurisdiction  
38 may be enforced even if the order is not entered into the  
39 state law-enforcement information system described by  
40 section twelve of this article.

41 (f) *Service by publication.* — A protective order may  
42 be served on the respondent by means of a Class I legal  
43 advertisement published notice, with the publication area  
44 being the county in which the respondent resides,  
45 published in accordance with the provisions of section two,  
46 article three, chapter fifty-nine of this code if: (i) The  
47 petitioner files an affidavit with the court stating that an  
48 attempt at personal service pursuant to rule four of the  
49 West Virginia rules of civil procedure has been  
50 unsuccessful or evidence is adduced at the hearing for the  
51 protective order that the respondent has left the state of  
52 West Virginia; and (ii) a copy of the order is mailed by  
53 certified or registered mail to the respondent at the  
54 respondent's last known residence and returned  
55 undelivered.

**§48-2A-4. Commencement of proceeding; forms; counter-claim; accompanying persons.**

1 (a) No person shall be refused the right to file a  
2 petition under the provisions of this article. No person  
3 shall be denied relief under the provisions of this article if  
4 she or he presents facts sufficient under the provisions of  
5 this article for the relief sought. The petition shall be  
6 verified.

7 A petition for a protective order may be filed by:

8 (1) A person seeking relief under this article for  
9 herself or himself;

10 (2) An adult family or household member for the  
11 protection of the victim or for any family or household  
12 member who is a minor child or physically or mentally  
13 incapacitated to the extent that he or she cannot file on his  
14 or her own behalf, or

15 (3) A person who reported or was a witness to  
16 domestic or family violence and who, as a result, has been  
17 abused, threatened, harassed or who has been the subject  
18 of other actions intended to intimidate the person.

19 (b) The West Virginia supreme court of appeals shall  
20 prescribe forms which are necessary and convenient for  
21 proceedings pursuant to this article, and the court shall  
22 distribute such forms to the clerk of the circuit court and  
23 magistrate court of each county within the state.

24 (c) The respondent named in any petition alleging  
25 domestic or family violence may file a counterclaim or  
26 raise any affirmative defenses.

27 (d) No person accompanying a person who is seeking  
28 to file a petition under the provisions of this article is  
29 precluded from being present if his or her presence is  
30 desired by the person seeking a petition unless the  
31 person's behavior is disruptive to the proceeding.

32 (e) No fees shall be charged for the filing of petitions  
33 or other papers, service of petitions or orders, copies of  
34 orders, or other costs for services provided by, or  
35 associated with, any proceedings under this article until the  
36 matter is brought before the court for final resolution.

**§48-2A-5. Temporary orders of court; hearings; persons present.**

1 (a) Upon filing of a verified petition under this article,  
2 the court may enter such temporary orders as it may deem  
3 necessary to protect the petitioner or minor children from  
4 domestic or family violence and, upon good cause shown,  
5 may do so ex parte without the necessity of bond being  
6 given by the petitioner. Clear and convincing evidence of

7 immediate and present danger of abuse to the petitioner or  
8 minor children shall constitute good cause for the issuance  
9 of an ex parte order pursuant to this section. If the  
10 respondent is not present at the proceeding, the petitioner  
11 or the petitioner's legal representative shall certify to the  
12 court, in writing, the efforts which have been made to give  
13 notice to the respondent or just cause why notice should  
14 not be required. Copies of medical reports or records  
15 may be admitted into evidence to the same extent as  
16 though the original thereof. The custodian of such  
17 records shall not be required to be present to authenticate  
18 such records for any proceeding held pursuant to this  
19 subsection. Following such proceeding, the court shall  
20 order a copy of the petition to be served immediately  
21 upon the respondent, together with a copy of any  
22 temporary order issued pursuant to the proceedings,  
23 notice setting forth the time and place of the full hearing  
24 and a statement of the right of the respondent to be  
25 present and to be represented by counsel. Copies of any  
26 order made under the provisions of this section shall also  
27 be issued to the petitioner and any law-enforcement  
28 agency having jurisdiction to enforce the order, including  
29 the city police, the county sheriff's office and local office  
30 of the state police within twenty-four hours of the entry of  
31 the order. A temporary protective order shall remain  
32 effective until such time as a hearing is held and shall be  
33 in full force and effect in every county in this state.

34 (b) Within five days following the issuance of the  
35 court's temporary order, a full hearing shall be held at  
36 which the petitioner must prove the allegation of domestic  
37 or family violence, or that he or she reported or witnessed  
38 domestic violence against another and has, as a result, been  
39 abused, threatened, harassed or has been the subject of  
40 other actions to attempt to intimidate him or her, by a  
41 preponderance of the evidence, or such petition shall be  
42 dismissed. If the respondent has not been served with  
43 notice of the temporary order, the hearing may be  
44 continued in order to permit service to be effected. The  
45 failure to obtain service upon the respondent does not  
46 constitute a basis for dismissing the petition. Copies of  
47 medical reports may be admitted into evidence to the same

48 extent as though the original thereof, upon proper  
49 authentication, by the custodian of such records.

50 (c) No person requested by a party to be present  
51 during a hearing held under the provisions of this article  
52 shall be precluded from being present unless such person  
53 is to be a witness in the proceeding and a motion for  
54 sequestration has been made and such motion has been  
55 granted. A person found by the court to be disruptive  
56 may be precluded from being present.

57 (d) If a hearing is continued, the court may make or  
58 extend such temporary orders as it deems necessary.

#### §48-2A-6. Protective orders.

1 (a) At the conclusion of the hearing, if the petitioner  
2 has proven the allegations of domestic or family violence,  
3 or that he or she reported or witnessed domestic or family  
4 violence against another and has, as a result, been abused,  
5 threatened, harassed or has been the subject of other  
6 actions to attempt to intimidate him or her, by a  
7 preponderance of the evidence, the court shall issue a  
8 protective order directing the respondent to refrain from  
9 abusing, harassing, stalking, threatening or otherwise  
10 intimidating the petitioner, the person who reported or  
11 witnessed family or domestic violence or the minor  
12 children, or engaging in other conduct that would place  
13 the petitioner, the person who reported or witnessed family  
14 or domestic violence or the minor children in reasonable  
15 fear of bodily injury. Where the respondent is present at  
16 the hearing and elects not to contest the allegations of  
17 domestic or family violence or does not contest the relief  
18 sought, the petitioner is not required to adduce evidence  
19 and prove the allegations of domestic or family violence  
20 and the court may directly address the issues of the relief  
21 requested.

22 (b) Where the petitioner is the victim of domestic or  
23 family violence, the terms of a protective order may  
24 include:

25 (1) Granting possession to the petitioner of the  
26 residence or household jointly resided in at the time the  
27 abuse occurred;

28 (2) Awarding temporary custody of or establishing  
29 temporary visitation rights with regard to minor children  
30 named in the order;

31 (3) Establishing terms of temporary visitation with  
32 regard to the minor children named in the order  
33 including, but not limited to, requiring third party  
34 supervision of visitations if necessary to protect the  
35 petitioner and/or the minor children;

36 (4) Ordering the noncustodial parent to pay to the  
37 custodial parent a sum for temporary support and  
38 maintenance of the petitioner and children, if any;

39 (5) Ordering the respondent to pay to the petitioner a  
40 sum for temporary support and maintenance of the  
41 petitioner, where appropriate;

42 (6) Ordering the respondent to refrain from entering  
43 the school, business or place of employment of the  
44 petitioner or household or family members for the  
45 purpose of violating the protective order;

46 (7) Ordering the respondent to participate in an  
47 intervention program for perpetrators;

48 (8) Ordering the respondent to refrain from  
49 contacting, telephoning, communicating, harassing or  
50 verbally abusing the petitioner;

51 (9) Providing for either party to obtain personal  
52 property or other items from a location, including  
53 granting temporary possession of motor vehicles owned  
54 by either or both of the parties, and providing for the  
55 safety of the parties while this occurs, including ordering a  
56 law-enforcement officer to accompany one or both of the  
57 parties;

58 (10) Prohibiting the respondent from using or  
59 possessing a firearm or other weapon, notwithstanding the  
60 fact that the respondent has a valid license to possess such  
61 firearm or other weapon;

62       (11) Informing the respondent that possession of a  
63 firearm while subject to a protective order is a violation of  
64 federal law;

65       (12) Ordering the respondent to reimburse the  
66 petitioner or other person for any expenses incurred as a  
67 result of the domestic or family violence, including, but  
68 not limited to, medical expenses, transportation and  
69 shelter; and

70       (13) Ordering the petitioner and respondent to refrain  
71 from transferring, conveying, alienating, encumbering, or  
72 otherwise dealing with property which could otherwise be  
73 subject to the jurisdiction of the court or another court in  
74 an action for divorce or support, partition or in any other  
75 action affecting their interests in property.

76       (c) Where the petitioner or other person to be  
77 protected reported or was a witness to the family or  
78 domestic violence, the terms of a protective order may  
79 include:

80       (1) Ordering the respondent to refrain from abusing,  
81 contacting, telephoning, communicating, harassing,  
82 verbally abusing or otherwise intimidating the petitioner  
83 or other person to be protected;

84       (2) Ordering the respondent to refrain from entering  
85 the school, business or place of employment of the  
86 petitioner or other person to be protected, for the purpose  
87 of violating the protective order.

88       (d) Except as otherwise provided by subsection (d),  
89 section three-a of this article, a final protective order  
90 issued by a magistrate, family law master or circuit judge  
91 pursuant to this article or subdivision (13), subsection (a),  
92 article two of this chapter, is effective for either ninety  
93 days or one hundred eighty days, in the discretion of the  
94 court. If the court enters an order for a period of ninety  
95 days, upon receipt of a written request from the petitioner  
96 prior to the expiration of the ninety-day period, the court  
97 shall extend its order for an additional ninety-day period.

98       (e) To be effective, a written request to extend an  
99 order from ninety days to one hundred eighty days must

100 be submitted to the court prior to the expiration of the  
101 original ninety-day period. A notice of the extension  
102 shall be sent by the clerk of the court to the respondent by  
103 first class mail, addressed to the last known address of the  
104 respondent as indicated by the court's case filings. The  
105 extension of time is effective upon mailing of the notice.

106 (f) The court may amend the terms of a protective  
107 order at any time upon subsequent petition filed by either  
108 party. The protective order shall be in full force and  
109 effect in every county of this state and shall so state.

110 (g) No order under this article shall in any manner  
111 affect title to any real property.

112 (h) Certified copies of any order or extension notice  
113 made under the provisions of this section shall be issued to  
114 the petitioner, the respondent and any law-enforcement  
115 agency having jurisdiction to enforce the order, including  
116 the city police, the county sheriff's office or local office of  
117 the West Virginia state police within twenty-four hours of  
118 the entry of the order.

119 (i) Mutual protective orders are prohibited unless both  
120 parties have filed a petition under section four of this  
121 article and have proven the allegations of domestic or  
122 family violence by a preponderance of the evidence. This  
123 shall not prevent other persons, including the respondent,  
124 from filing a separate petition. The court may consolidate  
125 two or more petitions if he or she determines that  
126 consolidation will further the interests of justice and  
127 judicial economy. The court shall enter a separate order  
128 for each petition filed.

129 (j) Any protective order issued pursuant to this article  
130 shall contain on its face the following statement, printed in  
131 bold faced type or in capital letters:

132 **"VIOLATION OF THIS ORDER MAY BE**  
133 **PUNISHED BY CONFINEMENT IN A REGIONAL**  
134 **OR COUNTY JAIL FOR AS LONG AS ONE YEAR**  
135 **AND BY A FINE OF AS MUCH AS TWO**  
136 **THOUSAND DOLLARS".**

**§48-2A-7. Conditions of visitation in cases involving domestic or family violence.**

1 (a) A court may award visitation of a child by a parent  
2 who has committed domestic or family violence only if  
3 the court finds that adequate provision for the safety of  
4 the child and the petitioner can be made.

5 (b) In a visitation order, a court may:

6 (1) Order an exchange of a child to occur in a  
7 protected setting;

8 (2) Order that supervision be provided by another  
9 person or agency;

10 (3) Order the perpetrator of domestic or family  
11 violence to attend and complete, to the satisfaction of the  
12 court, a program of intervention for perpetrators as a  
13 condition of the visitation;

14 (4) Order the perpetrator of domestic or family  
15 violence to abstain from possession or consumption of  
16 alcohol or controlled substances during the visitation and  
17 for the twelve hours that precede the visitation;

18 (5) Order the perpetrator of domestic or family  
19 violence to pay the costs of supervised visitation, if any;

20 (6) Prohibit overnight visitation;

21 (7) Impose any other condition that the court  
22 considers necessary to provide for the safety of the child,  
23 the petitioner or any other family or household member.

24 (c) Regardless of whether visitation is allowed, the  
25 court may order that the address of the child and the  
26 petitioner be kept confidential.

27 (d) If a court allows a family or household member to  
28 supervise visitation, the court shall establish conditions to  
29 be followed during visitation.

**§48-2A-9. Law enforcement response to domestic or family violence.**

1 (a) Notwithstanding any other provision of this code  
2 to the contrary, all law-enforcement officers are hereby  
3 authorized to serve all pleadings and orders filed or  
4 entered pursuant to this article on Sundays and legal  
5 holidays. No law-enforcement officer shall refuse to serve  
6 any pleadings or orders entered pursuant to this article.

7 (b) Any law-enforcement officer responding to an  
8 alleged incident of domestic or family violence shall  
9 inform the parties thereto of the availability of the possible  
10 remedies provided by this article and the possible  
11 applicability of the criminal laws of this state. Any law-  
12 enforcement officer investigating an alleged incident of  
13 domestic or family violence shall advise the victim of such  
14 violence of the availability of the family protection shelter  
15 to which such person may be admitted.

16 (c) Any law-enforcement officer responding to an  
17 alleged incident of domestic or family violence shall, in  
18 addition to providing the information required in  
19 subsection (a) of this section, provide transportation for or  
20 facilitate transportation of the victim or victims, upon the  
21 request of such victim or victims, to a shelter or the  
22 appropriate court where there is reasonable cause to  
23 believe that such victim or victims have suffered or are  
24 likely to suffer physical injury.

25 (d) Each law-enforcement agency shall maintain  
26 records on all incidents of domestic or family violence  
27 reported to it and shall monthly make and deliver to the  
28 West Virginia state police a report on a form prescribed by  
29 the state police, listing all such incidents of domestic or  
30 family violence. Such reports shall include:

31 (1) The age and sex of the victim and the perpetrator  
32 of domestic or family violence;

33 (2) The relationship between the parties;

34 (3) The type and extent of abuse;

35 (4) The number and type of weapons involved;

36 (5) Whether the law-enforcement agency responded to  
37 the complaint and if so, the time involved, the action taken

38 and the time lapse between the agency's action and the  
39 victim's request for assistance;

40 (6) Whether any prior reports have been made,  
41 received or filed regarding domestic or family violence on  
42 any prior occasion and if so, the number of such prior  
43 reports; and

44 (7) The effective dates and terms of any protective  
45 order issued prior to or following the incident to protect  
46 the victim: *Provided*, That no information which will  
47 permit the identification of the parties involved in any  
48 incident of domestic or family violence shall be included  
49 in such report.

50 (e) The West Virginia state police shall tabulate and  
51 analyze any statistical data derived from the reports made  
52 by law-enforcement agencies pursuant to this section and  
53 publish a statistical compilation in its annual uniform  
54 crime report, as provided for in section twenty-four, article  
55 two, chapter fifteen of this code. The statistical  
56 compilation shall include, but is not limited to, the  
57 following:

58 (1) The number of domestic or family violence  
59 complaints received;

60 (2) The number of complaints investigated;

61 (3) The number of complaints received from alleged  
62 victims of each sex;

63 (4) The average time lapse in responding to such  
64 complaints;

65 (5) The number of complaints received from alleged  
66 victims who have filed such complaints on prior occasions;

67 (6) The number of aggravated assaults and homicides  
68 resulting from such repeat incidents;

69 (7) The type of police action taken in disposition of  
70 the cases; and

71 (8) The number of alleged violations of protective  
72 orders.

73 (f) As used in this section, the terms "abuse", "family  
74 violence" and "family or household members" shall have  
75 the meanings given them in section two of this article; and  
76 the term "law-enforcement agency" shall include the West  
77 Virginia department of health and human resources in  
78 those instances of child abuse reported to the department  
79 which are not otherwise reported to any other law-  
80 enforcement agency.

81 (g) The governor's committee on crime, delinquency  
82 and correction shall develop and promulgate rules for  
83 state, county and municipal law-enforcement officers and  
84 law-enforcement agencies with regard to domestic  
85 violence. The notice of the public hearing on the rules  
86 shall be published before the first day of July, one  
87 thousand nine hundred ninety-one. Prior to the  
88 publication of the proposed rules, the governor's  
89 committee on crime, delinquency and correction shall  
90 convene a meeting or meetings of an advisory committee  
91 to assist in the development of the rules. The advisory  
92 committee shall be composed of persons invited by the  
93 committee to represent state, county and local law-  
94 enforcement agencies and officers, to represent  
95 magistrates and court officials, to represent victims of  
96 domestic or family violence, to represent shelters receiving  
97 funding pursuant to article two-c of this chapter and to  
98 represent other persons or organizations who, in the  
99 discretion of the committee, have an interest in the rules.  
100 The rules and the revisions thereof as provided in this  
101 section shall be promulgated as legislative rules in  
102 accordance with chapter twenty-nine-a of this code.  
103 Following the promulgation of said rules, the committee  
104 shall meet at least annually to review the rules and to  
105 propose revisions as a result of changes in law or policy.

106 (h) Nothing in this section shall be construed to  
107 authorize the inclusion of information contained in a  
108 report of an incident of abuse in any local, state, interstate,  
109 national or international systems of criminal identification  
110 pursuant to section twenty-four, article two, chapter fifteen  
111 of this code: *Provided*, That nothing in this section shall  
112 prohibit the West Virginia state police from processing

113 information through its criminal identification bureau with  
114 respect to any actual charge or conviction of a crime.

115 (i) All law-enforcement officers shall receive training  
116 relating to response to calls involving domestic or family  
117 violence by the first day of October, one thousand nine  
118 hundred ninety-three.

119 (j) Two years after the entry of a final protective order,  
120 the circuit court, may, upon motion, order that the  
121 protective order and references to the order be purged  
122 from the file maintained by any law-enforcement agency  
123 and may further order that the file maintained by the  
124 court be sealed and not opened except upon order of the  
125 court when such is in the interest of justice.

**§48-2A-10. Filing of orders with law-enforcement agency.**

1 Upon entry of an order pursuant to section five or six  
2 of this article, or an order entered pursuant to section  
3 thirteen, article two of this chapter granting relief provided  
4 for by this article, a copy of the order shall, no later than  
5 the close of the next business day, be transmitted by the  
6 court or the clerk of the court to a local office of the city  
7 police, the county sheriff and the West Virginia state  
8 police, where it shall be placed in a confidential file, with  
9 access provided only to the law-enforcement agency and  
10 the respondent named on the order. A sworn affidavit  
11 may be executed by a party who has been awarded  
12 exclusive possession of the residence or household,  
13 pursuant to an order entered under subsection (b), section  
14 six of this article, and shall be delivered to such law-  
15 enforcement agencies simultaneously with any order,  
16 giving his or her consent for a law-enforcement officer to  
17 enter the residence or household, without a warrant, to  
18 enforce the protective order or temporary order. Orders  
19 shall be promptly served upon the respondent. Failure to  
20 serve a protective order does not stay the effect of a valid  
21 order if the respondent has actual notice of the existence  
22 and contents of the order.

**§48-2A-10a. Civil contempt; violation of protective orders;  
order to show cause.**

1 (a) Any party to a protective order or a legal guardian  
2 or guardian ad litem may file a petition for civil contempt  
3 alleging a violation of an order issued pursuant to the  
4 provisions of this article. Such petition shall be filed in a  
5 court in the county in which the violation occurred or the  
6 county in which the order was issued.

7 (b) When a petition for an order to show cause is filed,  
8 a hearing on the petition shall be held within five days  
9 from the filing of the petition. Any order to show cause  
10 which is issued shall be served upon the alleged violator.

11 (c) Upon a finding of contempt, the court may order  
12 the violator to comply with specific provisions of the  
13 protective order and post a bond as surety for faithful  
14 compliance with such order.

**§48-2A-12. Registration of order.**

1 (a) The West Virginia state police shall maintain a  
2 registry in which it shall enter certified copies of orders  
3 entered by courts from every county in this state pursuant  
4 to the provisions of this article, or from other jurisdictions  
5 pursuant to their laws: *Provided*, That the provisions of  
6 this subsection are not effective until a central automated  
7 record system is developed.

8 (b) A petitioner who obtains a protective order  
9 pursuant to this article, or from another jurisdiction  
10 pursuant to its law, may register that order in any county  
11 within this state where the petitioner believes enforcement  
12 may be necessary.

13 (c) A protective order may be registered by the  
14 petitioner in a county other than the issuing county by  
15 obtaining a copy of the order of the issuing court,  
16 certified by the clerk of that court, and presenting that  
17 certified order to the local office of the West Virginia state  
18 police where the order is to be registered.

19 (d) Upon receipt of a certified order for registration,  
20 the local office of the state police shall provide certified  
21 copies to any law-enforcement agency within its  
22 jurisdiction, including the city police and the county  
23 sheriff's office.

24 (e) Nothing in this section precludes the enforcement  
25 of an order in a county other than the county or  
26 jurisdiction in which the order was issued, if the petitioner  
27 has not registered the order in the county in which an  
28 alleged violation of the order occurs.

**§48-2A-14. Arrest in domestic violence matters; conditions.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, if a person is alleged to have committed a  
3 violation of the provisions of subsection (a) or (b), section  
4 twenty-eight, article two, chapter sixty-one of this code  
5 against a family or household member, in addition to any  
6 other authority to arrest granted by this code, a  
7 law-enforcement officer has authority to arrest that person  
8 without first obtaining a warrant if:

9 (1) The law-enforcement officer has observed credible  
10 corroborative evidence that an offense has occurred; and  
11 either:

12 (2) The law-enforcement officer has received, from  
13 the victim or a witness, an oral or written allegation of facts  
14 constituting a violation of section twenty-eight, article two,  
15 chapter sixty-one of this code; or

16 (3) The law-enforcement officer has observed credible  
17 evidence that the accused committed the offense.

18 (b) For purposes of this section, credible corroborative  
19 evidence means evidence that is worthy of belief and  
20 corresponds to the allegations of one or more elements of  
21 the offense and may include, but is not limited to, the  
22 following:

23 (1) *Condition of the alleged victim.* — One or more  
24 contusions, scratches, cuts, abrasions, or swellings; missing  
25 hair; torn clothing or clothing in disarray consistent with a  
26 struggle; observable difficulty in breathing or  
27 breathlessness consistent with the effects of choking or a  
28 body blow; observable difficulty in movement consistent  
29 with the effects of a body blow or other unlawful physical  
30 contact.

31       (2) *Condition of the accused.* — Physical injury or  
32 other conditions similar to those set out for the condition  
33 of the victim which are consistent with the alleged offense  
34 or alleged acts of self-defense by the victim.

35       (3) *Condition of the scene.* — Damaged premises or  
36 furnishings; disarray or misplaced objects consistent with  
37 the effects of a struggle.

38       (4) *Other conditions.* — Statements by the accused  
39 admitting one or more elements of the offense; threats  
40 made by the accused in the presence of an officer; audible  
41 evidence of a disturbance heard by the dispatcher or other  
42 agent receiving the request for police assistance; written  
43 statements by witnesses.

44       (c) Whenever any person is arrested pursuant to  
45 subsection (a) of this section, the arrested person shall be  
46 taken before a magistrate within the county in which the  
47 offense charged is alleged to have been committed in a  
48 manner consistent with the provisions of Rule 1 of the  
49 Administrative Rules for the Magistrate Courts of West  
50 Virginia.

51       (d) If an arrest for a violation of subsection (c), section  
52 twenty-eight, article two, chapter sixty-one of this code is  
53 authorized pursuant to this section, that fact constitutes  
54 prima facie evidence that the accused constitutes a threat  
55 or danger to the victim or other family or household  
56 members for the purpose of setting conditions of bail  
57 pursuant to section seventeen-c, article one-c, chapter  
58 sixty-two of this code.

59       (e) Whenever any person is arrested pursuant to the  
60 provisions of this article or for a violation of an order  
61 issued pursuant to subdivision (12), subsection (a), section  
62 thirteen, article two of this chapter, the arresting officer:

63       (1) Shall seize all weapons that are alleged to have  
64 been involved or threatened to be used in the commission  
65 of domestic or family violence; and

66       (2) May seize a weapon that is in plain view of the  
67 officer or was discovered pursuant to a consensual search,

68 as necessary for the protection of the officer or other  
69 persons.

#### ARTICLE 2C. DOMESTIC VIOLENCE ACT.

- §48-2C-2. Definitions.
- §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-13a. Standards, procedures and curricula.
- §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-16. Continuing education for certain state employees.
- §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-19. Required curricula for public education system.
- §48-2C-20. Continuing education for school personnel who are required to report child abuse and neglect.

#### §48-2C-2. Definitions.

- 1 As used in this article, unless the context clearly
- 2 requires otherwise:
  - 3 (a) "Board" means the family protection services board
  - 4 created pursuant to section three of this article;
  - 5 (b) "Department" means the department of health and
  - 6 human resources or any successor agency however so
  - 7 named;
  - 8 (c) "Shelter" or "family protection shelter" means a
  - 9 licensed domestic or family violence shelter created for
  - 10 the purpose of receiving, on a temporary basis, persons
  - 11 who are victims of domestic violence, abuse or rape as well
  - 12 as the children of such victims;

13 (d) "Secretary" means the secretary of the  
14 department of health and human resources; and

15 (e) "Family protection program" or "program" means  
16 a licensed domestic or family violence program offered  
17 by a locally controlled organization primarily for the  
18 purpose of providing services to victims of domestic or  
19 family violence or abuse and their children.

**§48-2C-3. Family protection services board; members;  
purposes.**

1 (a) There is hereby created a family protection  
2 services board to consist of five persons. The governor,  
3 with the advice and consent of the Senate, shall appoint  
4 three members of the board. One such member shall be a  
5 director of a shelter. One member shall be a member of a  
6 major trade association which represents shelters across the  
7 state. The final gubernatorial appointee shall be a  
8 member of the public. The other two members shall be  
9 the secretary of the department of health and human  
10 resources, or his or her designee, and the chair of the  
11 governor's committee on crime, delinquency and  
12 correction, or his or her designee.

13 (b) The terms of the three members appointed by the  
14 governor shall be staggered terms of three years. In the  
15 case of the initial appointments, the director of the shelter  
16 shall serve a one-year term, the representative of the trade  
17 association shall serve a two-year term and the appointed  
18 member of the public shall serve a three-year term.

19 (c) In the event that a member of the board ceases to  
20 be qualified for appointment, then his or her appointment  
21 shall terminate.

**§48-2C-4. Duties of board.**

1 It is the duty of the board to:

2 (a) Regulate its procedural practice;

3 (b) Receive and consider applications for the  
4 development of shelters;

5 (c) Facilitate the formation and operation of shelters;

6 (d) Promulgate rules to implement the provisions of  
7 this article and any applicable federal guidelines;

8 (e) Advise the secretary on matters of concern relative  
9 to his or her responsibilities under this article;

10 (f) Study issues pertinent to family protection shelters,  
11 programs for domestic violence victims, and report the  
12 results to the governor and the Legislature;

13 (g) Conduct hearings as necessary under this article;

14 (h) Delegate to the secretary such powers and duties of  
15 the board as the board may deem appropriate to delegate,  
16 including, but not limited to, the authority to approve,  
17 disapprove, revoke or suspend licenses;

18 (i) Deliver funds to shelters within forty-five days of  
19 the approval of a proposal for such shelters;

20 (j) Establish a system of peer review which will ensure  
21 the safety, well-being and health of the clients of all  
22 shelters operating in the state;

23 (k) Evaluate annually each funded shelter to  
24 determine its compliance with the goals and objectives set  
25 out in its original application for funding or subsequent  
26 revisions;

27 (l) To award to shelters, for each fiscal year, ninety-  
28 five percent of the total funds collected and paid over  
29 during the fiscal year to the special revenue account  
30 established pursuant to section twenty-four, article one of  
31 this chapter and to expend, during said period a sum not  
32 in excess of five percent of said funds for cost of  
33 administering provisions of this article;

34 (m) Establish and enforce system of standards for  
35 annual licensure for all shelters and programs in the state;

36 (n) Enforce standards; and

37 (o) Review its rules biannually.

**§48-2C-4a. Establishment of local councils authorized.**

1 (a) A local government, a county or a combination  
2 thereof may establish an advisory council on domestic or  
3 family violence.

4 (b) The purpose of a local advisory council is to  
5 increase the awareness and understanding of domestic or  
6 family violence and its consequences and to reduce the  
7 incidence of domestic or family violence within the  
8 locality by:

9 (1) Promoting effective strategies for identification of  
10 the existence of domestic or family violence and  
11 intervention by public and private agencies serving  
12 persons who are victims of domestic or family violence;

13 (2) Providing for public education;

14 (3) Facilitating communication among public and  
15 private agencies that provide programs to assist victims  
16 and programs of intervention for perpetrators;

17 (4) Providing assistance to public and private agencies  
18 and providers of services to develop statewide procedures  
19 and community and staff education, including procedures  
20 to review fatalities; and

21 (5) Developing a comprehensive plan of data  
22 collection concerning domestic or family violence in  
23 cooperation with courts, prosecutors, law-enforcement  
24 officers, health care practitioners and other local agencies,  
25 in a manner that protects the identity of victims of  
26 domestic or family violence. Nothing contained in this  
27 subdivision shall be construed to modify or diminish any  
28 existing law relating to the confidentiality of records.

**§48-2C-4b. State public health plan for reducing domestic or family violence.**

1 (a) The bureau for public health of the department of  
2 health and human resources, in consultation with the  
3 family protection services board, shall:

4 (1) Assess the impact of domestic or family violence  
5 on public health; and

6 (2) Write a state public health plan for reducing the  
7 incidence of domestic or family violence in this state.

8 (b) The state public health plan shall:

9 (1) Include, but not be limited to, public education,  
10 including the use of the various communication media to  
11 set forth the public health perspective on domestic or  
12 family violence;

13 (2) Be developed in consultation with public and  
14 private agencies that provide programs for victims of  
15 domestic or family violence, advocates for victims,  
16 organizations representing the interests of shelters, and  
17 persons who have demonstrated expertise and experience  
18 in providing health care to victims of domestic or family  
19 violence and their children; and

20 (3) Be completed on or before the first day of  
21 January, two thousand.

22 (c) The bureau for public health of the department of  
23 health and human resources shall:

24 (1) Transmit a copy of the state public health plan to  
25 the governor and the Legislature; and

26 (2) Review and update the state public health plan  
27 annually.

**§48-2C-10. Referral to shelters by officers.**

1 Where shelters are available, the law-enforcement  
2 officer or other public authority investigating an alleged  
3 incident of domestic or family violence shall advise the  
4 victim of the availability of the family protection shelter to  
5 which that person may be admitted.

**§48-2C-10a. Notice of victims' rights, remedies and available services; required information.**

1 (a) The bureau for public health of the department of  
2 health and human resources shall make available to health  
3 care facilities and practitioners a written form notice of the  
4 rights of victims and the remedies and services available to  
5 victims of domestic or family violence.

6 (b) A health care practitioner whose patient has  
7 injuries or conditions consistent with domestic violence  
8 shall provide to the patient, and every health care facility  
9 shall make available to all patients, a written form notice of  
10 the rights of victims and the remedies and services  
11 available to victims of domestic or family violence.

**§48-2C-13a. Standards, procedures and curricula.**

1 (a) The bureau for public health of the department of  
2 health and human resources shall publish model standards,  
3 including specialized procedures and curricula,  
4 concerning domestic or family violence for health care  
5 facilities, practitioners and personnel.

6 (b) The procedures and curricula shall be developed  
7 in consultation with public and private agencies that  
8 provide programs for victims of domestic or family  
9 violence, advocates for victims, organizations representing  
10 the interests of shelters and personnel who have  
11 demonstrated expertise and experience in providing health  
12 care to victims of domestic or family violence and their  
13 children.

**§48-2C-13b. Regulation of intervention programs for perpetrators; required provisions; duties of providers.**

1 (a) The family protection services board shall propose  
2 legislative rules governing the minimum level of  
3 responsibility, service and accountability expected from  
4 providers of programs of intervention for perpetrators of  
5 domestic and family violence. These rules shall be  
6 proposed for promulgation in accordance with the  
7 provisions of article three, chapter twenty-nine-a of this  
8 code. These rules shall be developed in consultation with  
9 public and private agencies that provide programs for  
10 victims of domestic or family violence and programs of  
11 intervention for perpetrators, with advocates for victims,  
12 with organizations that represent the interests of shelters,  
13 and with persons who have demonstrated expertise and  
14 experience in providing services to victims and  
15 perpetrators of domestic and family violence and their  
16 children. If a program of intervention for perpetrators  
17 receives funds from the state or is licensed by the state, the

18 board shall review the program's compliance with the  
19 rules promulgated pursuant to this subsection.

20 (b) The rules for programs for intervention for  
21 perpetrators of domestic or family violence shall include:

22 (1) Criteria concerning a perpetrator's appropriateness  
23 for the program;

24 (2) Systems for communication and evaluation among  
25 the referring court, the public and private agencies that  
26 provide programs for victims of domestic or family  
27 violence and the programs of intervention for  
28 perpetrators; and

29 (3) Required qualifications concerning education,  
30 training and experience for providers of intervention  
31 programs.

32 (c) The standards shall be based upon and incorporate  
33 the following principles:

34 (1) The focus of a program is to end the acts of  
35 violence and ensure the safety of the victim and any  
36 children or other family or household members;

37 (2) Domestic or family violence constitutes behavior  
38 for which the perpetrator is accountable; and

39 (3) Although alcohol and substance abuse often  
40 exacerbate domestic or family violence, it is a separate  
41 problem which requires specialized intervention or  
42 treatment.

43 (d) Providers of perpetrator intervention programs:

44 (1) Shall require participants to sign the following  
45 releases:

46 (A) Allowing the provider to inform the victim and the  
47 victim's advocates that the perpetrator is participating in a  
48 batterers' intervention prevention program with the  
49 provider and to provide information to the victim and the  
50 victim's advocates, if necessary, for the victim's safety;

51 (B) Allowing prior and current treating agencies to  
52 provide information about the perpetrator to the provider;  
53 and

54 (C) Allowing the provider, for good cause, to provide  
55 information about the perpetrator to relevant legal entities,  
56 including courts, parole officers, probation officers and  
57 child protective services;

58 (2) Shall report to the court, if the participation was  
59 court ordered, and to the victim, if the victim requests and  
60 provides a method of notification, any assault, failure to  
61 comply with program requirements, failure to attend the  
62 program and threat of harm by the perpetrator;

63 (3) Shall report to the victim, without the participant's  
64 authorization, all threats of harm;

65 (4) May report to the victim, without the participant's  
66 authorization, the participant's failure to attend.

**§48-2C-13c. Licensing providers of intervention programs for  
perpetrators.**

1 (a) The board shall establish an application for  
2 licensure for all providers of programs of intervention for  
3 perpetrators in accordance with section thirteen-b of this  
4 article.

5 (b) Licenses may be renewed on an annual basis with  
6 all such licenses having a term of one year commencing  
7 on the first day of July and terminating on the thirtieth  
8 day of June on the next year.

9 (c) The board shall grant or deny any license within  
10 forty-five days of the receipt of the application.

11 (d) The license granted by the board shall be  
12 conspicuously displayed by the licensees.

13 (e) The board may grant a provisional license or  
14 grant a waiver of licensure if the board deems such waiver  
15 or provisional license necessary for the operation of a  
16 program. All such waivers or provisional licenses shall be  
17 reviewed semiannually.

**§48-2C-16. Continuing education for certain state employees.**

1 (a)(1) Subject to the provisions of subdivision (2) of  
2 this subsection, the department of health and human  
3 resources shall provide or require continuing education  
4 concerning domestic or family violence for child  
5 protective services workers, adult protective services  
6 workers, social services workers, family support workers  
7 and workers in the child support enforcement division.

8 (2) Funding for the continuing education provided or  
9 required under subdivision (1) of this section may not  
10 exceed the amounts allocated for that purpose by the  
11 spending unit from existing appropriations. No provision  
12 of this section may be construed to require the Legislature  
13 to make any appropriation.

14 (b) The courses or requirements shall be prepared and  
15 presented in consultation with public and private agencies  
16 that provide programs for victims of domestic or family  
17 violence or programs of intervention for perpetrators,  
18 advocates for victims, organizations representing the  
19 interests of shelters and the family protection services  
20 board.

**§48-2C-17. Continuing education for law-enforcement officers concerning domestic or family violence.**

1 (a)(1) Subject to the provisions of subdivision (2) of  
2 this subsection, as a part of the initial law-enforcement  
3 officer training required before a person may be  
4 employed as a law-enforcement officer pursuant to article  
5 twenty-nine, chapter thirty of this code, all law-  
6 enforcement officers shall receive training concerning  
7 domestic or family violence.

8 (2) Funding for the training required under  
9 subdivision (1) of this section may not exceed the  
10 amounts allocated by the spending unit for that purpose  
11 from existing appropriations. No provision of this section  
12 may be construed to require the Legislature to make any  
13 appropriation.

14 (b) The course of instruction and the objectives in  
15 learning and performance for the education of law-

16 enforcement officers required pursuant to this section  
17 shall be developed and presented in consultation with  
18 public and private providers of programs for victims of  
19 domestic or family violence and programs of intervention  
20 for perpetrators, persons who have demonstrated expertise  
21 in training and education concerning domestic or family  
22 violence and organizations representing the interests of  
23 shelters.

**§48-2C-18. Judicial education on domestic or family violence.**

1 (a)(1) Subject to the provisions of subdivision (2) of  
2 this subsection, as a part of existing training for court  
3 personnel, the supreme court of appeals shall develop and  
4 present courses of continuing education concerning  
5 domestic or family violence for magistrates assistants, and  
6 juvenile and adult probation officers.

7 (2) Funding for the continuing education required  
8 under subdivision (1) of this section may not exceed the  
9 amounts allocated for that purpose by the supreme court  
10 of appeals from existing appropriations. No provision of  
11 this section may be construed to require the Legislature to  
12 make any appropriation.

13 (b) The course of instruction shall be prepared and  
14 may be presented in consultation with public and private  
15 agencies that provide programs for victims of domestic or  
16 family violence and programs of intervention for  
17 perpetrators, advocates for victims, persons who have  
18 demonstrated expertise in training and education  
19 concerning domestic or family violence, organizations  
20 representing the interests of shelters and the family  
21 protection services board.

**§48-2C-19. Required curricula for public education system.**

1 (a)(1) Subject to the provisions of subdivision (2) of  
2 this subsection, the state board of education shall select or  
3 develop:

4 (A) Curricula that are appropriate for various ages for  
5 pupils concerning the dynamics of violence, prevention of  
6 violence, including domestic or family violence; and

7 (B) Curricula for school counselors, health care  
8 personnel, administrators and teachers concerning  
9 domestic or family violence.

10 (2) Funding for selecting or developing the curricula  
11 required under subdivision (1) of this section may not  
12 exceed the amounts allocated for that purpose by the  
13 spending unit from existing appropriations. No provision  
14 of this section may be construed to require the Legislature  
15 to make any appropriation.

16 (b) The curricula shall be selected or developed by the  
17 state board of education in consultation with public and  
18 private agencies that provide programs for conflict  
19 resolution, violence prevention, victims of domestic or  
20 family violence and programs of intervention for  
21 perpetrators of domestic or family violence, advocates for  
22 victims, organizations representing the interests of shelters,  
23 persons who have demonstrated expertise and experience  
24 in education and domestic or family violence and the  
25 family protection services board.

**§48-2C-20. Continuing education for school personnel who  
are required to report child abuse and neglect.**

1 (a)(1) Subject to the provisions of subdivision (2) of  
2 this subsection, the state department of education shall  
3 provide or require courses of continuing education  
4 concerning domestic or family violence for employees  
5 who are required by law to report child abuse or neglect.

6 (2) Funding for the continuing education provided or  
7 required under subdivision (1) of this section may not  
8 exceed the amounts allocated for that purpose by the  
9 spending unit from existing appropriations. No provision  
10 of this section may be construed to require the Legislature  
11 to make any appropriation.

12 (b) The courses or requirements shall be prepared  
13 and presented in consultation with public and private  
14 agencies that provide programs for victims of domestic or  
15 family violence, persons who have demonstrated expertise  
16 in education and domestic or family violence, advocates  
17 for victims, organizations representing the interests of  
18 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]

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[Passed March 14, 1998; in effect July 1, 1998. Approved by the Governor.]

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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.**

**§11-15-30. Proceeds of tax; appropriation of certain revenues.**

1 (a) The proceeds of the tax imposed by this article  
2 shall be deposited in the general revenue fund of the state  
3 except as otherwise expressly provided in this article.

4 (b) *School major improvement fund.* —

5 After the payment or commitment of the proceeds or  
6 collections of this tax for the purposes set forth in sections  
7 sixteen and eighteen of this article, on the first day of each  
8 month, there shall be dedicated monthly from the  
9 collections of this tax, the amount of four hundred sixteen  
10 thousand six hundred sixty-seven dollars and the amount  
11 dedicated shall be deposited on a monthly basis into the  
12 school major improvement fund created pursuant to  
13 section six, article nine-d, chapter eighteen of this code.

14 (c) *School construction fund.* —

15 After the payment or commitment of the proceeds or  
16 collections of this tax for the purposes set forth in sections  
17 sixteen and eighteen of this article:

18 (1) On the first day of each month, there shall be  
19 dedicated monthly from the collections of this tax, the  
20 amount of one million four hundred sixteen thousand six  
21 hundred sixty-seven dollars and the amount dedicated  
22 shall be deposited into the school construction fund

23 created pursuant to section six, article nine-d, chapter  
24 eighteen of this code.

25 (2) Effective the first day of July, one thousand nine  
26 hundred ninety-eight, there shall be dedicated from the  
27 collections of this tax, an amount equal to any annual  
28 difference that may occur between the debt service  
29 payment for the one thousand nine hundred ninety-seven  
30 fiscal year for school improvement bonds issued under the  
31 better school building amendment under the provisions of  
32 article nine-c, chapter eighteen of this code and the  
33 amount of funds required for debt service on these school  
34 improvement bonds in any current fiscal year thereafter.  
35 This annual difference shall be prorated monthly, added  
36 to the monthly deposit in subdivision (1) of this  
37 subsection and deposited into the school construction  
38 fund created pursuant to section six, article nine-d, chapter  
39 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.

1 (a) For each school year beginning on the first day of  
2 July, one thousand nine hundred ninety-eight, and  
3 thereafter, the sum of the allocations shall be the amount  
4 appropriated by the Legislature for those purposes:

5 (1) One hundred fifty thousand dollars shall be  
6 allocated to each county;

7 (2) Distribution to the counties of the remainder of  
8 these funds shall be made proportional to the average of  
9 each county's average daily attendance for the preceding  
10 year and the county's second month net enrollment.

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\*Clerk's Note: This section was also amended by HB 4306 (Chapter 126), which passed prior to this act.

11 Moneys allocated by provision of this section shall be  
12 used to improve instructional programs according to a  
13 plan for instructional improvement which the affected  
14 county board shall file with the state board by the first day  
15 of August of each year, to be approved by the state board  
16 by the first day of September of that year if the plan  
17 substantially complies with standards to be adopted by the  
18 state board: *Provided*, That notwithstanding any other  
19 provision of this code to the contrary, moneys allocated  
20 by provision of this section may also be used in the  
21 implementation and maintenance of the uniform  
22 integrated regional computer information system.

23 (3) Up to twenty-five percent of this allocation may be  
24 used to employ professional educators and service  
25 personnel in counties after all applicable provisions of  
26 sections four and five of this article have been fully  
27 utilized.

28 Prior to the use of any funds from this section for  
29 personnel costs, the county board must receive  
30 authorization from the state superintendent of schools.  
31 The state superintendent shall require the district board to  
32 demonstrate: (1) The need for the allocation; (2)  
33 efficiency and fiscal responsibility in staffing; and (3) the  
34 sharing of services with adjoining counties and the  
35 regional educational service agency for that county in the  
36 use of the total local district board budget. District boards  
37 shall make application for available funds for the next  
38 fiscal year by the first day of May of each year. On or  
39 before the first day of June, the state superintendent shall  
40 review all applications and notify applying district boards  
41 of the distribution of the allocation. The funds shall be  
42 distributed during the fiscal year as appropriate. The state  
43 superintendent shall require the county board to  
44 demonstrate the need for an allocation for personnel  
45 based upon the county's inability to meet the requirements  
46 of state law or state board policy: *Provided*, That the  
47 funds available for personnel under this section may not  
48 be used to increase the total number of professional  
49 noninstructional personnel in the central office beyond  
50 four. The instructional improvement plan shall be made

51 available for distribution to the public at the office of each  
52 affected county board.

53 (b) An amount not less than the amount required to  
54 meet debt service requirements on any revenue bonds  
55 issued prior to the first day of January, one thousand nine  
56 hundred ninety-four, and the debt service requirements on  
57 any revenue bonds issued for the purpose of refunding  
58 revenue bonds issued prior to the first day of January, one  
59 thousand nine hundred ninety-four, shall be paid into the  
60 school building capital improvements fund created by  
61 section six, article nine-d of this chapter, and shall be used  
62 solely for the purposes of that article. The school  
63 building capital improvements fund shall not be utilized to  
64 meet the debt services requirement on any revenue bonds  
65 or revenue refunding bonds for which moneys contained  
66 within the school building debt service fund have been  
67 pledged for repayment pursuant to that section.

68 When the school improvement bonds secured by  
69 funds from the school building capital improvements fund  
70 mature, the state board of education shall annually deposit  
71 an amount equal to twenty-four million dollars from the  
72 funds allocated in this section into the school construction  
73 fund created pursuant to the provisions of section six,  
74 article nine-d, chapter eighteen of this code to continue  
75 funding school facility construction and improvements.

76 (c) Any project funded by the school building  
77 authority shall be in accordance with a comprehensive  
78 educational facility plan which must be approved by the  
79 state board and the school building authority.

#### **ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**

##### **§18-9D-15. Legislative intent; distribution of money.**

1 (a) It is the intent of the Legislature to empower the  
2 school building authority to facilitate and provide state  
3 funds and to administer all federal funds provided for the  
4 construction and major improvement of school facilities  
5 so as to meet the educational needs of the people of this  
6 state in an efficient and economical manner. The  
7 authority shall make funding determinations in

8 accordance with the provisions of this article and shall  
9 assess existing school facilities and each facility's school  
10 major improvement plan in relation to the needs of the  
11 individual student, the general school population, the  
12 communities served by the facilities and facility needs  
13 statewide.

14 (b) An amount that is no more than three percent of  
15 the sum of moneys that are determined by the authority to  
16 be available for distribution during the then current fiscal  
17 year from: (1) Moneys paid into the school building  
18 capital improvements fund pursuant to section ten, article  
19 nine-a of this chapter; (2) the issuance of revenue bonds  
20 for which moneys in the school building debt service fund  
21 are pledged as security; (3) moneys paid into the school  
22 construction fund pursuant to section six of this article;  
23 and (4) any other moneys received by the authority,  
24 except moneys paid into the school major improvement  
25 fund pursuant to section six of this article, may be  
26 allocated and may be expended by the authority for  
27 projects that service the educational community statewide  
28 or, upon application by the state board, for educational  
29 programs that are under the jurisdiction of the state board.  
30 In addition, upon application by the state board or the  
31 administrative council of an area vocational educational  
32 center established pursuant to article two-b of this chapter,  
33 the authority may allocate and expend under this section  
34 moneys for school major improvement projects proposed  
35 by the state board or an administrative council for school  
36 facilities under the direct supervision of the state board or  
37 an administrative council, respectively: *Provided*, That the  
38 authority may not expend any moneys for a school major  
39 improvement project proposed by the state board or the  
40 administrative council of an area vocational educational  
41 center unless the state board or an administrative council  
42 has submitted a ten-year school major improvement plan,  
43 to be updated annually, pursuant to section sixteen of this  
44 article: *Provided, however*, That the authority shall,  
45 before allocating any moneys to the state board or the  
46 administrative council of an area vocational educational  
47 center for a school improvement project, consider all other  
48 funding sources available for the project.

49 (c) An amount that is no more than two percent of the  
50 moneys that are determined by the authority to be  
51 available for distribution during the current fiscal year  
52 from: (1) Moneys paid into the school building capital  
53 improvements fund pursuant to section ten, article nine-a  
54 of this chapter; (2) the issuance of revenue bonds for  
55 which moneys in the school building debt service fund are  
56 pledged as security; (3) moneys paid into the school  
57 construction fund pursuant to section six of this article;  
58 and (4) any other moneys received by the authority,  
59 except moneys deposited into the school major  
60 improvement fund, shall be set aside by the authority as an  
61 emergency fund to be distributed in accordance with the  
62 guidelines adopted by the authority.

63 (d) The remaining moneys determined by the  
64 authority to be available for distribution during the then  
65 current fiscal year from: (1) Moneys paid into the school  
66 building capital improvements fund pursuant to section  
67 ten, article nine-a of this chapter; (2) the issuance of  
68 revenue bonds for which moneys in the school building  
69 debt service fund are pledged as security; (3) moneys paid  
70 into the school construction fund pursuant to section six  
71 of this article; and (4) any other moneys received by the  
72 authority, except moneys deposited into the school major  
73 improvement fund, shall be allocated and expended on the  
74 basis of need and efficient use of resources, the basis to be  
75 determined by the authority in accordance with the  
76 provisions of section sixteen of this article.

77 (e) If a county board of education proposes to finance  
78 a project that is approved pursuant to section sixteen of  
79 this article through a lease with an option to purchase  
80 leased premises upon the expiration of the total lease  
81 period pursuant to an investment contract, the authority  
82 may allocate no moneys to the county board in  
83 connection with the project: *Provided*, That the authority  
84 may transfer moneys to the state board of education,  
85 which, with the authority, shall lend the amount transferred  
86 to the county board to be used only for a one-time  
87 payment due at the beginning of the lease term, made for  
88 the purpose of reducing annual lease payments under the  
89 investment contract, subject to the following conditions:

90 (1) The loan shall be secured in the manner required  
91 by the authority, in consultation with the state board, and  
92 shall be repaid in a period and bear interest at a rate as  
93 determined by the state board and the authority and shall  
94 have such terms and conditions as are required by the  
95 authority, all of which shall be set forth in a loan  
96 agreement among the authority, the state board and the  
97 county board;

98 (2) The loan agreement shall provide for the state  
99 board and the authority to defer the payment of principal  
100 and interest upon any loan made to the county board  
101 during the term of the investment contract, and annual  
102 renewals of the investment contract, among the state board,  
103 the authority, the county board and a lessor: *Provided*,  
104 That in the event a county board, which has received a  
105 loan from the authority for a one-time payment at the  
106 beginning of the lease term, does not renew the subject  
107 lease annually until performance of the investment  
108 contract in its entirety is completed, the county board is in  
109 default and the principal of the loan, together with all  
110 unpaid interest accrued to the date of the default, shall at  
111 the option of the authority, in consultation with the state  
112 board, become due and payable immediately or subject to  
113 renegotiation among the state board, the authority and the  
114 county board: *Provided, however*, That if a county board  
115 renews the lease annually through the performance of the  
116 investment contract in its entirety, the county board shall  
117 exercise its option to purchase the leased premises:  
118 *Provided further*, That the failure of the county board to  
119 make a scheduled payment pursuant to the investment  
120 contract constitutes an event of default under the loan  
121 agreement: *And provided further*, That upon a default by  
122 a county board, the principal of the loan, together with all  
123 unpaid interest accrued to the date of the default, shall at  
124 the option of the authority, in consultation with the state  
125 board, become due and payable immediately or subject to  
126 renegotiation among the state board, the authority and the  
127 county board: *And provided further*, That if the loan  
128 becomes due and payable immediately, the authority, in  
129 consultation with the state board, shall use all means  
130 available under the loan agreement and law to collect the

131 outstanding principal balance of the loan, together with all  
132 unpaid interest accrued to the date of payment of the  
133 outstanding principal balance; and

134 (3) The loan agreement shall provide for the state  
135 board and the authority to forgive all principal and  
136 interest of the loan upon the county board purchasing the  
137 leased premises pursuant to the investment contract and  
138 performance of the investment contract in its entirety.

139 (f) To encourage county boards to proceed promptly  
140 with facilities planning and to prepare for the expenditure  
141 of any state moneys derived from the sources described in  
142 this subsection, any county board failing to expend  
143 money within three years of the allocation to the county  
144 board shall forfeit the allocation and thereafter is  
145 ineligible for further allocations pursuant to this  
146 subsection until the county board is ready to expend  
147 funds in accordance with an approved facilities plan:  
148 *Provided*, That the authority may authorize an extension  
149 beyond the three-year forfeiture period not to exceed an  
150 additional two years. Any amount forfeited shall be  
151 added to the total funds available in the school  
152 construction fund of the authority for future allocation  
153 and distribution.

154 (g) The remaining moneys that are determined by the  
155 authority to be available for distribution during the then  
156 current fiscal year from moneys paid into the school  
157 major improvement fund pursuant to section six of this  
158 article shall be allocated and distributed on the basis of  
159 need and efficient use of resources, the basis to be  
160 determined by the authority in accordance with the  
161 provisions of section sixteen of this article: *Provided*,  
162 That the moneys may not be distributed to any county  
163 board that does not have an approved school major  
164 improvement plan or to any county board that is not  
165 prepared to commence expenditures of the funds during  
166 the fiscal year in which the moneys are distributed:  
167 *Provided, however*, That any moneys allocated to a  
168 county board and not distributed to that county board  
169 shall be deposited in an account to the credit of that  
170 county board, the principal amount to remain to the credit

171 of and available to the county board for a period of two  
172 years. Any moneys which are unexpended after a two-  
173 year period shall be redistributed on the basis of need  
174 from the school major improvement fund in that fiscal  
175 year.

176 (h) No local matching funds may be required under  
177 the provisions of this section. However, the responsibilities  
178 of the county boards of education to maintain school  
179 facilities are not negated by the provisions of this article.  
180 To be eligible to receive an allocation of school major  
181 improvement funds from the authority, a county board  
182 must have expended in the previous fiscal year an amount  
183 of county moneys equal to or exceeding the lowest  
184 average amount of money included in the county board's  
185 maintenance budget over any three of the previous five  
186 years and must have budgeted an amount equal to or  
187 greater than the average in the current fiscal year:  
188 *Provided*, That the state board of education shall  
189 promulgate rules relating to county boards' maintenance  
190 budgets, including items which shall be included in the  
191 budgets.

192 (i) Any county board may use moneys provided by  
193 the authority under this article in conjunction with local  
194 funds derived from bonding, special levy or other sources.  
195 Distribution to a county board, or to the state board or the  
196 administrative council of an area vocational educational  
197 center pursuant to subsection (b) of this section, may be in  
198 a lump sum or in accordance with a schedule of payments  
199 adopted by the authority pursuant to guidelines adopted  
200 by the authority.

201 (j) Funds in the school construction fund shall first be  
202 transferred and expended as follows:

203 Any funds deposited in the school construction fund  
204 shall be expended first in accordance with an  
205 appropriation by the Legislature. To the extent that funds  
206 are available in the school construction fund in excess of  
207 that amount appropriated in any fiscal year, the excess  
208 funds may be expended in accordance with the provisions  
209 of this article. Any projects which the authority identified  
210 and announced for funding on or before the first day of

211 August, one thousand nine hundred ninety-five, or  
212 identified and announced for funding on or before the  
213 thirty-first day of December, one thousand nine hundred  
214 ninety-five, shall be funded by the authority in an amount  
215 which is not less than the amount specified when the  
216 project was identified and announced.

217 (k) It is the intent of the Legislature to encourage  
218 county boards to explore and consider arrangements with  
219 other counties that may facilitate the highest and best use  
220 of all available funds, which may result in improved  
221 transportation arrangements for students, or which  
222 otherwise may create efficiencies for county boards and  
223 the students. In order to address the intent of the  
224 Legislature contained in this subsection, the authority shall  
225 grant preference to those projects which involve multi-  
226 county arrangements as the authority shall determine  
227 reasonable and proper.

228 (l) County boards shall submit all designs for  
229 construction of new school buildings to the school  
230 building authority for review and approval prior to  
231 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.**

1 (a) There is hereby continued a special revenue fund  
2 in the state treasury which shall be designated and known  
3 as the "state lottery fund". The fund shall consist of all  
4 appropriations to the fund and all interest earned from  
5 investment of the fund and any gifts, grants or  
6 contributions received by the fund. All revenues received

7 from the sale of lottery tickets, materials and games shall  
8 be deposited with the state treasurer and placed into the  
9 "state lottery fund". The revenue shall be disbursed in the  
10 manner provided in this section for the purposes stated in  
11 this section and shall not be treated by the auditor and  
12 treasurer as part of the general revenue of the state.

13 (b) No appropriation, loan or other transfer of state  
14 funds may be made to the commission or lottery fund  
15 after the initial appropriation.

16 (c) A minimum annual average of forty-five percent  
17 of the gross amount received from each lottery shall be  
18 allocated and disbursed as prizes.

19 (d) Not more than fifteen percent of the gross amount  
20 received from each lottery shall be allocated to and may  
21 be disbursed as necessary for fund operation and  
22 administration expenses.

23 (e) The excess of the aggregate of the gross amount  
24 received from all lotteries over the sum of the amounts  
25 allocated by subsections (c) and (d) of this section shall be  
26 allocated as net profit. In the event that the percentage  
27 allotted for operations and administration generates a  
28 surplus, the surplus shall be allowed to accumulate to an  
29 amount not to exceed two hundred fifty thousand dollars.  
30 On a monthly basis, the director shall report to the joint  
31 committee on government and finance of the Legislature  
32 any surplus in excess of two hundred fifty thousand  
33 dollars and remit to the state treasurer the entire amount of  
34 those surplus funds in excess of two hundred fifty  
35 thousand dollars which shall be allocated as net profit.

36 (f) After first satisfying the requirements for funds  
37 dedicated to the school building debt service fund in  
38 subsection (h) of this section to retire the ten-year bonds  
39 authorized to be issued pursuant to section eight, article  
40 nine-d, chapter eighteen of this code, and then satisfying  
41 the requirements for funds dedicated to the education, arts,  
42 sciences and tourism debt service fund in subsection (i) of  
43 this section to retire the bonds authorized to be issued  
44 pursuant to section eleven-a, article six, chapter five of this  
45 code, the Legislature shall annually appropriate all of the  
46 remaining amounts allocated as net profits in subsection  
47 (e) of this section, in such proportions as it considers

48 beneficial to the citizens of this state, to: (1) The lottery  
49 education fund created in subsection (g) of this section;  
50 (2) the school construction fund created in section six,  
51 article nine-d, chapter eighteen of this code; (3) the lottery  
52 senior citizens fund created in subsection (j) of this  
53 section; and (4) the division of natural resources created in  
54 section four, article five, chapter twenty of this code and  
55 the West Virginia development office as created in section  
56 one, article two, chapter five-b of this code, in accordance  
57 with subsection (k) of this section. No transfer to any  
58 account other than the school building debt service  
59 account and the education, arts, sciences and tourism debt  
60 service fund may be made in any period of time in which  
61 a default exists in respect to debt service on bonds issued  
62 by the school building authority and the state building  
63 commission which are secured by lottery proceeds. No  
64 additional transfer shall be made to any account other  
65 than the school building debt service account and the  
66 education, arts, sciences and tourism debt service fund  
67 when net profits for the preceding twelve months are not  
68 at least equal to one hundred fifty percent of debt service  
69 on bonds issued by the school building authority and the  
70 state building commission which are secured by net  
71 profits.

72 (g) There is hereby continued a special revenue fund  
73 in the state treasury which shall be designated and known  
74 as the "lottery education fund". The fund shall consist of  
75 the amounts allocated pursuant to subsection (f) of this  
76 section, which shall be deposited into the lottery education  
77 fund by the state treasurer. The lottery education fund  
78 shall also consist of all interest earned from investment of  
79 the lottery education fund and any other appropriations,  
80 gifts, grants, contributions or moneys received by the  
81 lottery education fund from any source. The revenues  
82 received or earned by the lottery education fund shall be  
83 disbursed in the manner provided below and shall not be  
84 treated by the auditor and treasurer as part of the general  
85 revenue of the state. Annually, the Legislature shall  
86 appropriate the revenues received or earned by the lottery  
87 education fund to the state system of public and higher  
88 education for these educational programs it considers  
89 beneficial to the citizens of this state.

90 (h) On or before the twenty-eighth day of each month  
91 through the twentieth day of June, two thousand five, the  
92 lottery director shall allocate to the school building debt  
93 service fund created pursuant to the provisions of section  
94 six, article nine-d, chapter eighteen of this code, as a first  
95 priority from the net profits of the lottery for the  
96 preceding month, an amount equal to one tenth of the  
97 projected annual principal, interest and coverage ratio  
98 requirements on any and all revenue bonds and refunding  
99 bonds issued, or to be issued, on or after the first day of  
100 April, one thousand nine hundred ninety-four, as certified  
101 to the lottery director in accordance with the provisions of  
102 section six, article nine-d, chapter eighteen of this code.  
103 In no event shall the monthly amount allocated exceed  
104 one million eight hundred thousand dollars, nor shall the  
105 total allocation of the net profits to be paid into the school  
106 building debt service fund, as provided in this section, in  
107 any fiscal year exceed the lesser of the principal and  
108 interest requirements certified to the lottery director or  
109 eighteen million dollars. In the event there are insufficient  
110 funds available in any month to transfer the amount  
111 required to be transferred pursuant to this subsection to  
112 the school debt service fund, the deficiency shall be added  
113 to the amount transferred in the next succeeding month in  
114 which revenues are available to transfer the deficiency. A  
115 lien on the proceeds of the state lottery fund up to a  
116 maximum amount equal to the projected annual principal,  
117 interest and coverage ratio requirements, not to exceed  
118 twenty-seven million dollars annually, may be granted by  
119 the school building authority in favor of the bonds it  
120 issues which are secured by the net lottery profits.

121 When the school improvement bonds, secured by  
122 profits from the lottery and deposited in the school debt  
123 service fund, mature, the lottery director shall allocate  
124 monthly, from the net profits of the lottery for the  
125 preceding month, an amount equal to one million five  
126 hundred thousand dollars into the school construction  
127 fund created pursuant to the provisions of section six,  
128 article nine-d, chapter eighteen of this code.

129 (i) On or before the twenty-eighth day of each month  
130 through the twenty-eighth day of June, two thousand  
131 twenty-one, the lottery director shall allocate to the  
132 education, arts, sciences and tourism debt service fund

133 created pursuant to the provisions of section eleven-a,  
134 article six, chapter five of this code, as a second priority  
135 from the net profits of the lottery for the preceding  
136 month, an amount equal to one tenth of the projected  
137 annual principal, interest and coverage ratio requirements  
138 on any and all revenue bonds and refunding bonds issued,  
139 or to be issued, on or after the first day of April, one  
140 thousand nine hundred ninety-six, as certified to the  
141 lottery director in accordance with the provisions of that  
142 section. In no event shall the monthly amount allocated  
143 exceed one million dollars nor shall the total allocation  
144 paid into the education, arts, sciences and tourism debt  
145 service fund, as provided in this section, in any fiscal year  
146 exceed the lesser of the principal and interest requirements  
147 certified to the lottery director or ten million dollars. In  
148 the event there are insufficient funds available in any  
149 month to transfer the amount required pursuant to this  
150 subsection to the education, arts, sciences and tourism debt  
151 service fund, the deficiency shall be added to the amount  
152 transferred in the next succeeding month in which  
153 revenues are available to transfer the deficiency. A  
154 second-in-priority lien on the proceeds of the state lottery  
155 fund up to a maximum amount equal to the projected  
156 annual principal, interest and coverage ratio requirements,  
157 not to exceed fifteen million dollars annually, may be  
158 granted by the state building commission in favor of the  
159 bonds it issues which are secured by the net lottery profits.

160 (j) There is hereby continued a special revenue fund  
161 in the state treasury which shall be designated and known  
162 as the "lottery senior citizens fund". The fund shall consist  
163 of the amounts allocated pursuant to subsection (f) of this  
164 section, which shall be deposited into the lottery senior  
165 citizens fund by the state treasurer. The lottery senior  
166 citizens fund shall also consist of all interest earned from  
167 investment of the lottery senior citizens fund and any  
168 other appropriations, gifts, grants, contributions or moneys  
169 received by the lottery senior citizens fund from any  
170 source. The revenues received or earned by the lottery  
171 senior citizens fund shall not be treated by the auditor or  
172 treasurer as part of the general revenue of the state.  
173 Annually, the Legislature shall appropriate the revenues  
174 received or earned by the lottery senior citizens fund to  
175 such senior citizens medical care and other programs as it  
176 considers beneficial to the citizens of this state.

177 (k) The division of natural resources and the West  
178 Virginia development office, as appropriated by the  
179 Legislature, may use the amounts allocated to them  
180 pursuant to subsection (f) of this section for one or more  
181 of the following purposes: (1) The payment of any or all  
182 of the costs incurred in the development, construction,  
183 reconstruction, maintenance or repair of any project or  
184 recreational facility, as these terms are defined in section  
185 four, article five, chapter twenty of this code, pursuant to  
186 the authority granted to it under article five, chapter  
187 twenty of this code; (2) the payment, funding or  
188 refunding of the principal of, interest on or redemption  
189 premiums on any bonds, security interests or notes issued  
190 by the parks and recreation section of the division of  
191 natural resources under article five, chapter twenty of this  
192 code; or (3) the payment of any advertising and  
193 marketing expenses for the promotion and development  
194 of tourism or any tourist facility or attraction in this state.

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## CHAPTER 126

(Com. Sub. for H. B. 4306—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)  
[By Request of the Executive]

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

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AN ACT to amend and reenact section one, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-six, article two of said chapter; to amend said article by adding thereto two new sections, designated sections twenty-three-a and thirty-two; to amend and reenact sections one-a and five, article two-e of said chapter; to amend said article by adding thereto a new section, designated section three-c; to amend said chapter by adding thereto a new article, designated article two-i; to amend and reenact sections seven and ten, article nine-a of said chapter; to amend and reenact section two-c, article three, chapter

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.**
- 2I. **Staff Development Councils.**
- 9A. **Public School Support.**

**ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.**

**§18-1-1. Definitions.**

1 The following words used in this chapter and in any  
2 proceedings pursuant thereto shall, unless the context  
3 clearly indicates a different meaning, be construed as  
4 follows:

5 (a) "School" means the pupils and teacher or  
6 teachers assembled in one or more buildings, organized as  
7 a unit;

8 (b) "District" means county school district;

9 (c) "State board" means the West Virginia board of  
10 education;

11 (d) "Board" means the county board of education;

12 (e) "State superintendent" means the state  
13 superintendent of free schools;

14 (f) "Superintendent" means the county  
15 superintendent of schools;

16 (g) "Teacher" means teacher, supervisor, principal,  
17 superintendent, public school librarian; registered  
18 professional nurse, licensed by the West Virginia board of  
19 examiners for registered professional nurses and  
20 employed by a county board of education, who has a  
21 baccalaureate degree; or any other person regularly

22 employed for instructional purposes in a public school in  
23 this state;

24 (h) "Service personnel" means all nonteaching  
25 school employees not included in the above definition of  
26 "teacher";

27 (i) "Regular full-time employee" means any person  
28 employed by a county board of education who has a  
29 regular position or job throughout his employment term,  
30 without regard to hours or method of pay;

31 (j) "Career clusters" means broad groupings of  
32 related occupations;

33 (k) "Work-based learning" means a structured  
34 activity that correlates with and is mutually supportive of  
35 the school-based learning of the student and includes  
36 specific objectives to be learned by the student as a result  
37 of the activity;

38 (l) "School-age juveniles" means any individual who  
39 is entitled to attend or who, if not placed in a residential  
40 facility, would be entitled to attend public schools, in  
41 accordance with: (1) Section five, article two of this  
42 chapter; (2) sections fifteen and eighteen, article five of  
43 this chapter; or (3) section one, article twenty of this  
44 chapter;

45 (m) "Student with a disability" means an exceptional  
46 child, other than gifted, pursuant to section one, article  
47 twenty of this chapter;

48 (n) "Low density county" means a county whose  
49 ratio of student population to square miles is less than or  
50 equal to the state average ratio as computed by the state  
51 department of education;

52 (o) "High density county" means a county whose  
53 ratio of student population to square miles is greater than  
54 the state average ratio as computed by the state department  
55 of education; and

56 (p) "Casual deficit" means a deficit of not more than  
57 three percent of the approved levy estimate or a deficit  
58 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.**

1 (a) The intent of this section is to provide for the  
2 coordination of professional development programs by  
3 the state board to promote high quality instructional  
4 delivery and management practices for a thorough and  
5 efficient system of schools. The state board annually shall  
6 establish goals for professional development in the public  
7 schools of the state. The state board shall submit the goals  
8 to the state department of education, the center for  
9 professional development, the regional educational service  
10 agencies, the state college and university systems and the  
11 legislative oversight commission on education  
12 accountability on or before the first day of October, each  
13 year. The goals shall include measures by which the  
14 effectiveness of professional development programs will  
15 be evaluated. The professional development goals may  
16 include separate goals for teachers, principals, service  
17 personnel and others in the public schools. In establishing  
18 the goals, the state board shall review reports that may  
19 indicate a need for staff development. At a minimum in  
20 establishing the goals for professional development, the  
21 state board shall consider the report of the staff  
22 development advisory council set forth in section four,  
23 article two-i, chapter eighteen of this code, student test  
24 scores on the statewide student assessment program, the  
25 measures of student and school performance for  
26 accreditation purposes, school and school district report  
27 cards, and its plans for the use of funds in the strategic  
28 staff development fund pursuant to section thirty-two,  
29 article two, chapter eighteen of this code.

30 (b) The center for professional development and the  
31 regional educational service agencies shall each design a  
32 proposed professional development program plan to  
33 achieve the goals of the state board which are within their  
34 purview pursuant to provisions set forth in this code and  
35 rules of the state board: *Provided*, That the state board  
36 may establish as a goal for the center for professional  
37 development, the delivery of a localized professional  
38 development program to address school, county or  
39 regional problems. The center for professional  
40 development and the regional educational service agencies  
41 shall each submit their respective proposed plans to the  
42 state board on or before the fifteenth day of November,  
43 each year. The proposed plans shall include a plan for  
44 evaluating the effectiveness of the professional  
45 development delivered through the program and a cost  
46 estimate. A copy of each proposed plan shall also be  
47 submitted by the respective agencies to the legislative  
48 oversight commission on education accountability. The  
49 state board shall review the proposed plans and shall  
50 return the proposed plans to the respective agencies on or  
51 before the first day of January, each year, noting whether  
52 the proposed plan is approved or is not approved in whole  
53 or in part. If a proposed plan is not approved in whole, the  
54 state board shall note its objections to the proposed plan  
55 or to the parts of the proposed plan not approved and may  
56 suggest improvements or specific modifications, additions  
57 or deletions to more fully address the goals or eliminate  
58 duplication. An agency whose proposed plan is not  
59 wholly approved shall revise the plan to satisfy the  
60 objections of the state board or state the reasons why  
61 revisions cannot be made to satisfy any or all of the  
62 objections and resubmit the proposal to the state board as  
63 soon as possible. State board approval of the professional  
64 development plans of the center for professional  
65 development and the regional educational service agencies  
66 is required prior to implementation of the plans.

67 (c) The state board shall submit a proposed master  
68 plan for professional development to the legislative  
69 oversight commission on education accountability on the  
70 first day of February, each year. The proposed master

71 plan shall include the state board approved plans of the  
72 state department of education, the center for professional  
73 development and the regional educational service agencies  
74 to meet the professional development goals of the state  
75 board. The proposed master plan also shall include a plan  
76 for evaluating the effectiveness of the professional  
77 development delivered through the programs, a cost  
78 estimate, a description of any proposals pending approval  
79 of the state board and any reasons why a goal or goals of  
80 the state board will not be met.

81 (d) An approved master plan for professional  
82 development shall be established by the state board not  
83 later than the fifteenth day of March, each year. The  
84 approved master plan shall include the state board  
85 approved professional development plans of the state  
86 department of education, the center for professional  
87 development and the regional educational service  
88 agencies. The approved master plan shall serve as a guide  
89 for the delivery of coordinated professional development  
90 programs by the state department of education, the center  
91 for professional development and the regional educational  
92 service agencies beginning on the first day of June in the  
93 year in which the master plan was approved through the  
94 thirtieth day of May in the following year.

**§18-2-26. Establishment of multicounty regional educational  
service agencies; purposes; authority to imple-  
ment regional services.**

1 (a) In order to consolidate and administer more  
2 effectively existing educational programs and services so  
3 individual districts will have more discretionary moneys  
4 for educational improvement and in order to equalize and  
5 extend educational opportunities, the state board of  
6 education shall establish multicounty regional educational  
7 service agencies for the purpose of providing high quality,  
8 cost effective educational programs and services to the  
9 county school systems, and shall make such rules as may  
10 be necessary for the effective administration and operation  
11 of such agencies: *Provided*, That the legislative oversight  
12 commission on education accountability shall commission  
13 a comprehensive feasibility study of the regional

14 educational service agencies which shall be completed and  
15 reported to the legislative oversight commission on  
16 education accountability no later than the tenth day of  
17 January, one thousand nine hundred ninety-five.

18 (b) In furtherance of these purposes, it is the duty of  
19 the board of directors of each regional educational service  
20 agency to continually explore possibilities for the delivery  
21 of services on a regional basis which will facilitate equality  
22 in the educational offerings among counties in its service  
23 area, permit the delivery of high quality educational  
24 programs at a lower per student cost, strengthen the cost  
25 effectiveness of education funding resources, reduce  
26 administrative and/or operational costs, including the  
27 consolidation of administrative, coordinating and other  
28 county level functions into region level functions, and  
29 promote the efficient administration and operation of the  
30 public school systems generally.

31 Technical, operational, programmatic or professional  
32 services would be among the types of services appropriate  
33 for delivery on a regional basis.

34 (c) In addition to performing the services and  
35 functions required by the provisions of this or any other  
36 section of this code, a regional educational service agency  
37 may implement regional programs and services by a  
38 majority vote of its board of directors. When said vote is  
39 not unanimous, the board of directors shall file a plan for  
40 the service or program delivery with the state board  
41 describing the program or service, the manner of delivery  
42 and the projected savings and/or the improved quality of  
43 the program or service. The state board shall promulgate  
44 rules requiring a county board that declines to participate  
45 in such programs or services to show just cause for not  
46 participating and the estimated savings accruing to that  
47 county therefrom. If a county board fails to show that  
48 savings will accrue to the county or that the quality of the  
49 program will be significantly and positively affected as a  
50 result of its decision not to participate, the state board shall  
51 withhold from the county's foundation allowance for  
52 administrative cost the lesser of the amount of the

53 estimated savings or the allocation for the county's  
54 foundation allowance for administrative cost.

55 (d) The state board, in conjunction with the various  
56 regional educational service agencies, shall develop an  
57 effective model for the regional delivery of instruction in  
58 subjects where there exists low student enrollment or a  
59 shortage of certified teachers or where such delivery  
60 method substantially improves the quality of an  
61 instructional program. Such model shall incorporate an  
62 interactive electronic classroom approach to instruction.  
63 To the extent funds are appropriated or otherwise  
64 available, county boards or regional educational service  
65 agencies may adopt and utilize the model for the delivery  
66 of such instruction.

67 (e) Each regional educational service agency shall  
68 conduct a study setting forth how the following services  
69 and functions may be performed by the agency for public  
70 schools and school districts within the region without  
71 terminating the employment of personnel employed by  
72 school districts prior to the effective date of this  
73 subsection: Accounting, purchasing, food service,  
74 transportation, delivery of high cost services to low  
75 incidence student populations, audiovisual material  
76 distribution, facilities planning, federal program  
77 coordination, personnel recruiting and an integrated  
78 regional computer information system. On or before the  
79 tenth day of January, one thousand nine hundred ninety,  
80 each regional educational service agency shall submit the  
81 study to the state board, to the standing committees on  
82 education and finance of the West Virginia Senate and  
83 House of Delegates and to the secretary of education and  
84 the arts: *Provided*, That in the event such study is  
85 implemented those individuals employed prior to the  
86 effective date thereof shall not have their employment  
87 terminated as a result of the study.

88 (f) Each regional educational service agency shall  
89 commence implementation of a uniform integrated  
90 regional computer information system as recommended  
91 by the state board of education on or before the first day  
92 of January, one thousand nine hundred ninety-one. Each

93 county board of education shall use the computer  
94 information system for data collection and reporting to  
95 the state department of education beginning no later than  
96 the first day of July, one thousand nine hundred ninety-  
97 four. County boards of education shall bear the cost of  
98 and fully participate in the implementation of the system  
99 by: (1) Acquiring necessary, compatible equipment to  
100 participate in the regional computer information system;  
101 or (2) following receipt of a waiver from the state  
102 superintendent, operating a comparable management  
103 information system at a lower cost which provides at least  
104 all uniform integrated regional computer information  
105 system software modules and allows on-line, interactive  
106 access for schools and the county board of education  
107 office onto the statewide communications network. All  
108 data formats shall be the same as for the uniform  
109 integrated regional information system and will reside at  
110 the regional computer. Any county granted a waiver shall  
111 receive periodic notification of any incompatibility or  
112 deficiency in its system. Continued inability of any  
113 county to meet the above criteria shall, upon notification  
114 to the county no later than the first day of April, one  
115 thousand nine hundred ninety-five, require the county to  
116 use the uniform integrated regional computer information  
117 system no later than the first day of July, one thousand  
118 nine hundred ninety-five. No county shall expand any  
119 system either through the purchase of additional software  
120 or hardware that does not advance the goals and  
121 implementation of the uniform integrated regional  
122 computer information system as recommended by the  
123 state board: *Provided*, That nothing contained herein  
124 shall prevent the state superintendent from granting a  
125 one-year extension to those counties projected to have  
126 budget deficits for the school year beginning on the first  
127 day of July, one thousand nine hundred ninety-four.

128 (g) Each regional educational service agency shall  
129 submit a report and evaluation of the services provided  
130 and utilized by the schools within each respective region.  
131 Furthermore, each school shall submit an evaluation of the  
132 services provided by the regional educational service  
133 agency, which shall include an evaluation of the regional

134 educational service agency program, suggestions as to how  
 135 to improve utilization and the individual school's plan as  
 136 to development of new programs and enhancement of  
 137 existing programs. The reports shall be due by the first  
 138 day of January of each year commencing with the year  
 139 one thousand nine hundred ninety-one and shall be made  
 140 available to the state board of education, standing  
 141 committees on education of the West Virginia Senate and  
 142 House of Delegates and to the secretary of education and  
 143 the arts.

144 (h) A regional board shall be empowered to receive  
 145 and disburse funds from the state and federal  
 146 governments, member counties, gifts and grants.

147 (i) Notwithstanding any other provision of the code to  
 148 the contrary, employees of regional educational service  
 149 agencies shall be reimbursed for travel, meals and lodging  
 150 at the same rate as state employees under the travel  
 151 management office of the department of administration.

152 (j) Regional educational service agencies shall hold at  
 153 least one half of their regular meetings during hours other  
 154 than those of a regular school day.

155 (k) Regional educational service agencies shall serve as  
 156 the lead agency for computer installation, maintenance  
 157 and repair for the basic skills computer program. By the  
 158 first day of October, one thousand nine hundred ninety-  
 159 five, and quarterly thereafter, each regional educational  
 160 service agency shall submit a status report on turn around  
 161 time for computer installation, maintenance and repair to  
 162 the state superintendent of schools who shall then submit a  
 163 report to the legislative oversight commission on  
 164 education accountability. The above-mentioned status  
 165 report for turn around time for computer installation,  
 166 maintenance and repair shall be based on the following  
 167 suggested time schedules:

- 168 Network File Servers . . . . . forty-eight hours
- 169 Local Area Networks . . . . . forty-eight hours
- 170 West Virginia Education
- 171 Information System . . . . . twenty-four hours

172 Computer Workstations . . . . . three to five days

173 Printers . . . . . .three to five days

174 Other Peripherals . . . . . three to five days

175 Regional educational service agencies shall also submit an  
176 audit report to the legislative oversight commission on  
177 education accountability each year.

178 (l) Pursuant to the processes and provisions of section  
179 twenty-three-a, article two, chapter eighteen of this code,  
180 each regional educational service agency shall provide  
181 coordinated professional development programs within its  
182 region to meet the professional development goals  
183 established by the state board.

**§18-2-32. Strategic staff development fund.**

1 (a) There is hereby created an account within the state  
2 board titled the strategic staff development fund. The  
3 allocation of balances which accrue in the general school  
4 fund shall be transferred to the strategic staff development  
5 fund each year when the balances become available. Any  
6 remaining funds transferred to the strategic staff  
7 development fund during the fiscal year shall be carried  
8 over for use in the same manner the next fiscal year and  
9 shall be separate and apart from, and in addition to, the  
10 transfer of funds from the general school fund for the  
11 next fiscal year.

12 (b) The money in the strategic staff development fund  
13 shall be used by the state board to provide staff  
14 development in schools, counties or both that the state  
15 board determines need additional resources. Additionally,  
16 the state board shall use a reasonable amount of the  
17 money from the strategic staff development fund to  
18 contract with an independent evaluator chosen by the state  
19 board to evaluate the effectiveness with which the money  
20 was used for staff development. The state board is  
21 required to report to the legislative oversight commission  
22 on education accountability before the first day of  
23 December of each year:

24 (1) The amount of each expenditure;

- 25           (2) The purpose of each expenditure; and  
26           (3) The effectiveness of the staff development  
27           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.**

1           (a) In order to further the purposes of this article, on  
2           or before the first day of January, one thousand nine  
3           hundred ninety-nine, the state board shall develop and  
4           recommend to the legislative oversight commission on  
5           education accountability an assessment program to  
6           measure the progress of public school students in attaining  
7           a high quality education. In addition, to further the  
8           purposes of this article, on or before the first day of  
9           January, one thousand nine hundred ninety-nine, the state  
10          board shall develop and recommend to the legislative  
11          oversight commission on education accountability an  
12          accountability program to help ensure a thorough and  
13          efficient system of schools. In developing the assessment  
14          program and the accountability program, the state board  
15          shall take into consideration recommendations arising  
16          from any legislative interim study undertaken at the  
17          direction of the joint committee on government and  
18          finance and also shall take into consideration any  
19          recommendations made by the legislative oversight  
20          commission on education accountability.

21          (b) As part of their on-going responsibility for  
22          developing and implementing a program of assessments  
23          and a program of accountability, the state board shall  
24          perform the following functions:

25 (1) Review assessment tools, including tests of student  
26 performance and measures of school and school system  
27 performance, and determine when any improvements or  
28 additions are necessary;

29 (2) Consider multiple assessments, including, but not  
30 limited to, a state testing program developed in  
31 conjunction with the state's professional educators with  
32 assistance from such knowledgeable consultants as may be  
33 necessary, which may include criterion referenced tests;

34 (3) Review all accountability measures, such as the  
35 accreditation and personnel evaluation systems and  
36 consider any improvements or additions deemed  
37 necessary; and

38 (4) Ensure that all statewide assessments of student  
39 performance are secure.

**§18-2E-3c. Summer school READS grant program created;  
legislative findings and purpose of section.**

1 (a) The Legislature hereby finds and acknowledges  
2 that, if remediation is necessary, it should be provided  
3 when students are younger and before patterns of failure  
4 are established. The Legislature further acknowledges that  
5 the people of West Virginia would be better served if the  
6 state acted to ensure that all public school students were  
7 able to read at or above grade level upon exiting grade  
8 four, that county boards are in the best position to  
9 determine if remediation is necessary for students in  
10 kindergarten through grade four and that the counties  
11 should have the option of providing summer school for  
12 students and may consider student attendance as a factor  
13 in determining whether a child is eligible to be promoted  
14 to the next grade.

15 The Legislature further finds that not all students are  
16 financially able to pay for summer school, nor do all  
17 county schools hold summer school. It is, therefore, the  
18 purpose of this section to help the county boards to  
19 provide, either individually or cooperatively, free summer  
20 school and summer school transportation for those  
21 students in kindergarten through grade four who did not

22 perform at grade level during the regular school year. It  
23 also is the purpose of this section to help students in  
24 kindergarten through grade four who are identified as  
25 being in danger of failing to read at grade level by the end  
26 of the school year to receive intensive reading instruction  
27 during their regularly scheduled reading time throughout  
28 the regular school year.

29 (b) Subject to appropriation by the Legislature  
30 therefor, the state board shall establish a competitive grant  
31 program as set forth in this section to provide reading  
32 programs for students in kindergarten through grade four  
33 who are not performing at grade level. The program shall  
34 be designated and known as the "Reading Excellence  
35 Accelerates Deserving Students" program and, along with  
36 such designation, may be referred to as "West Virginia  
37 READS".

38 Priorities for awarding the grants shall include, but are  
39 not limited to:

40 (1) Schools that have test scores below the state  
41 standards; and

42 (2) Schools that receive federal funds for the  
43 improvement of reading.

44 Competitive grant applications must be submitted by  
45 the county boards, or by a community collaborative with  
46 the county board as a partner with leadership  
47 responsibility, and shall describe how the program will:

48 (1) Employ strategies and proven methods for student  
49 learning, teaching and school management that are based  
50 on reliable research and effective practices and can be  
51 replicated in other schools to improve the reading skills of  
52 students;

53 (2) Contain measurable goals for the improvement of  
54 student reading skills and benchmarks for meeting those  
55 goals;

56 (3) Include a plan for the evaluation of student  
57 progress toward achieving the state's high standards;

- 58           (4) Identify how other federal, state, local and private  
59 resources, including volunteers, will be utilized to further  
60 the intent of this section;
- 61           (5) Link summer reading improvement programs with  
62 reading instruction and remediation throughout the school  
63 year;
- 64           (6) Determine feasibility of collaborating with colleges  
65 of education for the purpose of providing educational  
66 experiences for prospective teachers; and
- 67           (7) Accomplish other objectives as deemed necessary  
68 by the state board.
- 69           (c) Any county receiving a grant should encourage  
70 students in kindergarten through grade four who did not  
71 perform at grade level during the regular school year to  
72 attend summer school and may consider summer school  
73 attendance as a factor in determining whether a child is  
74 eligible to be promoted to the next grade. The county  
75 board shall provide intensive reading instruction during  
76 regularly scheduled reading time throughout the regular  
77 school year to students in kindergarten through grade  
78 four who are identified by the classroom teacher as being  
79 in danger of failing to read at grade level by the end of  
80 the school year. Nothing in this section shall prohibit  
81 county boards from permitting students to participate in  
82 reading programs on a student fee basis.
- 83           (d) The state board shall approve procedures for the  
84 implementation of this section. To assist the state board in  
85 developing procedures for the implementation of this  
86 section, including the grant application and the grant  
87 review and selection process, the state board shall appoint  
88 an advisory board consisting of the federal programs  
89 director and the title I reading coordinator/specialist, both  
90 from the state department of education, a representative  
91 from the department of education and the arts  
92 representing the library commission and the community  
93 schools initiative, a college or university professor of  
94 reading, two or more representatives from local school  
95 systems, the West Virginia coordinator of the read aloud  
96 program, the energy express project director, and a

97 representative of mission West Virginia, or representatives  
98 of like successor organizations should these named  
99 organizations cease to exist. The procedures shall provide  
100 for:

101 (1) The appointment of a grant review and selection  
102 panel by the state board consisting of persons with  
103 expertise and practical experience in delivering programs  
104 to increase the reading skills of young students, not more  
105 than one half of whom may be employees of the state  
106 department of education, or the state board may designate  
107 the advisory board as the grant review and selection panel;

108 (2) Notice to all schools of the grant competition and  
109 the availability of applications on or before the thirtieth  
110 day of September, in each fiscal year for which grant  
111 funds are available;

112 (3) A grant application deadline postmarked on or  
113 before the fifteenth day of December, in each fiscal year  
114 for which grant funds are available;

115 (4) Notice of grant awards on or before the first day  
116 of March, in each fiscal year for which grant funds are  
117 available; and

118 (5) Other such requirements as deemed necessary by  
119 the state board.

120 (e) The state board may fund, from any other funds  
121 available for such purposes, the programs required by this  
122 section for students in kindergarten through grade four  
123 and any programs required by state board rules such as,  
124 but not limited to, the following:

125 (1) Tutoring;

126 (2) Summer school educational services;

127 (3) Additional certified personnel to provide intensive  
128 instruction in reading throughout the school year;

129 (4) Staff development for teachers; and

130 (5) Hot meal programs.

131 (f) Nothing in this section shall supersede the  
132 individualized education program (IEP) of any student.

133 (g) Nothing in this section may be construed to  
134 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.**

1 (a) *Legislative intent.* — The purpose of this section is  
2 to establish a process for improving education that  
3 includes standards, assessment, accountability and capacity  
4 building to provide assurances that a thorough and  
5 efficient system of schools is being provided for all West  
6 Virginia public school students on an equal education  
7 opportunity basis and that the high quality standards are,  
8 at a minimum, being met.

9 (b) *State board rules.* — The state board shall  
10 promulgate rules in accordance with article three-b,  
11 chapter twenty-nine-a of this code establishing a unified  
12 county improvement plan for each county board and a  
13 unified school improvement plan for each public school  
14 in this state. The state board is not required to promulgate  
15 new rules if legislative rules meeting the requirements of  
16 article three-b, chapter twenty-nine-a of this code have  
17 been filed with the office of the secretary of state before  
18 the effective date of this section.

19 (c) *High quality education standards.* — The state  
20 board shall, in accordance with the provisions of article  
21 three-b, chapter twenty-nine-a of this code, adopt and  
22 periodically review and update high quality education  
23 standards for student, school and school system  
24 performance and processes in the following areas:

- 25 (1) Curriculum;
- 26 (2) Workplace readiness skills;
- 27 (3) Finance;
- 28 (4) Transportation;

- 29 (5) Special education;
- 30 (6) Facilities;
- 31 (7) Administrative practices;
- 32 (8) Training of county board members and  
33 administrators;
- 34 (9) Personnel qualifications;
- 35 (10) Professional development and evaluation;
- 36 (11) Student and school performance;
- 37 (12) A code of conduct for students and employees;
- 38 and
- 39 (13) Any other such areas as determined by the state  
40 board.

41 (d) *Performance measures.* — The standards shall  
42 assure that all graduates are prepared for gainful  
43 employment or for continuing post secondary education  
44 and training and that schools and school districts are  
45 making progress in achieving the education goals of the  
46 state.

47 The standards shall include measures of student  
48 performance to indicate when a thorough and efficient  
49 system of schools is being provided and of school and  
50 school system performance and processes that enable  
51 student performance. The measures of student  
52 performance and school and school system performance  
53 and processes shall include, but are not limited to, the  
54 following:

- 55 (1) The acquisition of student proficiencies as  
56 indicated by student performance by grade level  
57 measured, where possible, by a uniform statewide  
58 assessment program;
- 59 (2) School attendance rates;
- 60 (3) Student dropout rate;
- 61 (4) Percent of students promoted to next grade;

- 62 (5) Graduation rate;
- 63 (6) Average class size;
- 64 (7) Pupil-teacher ratio and number of exceptions to  
65 ratio requested by county boards and number granted;
- 66 (8) Number of split-grade classrooms;
- 67 (9) Percentage of graduates who enrolled in college;  
68 the percentage of graduates who enrolled in other post-  
69 secondary education; and the percentage of graduates who  
70 become fully employed within one year of high school  
71 graduation all as reported by the graduates on the  
72 assessment form attached to their individualized student  
73 transition plan, pursuant to section eight of this article and  
74 the percentage of graduates reporting;
- 75 (10) Pupil-administrator ratio;
- 76 (11) Parent involvement;
- 77 (12) Parent, teacher and student satisfaction;
- 78 (13) Operating expenditures per pupil;
- 79 (14) Percentage of graduates who attain the minimum  
80 level of performance in the basic skills recognized by the  
81 state board as laying the foundation for further learning  
82 and skill development for success in college, other post-  
83 secondary education and gainful employment and the  
84 grade level distribution in which the minimum level of  
85 performance was met;
- 86 (15) Percentage of graduates who received additional  
87 certification of their skills, competence and readiness for  
88 college, other post secondary education or employment  
89 above the minimum foundation level of basic skills; and
- 90 (16) Effective school system participation with their  
91 assigned regional education service agency.
- 92 (e) *Assessment and accountability of school and*  
93 *school system performance and processes.* — The state  
94 board shall establish by rule in accordance with the  
95 provisions of article three-b, chapter twenty-nine-a of this  
96 code, a system of education performance audits which

197 measures the quality of education and the preparation of  
198 students based on the standards and measures of student,  
199 school and school system performance and processes,  
200 including, but not limited to, the standards and measures  
201 set forth in subsections (c) and (d) of this section. The  
202 system of education performance audits shall assist the  
203 state board in ensuring that the standards and measures  
204 established pursuant to this section are, at a minimum,  
205 being met and that a thorough and efficient system of  
206 schools is being provided. The system of education  
207 performance audits shall include: (1) The assessment of  
208 student, school and school system performance and the  
209 processes in place in schools and school systems which  
210 enable student performance; (2) the review of school and  
211 school system unified improvement plans; and (3) the  
212 periodic, random unannounced on-site review of school  
213 and school system performance and compliance with the  
214 standards.

215 (f) *Uses of school and school system assessment*  
216 *information.* — The state board shall use information  
217 from the system of education performance audits to assist  
218 it in ensuring that a thorough and efficient system of  
219 schools is being provided and to improve student, school  
220 and school system performance, including, but not limited  
221 to, the following: (1) Determining school accreditation  
222 and school system approval status; (2) holding schools  
223 and school systems accountable for the efficient use of  
224 existing resources to meet or exceed the standards; and (3)  
225 targeting additional resources when necessary to improve  
226 performance. Primary emphasis in determining school  
227 accreditation and school system approval status will be  
228 based on student, school and school system performance  
229 on measures selected by the state board. The state board  
230 shall make accreditation information available to the  
231 Legislature; the governor; and to the general public and  
232 any individuals who request such information, subject to  
233 the provisions of any act, rule or regulation restricting the  
234 release of information. Based on the assessment of  
235 student, school and school system performance, the state  
236 board shall establish early detection and intervention  
237 programs to assist underachieving schools and school

138 systems in improving performance before conditions  
139 become so grave as to warrant more substantive state  
140 intervention, including, but not limited to, making  
141 additional technical assistance, programmatic, monetary  
142 and staffing resources available where appropriate.

143       (g) *Office of education performance audits.* — To  
144 assist the state board in the operation of the system of  
145 education performance audits and in making  
146 determinations regarding the accreditation status of  
147 schools and the approval status of school systems, the state  
148 board shall establish an office of education performance  
149 audits which shall be operated under the direction of the  
150 state board independently of the functions and supervision  
151 of the state department of education and state  
152 superintendent. The office of education performance  
153 audits shall report directly to and be responsible to the  
154 state board in carrying out its duties under the provisions  
155 of this section. The office shall be headed by a director  
156 who shall be appointed by the state board and shall serve  
157 at the will and pleasure of the state board. The salary of  
158 the director shall not exceed the salary of the state  
159 superintendent of schools. The state board shall organize  
160 and sufficiently staff the office to fulfill the duties  
161 assigned to it by this section and the state board.  
162 Employees of the state department of education who are  
163 transferred to the office of education performance audits  
164 shall retain their benefit and seniority status with the  
165 department of education. Under the direction of the state  
166 board, the office of education performance audits shall  
167 receive from the West Virginia education information  
168 system staff research and analysis data on the performance  
169 of students, schools and school systems, and shall receive  
170 assistance from staff at the state department of education  
171 and the state school building authority to carry out the  
172 duties assigned to the office. In addition to other duties  
173 which may be assigned to it by the state board or by  
174 statute, the office of education performance audits also  
175 shall:

176       (1) Assure that all statewide assessments of student  
177 performance are secure as required in section one-a,  
178 article two-e of this chapter;

179           (2) Administer all accountability measures as assigned  
180 by the state board, including, but not limited to, processes  
181 for the accreditation of schools and the approval of school  
182 systems, and recommend to the state board appropriate  
183 action, including, but not limited to, accreditation and  
184 approval action;

185           (3) Determine, in conjunction with the assessment and  
186 accountability processes, what capacity may be needed by  
187 schools and school systems to meet the standards  
188 established by the Legislature and the state board, and  
189 recommend to the school, school system and state board,  
190 plans to establish those needed capacities;

191           (4) Determine, in conjunction with the assessment and  
192 accountability processes, whether statewide system  
193 deficiencies exist in the capacity to establish and maintain  
194 a thorough and efficient system of schools, including the  
195 identification of trends and the need for continuing  
196 improvements in education, and report those deficiencies  
197 and trends to the state board;

198           (5) Determine, in conjunction with the assessment and  
199 accountability processes, staff development needs of  
200 schools and school systems to meet the standards  
201 established by the Legislature and the state board, and  
202 make recommendations to the state board, the center for  
203 professional development, regional education service  
204 agencies, higher education governing boards and county  
205 boards; and

206           (6) Identify, in conjunction with the assessment and  
207 accountability processes, exemplary schools and school  
208 systems and best practices that improve student, school  
209 and school system performance, and make  
210 recommendations to the state board for recognizing and  
211 rewarding exemplary schools and school systems and  
212 promoting the use of best practices. The state board shall  
213 provide information on best practices to county school  
214 systems and shall use information identified through the  
215 assessment and accountability processes to select schools  
216 of excellence.

217 (h) *On-site reviews*. — At the direction of the state  
218 board or by weighted, random selection by the office of  
219 education performance audits, an unannounced on-site  
220 review shall be conducted by the office of education  
221 performance audits of any school or school system for  
222 purposes, including, but not limited to, the following: (1)  
223 Verifying data reported by the school or county board;  
224 (2) documenting compliance with policies and laws; (3)  
225 evaluating the effectiveness and implementation status of  
226 school and school system unified improvement plans; (4)  
227 investigating official complaints submitted to the state  
228 board that allege serious impairments in the quality of  
229 education in schools or school systems; and (5)  
230 investigating official complaints submitted to the state  
231 board that allege that a school or county board is in  
232 violation of policies or laws under which schools and  
233 county boards operate. The random selection of schools  
234 and school systems for an on-site review shall use a  
235 weighted random sample so that those with lower  
236 performance indicators and those that have not had a  
237 recent on-site review have a greater likelihood of being  
238 selected. Under the direction of the state board, the office  
239 of education performance audits shall appoint an  
240 education standards compliance review team to assist it in  
241 conducting on-site reviews. The teams shall be composed  
242 of an adequate number of persons who possess the  
243 necessary knowledge, skills and experience to make an  
244 accurate assessment of education programs and who are  
245 drawn from a trained cadre established by the office of  
246 education performance audits. The state board shall have  
247 discretion in determining the number of persons to serve  
248 on a standards compliance review team based on the size  
249 of the school or school system as applicable. The teams  
250 shall be led by a member of the office of education  
251 performance audits. County boards shall be reimbursed  
252 for the costs of substitutes required to replace county  
253 board employees while they are serving on an education  
254 standards compliance review team. The office of  
255 education performance audits shall report the findings of  
256 the on-site reviews to the state board for inclusion in the  
257 evaluation and determination of a school's or county  
258 board's accreditation or approval status as applicable.

259 (i) *School accreditation.* — The state board annually  
260 shall review the information from the system of education  
261 performance audits submitted for each school and shall  
262 issue to every school: Full accreditation status, temporary  
263 accreditation status, conditional accreditation status, or  
264 shall declare the education programs at the school to be  
265 seriously impaired.

266 (1) Full accreditation status shall be given to a school  
267 when the school's performance on the standards adopted  
268 by the state board pursuant to subsections (c) and (d) of  
269 this section is at a level which would be expected when all  
270 of the high quality education standards are being met.

271 (2) Temporary accreditation status shall be given to a  
272 school when the measure of the school's performance is  
273 below the level required for full accreditation status.  
274 Whenever a school is given temporary accreditation status,  
275 the county board shall ensure that the school's unified  
276 improvement plan is revised to increase the performance  
277 of the school to a full accreditation status level. The  
278 revised unified school improvement plan shall include  
279 objectives, a time line, a plan for evaluation of the success  
280 of the improvements, cost estimates, and a date certain for  
281 achieving full accreditation. The revised plan shall be  
282 submitted to the state board for approval.

283 (3) Conditional accreditation status shall be given to a  
284 school when the school's performance on the standards  
285 adopted by the state board is below the level required for  
286 full accreditation, but the school's unified improvement  
287 plan has been revised to achieve full accreditation status  
288 by a date certain, the plan has been approved by the state  
289 board and the school is meeting the objectives and time  
290 line specified in the revised plan.

291 (4) The state board shall establish and adopt standards  
292 of performance to identify seriously impaired schools and  
293 the state board may declare a school seriously impaired  
294 whenever extraordinary circumstances exist as defined by  
295 the state board. These circumstances shall include, but are  
296 not limited to, the failure of a school on temporary  
297 accreditation status to obtain approval of its revised  
298 unified school improvement plan within a reasonable time

299 period as defined by the state board and the failure of a  
300 school on conditional accreditation status to meet the  
301 objectives and time line of its revised unified school  
302 improvement plan or to achieve full accreditation by the  
303 date specified in the revised plan. Whenever the state  
304 board determines that the quality of education in a school  
305 is seriously impaired, the state board, shall appoint a team  
306 of improvement consultants to make recommendations  
307 within sixty days of appointment for correction of the  
308 impairment. Upon approval of the recommendations by  
309 the state board, the recommendations shall be made to the  
310 county board. If progress in correcting the impairment as  
311 determined by the state board is not made within six  
312 months from the time the county board receives the  
313 recommendations, the state board shall place the county  
314 board on temporary approval status and provide  
315 consultation and assistance to the county board to: (i)  
316 Improve personnel management; (ii) establish more  
317 efficient financial management practices; (iii) improve  
318 instructional programs and rules; or (iv) make such other  
319 improvements as may be necessary to correct the  
320 impairment. If the impairment is not corrected by a date  
321 certain set by the state board, the county board shall be  
322 given nonapproval status.

323       (j) *Transfers from seriously impaired schools.* —  
324 Whenever a school is determined to be seriously impaired  
325 and fails to improve its status within one year, any student  
326 attending such school may transfer once to the nearest  
327 fully accredited school, subject to approval of the fully  
328 accredited school and at the expense of the school from  
329 which the student transferred.

330       (k) *School system approval.* — The state board  
331 annually shall review the information submitted for each  
332 school system from the system of education performance  
333 audits and issue one of the following approval levels to  
334 each county board: Full approval, temporary approval,  
335 conditional approval, or nonapproval.

336       (1) Full approval shall be given to a county board  
337 whose education system meets or exceeds all of the high  
338 quality standards for student, school and school system

339 performance and processes adopted by the state board and  
340 whose schools have all been given full, temporary or  
341 conditional accreditation status.

342 (2) Temporary approval shall be given to a county  
343 board whose education system is below the level required  
344 for full approval. Whenever a county board is given  
345 temporary approval status, the county board shall revise its  
346 unified county improvement plan to increase the  
347 performance of the school system to a full approval status  
348 level. The revised plan shall include objectives, a time line,  
349 a plan for evaluation of the success of the improvements, a  
350 cost estimate, and a date certain for achieving full  
351 approval. The revised plan shall be submitted to the state  
352 board for approval.

353 (3) Conditional approval shall be given to a county  
354 board whose education system is below the level required  
355 for full approval, but whose unified county improvement  
356 plan meets the following criteria: (i) The plan has been  
357 revised to achieve full approval status by a date certain; (ii)  
358 the plan has been approved by the state board; and (iii)  
359 the county board is meeting the objectives and time line  
360 specified in the revised plan.

361 (4) Nonapproval status shall be given to a county  
362 board which fails to submit and gain approval for its  
363 unified county improvement plan or revised unified  
364 county improvement plan within a reasonable time period  
365 as defined by the state board or fails to meet the objectives  
366 and time line of its revised unified county improvement  
367 plan or fails to achieve full approval by the date specified  
368 in the revised plan. The state board shall establish and  
369 adopt additional standards to identify school systems in  
370 which the program may be nonapproved and the state  
371 board may issue nonapproval status whenever  
372 extraordinary circumstances exist as defined by the state  
373 board. Furthermore, whenever a county board has more  
374 than a casual deficit, as defined in section one, article one  
375 of this chapter, the county board shall submit a plan to the  
376 state board specifying the county board's strategy for  
377 eliminating the casual deficit. The state board either shall  
378 approve or reject the plan. If the plan is rejected, the state

379 board shall communicate to the county board the reason  
380 or reasons for the rejection of the plan. The county board  
381 may resubmit the plan any number of times. However,  
382 any county board that fails to submit a plan and gain  
383 approval for the plan from the state board before the end  
384 of the fiscal year after a deficit greater than a casual deficit  
385 occurred or any county board which, in the opinion of the  
386 state board, fails to comply with an approved plan may be  
387 designated as having nonapproval status. Whenever  
388 nonapproval status is given to a school system, the state  
389 board shall declare a state of emergency in the school  
390 system and shall appoint a team of improvement  
391 consultants to make recommendations within sixty days of  
392 appointment for correcting the emergency. Upon  
393 approval of the recommendations by the state board, the  
394 recommendations shall be made to the county board. If  
395 progress in correcting the emergency, as determined by  
396 the state board, is not made within six months from the  
397 time the county board receives the recommendations, the  
398 state board shall intervene in the operation of the school  
399 system to cause improvements to be made that will provide  
400 assurances that a thorough and efficient system of schools  
401 will be provided. This intervention may include, but is not  
402 limited to, the following: (i) Limiting the authority of the  
403 county superintendent and county board as to the  
404 expenditure of funds, the employment and dismissal of  
405 personnel, the establishment and operation of the school  
406 calendar, the establishment of instructional programs and  
407 rules and such other areas as may be designated by the  
408 state board by rule; (ii) taking such direct action as may  
409 be necessary to correct the emergency; and (iii) declaring  
410 that the office of the county superintendent is vacant.

411 (1) *Capacity*. — The process for improving education  
412 includes a process for targeting resources strategically to  
413 improve the teaching and learning process. Development  
414 of unified school and school system improvement plans,  
415 pursuant to subsection (b) of this section, is intended, in  
416 part, to provide mechanisms to target resources  
417 strategically to the teaching and learning process to  
418 improve student, school and school system performance.  
419 When deficiencies are detected through the assessment and

420 accountability processes, the revision and approval of  
421 school and school system unified improvement plans shall  
422 ensure that schools and school systems are efficiently  
423 using existing resources to correct the deficiencies. When  
424 the state board determines that schools and school systems  
425 do not have the capacity to correct deficiencies, the state  
426 board shall work with the county board to develop or  
427 secure the resources necessary to increase the capacity of  
428 schools and school systems to meet the standards and,  
429 when necessary, seek additional resources in consultation  
430 with the Legislature and the governor.

431 The state board shall recommend to the appropriate  
432 body including, but not limited to, the Legislature, county  
433 boards, schools and communities methods for targeting  
434 resources strategically to eliminate deficiencies identified  
435 in the assessment and accountability processes by:

436 (1) Examining reports and unified improvement plans  
437 regarding the performance of students, schools and school  
438 systems relative to the standards and identifying the areas  
439 in which improvement is needed;

440 (2) Determining the areas of weakness that appear to  
441 have contributed to the substandard performance of  
442 students or the deficiencies of the school or school system;

443 (3) Determining the areas of strength that appear to  
444 have contributed to exceptional student, school and school  
445 system performance and promoting their emulation  
446 throughout the system;

447 (4) Requesting technical assistance from the school  
448 building authority in assessing or designing  
449 comprehensive educational facilities plans;

450 (5) Recommending priority funding from the school  
451 building authority based on identified needs;

452 (6) Requesting special staff development programs  
453 from the center for professional development, higher  
454 education, regional education service agencies and county  
455 boards based on identified needs;

456 (7) Submitting requests to the Legislature for  
 457 appropriations to meet the identified needs for improving  
 458 education;

459 (8) Directing county boards to target their funds  
 460 strategically toward alleviating deficiencies;

461 (9) Ensuring that the need for facilities in counties  
 462 with increased enrollment are appropriately reflected and  
 463 recommended for funding;

464 (10) Ensuring that the appropriate person or entity is  
 465 held accountable for eliminating deficiencies; and

466 (11) Ensuring that the needed capacity is available  
 467 from the state and local level to assist the school or school  
 468 system in achieving the standards and alleviating the  
 469 deficiencies.

470 Amendments to this section adopted by the  
 471 Legislature in regular session in the year one thousand  
 472 nine hundred ninety-eight shall be effective on the first  
 473 day of July, one thousand nine hundred ninety-eight.

## **ARTICLE 2I. STAFF DEVELOPMENT COUNCILS.**

§18-2I-1. Legislative purpose.

§18-2I-2. Legislative findings.

§18-2I-3. Creation of West Virginia staff development advisory council;  
 members; and functions.

§18-2I-4. Functions of the West Virginia staff development advisory council.

§18-2I-5. Creation of regional staff development councils; members; and  
 functions.

§18-2I-6. Functions of the regional staff development councils.

§18-2I-7. Limitations on funding of councils.

### **§18-2I-1. Legislative purpose.**

1 The purpose of this article is to create the West  
 2 Virginia staff development advisory council and eight  
 3 regional staff development councils to coordinate the  
 4 delivery of staff development programs for professional  
 5 education in West Virginia.

### **§18-2I-2. Legislative findings.**

1       The Legislature finds that there is presently an  
2 inadequate and inefficient delivery of staff development  
3 programs for professional education in West Virginia.  
4 The Legislature further finds that the creation of a West  
5 Virginia staff development advisory council and regional  
6 staff development councils will assure the efficient  
7 delivery of high quality staff training programs and will  
8 further assure that duplication of efforts will be  
9 minimized. The Legislature further finds that the  
10 functions of the West Virginia staff development advisory  
11 council and regional staff development councils will  
12 assure that key personnel will be fully aware of identified  
13 needs and programmatic services, that all stakeholders will  
14 be appropriately involved in planning and implementing  
15 programs to meet requisite needs and that high quality  
16 staff development programs will be provided to public  
17 school educators of West Virginia in the most efficient  
18 manner.

**§18-2I-3. Creation of West Virginia staff development  
advisory council; members; and functions.**

1       (a) There shall be a West Virginia staff development  
2 advisory council which shall consist of the following  
3 members:

4       (1) The chairpersons of each of the eight regional  
5 staff development councils established in section five of  
6 this article;

7       (2) The coordinators of each of the eight regional  
8 educational service agency staff development councils;

9       (3) The associate superintendent for the division of  
10 research, technology and professional services of the state  
11 department of education;

12       (4) The assistant superintendent for the division of  
13 instructional and student services of the state department  
14 of education;

15       (5) The assistant superintendent for the division of  
16 technical and adult education services of the state  
17 department of education;

18 (6) The assistant superintendent for the division of  
19 administrative services of the state department of  
20 education;

21 (7) The secretary of education and the arts or his or  
22 her designee;

23 (8) The chancellor of the university system of West  
24 Virginia or his or her designee;

25 (9) The chancellor of the state college system of West  
26 Virginia or his or her designee;

27 (10) The executive director of the West Virginia  
28 education fund or his or her designee;

29 (11) The executive director of the West Virginia center  
30 for professional development or his or her designee;

31 (12) The president of the West Virginia education  
32 association or his or her designee;

33 (13) The president of the West Virginia federation of  
34 teachers or his or her designee;

35 (14) The president of the West Virginia professional  
36 educators or his or her designee;

37 (15) The president of the West Virginia association of  
38 school administrators or his or her designee;

39 (16) The president of the West Virginia association of  
40 elementary and middle school principals or his or her  
41 designee; and

42 (17) The president of the West Virginia association of  
43 secondary school principals or his or her designee.

44 (b) Any member of the advisory council may be  
45 reimbursed by his or her employing agency for the cost  
46 of reasonable and necessary expenses actually incurred in  
47 the performance of their duties under this article as  
48 determined by the employing agency.

**§18-2I-4. Functions of the West Virginia staff development  
advisory council.**

1 The council shall:

- 2 (a) Identify and prioritize statewide staff development  
3 needs;
- 4 (b) Identify effective staff development programs to  
5 meet identified needs;
- 6 (c) Communicate staff development information and  
7 findings to the regional staff development councils, the  
8 state board and the legislative oversight commission on  
9 education accountability by the first day of September of  
10 each year;
- 11 (d) Convene regular meetings on a semiannual basis to  
12 effectuate the requirements in subsections (a), (b) and (c)  
13 of this section; and
- 14 (e) Elect a chairman who shall serve two years.

**§18-2I-5. Creation of regional staff development councils;  
members; and functions.**

- 1 (a) There shall be a regional staff development council  
2 in each of the eight regional educational service agencies  
3 located within the state. Each regional staff development  
4 council shall consist of the following members:
- 5 (1) The chairperson of each of the county  
6 professional staff development councils located in each  
7 county contained in the applicable region;
- 8 (2) The county staff development coordinator from  
9 each of the counties located within the region: *Provided,*  
10 That if the county does not have a staff development  
11 coordinator, then the superintendent shall designate a  
12 person to serve on the regional staff development council;
- 13 (3) The regional educational service agencies staff  
14 development coordinator who shall serve as an ex officio  
15 member;
- 16 (4) The executive director of the regional educational  
17 service agencies who shall serve as an ex officio member;
- 18 (5) The designee of the chancellor of the university  
19 system of West Virginia who shall serve as an ex officio  
20 member; and

21 (6) The designee of the chancellor of the state college  
22 system of West Virginia who shall serve as an ex officio  
23 member.

24 (b) Any member of the regional staff development  
25 council may be reimbursed by his or her employing  
26 agency for the cost of reasonable and necessary expenses  
27 actually incurred in the performance of their duties under  
28 this article as determined by the employing agency.

**§18-2I-6. Functions of the regional staff development councils.**

1 The regional councils shall:

2 (a) Identify and prioritize regional staff development  
3 needs;

4 (b) Identify effective staff development programs;

5 (c) Where requested by the regional educational  
6 service agency, establish the budget for multicounty staff  
7 development programs and oversee effective use of the  
8 budget;

9 (d) Where requested by the regional educational  
10 service agency, coordinate staff development at the  
11 regional level;

12 (e) Facilitate communications among and between  
13 personnel responsible for staff development at the state,  
14 local and regional levels;

15 (f) Convene regular meetings on a quarterly basis to  
16 effectuate the requirements in subsections (a), (b), (c), (d)  
17 and (e) of this section;

18 (g) Elect a chairman who shall serve two years; and

19 (h) Report information and findings related to staff  
20 development to the West Virginia staff development  
21 advisory council.

**§18-2I-7. Limitations on funding of councils.**

1 Nothing in this article may be construed to require  
2 any specific level of funding by the Legislature.

**ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

§18-9A-7. Foundation allowance for transportation cost.

§18-9A-10. Foundation allowance to improve instructional programs.

**§18-9A-7. Foundation allowance for transportation cost.**

1       The allowance in the foundation school program for  
2 each county for transportation shall be the sum of the  
3 following computations:

4       (1) Eighty-five percent of the transportation cost  
5 within each high density county and ninety percent of the  
6 transportation cost within each low density county for  
7 maintenance, operation and related costs, exclusive of all  
8 salaries: *Provided*, That for the school year beginning the  
9 first day of July, one thousand nine hundred ninety-eight,  
10 and thereafter, in the event a county uses an alternative  
11 fuel such as compressed natural gas or other acceptable  
12 alternative fuel for the operation of all or any portion of  
13 its school bus system, then the allowance in the foundation  
14 school program for each such county for that portion of  
15 its school bus system shall be ninety-five percent of the  
16 transportation cost for maintenance, operation and related  
17 costs, exclusive of all salaries, incurred by the use of the  
18 alternatively fueled school buses: *Provided, however*,  
19 That any county using an alternative fuel and qualifying  
20 for the additional allowance shall submit a plan regarding  
21 the intended future use of alternatively fueled school  
22 buses;

23       (2) The total cost, within each county, of insurance  
24 premiums on buses, buildings and equipment used in  
25 transportation: *Provided*, That such premiums were  
26 procured through competitive bidding;

27       (3) For the school year beginning the first day of July,  
28 one thousand nine hundred eighty-nine, and thereafter, an  
29 amount equal to ten percent of the current replacement  
30 value of the bus fleet within each county as determined by  
31 the state board, such amount to be used only for the  
32 replacement of buses. In addition, in any school year in  
33 which its net enrollment increases when compared to the  
34 net enrollment the year immediately preceding, a school  
35 district may apply to the state superintendent for funding  
36 for an additional bus. The state superintendent shall make

37 a decision regarding each application based upon an  
38 analysis of the individual school district's net enrollment  
39 history and transportation needs: *Provided*, That the  
40 superintendent shall not consider any application which  
41 fails to document that the county has applied for federal  
42 funding for additional buses. If the state superintendent  
43 finds that a need exists, a request for funding shall be  
44 included in the budget request submitted by the state  
45 board for the upcoming fiscal year;

46 (4) Eighty-five percent of the cost of contracted  
47 transportation services and public utility transportation  
48 within each high density county and ninety percent of the  
49 cost of contracted transportation services and public utility  
50 transportation within each low density county;

51 (5) Aid in lieu of transportation equal to the state  
52 average amount per pupil for each pupil receiving such  
53 aid within each county; and

54 (6) Ninety-five percent of the transportation cost for  
55 maintenance, operation and related costs, exclusive of all  
56 salaries, for transporting students to and from classes at a  
57 multicounty vocational center.

58 The total state share for this purpose shall be the sum  
59 of the county shares: *Provided*, That no county shall  
60 receive an allowance which is greater than one third above  
61 the computed state average allowance per transportation  
62 mile multiplied by the total transportation mileage in the  
63 county: *Provided, however*, That one half of one percent  
64 of the transportation allowance distributed to each county  
65 shall be for the purpose of trips related to academic  
66 classroom curriculum and not related to any  
67 extracurricular activity: *Provided further*, That any  
68 remaining funds credited to a county for the purpose of  
69 trips related to academic classroom curriculum during the  
70 fiscal year shall be carried over for use in the same  
71 manner the next fiscal year and shall be separate and apart  
72 from, and in addition to, the appropriation for the next  
73 fiscal year: *And provided further*, That the state board may  
74 request a county to document the use of funds for trips  
75 related to academic classroom curriculum if the board  
76 deems it necessary.

77       The state department of education shall cause a  
78 comprehensive study to be made relating to student  
79 transportation. The study shall examine, but is not limited  
80 to, the issues of funding, timeliness of data used for  
81 formula distribution, service personnel needed, inter-  
82 county service, regionalization of services, bus routes,  
83 amount of time students spend on buses, maintenance,  
84 safety training, and alternative transportation systems.  
85 The state department of education shall submit a report of  
86 the study to the legislative oversight commission on  
87 education accountability by the fifteenth day of January,  
88 one thousand nine hundred ninety-nine.

**\*§18-9A-10. Foundation allowance to improve instructional programs.**

1       (a) For the school year beginning on the first day of  
2 July, one thousand nine hundred ninety-eight, and  
3 thereafter, the sum of the allocations shall be the amount  
4 appropriated by the Legislature for such purposes:

5       (1) One hundred fifty thousand dollars shall be  
6 allocated to each county;

7       (2) Distribution to the counties of the remainder of  
8 these funds shall be made proportional to the average of  
9 each county's average daily attendance for the preceding  
10 year and the county's second month net enrollment.  
11 Moneys allocated by provision of this section shall be  
12 used to improve instructional programs according to a  
13 plan for instructional improvement which the affected  
14 county board shall file with the state board by the first day  
15 of August of each year, to be approved by the state board  
16 by the first day of September of that year if such plan  
17 substantially complies with standards to be adopted by the  
18 state board: *Provided*, That notwithstanding any other  
19 provision of this code to the contrary, moneys allocated  
20 by provision of this section may also be used in the  
21 implementation and maintenance of the uniform  
22 integrated regional computer information system; and

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\*Clerk's Note: This section was also amended by SB 533 (Chapter 125), which passed subsequent to this act.

23           (3) Up to twenty-five percent of this allocation may be  
24 used to employ professional educators and/or service  
25 personnel in counties after all applicable provisions of  
26 sections four and five of this article have been fully  
27 utilized: *Provided*, That for the school year beginning on  
28 the first day of July, one thousand nine hundred ninety-  
29 six, only, up to an additional twenty-five percent of this  
30 allocation may be used to employ classroom teachers, as  
31 defined in section one, article one, chapter eighteen-a of  
32 this code, and/or service personnel in counties after all  
33 applicable provisions of sections four and five of this  
34 article have been fully utilized: *Provided, however*, That  
35 service personnel employed with the additional twenty-five  
36 percent for the school year beginning on the first day of  
37 July, one thousand nine hundred ninety-six, only, may not  
38 include directors, coordinators or supervisors.

39           Prior to the use of any funds from this section for  
40 personnel costs, the county board must receive  
41 authorization from the state superintendent of schools.  
42 The state superintendent shall require the district board to  
43 demonstrate: (1) The need for the allocation; (2)  
44 efficiency and fiscal responsibility in staffing; and (3)  
45 sharing of services with adjoining counties and the  
46 regional educational service agency for that county in the  
47 use of the total local district board budget. District boards  
48 shall make application for available funds for the next  
49 fiscal year by the first day of May of each year. On or  
50 before the first day of June, the state superintendent shall  
51 review all applications and notify applying district boards  
52 of the distribution of the allocation: *Provided*, That for  
53 the school year beginning on the first day of July, one  
54 thousand nine hundred ninety-three, only, the state  
55 superintendent shall review all applications and notify  
56 applying district boards of the distribution of the  
57 allocation on or before the first day of July, one thousand  
58 nine hundred ninety-three. Such funds shall be  
59 distributed during the fiscal year as appropriate. The state  
60 superintendent shall require the county board to  
61 demonstrate the need for an allocation for personnel  
62 based upon the county's inability to meet the  
63 requirements of state law or state board policy: *Provided*,

64 *however*, That the funds available for personnel under this  
65 section may not be used to increase the total number of  
66 professional noninstructional personnel in the central  
67 office beyond four. Such instructional improvement plan  
68 shall be made available for distribution to the public at the  
69 office of each affected county board.

70 (b) Commencing with the school year beginning on  
71 the first day of July, one thousand nine hundred ninety-  
72 three, an amount not less than the amount required to  
73 meet debt service requirements on any revenue bonds  
74 issued prior to the first day of January, one thousand nine  
75 hundred ninety-four, and the debt service requirements on  
76 any revenue bonds issued for the purpose of refunding  
77 revenue bonds issued prior to the first day of January, one  
78 thousand nine hundred ninety-four, shall be paid into the  
79 school building capital improvements fund created by  
80 section six, article nine-d of this chapter, and shall be used  
81 solely for the purposes of said article. The school  
82 building capital improvements fund shall not be utilized to  
83 meet the debt services requirement on any revenue bonds  
84 or revenue refunding bonds for which moneys contained  
85 within the school building debt service fund have been  
86 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.

- 1 (a) *Principal training required.* — After the first day  
2 of January, one thousand nine hundred ninety-seven, and  
3 subject to the provisions of subsection (c) of this section,  
4 every principal shall complete a training program through  
5 the principals academy at least once every four years.

6 (b) *Admission to academy.* — The academy and the  
7 persons attending such academy shall adhere to the  
8 following guidelines for admission to the academy:

9 (1) All persons assigned as a principal for the first  
10 time in a West Virginia school after the first day of March,  
11 one thousand nine hundred ninety-six, shall complete  
12 training through the academy: *Provided*, That if training  
13 through the academy is scheduled to begin within ninety  
14 days from the date of assignment, such person may  
15 complete the next scheduled training through the  
16 academy;

17 (2) All principals of schools which have received from  
18 the state board temporary or conditional accreditation  
19 status or whose schools have been designated as seriously  
20 impaired, in accordance with section five, article two-e,  
21 chapter eighteen of this code, shall complete the next  
22 regularly scheduled training through the academy  
23 following the date of such designation: *Provided*, That if  
24 training through the academy is scheduled to begin within  
25 thirty days from the date of such designation, such  
26 principal may complete the next scheduled training  
27 through the academy: *Provided, however*, That principals  
28 whose schools have received conditional accreditation  
29 status, whose plan for correcting the deficiency which  
30 resulted in conditional accreditation status exceeds one  
31 year and whose schools are meeting the requirements of  
32 the plan, shall not be required to attend the academy in  
33 each successive year;

34 (3) All principals who are subject to an improvement  
35 plan, in accordance with section twelve, article two of this  
36 chapter, shall complete the next regularly scheduled  
37 training through the academy: *Provided*, That if training  
38 through the academy is scheduled to begin within thirty  
39 days from the date the principal is first subject to the  
40 improvement plan, then such principal may complete the  
41 next scheduled training through the academy;

42 (4) All principals who transfer to a school with a  
43 significantly different grade configuration shall complete  
44 the next regularly scheduled training through the  
45 academy: *Provided*, That if training through the academy

46 is scheduled to begin within ninety days from the date  
47 such principal is transferred, then such principal may  
48 complete the next scheduled training through the  
49 academy; and

50 (5) All persons serving as school principals who are  
51 not described in subdivisions (1) through (4) of this  
52 subsection shall complete training through the academy at  
53 least once every four years from and after the first day of  
54 January, one thousand nine hundred ninety-seven.

55 (c) *Academy and attendance subject to funding.* —  
56 The requirement that principals attend the academy shall  
57 be subject to the availability of funds for the principals  
58 academy from legislative appropriation or from other  
59 sources. If such funds are insufficient to provide for the  
60 total cost of admission to the academy for those required  
61 to complete training, then the academy shall admit the  
62 persons described in subdivisions (1) through (5),  
63 subsection (b) of this section according to the priority in  
64 which the subdivisions appear in said subsection. If such  
65 funds are insufficient to provide for the admission of all  
66 the persons described in one or more of subdivisions (1)  
67 through (5), subsection (b) of this section, the academy is  
68 authorized to determine which persons described within  
69 the said subdivision or subdivisions shall be admitted and  
70 which shall not be admitted: *Provided*, That the principals  
71 academy shall make every effort to ensure that all  
72 principals attend once every four years from and after  
73 the first day of January, one thousand nine hundred  
74 ninety-seven: *Provided, however*, That nothing in this  
75 section shall be construed to require any specific level of  
76 funding by the Legislature.

77 (d) *Principals standards advisory council.* — To assist  
78 the state board in the performance of the duties described  
79 in subsection (e) of this section, there is hereby created a  
80 "Principals Standards Advisory Council", which shall  
81 consist of nine persons, as follows: The executive director,  
82 or designee, of the center for professional development,  
83 who shall serve as the ex officio chair; three principals,  
84 one from an elementary school, one from a middle school,  
85 or a junior high school, and one from a high school, and

86 one county school superintendent, nominated by the state  
87 board and appointed by the governor; two representatives  
88 from higher education who teach in principal preparation  
89 programs, nominated by the chancellor of the state  
90 university system and appointed by the governor; and two  
91 citizen representatives who are knowledgeable on issues  
92 addressed in this section, appointed by the governor. Of  
93 the initial appointments, three of the members appointed  
94 shall serve for a term of three years, three members shall  
95 serve for a term of two years, and two members shall serve  
96 for a term of one year. All successive appointments shall  
97 be for a term of three years. Members of the council who  
98 are public employees shall be granted release time from  
99 their employment for attending meetings of the council.  
100 Members may be reimbursed for reasonable and  
101 necessary expenses actually incurred in the performance  
102 of their official duties by the center for professional  
103 development.

104 (e) *Establishment of standards.* — On or before the  
105 first day of October, one thousand nine hundred ninety-  
106 six, the state board shall approve and promulgate rules  
107 regarding the minimum qualities, proficiencies and skills  
108 that will be required of principals after the first day of  
109 January, one thousand nine hundred ninety-seven. The  
110 state board shall promulgate such rules after consultation  
111 with the principals standards advisory council created in  
112 subsection (d) of this section. The rule developed by the  
113 state board shall address at least the following:

114 (1) Staff relations, including, but not limited to, the  
115 development and use of skills necessary to make a positive  
116 use of faculty senates, to manage faculty and staff with  
117 courtesy and mutual respect, coach and motivate  
118 employees and to build consensus as a means of  
119 management;

120 (2) School community leadership qualities, including,  
121 but not limited to, the ability to organize and leverage  
122 community initiative, communicate effectively, work  
123 effectively with local school improvement councils,  
124 manage change, resolve conflict and reflect the highest  
125 personal values;

126 (3) Educational proficiencies, including, but not  
127 limited to, knowledge of curriculum, instructional  
128 techniques, student learning styles, student assessment  
129 criteria, school personnel performance, evaluation skills  
130 and family issues; and

131 (4) Administrative skills, including, but not limited to,  
132 organizational, fiscal, public policy and total quality  
133 management skills and techniques.

134 (f) *Waivers.* — Any person desiring to be relieved of  
135 the requirements of all or any part of this section may  
136 apply in writing to the state board for a waiver. Upon a  
137 showing of reasonable cause why relief should be granted,  
138 the state board may grant a waiver, upon such terms and  
139 conditions as the state board shall determine proper, as to  
140 all or any part of this section.

141 (g) *Failure to comply.* — Any person who fails or  
142 refuses to complete training through the academy, as  
143 required by the provisions of this section, and who fails to  
144 obtain a waiver, as described in subsection (f) of this  
145 section, shall be ineligible to be employed as, or serve in  
146 the capacity of, a principal.

147 (h) *Tracking of requirement.* — On or before the first  
148 day of January, one thousand nine hundred ninety-seven,  
149 the state board shall establish a system to track the  
150 progress of each person required to complete training  
151 through the academy and shall regularly advise such  
152 persons of their progress.

153 (i) *Payment of reasonable and necessary expenses and*  
154 *stipends.* — The center for professional development may  
155 reimburse persons attending the academy for reasonable  
156 and necessary expenses. Additionally, any person whose  
157 attendance occurs outside his or her employment term, as  
158 defined in section fifteen, article five, chapter eighteen of  
159 this code, may be entitled to a stipend to be determined by  
160 and paid by the center for professional development:  
161 *Provided,* That nothing in this section shall be construed  
162 to require any specific level of funding by the Legislature.

#### ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-1. Center for professional development continued; intent; advisory council.

§18A-3A-2. Professional development project.

§18A-3A-2a. Development training project.

§18A-3A-2b. The principals academy.

§18A-3A-3. Professional personnel evaluation project.

**§18A-3A-1. Center for professional development continued; intent; advisory council.**

1 (a) Teaching is a profession that directly correlates to  
2 the social and economic well-being of a society and its  
3 citizens. Superior teaching is essential to a well educated  
4 and productive populace. Strong academic leadership  
5 provided by principals and administrators skilled in  
6 modern management principles is also essential. The  
7 intent of this article is to recognize the value of  
8 professional involvement by experienced educators,  
9 principals and administrators in building and maintaining  
0 a superior force of professional educators and to establish  
1 avenues for applying such involvement.

2 The general mission of the center is to study matters  
13 relating to the quality of teaching and management in the  
14 schools of West Virginia and to promote the  
15 implementation primarily of statewide programs and  
16 practices as recommended by the state board to assure the  
17 highest quality in teaching and management. The center  
18 also may implement local programs if the state board, in  
19 its agenda set pursuant to section twenty-three-a, article  
20 two, chapter eighteen of this code, determines that there is  
21 a specific local need for the programs. Additionally, the  
22 center shall perform such duties as are assigned to it by  
23 law.

24 Nothing in this article shall be construed to require  
25 any specific level of funding by the Legislature.

26 (b) The center board shall consist of eleven persons as  
27 follows: The secretary of education and the arts, ex  
28 officio, and the state superintendent of schools, ex officio,  
29 both of whom shall be entitled to vote; three members of  
30 the state board, elected by the state board; three  
31 experienced educators, of whom two shall be working

32 classroom teachers and one of whom shall be a school or  
33 county administrator, appointed by the governor by and  
34 with the advice and consent of the Senate; and three  
35 citizens of the state who are knowledgeable in matters  
36 relevant to the issues addressed by the center, including,  
37 but not limited to, professional development and  
38 management principles, appointed by the governor by and  
39 with the advice and consent of the Senate. Not more than  
40 two appointees shall be residents within the same  
41 congressional district. The center board shall elect a  
42 board chair.

43       Of the initial members from the state board, one shall  
44 be elected for a term of one year and two shall be elected  
45 for terms of two years. All successive elections shall be  
46 for two-year terms. The state board shall elect another  
47 member to fill the unexpired term of any person so  
48 elected who subsequently vacates state board membership.  
49 Of the initial appointed members, three shall be appointed  
50 for one-year terms and three shall be appointed for two-  
51 year terms. All successive appointments shall be for two-  
52 year terms. The governor shall appoint a new member to  
53 fill the unexpired term of any vacancy in the appointed  
54 membership.

55       The center for professional development board shall  
56 meet at least quarterly and the appointed members shall be  
57 reimbursed for reasonable and necessary expenses  
58 actually incurred in the performance of their official  
59 duties from funds appropriated or otherwise made  
60 available for such purposes upon submission of an  
61 itemized statement therefor.

62       The board chair, with the advice of the center board,  
63 from appropriations to the center for professional  
64 development, may employ and fix the compensation of an  
65 executive director with knowledge and experience in  
66 professional development and management principles and  
67 such other persons as may be necessary to carry out the  
68 mission and duties of the center. When practical,  
69 personnel employed by state higher education agencies  
70 and state, regional and county public education agencies

71 shall be made available to the center to assist in the  
72 operation of projects of limited duration.

73 The center shall assist in the delivery of programs and  
74 activities pursuant to this article to meet statewide, and if  
75 needed as determined by the goals set by the state board  
76 pursuant to section twenty-three-a, article two, chapter  
77 eighteen of this code, the local professional development  
78 needs of teachers, principals and administrators and may  
79 contract with existing agencies or agencies created after  
80 the effective date of this section or others to provide  
81 training programs in the most efficient manner. Existing  
82 programs currently based in agencies of the state shall be  
83 continued in the agency of their origin unless the center  
84 establishes a compelling need to transfer or cancel the  
85 existing program. The center shall recommend to the  
86 governor the transfer of funds to the providing agency, if  
87 needed, to provide programs approved by the center.

88 Pursuant to the provisions of article ten, chapter four  
89 of this code, the center for professional development  
90 board shall continue to exist until the first day of July, two  
91 thousand one.

92 (c) On or before the first day of January, one  
93 thousand nine hundred ninety-eight, the center for  
94 professional development shall develop and communicate  
95 to the state board a curriculum for the principals academy.  
96 The curriculum shall be based upon the minimum  
97 qualities, proficiencies and skills necessary for principals  
98 and recommended by the state board, pursuant to the  
99 terms of section two-c, article three of this chapter.

100 (d) In accordance with section two-c, article three of  
101 this chapter, the center shall be responsible for paying  
102 reasonable and necessary expenses for persons attending  
103 the principals academy: *Provided*, That nothing in this  
104 section shall be construed to require any specific level of  
105 funding by the Legislature.

106 (e) Persons attending the professional development  
107 offerings of the center and such other courses as shall be  
108 offered by the center for professional development, except  
109 the principals academy, shall be assessed fees which shall

110 be less than the full cost of attendance. There is hereby  
111 created in the state treasury a special revenue account  
112 known as the "center for professional development  
113 fund". All moneys collected by the center shall be  
114 deposited in the fund for expenditure by the center board  
115 for the purposes specified in this section. Moneys  
116 remaining in the fund at the end of the fiscal year are  
117 subject to reappropriation by the Legislature.

**§18A-3A-2. Professional development project.**

1 Subject to the provisions of section twenty-three-a,  
2 article two, chapter eighteen of this code, through this  
3 project the center shall:

4 (1) Identify, coordinate, arrange and otherwise assist in  
5 the delivery of professional development programs and  
6 activities that help professional educators acquire the  
7 knowledge, skills, attitudes, practices and other such  
8 pertinent complements deemed essential for an individual  
9 to demonstrate appropriate performance as a professional  
10 personnel in the public schools of West Virginia. The  
11 basis for such performance shall be the laws, policies and  
12 regulations adopted for the public schools of West  
13 Virginia, and amendments thereto. The center also may  
14 permit and encourage school personnel such as classroom  
15 aides, higher education teacher education faculty and  
16 higher education faculty in programs such as articulated  
17 tech prep associate degree and other programs to  
18 participate in appropriate professional development  
19 programs and activities with public school professional  
20 educators;

21 (2) Identify, coordinate, arrange and otherwise assist in  
22 the delivery of professional development programs and  
23 activities that help principals and administrators acquire  
24 knowledge, skills, attitudes and practices in academic  
25 leadership and management principles for principals and  
26 administrators and such other pertinent complements  
27 deemed essential for principals and administrators to  
28 demonstrate appropriate performance in the public  
29 schools of West Virginia. The basis for such performance  
30 shall be the laws, policies and regulations adopted for the  
31 public schools of West Virginia, and amendments thereto;

32       (3) Serve in a coordinating capacity to assure that the  
33 knowledge, skills, attitude and other pertinent  
34 complements of appropriate professional performance  
35 which evolve over time in the public school environment  
36 are appropriately reflected in the programs approved for  
37 the education of professional personnel, including, but not  
38 limited to, advising the teacher education programs of  
39 major statutory and policy changes in the public schools  
40 which affect the job performance requirements of  
41 professional educators, including principals and  
42 administrators;

43       (4) Provide for the routine updating of professional  
44 skills of professional educators, including principals and  
45 administrators, through in-service and other programs.  
46 Such routine updating may be provided by the center  
47 through statewide or regional institutes which may require  
48 a registration fee; and

49       (5) Provide consultation and assistance to county staff  
50 development councils established under the provisions of  
51 section eight, article three of this chapter in planning,  
52 designing, coordinating, arranging for and delivering  
53 professional development programs to meet the needs of  
54 the professional educators of their district. From  
55 legislative appropriations to the center for professional  
56 development, exclusive of such amounts required for the  
57 expenses of the principals academy, the center shall, unless  
58 otherwise directed by the Legislature, provide assistance in  
59 the delivery of programs and activities to meet the  
60 expressed needs of the school districts for professional  
61 development to help teachers, principals and  
62 administrators demonstrate appropriate performance  
63 based on the laws, policies and regulations adopted for the  
64 public schools of West Virginia.

**§18A-3A-2a. Development training project.**

1       Subject to the provisions of section twenty-three-a,  
2 article two, chapter eighteen of this code, through this  
3 project the center shall develop training in the area of  
4 developmental instruction with an emphasis in grades  
5 kindergarten through grade four.

**§18A-3A-2b. The principals academy.**

1       There is hereby established within the center for  
2 professional development the "Principals Academy".  
3 Training through the principals academy shall include at  
4 least the following:

5       (a) Training designed to build within principals the  
6 minimum qualities, proficiencies and skills that will be  
7 required of all principals pursuant to the rules of the state  
8 board;

9       (b) Intensive summer training institutes; and

10       (c) Specialized training and professional development  
11 programs for all principals, with special programs for the  
12 following principals:

13       (1) Newly appointed principals;

14       (2) Principals of schools which have received from  
15 the state board temporary or conditional accreditation  
16 status or whose schools have been designated as seriously  
17 impaired;

18       (3) Principals subject to improvement plans; and

19       (4) Principals of schools with significantly different  
20 grade level configurations.

**§18A-3A-3. Professional personnel evaluation project.**

1       Subject to the provisions of section twenty-three-a,  
2 article two, chapter eighteen of this code, through this  
3 project the center shall:

4       (1) Establish programs that provide education and  
5 training in evaluation skills to administrative personnel  
6 who will evaluate the employment performance of  
7 professional personnel pursuant to the provisions of  
8 section twelve, article two of this chapter; and

9       (2) Establish programs that provide instruction to  
10 classroom teachers who will serve as beginning teacher  
11 mentors in accordance with the provisions of section  
12 two-b, article three of this chapter.

## CHAPTER 127

(H. B. 4697—By Delegates Manuel, Beach, Williams, Anderson,  
Stemple, Osborne and Hubbard)

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[Passed March 13, 1998; in effect July 1, 1998. Approved by the Governor.]

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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.**

- 1 This article is titled and may be cited as the “Air
- 2 Quality in New Schools Act of 1998.”

#### **§18-9E-2. Definitions.**

- 1 For the purposes of this article, “new school
- 2 building” means any public school in the state for which
- 3 design and construction begin after the first day of July,
- 4 one thousand nine hundred ninety-eight, for the education
- 5 of students in grades kindergarten through twelfth.

#### **§18-9E-3. Air quality in new schools.**

1 (a) In an effort to create well ventilated school  
2 environments, and notwithstanding any other provision of  
3 this code to the contrary, any new school building  
4 designed and constructed in the state by a county board  
5 after the first day of July, one thousand nine hundred  
6 ninety-eight, regardless of the funding source, shall be  
7 designed and constructed in compliance with the current  
8 standards of the American society of heating, refrigerating  
9 and air conditioning engineers handbook (ASHRAE), the  
10 national fire protection association code (NFPA) and the  
11 code of the building officials and code administrators  
12 (BOCA).

13 Prior to construction of any new school building in  
14 this state, tests, as required by the school building  
15 authority rules promulgated under the provisions of  
16 subsection (b) of this section, shall be conducted to  
17 determine if radon is present at the proposed construction  
18 site. If radon is detected, additional tests shall be  
19 performed within thirty days to confirm the results. If it is  
20 determined that radon is present in amounts greater than  
21 the amount determined to be acceptable by the rules  
22 promulgated by the school building authority, pursuant to  
23 subsection (b) of this section, during both tests, any new  
24 school building constructed on that site shall incorporate  
25 an active soil depressurization system to divert radon from  
26 the building site, or utilize any other industry accepted  
27 mitigation technique to minimize exposure to radon.

28 (b) The school building authority shall promulgate  
29 rules pursuant to article three-a, chapter twenty-nine-a of  
30 this code to assure that any new school building designed  
31 after the effective date of this article is designed and  
32 constructed in accordance with the ASHRAE, NFPA and  
33 BOCA standards. The school building authority shall  
34 promulgate rules, pursuant to article three-a, chapter  
35 twenty-nine-a of this code that establish standards for safe  
36 levels of radon for public school buildings. The school  
37 building authority shall submit the rules for approval to  
38 the legislative oversight commission on education  
39 accountability on or before the first day of July, one  
40 thousand nine hundred ninety-eight. The rules shall  
41 include the requirement that county boards submit all  
42 designs to the school building authority for review and  
43 approval prior to preparation of final bid documents.

## CHAPTER 128

(Com. Sub. for S. B. 409—By Senators Hunter, Helmick and Ross)

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

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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.**

- 1 This article may be cited as the "Blind Persons'
- 2 Literacy Rights and Education Act".

**§18-10J-2. Definitions.**

- 1 The following words used in this article shall be
- 2 construed as follows:

3 (a) "Blind or visually impaired child" means an  
4 individual who is eligible for special education services  
5 and who:

6 (1) Has a visual acuity of 20/200 or less in the better  
7 eye with correcting lenses or has a limited field of vision  
8 such that the widest diameter subtends an angular distance  
9 of no greater than twenty degrees; or

10 (2) Has a medically indicated expectation of visual  
11 deterioration.

12 (b) "Braille" means the system of reading and writing  
13 through touch commonly known as standard English  
14 braille.

15 (c) "Individualized education program" and "IEP  
16 team" have the meanings provided in Section 614(d) of  
17 the Individuals with Disabilities Education Act (20 U.S.C.  
18 Section 1414(d)).

19 (d) "Textbooks and other instructional materials"  
20 means any literary or nonliterary works obtained for use  
21 in a course of study.

### **§18-10J-3. Individualized education program.**

1 In developing the individualized education program  
2 for a child who is blind or visually impaired, the  
3 individualized education program team shall provide for  
4 the child to receive instruction in braille and the use of  
5 braille unless the individualized education program team  
6 determines, after an evaluation of the child's reading and  
7 writing skills, needs, and appropriate reading and writing  
8 media (including an evaluation of the child's future needs  
9 for instruction in braille or the use of braille), that the  
10 instruction or use is not appropriate for the child.  
11 Nothing in this section requires the exclusive use of braille  
12 if other special education services are appropriate to the  
13 child's educational needs. The provision of other  
14 appropriate services shall not preclude braille use or  
15 instruction.

### **§18-10J-4. Standards of competency and instruction.**

1 Instruction in braille reading and writing shall be  
2 provided with the goal of enabling each blind or visually

3 impaired child to communicate effectively and efficiently  
4 with the same level of proficiency expected of the child's  
5 peers of comparable ability and grade level. The child's  
6 individualized education program shall specify:

7 (a) The results obtained from the evaluations required  
8 under section three of this article;

9 (b) How braille will be implemented as the primary  
10 mode for learning through integration with other  
11 classroom activities;

12 (c) The date on which braille instruction will  
13 commence;

14 (d) The length of the period of instruction and the  
15 frequency and duration of each instructional session;

16 (e) The level of competency in braille reading and  
17 writing to be achieved by the end of the period and the  
18 objective assessment measures to be used; and

19 (f) If a decision has been made under section two of  
20 this article, that braille instruction or use is not required  
21 for the child:

22 (1) Documentation that the decision was reached after  
23 a review of pertinent literature describing the educational  
24 benefits of braille instruction and use; and

25 (2) A specification of the evidence used to determine  
26 that the child's ability to read and write effectively without  
27 braille instruction is not impaired.

#### **§18-10J-5. Instructional materials.**

1 All publishers of textbooks or other instructional  
2 materials sold to the state or any local education agency  
3 (including post-secondary institutions) shall furnish  
4 computer diskettes for literary subjects in the American  
5 standard code for information interchange from which  
6 braille versions can be produced. Further, the publishers  
7 shall furnish computer diskettes in American standard  
8 code for information interchange for nonliterary subjects,  
9 including natural sciences, computer science, mathematics  
10 and music, when braille specialty code translation software  
11 is available.

**§18-10J-6. Teacher certification and training.**

1 As part of the professional certification process,  
2 teachers seeking to become certified in the education of  
3 blind and visually impaired children shall demonstrate  
4 competence in reading and writing braille. Before issuing  
5 a professional certificate to teach the blind and visually  
6 impaired, the West Virginia department of education shall  
7 require that the applicant demonstrate, based upon  
8 standards adopted by the national library service for the  
9 blind and physically handicapped, library of congress,  
10 Washington, D.C., that he or she is proficient in reading  
11 and writing braille. This requirement becomes effective  
12 the first day of July, two thousand. Teachers already  
13 certified in the education of blind and visually impaired  
14 children are not required to demonstrate that proficiency  
15 in order to retain their certification. Further, the West  
16 Virginia department of education shall, on a schedule of at  
17 least once every three years, make available to all teachers  
18 of blind and visually impaired children a continuing  
19 education class in reading or writing braille or a college  
20 credit course in reading and writing braille, or both. In  
21 order to achieve successful completion of a course, a  
22 teacher shall demonstrate proficiency in reading and  
23 writing braille at a level commensurate with the standards  
24 adopted by the national library service for the blind and  
25 physically handicapped, library of congress.

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## 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)

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

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AN ACT to amend and reenact 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;

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.
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- §18-30-11. Confidentiality.

**§18-30-2. Legislative findings and purpose.**

- 1 The Legislature hereby finds and determines that the
- 2 advancement and improvement of higher education in the
- 3 state of West Virginia is a proper governmental function
- 4 and purpose of the state. The Legislature also finds that
- 5 the creation of a prepaid tuition trust fund, to assist
- 6 qualified students and their families in financing a portion
- 7 of the costs of attending an accredited higher education
- 8 institution or program in the state of West Virginia will
- 9 increase the number of qualified students who will seek to

10 attend the accredited higher education institutions and  
11 programs, which will be of benefit to students, families and  
12 to the accredited higher education institutions and  
13 programs, and will therefore advance and improve higher  
14 education in the state of West Virginia. It is, therefore, the  
15 legislative intent of this article to establish a prepaid tuition  
16 trust fund to assist qualified students to pay in advance the  
17 costs of attending accredited higher education institutions  
18 and programs and thereby to encourage the qualified  
19 students to attend accredited higher education institutions  
20 and programs in the state of West Virginia. The  
21 Legislature finds and declares that prepaid tuition trust  
22 fund contracts neither contain nor obligate any general  
23 revenue funds.

### §18-30-3. Definitions.

1 For the purpose of this article, the following terms  
2 have the meanings ascribed to them, unless the context  
3 clearly indicates otherwise:

4 (a) "Accredited higher education institution or  
5 program" means any accredited higher education  
6 institution or accredited higher education program offered  
7 through an accredited provider.

8 (b) "Beneficiary" means any intended or unintended  
9 beneficiary of the prepaid tuition contract between the  
10 purchaser and the board, including any beneficiary  
11 designated by the purchaser, his or her agent or his or her  
12 estate in the event that the intended beneficiary is unable  
13 or unwilling to benefit under the terms of the trust fund.

14 (c) "Board" means the board of trustees of the prepaid  
15 tuition trust fund as provided in section four of this article.

16 (d) "Outside tuition fee" means the amount of tuition  
17 or fees, or both, payable to an accredited higher education  
18 institution or program outside the state or independent  
19 state institutions or programs upon the election by a  
20 beneficiary to attend those institutions or programs. This  
21 fee shall generally be the amount of the average public  
22 tuition costs or fees, or both, of state institutions of higher  
23 learning as determined by the board of trustees on an  
24 annual basis.

25 (e) "Prepaid tuition contract" means a contract entered  
26 into by the board of the trust fund and a purchaser  
27 pursuant to this article.

28 (f) "Purchaser" means an individual, corporation or  
29 other entity who makes or is obligated to make payments  
30 in accordance with a prepaid tuition contract entered into  
31 pursuant to this article.

32 (g) "Room and board" means the charges for  
33 lodging and food incurred by a beneficiary while  
34 attending an accredited higher education institution or  
35 program.

36 (h) "Trust fund" means the prepaid tuition trust fund.

37 (i) "Tuition" means the quarter, semester or term  
38 charges imposed by an accredited higher education  
39 institution or program and all mandatory fees required as  
40 a condition of enrollment by all students.

**§18-30-4. Appointment of board of trustees; terms; compensation; proceedings generally.**

1 (a) The board of the prepaid tuition trust fund  
2 consists of nine members and shall include the secretary  
3 of education and the arts and the state treasurer, who shall  
4 serve as ex officio voting members of the board, and seven  
5 other members with knowledge, skill and experience in an  
6 academic, business or financial field. The seven appointed  
7 members shall be residents of the state. One member shall  
8 be a representative of the university of West Virginia  
9 board of trustees selected by the board of trustees from its  
10 members as defined in section one, article two, chapter  
11 eighteen-b of this code and one member shall be a  
12 representative of the board of directors of the state college  
13 system selected by the board of directors from its  
14 members as defined in section one, article three, chapter  
15 eighteen-b of this code. The governor shall appoint three  
16 members from nominations as follows: One member shall  
17 be a private citizen not employed by, or an officer of, the  
18 state or any political subdivision of the state appointed  
19 from one or more nominees of the speaker of the House  
20 of Delegates; one member shall be a private citizen not  
21 employed by, or an officer of, the state or any political  
22 subdivision of the state appointed from one or more

23 nominees of the president of the Senate; and one member  
24 shall represent the interests of private institutions of higher  
25 education located in this state who shall be appointed from  
26 one or more nominees of the West Virginia association of  
27 private colleges. The governor also shall appoint two  
28 members who are representatives of the public. The  
29 public members and the member representing the interests  
30 of private institutions of higher education shall be  
31 appointed by the governor with the advice and consent of  
32 the Senate.

33 (b) Appointed members shall serve a term of five  
34 years and may be reappointed at the expiration of their  
35 terms. In the event of a vacancy among appointed  
36 members, the governor shall appoint a person representing  
37 the same interests to fill the unexpired term. Of the initial  
38 appointments, the governor shall appoint one member to a  
39 one-year term, one member to a two-year term, one  
40 member to a three-year term, one member to a four-year  
41 term and one member to a five-year term. Thereafter, all  
42 terms shall be for five years.

43 (c) Members of the board of trustees shall serve  
44 without compensation, but for the first twelve months after  
45 the effective date of this section members shall be  
46 reimbursed by the state treasurer's office for expenses,  
47 including travel expenses, actually incurred by a member  
48 in the official conduct of the business of the board at the  
49 same rate as is paid the employees of the state. Thereafter,  
50 the state treasurer may charge back to the trust fund as  
51 administrative expenses all expenses, including travel  
52 expenses, actually incurred and paid to board members  
53 for the conduct of their official duties.

54 (d) The state treasurer is the trustee chairman and  
55 presiding officer of the board, and may appoint such  
56 other employees as the board considers advisable or  
57 necessary. A majority of the members of the board  
58 constitute a quorum for the transaction of the business of  
59 the trust fund.

#### **§18-30-5. Powers of the board.**

1 In addition to the powers granted by any other  
2 provision of this article, the board has the powers  
3 necessary or convenient to carry out the purposes and

4 provisions of this article, the purposes and objectives of  
5 the trust and the powers delegated by any other law of the  
6 state or any executive order of the state including, but not  
7 limited to, the following express powers:

8 (a) To adopt and amend bylaws;

9 (b) To propose legislative rules for promulgation in  
10 accordance with the provisions of article three-a, chapter  
11 twenty-nine-a of this code to effectuate the purposes of  
12 this article: *Provided*, That the board may promulgate  
13 emergency rules only when changes in the federal tax  
14 code or changes in federal regulations contravene the  
15 current rules of the prepaid tuition trust fund board of  
16 trustees;

17 (c) To invest any of its funds at the board's  
18 discretion, with the West Virginia investment management  
19 board in accordance with the provisions of article six,  
20 chapter twelve of this code. Any investments made under  
21 this article shall be made with the care, skill, prudence and  
22 diligence under the circumstances then prevailing that a  
23 prudent person acting in a like capacity and familiar with  
24 such matters would use in the conduct of an enterprise of  
25 a like character and with like aims. Fiduciaries shall  
26 diversify plan investments to the extent permitted by law  
27 so as to minimize the risk of large losses, unless under the  
28 circumstances it is clearly prudent not to do so;

29 (d) To execute contracts and other necessary  
30 instruments;

31 (e) To enter into prepaid tuition contracts;

32 (f) To impose reasonable limits on the number of  
33 prepaid tuition contract purchasers participating in the  
34 trust fund at any given period of time;

35 (g) To impose reasonable requirements for residency  
36 for qualified beneficiaries at the time of purchase of the  
37 prepaid tuition contract. However, nothing in this  
38 subdivision may be construed to establish residency  
39 requirements for matriculation at state institutions of  
40 higher education;

41 (h) To contract for necessary goods and services, to  
42 employ necessary personnel and to engage the services of

43 private persons for administrative and technical assistance  
44 in carrying out the responsibilities of the trust fund;

45 (i) To solicit and accept gifts, including bequests or  
46 other testamentary gifts made by will, trust or other  
47 disposition, grants, loans and other aids from any source  
48 or to participate in any other way in any federal, state or  
49 local governmental programs in carrying out the purposes  
50 of this article;

51 (j) To define the terms and conditions under which  
52 payments may be withdrawn from the trust fund and  
53 impose reasonable charges for the withdrawal: *Provided,*  
54 That payments made by employers on behalf of  
55 beneficiaries selected by their employees are considered  
56 fully vested in the employees from time of receipt of the  
57 payments by the board;

58 (k) To devise and offer to purchasers other  
59 educational savings programs, such as the purchase of  
60 books, fees, room and board and other educational  
61 supplies;

62 (l) To impose reasonable time limits on the use of the  
63 benefits provided by the program;

64 (m) To provide for the receipt of contributions to the  
65 trust fund in lump sums or installment payments; and

66 (n) To establish other policies, procedures and criteria  
67 necessary to implement and administer the provisions of  
68 this article.

**§18-30-6. West Virginia prepaid tuition trust created.**

1 (a) There is continued within the accounts held by the  
2 state treasurer the prepaid tuition trust fund account to be  
3 administered by the board until and unless the Legislature  
4 determines otherwise, and titled the "Prepaid Tuition Trust  
5 Fund".

6 (b) The location of the trust fund is the state  
7 treasurer's office, and the facilities of the state treasurer  
8 shall be used and employed in the administration of the  
9 trust fund including, but without limitation thereto, the  
10 keeping of records, the management of bank accounts and

11 other investments, the transfer of funds and the  
12 safekeeping of securities evidencing investments.

13 (c) Payments received by the board from purchasers  
14 on behalf of beneficiaries or from any other source,  
15 public or private, shall be placed in the trust fund.

16 (d) The corpus, assets and income of the trust fund do  
17 not constitute public funds of the state.

18 (e) The trust fund, through the trustee chairman, is  
19 authorized to receive any gift or transfer of property, real  
20 or personal of any nature, from any source as may be  
21 approved by the board, or any terms and conditions as  
22 may be imposed by the board: *Provided*, That all  
23 property received by the trust shall be converted into cash  
24 within ninety days of receipt.

25 (f) The board shall cause an actuarial study to be  
26 periodically performed to ensure that sufficient funds are  
27 being deposited to the fund to meet the obligations of the  
28 trust fund. Specifically, the board shall annually evaluate  
29 or cause to be evaluated, the actuarial soundness of the  
30 trust fund. If the board finds that additional contributions  
31 are needed in order to preserve the actuarial soundness of  
32 the fund, it may adjust the terms of preexisting and  
33 subsequent prepaid tuition contracts to ensure the fund's  
34 soundness: *Provided*, That any necessary adjustment to  
35 preexisting contracts may only be assessed on future  
36 payments and not retroactively upon previous payments  
37 made by the purchaser or donors to the trust fund. There  
38 may be no obligation of state general revenue funds to the  
39 trust fund for any purpose whatsoever, unless authorized  
40 by the Legislature.

41 (g) The board shall build and maintain in the prepaid  
42 tuition trust fund an actuarial surplus, at a level  
43 recommended by the actuaries, to ensure appropriate  
44 funding for the trust fund.

45 (h) In order to fulfill the charitable and public  
46 purposes of this article, neither the income nor the  
47 property of the trust fund is subject to taxation by the state  
48 or any of its political subdivisions.

49 (i) The board may propose rules to provide for the  
50 withdrawal and disbursement of contract funds on an  
51 actuarially sound basis. The board may propose rules to

52 provide a tuition guarantee for beneficiaries attending  
53 state institutions of higher education: *Provided*, That this  
54 rule may not be promulgated as an emergency rule  
55 subject to oversight by the legislative oversight  
56 commission on education accountability as provided by  
57 section eleven, article three-a, chapter twenty-nine-a of this  
58 code.

**§18-30-6a. Prepaid tuition trust fund administrative account.**

1       There is hereby created a separate account within the  
2 state treasurer's office to be known as the prepaid tuition  
3 trust fund administrative account for the purposes of  
4 implementing and maintaining the trust fund accounts  
5 pursuant to this article. The board may charge against the  
6 fees collected and interest earned from the trust fund  
7 accounts, amounts as are reasonable and customary for the  
8 state treasurer to fund the administrative costs of  
9 maintaining the trust fund accounts. The charges shall be  
10 deposited into the prepaid tuition trust fund administrative  
11 account. The charges shall be disclosed quarterly,  
12 beginning the first day of January, one thousand nine  
13 hundred ninety-nine, to the joint committee on  
14 government and finance and the legislative oversight  
15 commission on education accountability. Expenditures  
16 from the fund are authorized from collections subject to  
17 appropriations made by the Legislature.

**§18-30-8. Report and account; annual audit.**

1       (a) In addition to any other requirements of this  
2 article, the board shall:

3       (1) Provide annually summary information on the  
4 financial condition of the trust fund to all purchasers of  
5 prepaid tuition contracts;

6       (2) Prepare, or cause to be prepared, a quarterly report  
7 on the status of the program and provide a copy of the  
8 report to the joint committee on government and finance  
9 and the legislative oversight commission on education  
10 accountability;

11       (3) Prepare, or cause to be prepared, an annual  
12 accounting and actuarial report of the trust fund and  
13 transmit a copy of the report to the governor, the president  
14 of the Senate, the speaker of the House of Delegates and  
15 the legislative oversight commission on education  
16 accountability; and

17 (4) Make all necessary and appropriate arrangements  
 18 with accredited higher education institutions and programs  
 19 in order to fulfill its obligations under the prepaid tuition  
 20 contracts. The arrangements shall include the satisfaction  
 21 by the trust fund of current applicable tuition and fee  
 22 charges on behalf of a beneficiary to the accredited higher  
 23 education institution or program.

24 (b) All accounts of the board, including the trust fund  
 25 accounts, are subject to an annual external audit by an  
 26 accounting firm, selected by the board, of which all  
 27 members or partners assigned to head the audit are  
 28 members of the American institute of certified public  
 29 accountants. The audit shall comply with the  
 30 requirements of section thirty-three, article two, chapter  
 31 five-a of this code.

#### §18-30-11. Confidentiality.

1 Any information that would tend to disclose the  
 2 identity of a beneficiary, purchaser or donor is exempt  
 3 from the provisions of chapter twenty-nine-b of this code.

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## 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)

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[Passed March 11, 1998; in effect ninety days from passage. Approved by the Governor.]

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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.**

1       The legislative rules filed in the state register on the  
2 thirtieth day of September, one thousand nine hundred  
3 ninety-seven, modified by the board of trustees of the  
4 West Virginia prepaid tuition trust fund to meet the  
5 objections of the legislative oversight commission on  
6 education accountability and refiled in the state register on  
7 the thirtieth day of January, one thousand nine hundred  
8 ninety-eight, relating to the West Virginia prepaid tuition  
9 trust fund (rules for the West Virginia prepaid tuition trust  
10 fund), are authorized.

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## CHAPTER 131

(H. B. 4547—By Delegates Dempsey, Williams, C. White, Osborne,  
Ennis, Yeager and Henderson)

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[Passed March 11, 1998; in effect July 1, 1998. Approved by the Governor.]

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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.**

1       (a) Each classified employee shall receive for the same  
2 employment at the same pay grade, subject to an  
3 appropriation by the Legislature, and in addition to the

4 experience increment increase provided for in subsection  
5 (b) of this section, a monthly salary which is at least one  
6 hundred twenty-five dollars more than the final base  
7 monthly salary paid the classified employee for the fiscal  
8 year commencing on the first day of July, one thousand  
9 nine hundred ninety-two, to be paid in equal installments  
10 within the regular pay periods and to be prorated for  
11 classified employees working less than thirty-seven and  
12 one-half hours per week.

13 (b) Commencing with the fiscal year beginning on the  
14 first day of July, one thousand nine hundred ninety-eight,  
15 and each fiscal year thereafter, each classified employee  
16 with three or more years of experience shall receive an  
17 annual salary increase equal to fifty dollars times the  
18 employee's years of experience: *Provided*, That the  
19 annual salary increase may not exceed the amount granted  
20 for the maximum of twenty years of experience. These  
21 incremental increases are in lieu of any salary increase  
22 received pursuant to section two, article five, chapter five  
23 of this code; are in addition to any across-the-board, cost-  
24 of-living or percentage salary increases which may be  
25 granted in any fiscal year by the Legislature; and shall be  
26 paid in like manner as the annual payment to eligible state  
27 employees of the incremental salary increases based on  
28 years of service under the provisions of section two, article  
29 five, chapter five of this code.

30 (c) Any classified employee may receive merit  
31 increases and salary adjustments in accordance with  
32 policies established by the board: *Provided*, That funds  
33 for the increases and adjustments shall be distributed in  
34 accordance with rules of the appropriate governing board  
35 and shall be available to all state institutions of higher  
36 education on an equitable basis.

37 (d) The current annual salary of any classified  
38 employee may not be reduced by the provisions of this  
39 article nor by any other action inconsistent with the  
40 provisions of this article, and nothing in this article may be  
41 construed to prohibit promotion of any classified  
42 employee to a job title carrying a higher pay grade if the  
43 promotion is in accordance with the provisions of this  
44 article and the personnel classification system established  
45 by the appropriate governing board.

## CHAPTER 132

(S. B. 565—By Senators Jackson, Craigo, Plymale, Bailey, Prezioso, Dugan, Oliverio, Ross, Sharpe, McKenzie, Schoonover, Ball, Dittmar, Anderson, Kessler, Bowman, Wooton, Fanning, Sprouse, Hunter, Kimble, Scott, Boley, Minear and Tomblin, Mr. President)

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[Passed March 11, 1998; in effect ninety days from passage. Approved by the Governor.]

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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  
2 third day of December, one thousand nine hundred  
3 ninety-one, modified by the board of trustees to meet the  
4 objections of the legislative oversight commission on  
5 education accountability and refiled in the state register on  
6 the twenty-first day of January, one thousand nine  
7 hundred ninety-two, relating to the board of trustees  
8 (report card), are authorized.

9 (b) The legislative rules filed in the state register on  
10 the thirteenth day of July, one thousand nine hundred  
11 ninety-one, relating to the board of trustees (equal  
12 opportunity and affirmative action), are authorized.

13 (c) The legislative rules filed in the state register on the  
14 eighth day of September, one thousand nine hundred  
15 ninety-two, relating to the board of trustees (holidays), are  
16 authorized.

17 (d) The legislative rules filed in the state register on  
18 the third day of April, one thousand nine hundred ninety-  
19 two, relating to the board of trustees (alcoholic beverages  
20 on campuses), are authorized.

21 (e) The legislative rules filed in the state register on the  
22 fifteenth day of November, one thousand nine hundred  
23 ninety-three, relating to the board of trustees (acceptance  
24 of advanced placement credit), are authorized.

25 (f) The legislative rules filed in the state register on the  
26 thirteenth day of December, one thousand nine hundred  
27 ninety-three, modified by the board of trustees to meet the  
28 objections of the legislative oversight commission on  
29 education accountability and refiled in the state register on  
30 the twenty-first day of January, one thousand nine  
31 hundred ninety-four, relating to the board of trustees  
32 (assessment, payment and refund of fees), are authorized.

33 (g) The legislative rules filed in the state register on  
34 the first day of November, one thousand nine hundred  
35 ninety-three, modified by the board of trustees to meet the  
36 objections of the legislative oversight commission on  
37 education accountability and refiled in the state register on  
38 the twenty-first day of December, one thousand nine  
39 hundred ninety-three, relating to the board of trustees  
40 (personnel administration), are authorized.

41 (h) The legislative rules filed in the state register on  
42 the twenty-seventh day of January, one thousand nine  
43 hundred ninety-four, relating to the board of trustees  
44 (resource allocation policy), are authorized.

45 (i) The legislative rules filed in the state register on the  
46 fourth day of December, one thousand nine hundred  
47 ninety-five, modified by the board of trustees to meet the  
48 objections of the legislative oversight commission on  
49 education accountability and refiled in the state register on  
50 the fifteenth day of February, one thousand nine hundred  
51 ninety-six, relating to the board of trustees (higher  
52 education report card), are authorized.

53 (j) The legislative rules filed in the state register on the  
54 nineteenth day of December, one thousand nine hundred  
55 ninety-seven, relating to the board of trustees  
56 (Underwood-Smith Teacher Scholarship Program), are  
57 authorized.

**§18B-17-3. Board of directors.**

1 (a) The legislative rules filed in the state register on the  
2 sixteenth day of December, one thousand nine hundred  
3 ninety-one, modified by the board of directors to meet the  
4 objections of the legislative oversight commission on  
5 education accountability and refiled in the state register on  
6 the twenty-first day of January, one thousand nine  
7 hundred ninety-two, relating to the board of directors  
8 (report card), are authorized.

9 (b) The legislative rules filed in the state register on  
10 the twenty-seventh day of September, one thousand nine  
11 hundred ninety-one, relating to the board of directors  
12 (equal opportunity and affirmative action), are authorized.

13 (c) The legislative rules filed in the state register on the  
14 fourth day of December, one thousand nine hundred  
15 ninety-one, relating to the board of directors (holiday  
16 policy), are authorized.

17 (d) The legislative rules filed in the state register on  
18 the nineteenth day of March, one thousand nine hundred  
19 ninety-two, as modified and refiled in the state register on  
20 the tenth day of July, one thousand nine hundred ninety-  
21 two, relating to the board of directors (presidential  
22 appointments, responsibilities and evaluations), are  
23 authorized.

24 (e) The legislative rules filed in the state register on the  
25 twentieth day of September, one thousand nine hundred  
26 ninety-three, relating to the board of directors (acceptance  
27 of advanced placement credit), are authorized.

28 (f) The legislative rules filed in the state register on the  
29 tenth day of December, one thousand nine hundred  
30 ninety-three, relating to the board of directors (resource  
31 allocation policy), are authorized.

32 (g) The legislative rules filed in the state register on  
33 the eighth day of December, one thousand nine hundred

34 ninety-three, modified by the board of directors to meet  
35 the objections of the legislative oversight commission on  
36 education accountability and refiled in the state register on  
37 the eleventh day of January, one thousand nine hundred  
38 ninety-four, relating to the board of directors (assessment,  
39 payment and refund of fees), are authorized.

40 (h) The legislative rules filed in the state register on  
41 the first day of November, one thousand nine hundred  
42 ninety-three, modified by the board of directors to meet  
43 the objections of the legislative oversight commission on  
44 education accountability and refiled in the state register on  
45 the twenty-first day of December, one thousand nine  
46 hundred ninety-three, relating to the board of directors  
47 (personnel administration), are authorized.

48 (i) The legislative rules filed in the state register on the  
49 twenty-seventh day of October, one thousand nine  
50 hundred ninety-four, modified by the board of directors  
51 to meet the objections of the legislative oversight  
52 commission on education accountability and refiled in the  
53 state register on the nineteenth day of December, one  
54 thousand nine hundred ninety-four, relating to the board  
55 of directors (proprietary, correspondence, business,  
56 occupational and trade schools), are authorized.

57 (j) The legislative rules filed in the state register on the  
58 eighteenth day of April, one thousand nine hundred  
59 ninety-five, relating to the board of directors (contracts  
60 and consortium agreements with public schools, private  
61 schools or private industry), are authorized.

62 (k) The legislative rules filed in the state register on  
63 the seventeenth day of November, one thousand nine  
64 hundred ninety-five, modified by the board of directors to  
65 meet the objections of the legislative oversight commission  
66 on education accountability and refiled in the state register  
67 on the fourth day of January, one thousand nine hundred  
68 ninety-six, relating to the board of directors (higher  
69 education report cards), are authorized.

70 (l) The legislative rules filed in the state register on the  
71 nineteenth day of December, one thousand nine hundred  
72 ninety-seven, relating to the board of directors  
73 (Underwood-Smith Teacher Scholarship Program), are  
74 authorized.

## CHAPTER 133

(S. B. 397—By Senators Wooton, Ball, Bowman, Dittmar, Hunter,  
Kessler, Oliverio, Ross, Schoonover, Snyder,  
White, Deem and Scott)

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

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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  
2 the county who for authorized reasons as provided in this  
3 article are unable to vote in person at the polling place on  
4 the day of a primary, general or special election may vote  
5 an absentee ballot according to the provisions of this  
6 article.

7 (b) Voters in the following circumstances shall be  
8 authorized to vote an absentee ballot and shall be required  
9 to vote that absentee ballot in person in the office of the  
10 clerk of the circuit court during the period of regular  
11 absentee voting in person:

12 (1) Any voter who is within the county and physically  
13 able to vote in person during regular business hours of the  
14 clerk's office during the prescribed period for absentee  
15 voting but is unable to vote in person on election day

16 because of: (A) Anticipated or scheduled commitment to  
17 a hospital, institution or other confinement for medical  
18 reasons; (B) absence from the county during the entire  
19 time the polls are open; (C) appointment as an election  
20 official in a precinct other than the one in which the voter  
21 is registered; or (D) the inaccessibility of the polling place  
22 to the voter because of his or her physical disability; and

23 (2) Any voter who is a member of a religious  
24 denomination with an established history of observing  
25 Saturday as the Sabbath, when the election is scheduled to  
26 be held on Saturday.

27 (c) Voters in the following circumstances shall be  
28 authorized to vote an absentee ballot under special  
29 affidavit and shall be required to vote that absentee ballot  
30 in person in the office of the clerk of the circuit court  
31 during the period of special absentee voting in person:

32 Any voter who will be absent from the county  
33 throughout the regular period and available hours for  
34 voting in person at the polls or at the clerk's office because  
35 of personal or business travel or employment, who will be  
36 unable to receive an absentee ballot by mail at an address  
37 outside the county during that absence, and who will be  
38 present within the county between the forty-second day  
39 before the election and the fifteenth day before the  
40 election.

41 (d) Voters in the following circumstances shall be  
42 authorized to vote an absentee ballot by mail:

43 (1) Any voter who is confined to a specific location  
44 and prevented from voting in person throughout the  
45 period of voting in person because of: (A) Illness, injury  
46 or other medical reason; (B) physical disability or  
47 immobility due to extreme advanced age; or (C)  
48 incarceration or home detention when not under  
49 conviction of a felony, treason or bribery in an election;

50 (2) Any voter who is absent from the county  
51 throughout the period and available hours for voting in  
52 person because of: (A) Personal or business travel; (B)  
53 attendance at a college, university or other place of  
54 education or training; or (C) employment which because  
55 of hours worked and distance from the county seat make  
56 voting in person impossible;

57 (3) Any voter absent from the county throughout the  
58 period and available hours for voting in person and who is  
59 an absent uniformed services voter or overseas voter, as  
60 defined by the Uniformed and Overseas Citizens Absentee  
61 Voting Act of 1986 (Public Law 99-410, 42 U.S.C. 1973,  
62 et seq.). Members of the uniformed services on active  
63 duty, members of the merchant marine, spouses and  
64 dependents of those members on active duty, and persons  
65 who reside outside the United States and are qualified to  
66 vote in the last place in which the person was domiciled  
67 before leaving the United States are included in the above  
68 definition;

69 (4) Any voter who is required to dwell temporarily  
70 outside the county and is absent from the county  
71 throughout the time for voting in person because of: (A)  
72 Serving as an elected or appointed federal or state officer;  
73 or (B) serving in any other documented employment  
74 assignment of specific duration of four years or less; and

75 (5) Any voter for whom both the office of the circuit  
76 clerk and the polling place are inaccessible to the voter  
77 because of his or her physical disability.

78 (e) Voters in the following circumstances shall be  
79 authorized to vote an emergency absentee ballot, subject  
80 to the availability of the services as provided in this article:

81 (1) Any voter who is admitted for emergency medical  
82 treatment on or after the seventh day next preceding the  
83 election and who anticipates continued confinement in a  
84 hospital or other duly licensed health care within the  
85 county of residence or other authorized area, as provided  
86 in this article;

87 (2) Any voter who resides in a nursing home within  
88 the county of residence and would be otherwise unable to  
89 vote in person, providing the county commission has  
90 authorized such services; and

91 (3) Any voter who is working as a replacement poll  
92 worker and is assigned a precinct out of his or her voting  
93 district, if the assignment was made after the period for  
94 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)

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

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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.**

1 (a) Upon oral or written request, the clerk of the circuit  
2 court shall provide to any voter of the county, in person,  
3 by mail or by facsimile, if the clerk has access to facsimile  
4 equipment, the appropriate application for voting absentee  
5 by mail, as provided in this article. The voter shall  
6 complete and sign the application in his or her own  
7 handwriting or, if the voter is unable to complete the  
8 application because of illiteracy or physical disability, the  
9 person assisting the voter and witnessing the mark of the  
10 voter shall sign his or her name in the space provided.

11 (b) Completed applications for voting an absentee  
12 ballot by mail shall be accepted when received by the  
13 clerk in person, by mail or by facsimile, if the clerk has  
14 access to facsimile equipment, within the following times:

15 (1) For persons eligible to vote an absentee ballot  
16 under the provisions of subdivision (3), subsection (d),  
17 section one of this article, relating to absent uniformed  
18 services and overseas voters, not earlier than the first day  
19 of January of an election year, or eighty-four days  
20 preceding the election, whichever is earlier, and not later  
21 than the sixth day preceding the election, which  
22 application shall, upon the voter's request, be accepted as  
23 an application for the ballots for all elections in the  
24 calendar year;

25 (2) For all other persons eligible to vote an absentee  
26 ballot by mail, not earlier than eighty-four days preceding  
27 the election and not later than the sixth day preceding the  
28 election.

29 (c) Upon acceptance of a completed application, the  
30 circuit clerk shall determine whether the following  
31 requirements have been met:

32 (1) The application has been completed as required by  
33 law;

34 (2) The applicant is duly registered to vote in the  
35 precinct of his or her residence and, in a primary election,  
36 is qualified to vote the ballot of the political party  
37 requested;

38 (3) The applicant is authorized for the reasons given in  
39 the application to vote an absentee ballot by mail;

40 (4) The address to which the ballot is to be mailed is  
41 an address outside the county if the voter is applying to  
42 vote by mail under the provisions of subdivision (2), (3)  
43 or (4), subsection (d), section one of this article;

44 (5) The applicant is not making his or her first vote  
45 after having registered by postcard registration under the  
46 provisions of section forty-one, article two of this chapter  
47 or, if the applicant is making the first vote under these  
48 provisions, the applicant is exempt from these  
49 requirements;

50 (6) No regular and repeated pattern of applications for  
51 an absentee ballot by mail for the reason of being out of  
52 the county during the entire period of voting in person  
53 exists to suggest that the applicant is no longer a resident  
54 of the county.

55 If the clerk determines the required conditions have  
56 not been met, or has evidence that any of the information  
57 contained in the application is not true, the clerk shall give  
58 notice to the voter that the voter's absentee ballot will be  
59 challenged as provided in this article, and shall enter that  
60 challenge.

61 (d) Within one day after the clerk has both the  
62 completed application and the ballot, the clerk shall mail  
63 to the voter at the address given on the application the  
64 following: (1) One of each type of official absentee ballot  
65 the voter is eligible to vote, prepared according to law; (2)  
66 one envelope, unsealed, which shall have no marks except  
67 the designation "Absent Voter's Ballot Envelope No. 1"  
68 and printed instructions to the voter; (3) one postage paid  
69 envelope, unsealed, designated "Absent Voter's Ballot  
70 Envelope No. 2" and printed as prescribed by the  
71 secretary of state; (4) instructions for voting absentee by  
72 mail; and (5) any other supplies required for voting in the  
73 particular voting system.

74 (e) The voter shall mark the ballot alone: *Provided*,  
75 That the voter may have assistance in voting according to  
76 the provisions of section six of this article. After the voter  
77 has voted the ballot or ballots, the voter shall: (1) Place  
78 the ballot or ballots in envelope no. 1 and seal that  
79 envelope; (2) place the sealed envelope no. 1 in envelope  
80 no. 2 and seal that envelope; (3) complete and sign the  
81 forms on envelope no. 2; and (4) return that envelope to  
82 the clerk.

83 (f) Absentee ballots returned by United States mail or  
84 other express shipping service shall be accepted if: (1)  
85 The ballot is received by the clerk no later than the close  
86 of the polls on election day; or (2) the ballot bears a  
87 postmark of the United States postal service dated no later  
88 than election day and the ballot is received by the clerk no  
89 later than the hour at which the board of canvassers  
90 convenes to begin the canvass.

91           Ballots received after the proper time which cannot be  
92 accepted shall be placed unopened in an envelope marked  
93 for the purpose and kept secure for twenty-two months  
94 following the election, after which time they shall be  
95 destroyed without being opened.

96           (g) Absentee ballots which are hand delivered to the  
97 clerk shall be accepted if they are received by the circuit  
98 clerk no later than the day preceding the election:  
99 *Provided*, That no person may hand deliver more than two  
100 absentee ballots in any election, and any person hand  
101 delivering an absentee ballot shall be required to certify  
102 that he or she has not examined or altered the ballot. Any  
103 person who makes a false certification shall be in violation  
104 of the penalty provisions of article nine of this chapter and  
105 subject to those provisions.

106           (h) Upon receipt of the sealed envelope, the clerk  
107 shall: (1) Enter onto the envelope any other required  
108 information; (2) enter the challenge, if any, to the ballot;  
109 (3) enter the required information into the permanent  
110 record of persons applying for and voting an absentee  
111 ballot in person; and (4) place the sealed envelope in a  
112 secure location in the clerk's office, to remain until  
113 delivered to the polling place or, in the case of a  
114 challenged ballot, to the board of canvassers.

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## CHAPTER 135

(H. B. 2387—By Delegates Jenkins, Johnson,  
Leach, Hubbard and Underwood)

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

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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.**

- 1       As used in this article, unless otherwise specified:
- 2       (a) "Automatic tabulating equipment" means all  
3 apparatus necessary to electronically count votes recorded  
4 on ballots and tabulate the results;
- 5       (b) "Ballot" means a tabulating card or paper on which  
6 votes may be recorded by means of perforating or  
7 marking with electronically sensible ink or pencil;
- 8       (c) "Ballot labels" means the cards, papers, booklet,  
9 pages or other material showing the names of offices and  
10 candidates and the statements of measures to be voted on,  
11 which are placed on the vote recording device used for  
12 recording votes by means of perforating;
- 13       (d) "Central counting center" means a facility  
14 equipped with suitable and necessary automatic tabulating  
15 equipment, selected by the county commission, for the  
16 electronic counting of votes recorded on ballots;
- 17       (e) "Electronic voting system" is a means of  
18 conducting an election whereby votes are recorded on  
19 ballots by means of an electronically sensible marking ink,  
20 by perforating or are recorded on equipment that registers  
21 votes on a computer disc, and votes are subsequently  
22 counted by automatic tabulating equipment at the central  
23 counting center;
- 24       (f) "Program deck" means the actual punch card deck  
25 or decks, or a computer program disk, diskette, tape or  
26 other programming media, containing the program for  
27 counting and tabulating the votes, including the  
28 "application program deck";

29 (g) "Application program deck" means the punch card  
 30 deck or equivalent capacity in other program medias as  
 31 provided, containing specific options used and necessary  
 32 to modify the program of general application, to conduct  
 33 and tabulate a specific election according to applicable  
 34 law;

35 (h) "Standard validation test deck" means a group of  
 36 ballots wherein all voting possibilities which can occur in  
 37 an election are represented; and

38 (i) "Vote recording device" means equipment in which  
 39 ballot labels and ballots are placed to allow a voter to  
 40 record his or her vote by perforating.

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## CHAPTER 136

(Com. Sub. for S. B. 113—By Senator Bailey)

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

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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.**

1 Any person who is eligible and seeks to hold an office  
 2 or political party position to be filled by election in any  
 3 primary or general election held under the provisions of  
 4 this chapter shall file a certificate of announcement

5 declaring as a candidate for the nomination or election to  
6 the office.

7 (a) The certificate of announcement shall be filed as  
8 follows:

9 (1) With the secretary of state, if it be an office or  
10 political position to be filled by the voters of more than  
11 one county;

12 (2) With the clerk of the circuit court, if it be for an  
13 office to be filled by the voters of a single county or of a  
14 subdivision less than a county;

15 (3) With the recorder or city clerk if it be for an office  
16 to be filled by the voters of a municipality.

17 The certificate of announcement shall be filed with the  
18 proper officer not earlier than the second Monday in  
19 January next preceding the primary election day, and not  
20 later than the last Saturday in January next preceding the  
21 primary election day, and must be received before  
22 midnight, eastern standard time, of that day or, if mailed,  
23 shall be postmarked by the United States postal service  
24 before that hour.

25 (b) The certificate of announcement shall be in a form  
26 prescribed by the secretary of state on which the candidate  
27 shall make a sworn statement before a notary public or  
28 other officer authorized to give oaths, containing the  
29 following information:

30 (1) The date of the election in which the candidate  
31 seeks to appear on the ballot;

32 (2) The name of the office sought; the district, if any;  
33 and the division, if any;

34 (3) The legal name of the candidate, and the exact  
35 name the candidate desires to appear on the ballot, subject  
36 to limitations prescribed in section thirteen, article five of  
37 this chapter;

38 (4) The county of residence and a statement that the  
39 candidate is a legally qualified voter of that county; and  
40 the magisterial district of residence for candidates elected  
41 from magisterial districts or under magisterial district  
42 limitations;

43 (5) The specific address designating the location at  
44 which the candidate resides at the time of filing, including  
45 number and street or rural route and box number, and  
46 city, state and zip code;

47 (6) For partisan elections, the name of the candidate's  
48 political party, and a statement that the candidate is a  
49 member of and affiliated with that political party as is  
50 evidenced by the candidate's current registration as a voter  
51 affiliated with that party, and that the candidate has not  
52 been registered as a voter affiliated with any other political  
53 party for a period of sixty days before the date of filing  
54 the announcement;

55 (7) For candidates for delegate to national convention,  
56 the name of the presidential candidate to be listed on the  
57 ballot as the preference of the candidate on the first  
58 convention ballot; or, a statement that the candidate  
59 prefers to remain "uncommitted";

60 (8) A statement that the person filing the certificate of  
61 announcement is a candidate for the office in good faith;

62 (9) The words "subscribed and sworn to before me this  
63 \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_," and a space for  
64 the signature of the officer giving the oath.

65 The secretary of state or the board of ballot  
66 commissioners, as the case may be, may refuse to certify  
67 the candidacy or remove the certification of the candidacy  
68 upon receipt of a certified copy of the voter's registration  
69 record of the candidate evidencing that the candidate was  
70 registered as a voter in a party other than the one named  
71 in the certificate of announcement during the sixty days  
72 immediately preceding the filing of the certificate:  
73 *Provided*, That unless a signed formal complaint of  
74 violation of this section and the certified copy of the  
75 voter's registration record of the candidate be filed with  
76 the officer receiving that candidate's certificate of  
77 announcement no later than ten days following the close  
78 of the filing period, the candidate shall not be refused  
79 certification for this reason.

80 (c) The certificate of announcement shall be  
81 subscribed and sworn to by the candidate before some  
82 officer qualified to administer oaths, who shall certify the  
83 same. Any person who knowingly provides false  
84 information on the certificate is guilty of false swearing

85 and shall be punished as set forth in section three, article  
86 nine of this chapter.

87 (d) Any candidate for delegate to a national  
88 convention may change his or her statement of  
89 presidential preference by notifying the secretary of state  
90 by letter received by the secretary of state no later than the  
91 third Tuesday following the close of candidate filing.  
92 When the rules of the political party allow each  
93 presidential candidate to approve or reject candidates for  
94 delegate to convention who may appear on the ballot as  
95 committed to that presidential candidate, the presidential  
96 candidate or the candidate's committee on his or her  
97 behalf may file a list of approved or rejected candidates  
98 for delegate, and the secretary of state shall list as  
99 "uncommitted" any candidate for delegate who is  
100 disapproved by the presidential candidate.

101 (e) No person shall be a candidate for more than one  
102 office or office division at any election: *Provided*, That a  
103 candidate for an office may also be a candidate for  
104 president of the United States, for membership on a  
105 political party executive committee or for delegate to a  
106 political party national convention. Notwithstanding the  
107 provisions of this section, nothing shall prohibit a  
108 candidate from jointly running for or holding the offices  
109 of county clerk and circuit clerk in those counties which  
110 operate a joint clerkship system.

111 (f) Any candidate who files a certificate of  
112 announcement for more than one office or division and  
113 does not withdraw, as provided by section eleven, article  
114 five of this chapter, from all but one office prior to the  
115 close of the filing period shall not be certified by the  
116 secretary of state or placed on the ballot for any office by  
117 the board of ballot commissioners.

118 The provisions of this section enacted during the  
119 regular session of the Legislature in the year one thousand  
120 nine hundred ninety-one shall apply to the primary  
121 election held in the year one thousand nine hundred  
122 ninety-two and every primary election held thereafter.  
123 The provisions of this section enacted during the regular  
124 session of the Legislature in the year one thousand nine  
125 hundred ninety-eight shall apply to the primary election  
126 held in the year two thousand and every primary election  
127 held thereafter.

# CHAPTER 137

(H. B. 4031—By Delegates Doyle and Manuel)

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[Passed February 9, 1998; in effect from passage. Approved by the Governor.]

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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.**

1 The face of every primary election ballot shall  
2 conform as nearly as practicable to that used at the general  
3 election.

4 (a) The heading of every ballot shall be printed in  
5 display type. The heading shall contain a ballot title, the  
6 name of the county, the state, the words "Primary Election"  
7 and the month, day and year of the election. The ballot  
8 title of the political party ballots shall contain the words  
9 "Official Ballot of the (Name) Party" and the official  
10 symbol of the political party may be included in the  
11 heading. The ballot title of any separate paper ballot or  
12 portion of any electronic or voting machine ballot for the  
13 board of education shall contain the words "Nonpartisan  
14 Ballot of Election of Members of the \_\_\_\_\_  
15 County Board of Education". The districts for which less  
16 than two candidates may be elected and the number of  
17 available seats shall be specified and the names of the  
18 candidates shall be printed without reference to political

19 party affiliation, and without designation as to a particular  
20 term of office. Any other ballot or portion of a ballot on  
21 a question shall have a heading which clearly states the  
22 purpose of the election, according to the statutory  
23 requirements for that question.

24 (b) (1) For paper ballots, the heading of the ballot  
25 shall be separated from the rest of the ballot by heavy  
26 lines, and the offices shall be arranged in columns with the  
27 following headings, from left to right across the ballot:  
28 "National Ticket", "State Ticket", "County Ticket", and, in a  
29 presidential election year, "National Convention", or, in a  
30 nonpresidential election year "District Ticket". The  
31 columns shall be separated by heavy lines. Within the  
32 columns, the offices shall be arranged in the order  
33 prescribed in section thirteen-a of this article.

34 (2) For voting machines, electronic voting devices and  
35 any ballot tabulated by electronic means, the offices shall  
36 appear in the same sequence as prescribed in section  
37 thirteen-a, and under the same headings as prescribed in  
38 subsection (a) of this section. The number of pages,  
39 columns or rows, where applicable, may be modified to  
40 meet the limitations of ballot size and composition  
41 requirements, subject to approval by the secretary of state.

42 (3) The title of each office shall be separated from  
43 preceding offices or candidates by a line, and shall be  
44 printed in bold type, no smaller than eight point. Below  
45 the office shall be printed the number of the district, if  
46 any, the number of the division, if any, and the words  
47 "Vote for \_\_\_\_\_" with the number to be nominated or  
48 elected or "Vote For Not More Than \_\_\_\_\_" in  
49 multicandidate elections. For offices in which there are  
50 limitations relating to the number of candidates which  
51 may be nominated, elected or appointed to or hold office  
52 at one time from a political subdivision within the district  
53 or county in which they are elected, there shall be a clear  
54 explanation of such limitation, as prescribed by the  
55 secretary of state, printed in bold type immediately  
56 preceding the names of the candidates for those offices on  
57 the ballot in every voting system. For counties in which  
58 the number of county commissioners exceeds three and  
59 the total number of members of the county commission is

60 equal to the number of magisterial districts within the  
61 county, the office of county commission shall be listed  
62 separately for each district to be filled, with the name of  
63 the magisterial district and the words "Vote for One"  
64 printed below the name of the office.

65 (c) The location for indicating the voter's choices on  
66 the ballot shall be clearly shown. For paper ballots, other  
67 than those tabulated electronically, the official primary  
68 ballot shall contain a square formed in dark lines at the  
69 left of each name on the ballot, arranged in a  
70 perpendicular column of squares before each column of  
71 names.

72 (d) (1) The name of every candidate certified by the  
73 secretary of state or the board of ballot commissioners  
74 shall be printed in capital letters in no smaller than eight  
75 point type on the ballot for the appropriate precincts.  
76 Subject to the rules promulgated by the secretary of state,  
77 the name of each candidate shall appear in the form set  
78 out by the candidate on the certificate of announcement,  
79 but in no case may the name misrepresent the identity of  
80 the candidate, nor may the name include any title,  
81 position, rank, degree or nickname implying or inferring  
82 any status as a member of a class or group or affiliation  
83 with any system of belief.

84 (2) The city of residence of every candidate, the state  
85 of residence of every candidate residing outside the state,  
86 the county of residence of every candidate for an office  
87 on the ballot in more than one county, and the magisterial  
88 district of residence of every candidate for an office  
89 subject to magisterial district limitations, shall be printed in  
90 lower case letters beneath the names of the candidates.

91 (3) The arrangement of names within each office shall  
92 be determined as prescribed in section thirteen-a of this  
93 article.

94 (4) If the number of candidates for an office exceeds  
95 the space available on a column or ballot label page and  
96 requires that candidates for a single office be separated, to  
97 the extent possible, the number of candidates for the  
98 office on separate columns or pages shall be nearly equal,  
99 and clear instructions given the voter that the candidates

100 for the office are continued on the following column or  
101 page.

102 (e) When an insufficient number of candidates has  
103 filed for a party to make the number of nominations  
104 allowed for the office, or for the voters to elect sufficient  
105 members to the board of education or to executive  
106 committees, the vacant positions on the ballot shall be  
107 filled with the words "No Candidate Filed": *Provided,*  
108 That in paper ballot systems which allow for write-ins to  
109 be made directly on the ballot, a blank line shall be placed  
110 in any vacant position in the office of board of education  
111 or for election to any party executive committee. A line  
112 shall separate each candidate from every other candidate  
113 for the same office.

114 (f) In presidential election years, the words "For  
115 election in accordance with the plan adopted by the party  
116 and filed with the secretary of state" shall be printed  
117 following the names of all candidates for delegate to  
118 national convention.

119 (g) All paper ballots shall be printed in black ink on  
120 paper sufficiently thick so that the printing or marking  
121 cannot be discernible from the back. Ballot cards and  
122 paper for printing ballots using electronically sensible ink  
123 shall meet minimum requirements of the tabulating  
124 systems.

125 (h) Electronically tabulated ballots and ballot cards  
126 shall contain perforated tabs at the top of the ballots and  
127 shall be printed with unique sequential numbers from one  
128 to the highest number representing the total number of  
129 ballots or ballot cards printed. On paper ballots, the ballot  
130 shall be bordered by a solid line at least one sixteenth of  
131 an inch wide, and the ballot shall be trimmed to within  
132 one-half inch of that border.

133 (i) On the back of every official ballot or ballot card,  
134 there shall be printed the words "Official Ballot" with the  
135 name of the county and the date of the election. Beneath  
136 shall be two blank lines, followed by the words "Poll  
137 Clerks".

138 (j) Absent voters' ballots shall be in all respects like  
139 other official ballots, except that three blank lines shall be  
140 printed on the back of the ballot or ballot card in the  
141 lower left corner with the words "Ballot Commissioners"  
142 printed underneath.

143 (k) The face of sample paper ballots and sample ballot  
144 labels shall be like other official ballots or ballot labels,  
145 except that the word "sample" shall be prominently printed  
146 across the front of the ballot in such a way that the names  
147 of candidates are not obscured, and the word "sample"  
148 may be printed in red ink. No printing may be placed on  
149 the back of the sample.

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## CHAPTER 138

(S. B. 473—By Senators Wooton, Ball, Bowman, Dittmar, Hunter, Ross,  
Schoonover, Snyder, White, Buckalew and Scott)

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[Passed March 10, 1998; in effect ninety days from passage. Approved by the Governor.]

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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.**

1       The separate certificates of the board of canvassers,  
2 made pursuant to section ten of this article, shall be  
3 disposed of by the board of canvassers as follows: Of the  
4 certificates respecting the election for delegate or  
5 delegates in the Legislature, they shall, upon request of the  
6 candidate, transmit a copy to any candidate, and shall file  
7 a copy in the office of the clerk of the county commission  
8 to be preserved and made available to the general public  
9 and to the media. The clerk shall transmit a copy to the  
10 secretary of state within thirty days from the date of the  
11 election, except that in the case of a recount, within thirty  
12 days from the date of the completion of the recount, who  
13 shall submit the same to the House of Delegates, on the  
14 first day of the next ensuing session, together with a list of  
15 the persons appearing thereby to be elected. Of the  
16 certificates respecting the election of state senator, they  
17 shall, upon request of the candidate, transmit a copy to  
18 any candidate, and shall file a copy in the office of the  
19 clerk of the county commission to be preserved and made  
20 available to the general public and to the media. The clerk  
21 shall transmit a copy to the secretary of state within thirty  
22 days from the date of the election, except that in the case  
23 of a recount, within thirty days from the date of the  
24 completion of the recount, to be submitted by the  
25 secretary of state to the Senate, on the first day of the next  
26 ensuing session, together with a list of persons appearing  
27 thereby to be elected. Of the certificates respecting the  
28 election of state officers, a copy for each officer, except  
29 justice of the supreme court of appeals, shall be sealed and  
30 transmitted by the commissioners to the secretary of state  
31 within thirty days from the date of the election endorsed  
32 on the envelope as follows: "Returns of the election for  
33 state officers." Except in the case of a recount, the  
34 certificates shall be transmitted within thirty days from the  
35 date of the completion of the recount. The secretary of  
36 state shall deliver the certificates to the speaker of the  
37 House of Delegates on the first day of the next session of  
38 the Legislature; and the speaker shall, immediately after  
39 the organization of the House of Delegates and before

40 proceeding to other business, open and publish the  
41 certificates in the presence of a majority of each house of  
42 the Legislature, which bodies shall, for that purpose,  
43 assemble in the hall of the House of Delegates. The  
44 person having the highest number of votes for any one of  
45 such offices shall be declared duly elected thereto; but if  
46 two or more persons have the same and the highest  
47 number of votes for the same office, the Legislature shall,  
48 by a joint vote of the two houses, choose one of said  
49 persons for the office; and one of each of the last-  
50 mentioned certificates shall also be transmitted, under seal,  
51 to the governor, who shall immediately tabulate the vote in  
52 all the counties, for each office, and cause the results to be  
53 printed in a newspaper published at the seat of  
54 government. Of the certificates respecting the election for  
55 United States senator, member of the House of  
56 Representatives in the Congress of the United States,  
57 justice of the supreme court of appeals, judge of a circuit  
58 court, and president and vice president of the United  
59 States, respectively, the commissioners shall, upon request  
60 of the candidate, transmit a copy to any candidate, and a  
61 copy to the governor within thirty days from the date of  
62 the election; except that in the case of a recount, within  
63 thirty days from the date of the completion of the recount;  
64 and the governor shall ascertain who are elected and make  
65 proclamation thereof. The commissioners shall also file a  
66 copy of the certificates in the office of the clerk of the  
67 county commission to be preserved and made available to  
68 the general public and to the media. Of the certificates  
69 respecting the election of all county and district officers,  
70 the commissioners shall, upon request of the candidate,  
71 transmit a copy to any candidate, and shall file a copy in  
72 the office of the clerk of the county commission to be  
73 preserved and made available to the general public and to  
74 the media.

75 No county may be charged for the publication of any  
76 certificates of election.

## CHAPTER 139

(Com. Sub. for H. B. 4293—By Delegates Staton, Varner and Caputo)

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

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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**

- 2. Common Law, Statutes, Legal Holidays, Definitions, and Legal Capacity.**
- 39. Records and Papers.**

**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  
2 construction of statutes, unless a different intent on the  
3 part of the Legislature be apparent from the context:

4       (a) A word importing the singular number only may  
5 be applied to several persons or things, as well as to one  
6 person or thing; a word importing the plural number only  
7 may be applied to one person or thing as well as to  
8 several; and a word importing the masculine gender only  
9 may be applied to females as well as males;

10       (b) Words purporting to give a joint authority to three  
11 or more persons confer such authority upon a majority of  
12 them, and not upon any less number;

13       (c) The words "written" or "in writing" include any  
14 representation of words, letters or figures, whether by  
15 printing, engraving, writing or otherwise. But when the  
16 signature of any person is required, it must be in his or her  
17 own proper handwriting, or his or her mark, attested,  
18 proved or acknowledged: *Provided*, That unless a  
19 provision of this code specifically provides otherwise, an  
20 electronic signature satisfies this signature requirement if  
21 the electronic signature meets the requirements of  
22 subsection (a), section three, article five, chapter thirty nine  
23 of this code;

24       (d) The words "preceding," "succeeding" or  
25 "following" used in reference to any section or sections of  
26 a chapter or statute, mean next preceding, next succeeding  
27 or next following that in which such reference is made,  
28 unless a different interpretation be required by the  
29 context;

30       (e) An officer shall be deemed to have qualified when  
31 he or she has done all that is required by law to be done

32 before proceeding to exercise the authority and discharge  
33 the duties of his or her office;

34 (f) The words "the governor" are equivalent to "the  
35 executive of the state" or "the person having the executive  
36 power";

37 (g) "Justice" or "justices" as used in article one, chapter  
38 fifty-one of this code and in other references to a member  
39 or members of the supreme court of appeals shall mean  
40 and apply to a judge or the judges of said court as  
41 provided for in the constitution of the state. The word  
42 "justice" in any other context is equivalent to the words  
43 "justice of the peace," and the word "notary" is equivalent  
44 to "notary public";

45 (h) The word "state," when applied to a part of the  
46 United States and not restricted by the context, includes  
47 the District of Columbia and the several territories, and the  
48 words "United States" also include the said district and  
49 territories;

50 (i) The word "person" or "whoever" shall include  
51 corporations, societies, associations and partnerships, if not  
52 restricted by the context;

53 (j) The words "personal representative" include the  
54 executor of a will, the administrator of the estate of a  
55 deceased person, the administrator of such estate with the  
56 will annexed, the administrator de bonis non of such  
57 estate, whether there be a will or not, the sheriff or other  
58 officer lawfully charged with the administration of the  
59 estate of a deceased person, and every other curator or  
60 committee of a decedent's estate for or against whom suits  
61 may be brought for causes of action which accrued to or  
62 against such decedent;

63 (k) The word "will" embraces a testament, a codicil, an  
64 appointment by will or writing in the nature of a will in  
65 exercise of a power, also any other testamentary  
66 disposition;

67 (l) The word "judgment" includes decrees and orders  
68 for the payment of money or the conveyance or delivery

69 of land or personal property, or some interest therein, or  
70 any undertaking, bond or recognizance which has the  
71 legal effect of a judgment;

72 (m) The words "under disability" include persons  
73 under the age of eighteen years, insane persons, and  
74 convicts while confined in the penitentiary;

75 (n) The words "insane person" include everyone who  
76 has mental illness as defined in section two, article one,  
77 chapter twenty-seven of this code;

78 (o) The word "convict" means a person confined in the  
79 penitentiary of this or any other state, or of the United  
80 States;

81 (p) The word "land" or "lands" and the words "real  
82 estate" or "real property" include lands, tenements and  
83 hereditaments, all rights thereto and interests therein  
84 except chattel interests;

85 (q) The words "personal estate" or "personal property"  
86 include goods, chattels, real and personal, money, credits,  
87 investments and the evidences thereof;

88 (r) The word "property" or "estate" embraces both real  
89 and personal estate;

90 (s) The word "offense" includes every act or omission  
91 for which a fine, forfeiture or punishment is imposed by  
92 law;

93 (t) The expression "laws of the state" includes the  
94 constitution of the state and the constitution of the United  
95 States, and treaties and laws made in pursuance thereof;

96 (u) The word "town" includes a city, village or town,  
97 and the word "council," any body or board, whether  
98 composed of one or more branches, who are authorized to  
99 make ordinances for the government of a city, town or  
100 village;

101 (v) When a council of a town, city or village, or any  
102 board, number of persons or corporations, are authorized  
103 to make ordinances, bylaws, rules, regulations or orders, it

104 shall be understood that the same must be consistent with  
105 the laws of this state;

106 (w) The words "county court" include any existing  
107 tribunal created in lieu of a county court; the words  
108 "commissioner of the county court" and "county  
109 commissioner" mean, and have reference to, the  
110 commissioners, or one of them, composing the county  
111 court, in pursuance of section twenty-two, article eight of  
112 the constitution, as amended, or any existing tribunal  
113 created in lieu of a county court;

114 (x) The word "horse" embraces a stallion, a mare and a  
115 gelding;

116 (y) The words "railroad" and "railway" shall be  
117 construed by the courts of this state to mean the same  
118 thing in law; and, in any proceeding wherein a railroad  
119 company or a railway company is a party, it shall not be  
120 deemed error to call a railroad company a railway  
121 company or vice versa; nor shall any demurrer, plea or  
122 any other defense be set up to a motion, pleading or  
123 indictment in consequence of such misdescription;

124 (z) The sectional headings or headlines of the several  
125 sections of this code printed in black-faced type are  
126 intended as mere catchwords to indicate the contents of  
127 the section and shall not be deemed or taken to be titles of  
128 such sections, or as any part of the statute, and, unless  
129 expressly so provided, they shall not be so deemed when  
130 any of such sections, including the headlines, are amended  
131 or reenacted;

132 (aa) The words "infant" and "minor" mean persons  
133 under the age of eighteen years as such words are used in  
134 this code or in rules and regulations promulgated by the  
135 supreme court of appeals;

136 (bb) A statute is presumed to be prospective in its  
137 operation unless expressly made retrospective;

138 (cc) Unless there is a provision in a section, article or  
139 chapter of this code specifying that the provisions thereof  
140 shall not be severable, the provisions of every section,

141 article or chapter of this code, whether enacted before or  
142 subsequent to the effective date of this subdivision, shall  
143 be severable so that if any provision of any such section,  
144 article or chapter is held to be unconstitutional or void, the  
145 remaining provisions of such section, article or chapter  
146 shall remain valid, unless the court finds the valid  
147 provisions are so essentially and inseparably connected  
148 with, and so dependent upon, the unconstitutional or void  
149 provision that the court cannot presume the Legislature  
150 would have enacted the remaining valid provisions without  
151 the unconstitutional or void one, or unless the court finds  
152 the remaining valid provisions, standing alone, are  
153 incomplete and are incapable of being executed in  
154 accordance with the legislative intent: *Provided*, That if  
155 any such section, article or chapter of this code has its own  
156 severability clause, then such severability clause shall  
157 govern and control with respect to such section, article or  
158 chapter in lieu of the provisions of this subdivision. The  
159 provisions of this subdivision shall be fully applicable to  
160 all future amendments or additions to this code, with like  
161 effect as if the provisions of this subdivision were set forth  
162 in extenso in every such amendment or addition and were  
163 reenacted as a part thereof, unless such amendment or  
164 addition contains its own severability clause;

165 (dd) A reference to any section, article or chapter of  
166 this code applies to all reenactments, revisions or  
167 amendments thereof;

168 (ee) If a statute refers to a series of numbers or letters,  
169 the first and the last numbers or letters in the series are  
170 deemed to be included;

171 (ff) The words "board of regents," wherever they  
172 appear in the code, means the board of trustees created by  
173 section one, article one, chapter eighteen-b of this code  
174 and the board of directors created by section one, article  
175 one, chapter eighteen-b of this code unless the term is  
176 used in relation to activities conducted solely by an  
177 institution or institutions governed by article two, chapter  
178 eighteen-b of this code in which case it only means the  
179 board of trustees, or where the term is used in relation to  
180 activities conducted solely by an institution or institutions

181 governed by article three, chapter eighteen-b of the code  
182 in which case it only means the board of directors.

## **CHAPTER 39. RECORDS AND PAPERS.**

### **ARTICLE 5. ELECTRONIC SIGNATURES AUTHORIZATION ACT.**

§39-5-1. Legislative findings; statement of purpose.

§39-5-2. Definitions.

§39-5-3. Acceptance of electronic signatures generally.

§39-5-4. Duties of the secretary of state and state auditor; state agencies use of electronic signatures.

§39-5-5. Acceptance of electronic signature by governmental entities in satisfaction of signature requirement.

§39-5-6. Acceptance of electronic signatures by persons other than governmental entities.

§39-5-7. Secretary of state; liability.

§39-5-8. Admissibility into evidence.

#### **§39-5-1. Legislative findings; statement of purpose.**

1 The Legislature finds that the rapid and secure  
2 conveyance of signed written transactions, messages and  
3 official documents is essential to effective and economical  
4 conduct of commercial, governmental and personal  
5 affairs; and that technology is available to allow  
6 instantaneous transmission of documents and to provide  
7 secure means of authorization through electronic  
8 signatures. Therefore, it is the purpose of this act to  
9 facilitate and promote electronic commerce and online  
10 government by clarifying the legal status of electronic  
11 records and electronic signatures in the context of writing  
12 and signing requirements imposed by law; to permit and  
13 encourage the continued expansion of electronic  
14 commerce and online government through the operation  
15 of free market forces rather than proscriptive legislation;  
16 to promote public confidence in the validity, integrity and  
17 reliability of electronic commerce and online government;  
18 and to promote the development of the legal and business  
19 infrastructure necessary to support and encourage  
20 electronic commerce and online government.

#### **§39-5-2. Definitions.**

1 As used in this article, the following words shall have  
2 the following meanings:

3 (a)“Certificate” means a computer-based record that:

4 (1) Identifies the certification authority issuing it;

5 (2) Names or identifies its subscriber;

6 (3) Contains the subscriber’s public key; and

7 (4) Is digitally signed by the certification authority  
8 issuing it.

9 (b)“Certification authority” means a person who  
10 issues a certificate.

11 (c) “Electronic” means electrical, digital, magnetic,  
12 optical, electromagnetic, or any other technology that is  
13 similar to these technologies.

14 (d) “Electronic record” means a record generated,  
15 communicated, received, or stored by electronic means.

16 (e) “Electronic signature” means any identifier or  
17 authentication technique attached to or logically  
18 associated with an electronic record that is intended by the  
19 person using it to have the same force and effect as a  
20 manual signature. Electronic signatures include, but are  
21 not limited to the following:

22 (1) A “digitized signature” which consists of a  
23 handwritten signature entered on a recording device  
24 utilizing electronic recording software which  
25 simultaneously converts the image created to a digital  
26 record and attaches it to the electronic document to which  
27 it relates;

28 (2) A “digital mark” which consists of an electronic  
29 code indicating approval or confirmation which is entered  
30 into a protected digital record following access protocols  
31 which identify the user and require a password, personal  
32 identification number, encrypted card or other security  
33 device which restricts access to one or more authorized  
34 individuals; and

35 (3) A “digital signature” which consists of a message  
36 transformed using an asymmetric cryptosystem so that a  
37 person having the initial message and the signer’s public  
38 key can accurately determine:

39 (A) Whether the transformed message was created  
40 using the private key that corresponds to the signer’s  
41 public key; and

42 (B) Whether the initial message has been altered since  
43 the message was transformed.

44 (f) “Record” means information that is inscribed on a  
45 tangible medium or that is stored in an electronic or other  
46 medium and is retrievable in perceivable form.

**§39-5-3. Acceptance of electronic signatures generally.**

1 (a) Where a rule of law requires a signature, or  
2 provides for certain consequences in the absence of a  
3 signature, that rule may be satisfied by an electronic  
4 signature, if:

5 (1) The type of electronic signature provided is  
6 authorized according to the provisions of this article by  
7 the person or governmental entity receiving the message;

8 (2) The original digitized signature, digital mark or  
9 digital signature was affixed by the signer with the  
10 intention of signing the message, or the facsimile digitized  
11 signature was affixed by the signer’s designee with the  
12 authority of the signer; and

13 (3) The recipient has no knowledge or notice that the  
14 signer either:

15 (A) Breached a duty; or

16 (B) Does not rightfully hold the access code used to  
17 affix the digital mark or the private key used to affix the  
18 digital signature.

19 (b) Nothing in this article:

20 (1) Precludes an electronic signature from being valid  
21 as a signature under other applicable law;

22 (2) May be construed to obligate a recipient or any  
23 other person asked to rely on an electronic signature to  
24 accept an electronic signature or to respond to an  
25 electronic message containing an electronic signature; or

26 (3) Precludes the recipient of an electronic signature  
27 or an electronic message containing an electronic  
28 signature from establishing the conditions under which the  
29 recipient will accept an electronic signature.

**§39-5-4. Duties of the secretary of state and state auditor; state agencies use of electronic signatures.**

1 (a) The secretary of state and state auditor shall  
2 propose joint legislative rules for promulgation in  
3 accordance with the provisions of article three, chapter  
4 twenty-nine-a of this code to establish standards and  
5 processes to facilitate the use of electronic signatures in all  
6 governmental transactions by state agencies subject to  
7 chapter twenty-nine-a of this code. These rules shall  
8 include minimum standards for secure transactions to  
9 assure confidence and efficiency in legally binding  
10 electronic document transactions. These rules may be  
11 amended from time to time to keep the rules current with  
12 new developments in technology and improvements in  
13 secured transaction processes. The Legislature also  
14 authorizes these rules to be initially promulgated as  
15 emergency rules pursuant to article three, chapter twenty-  
16 nine-a of this code.

17 (b) The secretary of state is also designated the  
18 certification authority and repository for all governmental  
19 agencies which are subject to chapter twenty-nine-a of this  
20 code, and shall regulate transactions and digital signature  
21 verifications. The secretary may enter into reciprocity  
22 agreements with all state and federal governmental entities  
23 to promote the efficient governmental use of electronic  
24 transactions. The secretary of state may also propose  
25 legislative rules for issuing certificates that bind public

26 keys to individuals, and other electronic transaction  
27 authentication devices as provided for in section three.  
28 The secretary of state is further authorized to contract with  
29 a private entity to serve as certification authority for the  
30 state of West Virginia. This private certification authority  
31 may contract with persons to provide certification service.  
32 Any contract entered into must assure the certification  
33 authority will meet the requirements of this act and any  
34 rules promulgated pursuant to this subsection.

35 (c) Nothing contained in this act shall be construed to  
36 mandate any specific form of technology, process or  
37 standard to be the only technology, process or standard  
38 which may be utilized by state entities, nor shall limit the  
39 secretary of state and state auditor in adopting by  
40 legislative rule, alternative technologies to authorize  
41 electronic signatures.

**§39-5-5. Acceptance of electronic signature by governmental  
entities in satisfaction of signature requirement.**

1 (a) Any governmental entity may, by appropriate  
2 official action, authorize the acceptance of electronic  
3 signatures in lieu of original signatures on messages or  
4 filings requiring one or more original signatures, subject  
5 to the requirements and limitations of section three of this  
6 article.

7 (b) Any governmental entity may elect to participate  
8 and utilize the secretary of state's digital signature  
9 authority and registry. Upon acceptance of and  
10 registration with the secretary of state's digital signature  
11 authority and registry, the governmental entity's  
12 electronic transactions are bound to the regulation of the  
13 authority and registry and those rules promulgated  
14 thereunder. Any governmental entity not required to  
15 participate, but which elects to participate, may withdrawal  
16 at any time from the program, upon notification of the  
17 secretary of state and all others who utilize that entity's  
18 digital signature program.

19 (c) Any governmental entities may adopt, in the  
20 manner provided by law, an ordinance, rule or official  
21 policy designating the documents on which electronic  
22 signatures are authorized, and the type or types of  
23 electronic signatures which may be accepted for each type  
24 of document. Those governmental entities not subject to  
25 the provisions of chapter twenty-nine-a of this code, which  
26 proposes to authorize the acceptance of electronic  
27 signatures on documents filed with that entity shall give  
28 public notice of the proposed adoption in an manner  
29 prescribed by law, an ordinance, rule or official policy, but  
30 in no case for less than thirty days before adoption.

31 (d) Any governmental entity which intends to extend,  
32 modify or revoke the authority to accept electronic  
33 signatures shall do so by the same means and with the  
34 same notice as required in this section for adoption.

**§39-5-6. Acceptance of electronic signatures by persons other than governmental entities.**

1 (a) Where a commercial or other transaction between  
2 persons other than governmental entities consists in part of  
3 a message which requires the signature of one or more  
4 parties to the transaction, an electronic signature shall be a  
5 valid signature if authorized and accepted by the receiving  
6 party and made in good faith by the signing party or  
7 parties.

8 (b) The receiving party may determine the type or  
9 types of electronic signatures which will be accepted for  
10 particular types of messages or transactions.

11 (1) The receiving party shall give notice to the  
12 prospective signing party of the type or types of electronic  
13 signatures which will be accepted for the particular type of  
14 message or transaction; and

15 (2) The receiving party may confirm to the signer the  
16 receipt and acceptance of an electronic message  
17 containing an electronic signature.

**§39-5-7. Secretary of state; liability.**

1       The secretary of state, serving as authority and  
 2 repository for governmental entities for signature keys  
 3 shall revoke any signature key when the secretary has  
 4 reason to believe that the digital signature key has been  
 5 stolen, fraudulently used or otherwise compromised. This  
 6 article creates no liability upon the secretary of state for  
 7 any transaction compromised by any illegal act or  
 8 inappropriate uses associated with electronic signatures.

**§39-5-8. Admissibility into evidence.**

1       In any legal proceeding, nothing in the application or  
 2 the rules of evidence shall apply so as to deny the  
 3 admissibility of an electronic record or electronic  
 4 signature into evidence solely on the ground that it is an  
 5 electronic record or electronic signature, or, on the  
 6 grounds that it is not in its original form or is not an  
 7 original.

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## CHAPTER 140

(Com. Sub. for H. B. 4043—By Delegates Beane, Cann, Thompson, Compton,  
 Faircloth, Amores and Hutchins)

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

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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  
2   be designed by the public employees insurance agency:
- 3       (1) To provide a reasonable relationship between the  
4   hospital, surgical, medical and prescription drug benefits  
5   to be included and the expected reasonable and customary  
6   hospital, surgical, medical and prescription drug expenses  
7   as established by the director to be incurred by the

8 affected employee, his or her spouse and his or her  
9 dependents. The establishment of reasonable and  
10 customary expenses by the public employees insurance  
11 agency pursuant to the preceding sentence is not subject  
12 to the state administrative procedures act in chapter  
13 twenty-nine-a of this code;

14 (2) To include reasonable controls which may include  
15 deductible and coinsurance provisions applicable to some  
16 or all of the benefits, and shall include other provisions,  
17 including, but not limited to, copayments, preadmission  
18 certification, case management programs and preferred  
19 provider arrangements;

20 (3) To prevent unnecessary utilization of the various  
21 hospital, surgical, medical and prescription drug services  
22 available;

23 (4) To provide reasonable assurance of stability in  
24 future years for the plans;

25 (5) To provide major medical insurance for the  
26 employees covered under this article;

27 (6) To provide certain group life and accidental death  
28 insurance for the employees covered under this article;

29 (7) To include provisions for the coordination of  
30 benefits payable by the terms of the plans with the benefits  
31 to which the employee, or his or her spouse or his or her  
32 dependents may be entitled by the provisions of any other  
33 group hospital, surgical, medical, major medical, or  
34 prescription drug insurance or any combination thereof;

35 (8) To provide a cash incentive plan for employees,  
36 spouses and dependents to increase utilization of, and to  
37 encourage the use of, lower cost alternative health care  
38 facilities, health care providers and generic drugs. The  
39 plan shall be reviewed annually by the director and the  
40 advisory board;

41 (9) To provide "wellness" programs and activities  
42 which will include, but not be limited to, benefit plan  
43 incentives to discourage tobacco, alcohol and chemical  
44 abuse and an educational program to encourage proper

45 diet and exercise. In establishing "wellness" programs,  
46 the division of vocational rehabilitation shall cooperate  
47 with the public employees insurance agency in  
48 establishing statewide wellness programs. The director of  
49 the public employees insurance agency shall contract with  
50 county boards of education for the use of facilities,  
51 equipment or any service related to that purpose. Boards  
52 of education may charge only the cost of janitorial service  
53 and increased utilities for the use of the gymnasium and  
54 related equipment. The cost of the exercise program shall  
55 be paid by county boards of education, the public  
56 employees insurance agency, or participating employees,  
57 their spouses or dependents. All exercise programs shall  
58 be made available to all employees, their spouses or  
59 dependents and shall not be limited to employees of  
60 county boards of education;

61 (10) To provide a program, to be administered by the  
62 director, for a patient audit plan with reimbursement up to  
63 a maximum of one thousand dollars annually, to  
64 employees for discovery of health care provider or  
65 hospital overcharges when the affected employee brings  
66 the overcharge to the attention of the plan. The hospital  
67 or health care provider shall certify to the director that it  
68 has provided, prior to or simultaneously with the  
69 submission of the statement of charges for payments, an  
70 itemized statement of the charges to the employee  
71 participant for which payment is requested of the plan;

72 (11) To require that all employers give written notice  
73 to each covered employee prior to institution of any  
74 changes in benefits to employees, and to include  
75 appropriate penalty for any employer not providing the  
76 required information to any employee; and

77 (12) To provide coverage for emergency services  
78 under offered plans. For the purposes of this subsection,  
79 "emergency services" means services provided in or by a  
80 hospital emergency facility, an ambulance providing  
81 related services under the provisions of article four-c,  
82 chapter sixteen of this code or the private office of a  
83 dentist to evaluate and treat a medical condition  
84 manifesting itself by the sudden, and at the time,

85 unexpected onset of symptoms that require immediate  
86 medical attention and for which failure to provide medical  
87 attention would result in serious impairment to bodily  
88 function, serious dysfunction to any bodily organ or part,  
89 or would place the person's health in jeopardy. From the  
90 first day of July, one thousand nine hundred ninety-eight,  
91 through the thirtieth day of June, two thousand, the  
92 following provisions apply: Plans shall provide coverage  
93 for emergency services, including any prehospital services,  
94 to the extent necessary to screen and stabilize the covered  
95 person. The plans shall reimburse, less any applicable  
96 copayments, deductibles, or coinsurance, for emergency  
97 services rendered and related to the condition for which  
98 the covered person presented. Prior authorization of  
99 coverage shall not be required for the screening services if  
100 a prudent layperson acting reasonably would have  
101 believed that an emergency medical condition existed.  
102 Prior authorization of coverage shall not be required for  
103 stabilization if an emergency medical condition exists. In  
104 the event that prior authorization was obtained, the  
105 authorization may not be retracted after the services have  
106 been provided except when the authorization was based on  
107 a material misrepresentation about the medical condition  
108 by the provider of the services or the insured person. The  
109 provider of the emergency services and the plan  
110 representative shall make a good faith effort to  
111 communicate with each other in a timely fashion to  
112 expedite postevaluation or poststabilization services.  
113 Payment of claims for emergency services shall be based  
114 on the retrospective review of the presenting history and  
115 symptoms of the covered person. For purposes of this  
116 subdivision: (A) "Emergency services" means those  
117 services required to screen for or treat an emergency  
118 medical condition until the condition is stabilized,  
119 including prehospital care; (B) "prudent layperson"  
120 means a person who is without medical training and who  
121 draws on his or her practical experience when making a  
122 decision regarding whether an emergency medical  
123 condition exists for which emergency treatment should be  
124 sought; (C) "emergency medical condition for the  
125 prudent layperson" means one that manifests itself by

126 acute symptoms of sufficient severity, including severe  
127 pain, such that the person could reasonably expect the  
128 absence of immediate medical attention to result in serious  
129 jeopardy to the individual's health, or, with respect to a  
130 pregnant woman, the health of the unborn child; serious  
131 impairment to bodily functions; or serious dysfunction of  
132 any bodily organ or part; (D) "stabilize" means with  
133 respect to an emergency medical condition, to provide  
134 medical treatment of the condition necessary to assure,  
135 with reasonable medical probability that no medical  
136 deterioration of the condition is likely to result from or  
137 occur during the transfer of the individual from a facility:  
138 *Provided*, That this provision may not be construed to  
139 prohibit, limit or otherwise delay the transportation  
140 required for a higher level of care than that possible at the  
141 treating facility; (E) "medical screening examination"  
142 means an appropriate examination within the capability of  
143 the hospital's emergency department, including ancillary  
144 services routinely available to the emergency department,  
145 to determine whether or not an emergency medical  
146 condition exists. The director is to report annually to the  
147 legislative oversight commission on health and human  
148 resources accountability on the utilization of emergency  
149 services, the cost of those services, a comparison of  
150 utilization and costs between enrollees of the various plans,  
151 and possible plan amendments designed to decrease any  
152 inappropriate utilization of emergency services; and (F)  
153 "emergency medical condition" means a condition that  
154 manifests itself by acute symptoms of sufficient severity  
155 including severe pain such that the absence of immediate  
156 medical attention could reasonably be expected to result  
157 in serious jeopardy to the individual's health or with  
158 respect to a pregnant woman the health of the unborn  
159 child, serious impairment to bodily functions or serious  
160 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.
- 25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.

#### ARTICLE 1. DEFINITIONS.

##### §33-1-21. Emergency services.

1 (a) Emergency services are: Those services provided in  
2 or by a hospital emergency facility, an ambulance  
3 providing related services under the provisions of article  
4 four-c, chapter sixteen of this code or the private office of  
5 a dentist to evaluate and treat a medical condition  
6 manifesting itself by the sudden, and at the time,  
7 unexpected onset of symptoms that require immediate  
8 medical attention and that failure to provide medical  
9 attention would result in serious impairment to bodily  
10 function, serious dysfunction to any bodily organ or part,  
11 or would place the person's health in jeopardy.

12 (b) From the first day of July, one thousand nine  
13 hundred ninety-eight, through the thirtieth day of June,  
14 two thousand, the following provisions apply:

15 (1) "Emergency medical services" means those  
16 services required to screen for or treat an emergency  
17 medical condition until the condition is stabilized,  
18 including prehospital care;

19 (2) "Prudent layperson" means a person who is  
20 without medical training and who draws on his or her  
21 practical experience when making a decision regarding  
22 whether an emergency medical condition exists for which  
23 emergency treatment should be sought;

24 (3) "Emergency medical condition for the prudent  
25 layperson" means one that manifests itself by acute  
26 symptoms of sufficient severity, including severe pain,  
27 such that the person could reasonably expect the absence  
28 of immediate medical attention to result in serious  
29 jeopardy to the individual's health, or, with respect to a  
30 pregnant woman, the health of the unborn child; serious

31 impairment to bodily functions; or serious dysfunction of  
32 any bodily organ or part;

33 (4) "Stabilize" means with respect to an emergency  
34 medical condition, to provide medical treatment of the  
35 condition necessary to assure, with reasonable medical  
36 probability that no medical deterioration of the condition  
37 is likely to result from or occur during the transfer of the  
38 individual from a facility: *Provided*, That this provision  
39 may not be construed to prohibit, limit or otherwise delay  
40 the transportation required for a higher level of care than  
41 that possible at the treating facility;

42 (5) "Medical screening examination" means an  
43 appropriate examination within the capability of the  
44 hospital's emergency department, including ancillary  
45 services routinely available to the emergency department,  
46 to determine whether or not an emergency medical  
47 condition exists; and

48 (6) "Emergency medical condition" means a  
49 condition that manifests itself by acute symptoms of  
50 sufficient severity including severe pain such that the  
51 absence of immediate medical attention could reasonably  
52 be expected to result in serious jeopardy to the  
53 individual's health or with respect to a pregnant woman  
54 the health of the unborn child, serious impairment to  
55 bodily functions or serious dysfunction of any bodily part  
56 or organ.

#### ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

##### §33-15-21. Coverage of emergency services.

1 From the first day of July, one thousand nine hundred  
2 ninety-eight, through the thirtieth day of June, two  
3 thousand, the following provisions apply:

4 (a) Every insurer shall provide coverage for  
5 emergency medical services, including prehospital  
6 services, to the extent necessary to screen and to stabilize  
7 an emergency medical condition. The insurer shall not  
8 require prior authorization of the screening services if a  
9 prudent layperson acting reasonably would have believed  
10 that an emergency medical condition existed. Prior

11 authorization of coverage shall not be required for  
12 stabilization if an emergency medical condition exists.  
13 Payment of claims for emergency services shall be based  
14 on the retrospective review of the presenting history and  
15 symptoms of the covered person.

16 (b) An insurer that has given prior authorization for  
17 emergency services shall cover the services and shall not  
18 retract the authorization after the services have been  
19 provided unless the authorization was based on a material  
20 misrepresentation about the covered person's health  
21 condition made by the referring provider, the provider of  
22 the emergency services or the covered person.

23 (c) Coverage of emergency services shall be subject to  
24 coinsurance, copayments and deductibles applicable under  
25 the health benefit plan.

26 (d) The emergency department and the insurer shall  
27 make a good faith effort to communicate with each other  
28 in a timely fashion to expedite postevaluation or  
29 poststabilization services in order to avoid material  
30 deterioration of the covered person's condition.

31 (e) As used in this section:

32 (1) "Emergency medical services" means those  
33 services required to screen for or treat an emergency  
34 medical condition until the condition is stabilized,  
35 including prehospital care;

36 (2) "Prudent layperson" means a person who is  
37 without medical training and who draws on his or her  
38 practical experience when making a decision regarding  
39 whether an emergency medical condition exists for which  
40 emergency treatment should be sought;

41 (3) "Emergency medical condition for the prudent  
42 layperson" means one that manifests itself by acute  
43 symptoms of sufficient severity, including severe pain,  
44 such that the person could reasonably expect the absence  
45 of immediate medical attention to result in serious  
46 jeopardy to the individual's health, or, with respect to a  
47 pregnant woman, the health of the unborn child; serious

48 impairment to bodily functions; or serious dysfunction of  
49 any bodily organ or part;

50 (4) "Stabilize" means with respect to an emergency  
51 medical condition, to provide medical treatment of the  
52 condition necessary to assure, with reasonable medical  
53 probability that no medical deterioration of the condition  
54 is likely to result from or occur during the transfer of the  
55 individual from a facility: *Provided*, That this provision  
56 may not be construed to prohibit, limit or otherwise delay  
57 the transportation required for a higher level of care than  
58 that possible at the treating facility;

59 (5) "Medical screening examination" means an  
60 appropriate examination within the capability of the  
61 hospital's emergency department, including ancillary  
62 services routinely available to the emergency department,  
63 to determine whether or not an emergency medical  
64 condition exists; and

65 (6) "Emergency medical condition" means a  
66 condition that manifests itself by acute symptoms of  
67 sufficient severity including severe pain such that the  
68 absence of immediate medical attention could reasonably  
69 be expected to result in serious jeopardy to the  
70 individual's health or with respect to a pregnant woman  
71 the health of the unborn child, serious impairment to  
72 bodily functions or serious dysfunction of any bodily part  
73 or organ.

#### ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

##### §33-16-3i. Coverage of emergency services.

1 (a) Notwithstanding any provision of any policy,  
2 provision, contract, plan or agreement to which this article  
3 applies, any entity regulated by this article shall provide as  
4 benefits to all subscribers and members coverage for  
5 emergency services. A policy, provision, contract, plan or  
6 agreement may apply to emergency services the same  
7 deductibles, coinsurance and other limitations as apply to  
8 other covered services: *Provided*, That preauthorization or  
9 precertification shall not be required.

10 (b) 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

48 whether an emergency medical condition exists for which  
49 emergency treatment should be sought;

50 (C) "Emergency medical condition for the prudent  
51 layperson" means one that manifests itself by acute  
52 symptoms of sufficient severity, including severe pain,  
53 such that the person could reasonably expect the absence  
54 of immediate medical attention to result in serious  
55 jeopardy to the individual's health, or, with respect to a  
56 pregnant woman, the health of the unborn child; serious  
57 impairment to bodily functions; or serious dysfunction of  
58 any bodily organ or part;

59 (D) "Stabilize" means with respect to an emergency  
60 medical condition, to provide medical treatment of the  
61 condition necessary to assure, with reasonable medical  
62 probability that no medical deterioration of the condition  
63 is likely to result from or occur during the transfer of the  
64 individual from a facility: *Provided*, That this provision  
65 may not be construed to prohibit, limit or otherwise delay  
66 the transportation required for a higher level of care than  
67 that possible at the treating facility;

68 (E) "Medical screening examination" means an  
69 appropriate examination within the capability of the  
70 hospital's emergency department, including ancillary  
71 services routinely available to the emergency department,  
72 to determine whether or not an emergency medical  
73 condition exists; and

74 (F) "Emergency medical condition" means a  
75 condition that manifests itself by acute symptoms of  
76 sufficient severity including severe pain such that the  
77 absence of immediate medical attention could reasonably  
78 be expected to result in serious jeopardy to the  
79 individual's health or with respect to a pregnant woman  
80 the health of the unborn child, serious impairment to  
81 bodily functions or serious dysfunction of any bodily part  
82 or organ.

83 (c) The commissioner shall require periodic reports  
84 regarding emergency services utilization and costs  
85 provided pursuant to the provisions of this article. Those  
86 reports will be provided annually to the

87 oversight commission on health and human resources  
88 accountability.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL  
SERVICE CORPORATIONS, DENTAL SERVICE  
CORPORATIONS AND HEALTH SERVICE COR-  
PORATIONS.**

**§33-24-7e. Coverage of emergency services.**

1 (a) Notwithstanding any provision of any policy,  
2 provision, contract, plan or agreement to which this article  
3 applies, any entity regulated by this article shall provide as  
4 benefits to all subscribers and members coverage for  
5 emergency services. A policy, provision, contract, plan or  
6 agreement may apply to emergency services the same  
7 deductibles, coinsurance and other limitations as apply to  
8 other covered services: *Provided*, That preauthorization  
9 or precertification shall not be required.

10 (b) 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  
48 whether an emergency medical condition exists for which  
49 emergency treatment should be sought;

50 (C) "Emergency medical condition for the prudent  
51 layperson" means one that manifests itself by acute  
52 symptoms of sufficient severity, including severe pain,  
53 such that the person could reasonably expect the absence  
54 of immediate medical attention to result in serious  
55 jeopardy to the individual's health, or, with respect to a  
56 pregnant woman, the health of the unborn child; serious  
57 impairment to bodily functions; or serious dysfunction of  
58 any bodily organ or part;

59 (D) "Stabilize" means with respect to an emergency  
60 medical condition, to provide medical treatment of the  
61 condition necessary to assure, with reasonable medical  
62 probability that no medical deterioration of the condition  
63 is likely to result from or occur during the transfer of the  
64 individual from a facility: *Provided*, That this provision  
65 may not be construed to prohibit, limit or otherwise delay  
66 the transportation required for a higher level of care than  
67 that possible at the treating facility;

68 (E) "Medical screening examination" means an  
69 appropriate examination within the capability of the

70 hospital's emergency department, including ancillary  
71 services routinely available to the emergency department,  
72 to determine whether or not an emergency medical  
73 condition exists; and

74 (F) "Emergency medical condition" means a  
75 condition that manifests itself by acute symptoms of  
76 sufficient severity including severe pain such that the  
77 absence of immediate medical attention could reasonably  
78 be expected to result in serious jeopardy to the  
79 individual's health or with respect to a pregnant woman  
80 the health of the unborn child, serious impairment to  
81 bodily functions or serious dysfunction of any bodily part  
82 or organ.

#### ARTICLE 25. HEALTH CARE CORPORATIONS.

##### §33-25-8d. Coverage of emergency services.

1 (a) Notwithstanding any provision of any policy,  
2 provision, contract, plan or agreement to which this article  
3 applies, any entity regulated by this article shall provide as  
4 benefits to all subscribers and members coverage for  
5 emergency services. A policy, provision, contract, plan or  
6 agreement may apply to emergency services the same  
7 deductibles, coinsurance and other limitations as apply to  
8 other covered services: *Provided*, That preauthorization  
9 or precertification shall not be required.

10 (b) 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 pre-hospital  
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  
48 whether an emergency medical condition exists for which  
49 emergency treatment should be sought;

50 (C) "Emergency medical condition for the prudent  
51 layperson" means one that manifests itself by acute  
52 symptoms of sufficient severity, including severe pain,  
53 such that the person could reasonably expect the absence  
54 of immediate medical attention to result in serious  
55 jeopardy to the individual's health, or, with respect to a  
56 pregnant woman, the health of the unborn child; serious  
57 impairment to bodily functions; or serious dysfunction of  
58 any bodily organ or part;

59 (D) "Stabilize" means with respect to an emergency  
60 medical condition, to provide medical treatment of the  
61 condition necessary to assure, with reasonable medical  
62 probability that no medical deterioration of the condition  
63 is likely to result from or occur during the transfer of the  
64 individual from a facility: *Provided*, That this provision  
65 may not be construed to prohibit, limit or otherwise delay  
66 the transportation required for a higher level of care than  
67 that possible at the treating facility;

68 (E) "Medical screening examination" means an  
69 appropriate examination within the capability of the  
70 hospital's emergency department, including ancillary  
71 services routinely available to the emergency department,  
72 to determine whether or not an emergency medical  
73 condition exists; and

74 (F) "Emergency medical condition" means a  
75 condition that manifests itself by acute symptoms of  
76 sufficient severity including severe pain such that the  
77 absence of immediate medical attention could reasonably  
78 be expected to result in serious jeopardy to the  
79 individual's health or with respect to a pregnant woman  
80 the health of the unborn child, serious impairment to  
81 bodily functions or serious dysfunction of any bodily part  
82 or organ.

#### ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

##### §33-25A-8d. Coverage of emergency services.

1 (a) Notwithstanding any provision of any policy,  
2 provision, contract, plan or agreement to which this article  
3 applies, any entity regulated by this article shall provide as  
4 benefits to all subscribers and members coverage for  
5 emergency services. A policy, provision, contract, plan or  
6 agreement may apply to emergency services the same  
7 deductibles, coinsurance and other limitations as apply to  
8 other covered services: *Provided*, That preauthorization  
9 or precertification shall not be required.

10 (b) 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 pre-hospital  
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  
48 whether an emergency medical condition exists for which  
49 emergency treatment should be sought;

50 (C) "Emergency medical condition for the prudent  
51 layperson" means one that manifests itself by acute  
52 symptoms of sufficient severity, including severe pain,  
53 such that the person could reasonably expect the absence  
54 of immediate medical attention to result in serious  
55 jeopardy to the individual's health, or, with respect to a  
56 pregnant woman, the health of the unborn child; serious  
57 impairment to bodily functions; or serious dysfunction of  
58 any bodily organ or part;

59 (D) "Stabilize" means with respect to an emergency  
60 medical condition, to provide medical treatment of the  
61 condition necessary to assure, with reasonable medical  
62 probability that no medical deterioration of the condition  
63 is likely to result from or occur during the transfer of the  
64 individual from a facility: *Provided*, That this provision  
65 may not be construed to prohibit, limit or otherwise delay  
66 the transportation required for a higher level of care than  
67 that possible at the treating facility;

68 (E) "Medical screening examination" means an  
69 appropriate examination within the capability of the  
70 hospital's emergency department, including ancillary  
71 services routinely available to the emergency department,  
72 to determine whether or not an emergency medical  
73 condition exists; and

74 (F) "Emergency medical condition" means a  
75 condition that manifests itself by acute symptoms of  
76 sufficient severity including severe pain such that the  
77 absence of immediate medical attention could reasonably  
78 be expected to result in serious jeopardy to the  
79 individual's health or with respect to a pregnant woman  
80 the health of the unborn child, serious impairment to  
81 bodily functions or serious dysfunction of any bodily part  
82 or organ.

83 (6) Each insurer shall provide the enrolled member  
84 with a description of procedures to be followed by the  
85 member for emergency services, including the following:

86 (A) The appropriate use of emergency facilities;

87 (B) The appropriate use of any prehospital services  
88 provided by the health maintenance organization;

89 (C) Any potential responsibility of the member for  
90 payment for nonemergency services rendered in an  
91 emergency facility;

92 (D) Any cost-sharing provisions for emergency  
93 services; and

94 (E) An explanation of the prudent layperson standard  
95 for emergency medical condition.

96 (c) The commissioner shall require periodic reports  
97 regarding emergency services utilization and costs  
98 provided pursuant to the provisions of this article. Those  
99 reports will be provided annually to the legislative  
100 oversight commission on health and human resources  
101 accountability.

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## CHAPTER 141

(H. B. 4595—By Delegates Seacrist, Pulliam, Compton, Warner,  
Fantasia, Kelley and Pettit)

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

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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.**

1 (a) There is established in the state treasury a special  
 2 revenue fund designated the "emergency medical services  
 3 agency licensure fund", which shall be administered by  
 4 the commissioner of the bureau of public health.

5 (b) All application and licensing fees collected  
 6 pursuant to the provisions of section six-a of this article  
 7 shall be deposited into the fund and expended in  
 8 accordance with the licensure duties imposed in this  
 9 article.

10 (c) Any remaining balance, including accrued interest,  
 11 in the fund at the end of the fiscal year shall not revert to  
 12 the general revenue fund, but shall remain in the account.

13 (d) On or before the first day of January of each year,  
 14 the commissioner shall provide the Legislature with an  
 15 annual fiscal year report on the emergency medical  
 16 services agency licensure account including, but not  
 17 limited to, the previous fiscal year's expenditures;  
 18 projected expenditures for the current and next fiscal  
 19 years; the number of agency licenses issued, denied,  
 20 suspended or revoked; and, the status of licensure hearings  
 21 and court actions.

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## 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.**

1 (a) The Legislature finds that:

2 (1) Restoring and protecting the environment is  
3 fundamental to the health and welfare of individual  
4 citizens, and our government has a duty to provide and  
5 maintain a healthful environment for our citizens.

6 (2) The state has the primary responsibility for  
7 protecting the environment; other governmental entities,  
8 public and private organizations and our citizens have the  
9 primary responsibility of supporting the state in its role as  
10 protector of the environment.

11 (3) Governmental decisions on matters which relate to  
12 the use, enhancement, preservation, protection and  
13 conservation of the environment should be made after  
14 public participation and public hearings.

15       (4) Efficiency in the wise use, enhancement,  
16 preservation, protection and conservation of the  
17 environment can best be accomplished by an integrated  
18 and interdisciplinary approach in decision making and  
19 would benefit from the coordination, consolidation and  
20 integration of state programs and agencies which are  
21 significantly concerned with the use, enhancement,  
22 preservation, protection and conservation of the  
23 environment.

24       (5) Those functions of government which regulate the  
25 environment should be consolidated in order to  
26 accomplish the purposes set forth in this article, to carry  
27 out the environmental functions of government in the  
28 most efficient and cost effective manner, to protect human  
29 health and safety and, to the greatest degree practicable, to  
30 prevent injury to plant, animal and aquatic life, improve  
31 and maintain the quality of life of our citizens, and  
32 promote economic development consistent with  
33 environmental goals and standards.

34       (b) The Legislature declares that the establishment of  
35 a division of environmental protection is in the public  
36 interest and will promote the general welfare of the state of  
37 West Virginia without sacrificing social and economic  
38 development. It is the policy of the state of West Virginia,  
39 in cooperation with other governmental agencies, public  
40 and private organizations, and the citizens of this state, to  
41 use all practicable means and measures to prevent or  
42 eliminate harm to the environment and biosphere, to  
43 create and maintain conditions under which man and  
44 nature can exist in productive harmony, and fulfill the  
45 social, economic and other requirements of present and  
46 future generations. The purposes of this chapter are:

47       (1) To strengthen the commitment of this state to  
48 restore, maintain and protect the environment;

49       (2) To consolidate environmental regulatory  
50 programs in a single state agency;

51       (3) To provide a comprehensive program for the  
52 conservation, protection, exploration, development,

53 enjoyment and use of the natural resources of the state of  
54 West Virginia;

55 (4) To supplement and complement the efforts of the  
56 state by coordinating state programs with the efforts of  
57 other governmental entities, public and private  
58 organizations and the general public; to improve the  
59 quality of the environment, the public health and public  
60 enjoyment of the environment, and the propagation and  
61 protection of animal, aquatic and plant life, in a manner  
62 consistent with the benefits to be derived from strong  
63 agricultural, manufacturing, tourism and energy-  
64 producing industries;

65 (5) Insofar as federal environmental programs require  
66 state participation, to endeavor to obtain and continue state  
67 primacy in the administration of such federally-mandated  
68 environmental programs, and to endeavor to maximize  
69 federal funds which may be available to accomplish the  
70 purposes of the state and federal environmental programs  
71 and to cooperate with appropriate federal agencies to meet  
72 environmental goals;

73 (6) To encourage the increased involvement of all  
74 citizens in the development and execution of state  
75 environmental programs;

76 (7) To promote improvements in the quality of the  
77 environment through research, evaluation and sharing of  
78 information;

79 (8) To improve the management and effectiveness of  
80 state environmental protection programs;

81 (9) To increase the accountability of state  
82 environmental protection programs to the governor, the  
83 Legislature and the public generally; and

84 (10) To promote pollution prevention by encouraging  
85 reduction or elimination of pollutants at the source  
86 through process modification, material substitutions, in-  
87 process recycling, reduction of raw material use or other  
88 source reduction opportunities.

**\*§22-1-6. Director of the division of environmental protection.**

1           (a) The director is the chief executive officer of the  
2 division. Subject to section seven of this article and other  
3 provisions of law, the director shall organize the division  
4 into such offices, sections, agencies and other units of  
5 activity as may be found by the director to be desirable  
6 for the orderly, efficient and economical administration of  
7 the division and for the accomplishment of its objects and  
8 purposes. The director may appoint assistants, hearing  
9 officers, clerks, stenographers and other officers, technical  
10 personnel and employees needed for the operation of the  
11 division and may prescribe their powers and duties and fix  
12 their compensation within amounts appropriated  
13 therefore.

14           (b) The director has the power to and may designate  
15 supervisory officers or other officers or employees of the  
16 division to substitute for him or her on any board or  
17 commission established under this code or to sit in his or  
18 her place in any hearings, appeals, meetings or other  
19 activities with such substitute having the same powers,  
20 duties, authority and responsibility as the director.  
21 Additionally, the director has the power to delegate, as he  
22 or she considers appropriate, to supervisory officers or  
23 other officers or employees of the division his or her  
24 powers, duties, authority and responsibility relating to  
25 issuing permits, hiring and training inspectors and other  
26 employees of the division, conducting hearings and  
27 appeals and such other duties and functions set forth in  
28 this chapter or elsewhere in this code.

29           (c) The director has responsibility for the conduct of  
30 the intergovernmental relations of the division, including  
31 assuring: (1) That the division carries out its functions in a  
32 manner which supplements and complements the  
33 environmental policies, programs and procedures of the  
34 federal government, other state governments and other  
35 instrumentalities of this state; and (2) that appropriate  
36 officers and employees of the division consult with

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**\*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.

37 individuals responsible for making policy relating to  
38 environmental issues in the federal government, other state  
39 governments and other instrumentalities of this state  
40 concerning differences over environmental policies,  
41 programs and procedures and concerning the impact of  
42 statutory law and rules upon the environment of this state.

43 (d) The director has the authority to designate  
44 employees in established programs within the division of  
45 environmental protection to engage in bona fide pollution  
46 prevention and compliance assistance activities as  
47 designated by the director within the state. Disclosure to  
48 the enforcement or other division personnel is not  
49 required unless an imminent hazard to human health or  
50 the environment exists. Pollution prevention and  
51 compliance assistance may not interfere with current or  
52 future enforcement actions by state or federal regulatory  
53 agencies even if such assistance may result in compliance  
54 although the director may modify agency enforcement  
55 actions in light of a facility's implementation of pollution  
56 prevention and waste minimization practices. The director  
57 shall propose for legislative promulgation, legislative rules  
58 pursuant to article three, chapter twenty-nine-a of this  
59 code to implement the provisions of this subsection.

60 (e) In addition to other powers, duties and  
61 responsibilities granted and assigned to the director by this  
62 chapter, the director is hereby authorized and empowered  
63 to:

64 (1) Sign and execute in the name of the state by the  
65 "division of environmental protection" any contract or  
66 agreement with the federal government or its departments  
67 or agencies, subdivisions of the state, corporations,  
68 associations, partnerships or individuals: *Provided*, That  
69 the powers granted to the director to enter into agreements  
70 or contracts and to make expenditures and obligations of  
71 public funds under this subdivision shall not exceed or be  
72 interpreted as authority to exceed the powers heretofore  
73 granted by the Legislature to the various commissioners,  
74 directors or board members of the various departments,  
75 agencies or boards that comprise and are incorporated  
76 into each secretary's department pursuant to the  
77 provisions of chapter five-f of this code;

78 (2) Conduct research in improved environmental  
79 protection methods and disseminate information to the  
80 citizens of this state;

81 (3) Enter private lands to make surveys and  
82 inspections for environmental protection purposes; to  
83 investigate for violations of statutes or rules which the  
84 division is charged with enforcing; to serve and execute  
85 warrants and processes; to make arrests; issue orders,  
86 which for the purposes of this chapter include consent  
87 agreements; and to otherwise enforce the statutes or rules  
88 which the division is charged with enforcing;

89 (4) Acquire for the state in the name of the "division  
90 of environmental protection" by purchase, condemnation,  
91 lease or agreement, or accept or reject for the state, in the  
92 name of the division of environmental protection, gifts,  
93 donations, contributions, bequests or devises of money,  
94 security or property, both real and personal, and any  
95 interest in such property;

96 (5) Provide for workshops, training programs and  
97 other educational programs, apart from or in cooperation  
98 with other governmental agencies, necessary to insure  
99 adequate standards of public service in the division. The  
100 director may also provide for technical training and  
101 specialized instruction of any employee. Approved  
102 educational programs, training and instruction time may  
103 be compensated for as a part of regular employment. The  
104 director is further authorized to pay out of federal or state  
105 funds, or both, as such funds are available, fees and  
106 expenses incidental to such educational programs,  
107 training, and instruction. Eligibility for participation by  
108 employees will be in accordance with guidelines  
109 established by the director;

110 (6) Issue certifications required under 33 U.S.C.  
111 §1341. Prior to issuing any such certification the director  
112 shall solicit from the division of natural resources reports  
113 and comments concerning the possible certification. The  
114 reports and comments shall be directed from the division  
115 of natural resources to the director for consideration; and

116 (7) Notwithstanding any provisions of this code to the  
117 contrary, employ in-house counsel to perform all legal  
118 services for the director and the division, including, but  
119 not limited to, representing the director, any chief, the

120 division or any office thereof in any administrative  
121 proceeding or in any proceeding in any state or federal  
122 court. Additionally, the director may call upon the  
123 attorney general for legal assistance and representation as  
124 provided by law.

125 (f) The director shall be appointed by the governor,  
126 by and with the advice and consent of the Senate, and  
127 serves at the will and pleasure of the governor.

128 (g) At the time of his or her initial appointment, the  
129 director shall be at least thirty years old and shall be  
130 selected with special reference and consideration given to  
131 his or her administrative experience and ability, to his or  
132 her demonstrated interest in the effective and responsible  
133 regulation of the energy industry and the conservation  
134 and wise use of natural resources. The director shall have  
135 at least a bachelor's degree in a related field and shall  
136 have at least three years of experience in a position of  
137 responsible charge in at least one discipline relating to the  
138 duties and responsibilities for which the director will be  
139 responsible upon assumption of the office of director.  
140 The director shall not be a candidate for or hold any other  
141 public office, shall not be a member of any political party  
142 committee and shall immediately forfeit and vacate his or  
143 her office as director in the event he or she becomes a  
144 candidate for or accepts appointment to any other public  
145 office or political party committee.

146 (h) The director shall receive an annual salary of  
147 sixty-five thousand dollars and shall be allowed and paid  
148 necessary expenses incident to the performance of his or  
149 her official duties. Prior to the assumption of the duties of  
150 his or her office, the director shall take and subscribe to  
151 the oath required of public officers prescribed by section  
152 five, article IV of the constitution of West Virginia and  
153 shall execute a bond, with surety approved by the  
154 governor, in the penal sum of ten thousand dollars, which  
155 executed oath and bond shall be filed in the office of the  
156 secretary of state. Premiums on the bond shall be paid  
157 from the division funds.

## CHAPTER 143

(H. B. 2735—By Delegates Amores, Rowe and Buchanan)

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

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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.

1       (a) The director is the chief executive officer of the  
2 division. Subject to section seven of this article and other  
3 provisions of law, the director shall organize the division  
4 into such offices, sections, agencies and other units of  
5 activity as may be found by the director to be desirable  
6 for the orderly, efficient and economical administration of  
7 the division and for the accomplishment of its objects and  
8 purposes. The director may appoint assistants, hearing  
9 officers, clerks, stenographers and other officers, technical  
10 personnel and employees needed for the operation of the  
11 division and may prescribe their powers and duties and fix  
12 their compensation within amounts appropriated therefor.

13       (b) The director has the power to and may designate  
14 supervisory officers or other officers or employees of the

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\*Clerk's Note: This section was also amended by HB 4693 (Chapter 142), and SB 145 (Chapter 144), which passed subsequent to this act.

15 division to substitute for him or her on any board or  
16 commission established under this code or to sit in his or  
17 her place in any hearings, appeals, meetings or other  
18 activities with such substitute having the same powers,  
19 duties, authority and responsibility as the director.  
20 Additionally, the director has the power to delegate, as he  
21 or she considers appropriate, to supervisory officers or  
22 other officers or employees of the division his or her  
23 powers, duties, authority and responsibility relating to  
24 issuing permits, hiring and training inspectors and other  
25 employees of the division, conducting hearings and  
26 appeals and such other duties and functions set forth in  
27 this chapter or elsewhere in this code.

28 (c) The director has responsibility for the conduct of  
29 the intergovernmental relations of the division, including  
30 assuring: (1) That the division carries out its functions in  
31 a manner which supplements and complements the  
32 environmental policies, programs and procedures of the  
33 federal government, other state governments and other  
34 instrumentalities of this state; and (2) that appropriate  
35 officers and employees of the division consult with  
36 individuals responsible for making policy relating to  
37 environmental issues in the federal government, other state  
38 governments and other instrumentalities of this state  
39 concerning differences over environmental policies,  
40 programs and procedures and concerning the impact of  
41 statutory law and rules upon the environment of this state.

42 (d) In addition to other powers, duties and  
43 responsibilities granted and assigned to the director by this  
44 chapter, the director is hereby authorized and empowered  
45 to:

46 (1) Sign and execute in the name of the state by the  
47 "division of environmental protection" any contract or  
48 agreement with the federal government or its departments  
49 or agencies, subdivisions of the state, corporations,  
50 associations, partnerships or individuals: *Provided*, That  
51 the powers granted to the director to enter into agreements  
52 or contracts and to make expenditures and obligations of  
53 public funds under this subdivision shall not exceed or be  
54 interpreted as authority to exceed the powers heretofore

55 granted by the Legislature to the various commissioners,  
56 directors or board members of the various departments,  
57 agencies or boards that comprise and are incorporated  
58 into each secretary's department pursuant to the provisions  
59 of chapter five-f of this code;

60 (2) Conduct research in improved environmental  
61 protection methods and disseminate information to the  
62 citizens of this state;

63 (3) Enter private lands to make surveys and  
64 inspections for environmental protection purposes; to  
65 investigate for violations of statutes or rules which the  
66 division is charged with enforcing; to serve and execute  
67 warrants and processes; to make arrests; issue orders,  
68 which for the purposes of this chapter include consent  
69 agreements; and to otherwise enforce the statutes or rules  
70 which the division is charged with enforcing;

71 (4) Acquire for the state in the name of the "division  
72 of environmental protection" by purchase, condemnation,  
73 lease or agreement, or accept or reject for the state, in the  
74 name of the division of environmental protection, gifts,  
75 donations, contributions, bequests or devises of money,  
76 security or property, both real and personal, and any  
77 interest in such property;

78 (5) Provide for workshops, training programs and  
79 other educational programs, apart from or in cooperation  
80 with other governmental agencies, necessary to insure  
81 adequate standards of public service in the division. The  
82 director may also provide for technical training and  
83 specialized instruction of any employee. Approved  
84 educational programs, training and instruction time may  
85 be compensated for as a part of regular employment. The  
86 director is further authorized to pay out of federal or state  
87 funds, or both, as such funds are available, fees and  
88 expenses incidental to such educational programs,  
89 training, and instruction. Eligibility for participation by  
90 employees will be in accordance with guidelines  
91 established by the director;

92 (6) Issue certifications required under 33 U.S.C.  
93 §1341. Prior to issuing any such certification the director

94 shall solicit from the division of natural resources reports  
95 and comments concerning the possible certification. The  
96 reports and comments shall be directed from the division  
97 of natural resources to the director for consideration; and

98 (7) Notwithstanding any provisions of this code to the  
99 contrary, employ in-house counsel to perform all legal  
100 services for the director and the division, including, but  
101 not limited to, representing the director, any chief, the  
102 division or any office thereof in any administrative  
103 proceeding or in any proceeding in any state or federal  
104 court, said counsel to be classified-exempt. Additionally,  
105 the director may call upon the attorney general for legal  
106 assistance and representation as provided by law.

107 (e) The director shall be appointed by the governor,  
108 by and with the advice and consent of the Senate, and  
109 serves at the will and pleasure of the governor: *Provided,*  
110 That in lieu of appointing a director, the governor may  
111 order the secretary to directly exercise the powers of the  
112 director. The secretary shall designate the order in which  
113 other officials of the division shall act for and perform the  
114 functions of the secretary or the director during the  
115 absence or disability of both the secretary and the director  
116 or in the event of vacancies in both of those offices.

117 (f) At the time of his or her initial appointment, the  
118 director shall be at least thirty years old and shall be  
119 selected with special reference and consideration given to  
120 his or her administrative experience and ability, to his or  
121 her demonstrated interest in the effective and responsible  
122 regulation of the energy industry and the conservation  
123 and wise use of natural resources. The director shall have  
124 at least a bachelor's degree in a related field and shall have  
125 at least three years of experience in a position of  
126 responsible charge in at least one discipline relating to the  
127 duties and responsibilities for which the director will be  
128 responsible upon assumption of the office of director.  
129 The director shall not be a candidate for or hold any other  
130 public office, shall not be a member of any political party  
131 committee and shall immediately forfeit and vacate his or  
132 her office as director in the event he or she becomes a  
133 candidate for or accepts appointment to any other public  
134 office or political party committee.

135 (g) The director shall receive an annual salary of  
136 sixty-five thousand dollars and shall be allowed and paid  
137 necessary expenses incident to the performance of his or  
138 her official duties. Prior to the assumption of the duties of  
139 his or her office, the director shall take and subscribe to  
140 the oath required of public officers prescribed by section  
141 five, article IV of the constitution of West Virginia and  
142 shall execute a bond, with surety approved by the  
143 governor, in the penal sum of ten thousand dollars, which  
144 executed oath and bond shall be filed in the office of the  
145 secretary of state. Premiums on the bond shall be paid  
146 from the division funds.

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## CHAPTER 144

(Com. Sub. for S. B. 145—By Senators Anderson, Dittmar, Ross, Sharpe,  
White, Bowman, Walker, Helmick, Schoonover,  
McKenzie and Dugan)

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

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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 I. DIVISION OF ENVIRONMENTAL PROTECTION.**

**\*§22-1-6. Director of the division of environmental protection.**

1 (a) The director is the chief executive officer of the  
2 division. Subject to section seven of this article and other  
3 provisions of law, the director shall organize the division  
4 into such offices, sections, agencies and other units of  
5 activity as may be found by the director to be desirable  
6 for the orderly, efficient and economical administration of  
7 the division and for the accomplishment of its objects and  
8 purposes. The director may appoint assistants, hearing  
9 officers, clerks, stenographers and other officers, technical  
10 personnel and employees needed for the operation of the  
11 division and may prescribe their powers and duties and fix  
12 their compensation within amounts appropriated therefor.

13 (b) The director has the power to and may designate  
14 supervisory officers or other officers or employees of the  
15 division to substitute for him or her on any board or  
16 commission established under this code or to sit in his or  
17 her place in any hearings, appeals, meetings or other  
18 activities with such substitute having the same powers,  
19 duties, authority and responsibility as the director.  
20 Additionally, the director has the power to delegate, as he  
21 or she considers appropriate, to supervisory officers or

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\*Clerk's Note: This section was also amended by HB 2735 (Chapter 143) and HB 4693 (Chapter 142), which passed prior to this act.

22 other officers or employees of the division his or her  
23 powers, duties, authority and responsibility relating to  
24 issuing permits, hiring and training inspectors and other  
25 employees of the division, conducting hearings and  
26 appeals and such other duties and functions set forth in  
27 this chapter or elsewhere in this code.

28 (c) The director has responsibility for the conduct of  
29 the intergovernmental relations of the division, including  
30 assuring:

31 (1) That the division carries out its functions in a  
32 manner which supplements and complements the  
33 environmental policies, programs and procedures of the  
34 federal government, other state governments and other  
35 instrumentalities of this state; and (2) that appropriate  
36 officers and employees of the division consult with  
37 individuals responsible for making policy relating to  
38 environmental issues in the federal government, other state  
39 governments and other instrumentalities of this state  
40 concerning differences over environmental policies,  
41 programs and procedures and concerning the impact of  
42 statutory law and rules upon the environment of this state.

43 (d) In addition to other powers, duties and  
44 responsibilities granted and assigned to the director by this  
45 chapter, the director is hereby authorized and empowered  
46 to:

47 (1) Sign and execute in the name of the state by the  
48 "division of environmental protection" any contract or  
49 agreement with the federal government or its departments  
50 or agencies, subdivisions of the state, corporations,  
51 associations, partnerships or individuals: *Provided*, That  
52 the powers granted to the director to enter into agreements  
53 or contracts and to make expenditures and obligations of  
54 public funds under this subdivision may not exceed or be  
55 interpreted as authority to exceed the powers heretofore  
56 granted by the Legislature to the various commissioners,  
57 directors or board members of the various departments,  
58 agencies or boards that comprise and are incorporated  
59 into each secretary's department pursuant to the provisions  
60 of chapter five-f of this code;

61 (2) Conduct research in improved environmental  
62 protection methods and disseminate information to the  
63 citizens of this state;

64 (3) Enter private lands to make surveys and inspections  
65 for environmental protection purposes; to investigate for  
66 violations of statutes or rules which the division is charged  
67 with enforcing; to serve and execute warrants and  
68 processes; to make arrests; issue orders, which for the  
69 purposes of this chapter include consent agreements; and  
70 to otherwise enforce the statutes or rules which the division  
71 is charged with enforcing;

72 (4) Acquire for the state in the name of the "division of  
73 environmental protection" by purchase, condemnation,  
74 lease or agreement, or accept or reject for the state, in the  
75 name of the division of environmental protection, gifts,  
76 donations, contributions, bequests or devises of money,  
77 security or property, both real and personal, and any  
78 interest in such property;

79 (5) Provide for workshops, training programs and  
80 other educational programs, apart from or in cooperation  
81 with other governmental agencies, necessary to ensure  
82 adequate standards of public service in the division. The  
83 director may also provide for technical training and  
84 specialized instruction of any employee. Approved  
85 educational programs, training and instruction time may  
86 be compensated for as a part of regular employment. The  
87 director is further authorized to pay out of federal or state  
88 funds, or both, as such funds are available, fees and  
89 expenses incidental to such educational programs, training  
90 and instruction. Eligibility for participation by employees  
91 will be in accordance with guidelines established by the  
92 director;

93 (6) Issue certifications required under 33 U.S.C.  
94 §1341 of the federal Clean Water Act and may enter into  
95 agreements in accordance with the provisions of section  
96 seven-a, article eleven of this chapter. Prior to issuing any  
97 certification the director shall solicit from the division of  
98 natural resources reports and comments concerning the  
99 possible certification. The reports and comments shall be  
100 directed from the division of natural resources to the  
101 director for consideration; and

102 (7) Notwithstanding any provisions of this code to the  
103 contrary, employ in-house counsel to perform all legal  
104 services for the director and the division, including, but  
105 not limited to, representing the director, any chief, the  
106 division or any office thereof in any administrative  
107 proceeding or in any proceeding in any state or federal  
108 court. Additionally, the director may call upon the  
109 attorney general for legal assistance and representation as  
110 provided by law.

111 (e) The director shall be appointed by the governor, by  
112 and with the advice and consent of the Senate, and serves  
113 at the will and pleasure of the governor: *Provided*, That in  
114 lieu of appointing a director, the governor may order the  
115 secretary to directly exercise the powers of the director.  
116 The secretary shall designate the order in which other  
117 officials of the division shall act for and perform the  
118 functions of the secretary or the director during the  
119 absence or disability of both the secretary and the director  
120 or in the event of vacancies in both of those offices.

121 (f) At the time of his or her initial appointment, the  
122 director shall be at least thirty years old and shall be  
123 selected with special reference and consideration given to  
124 his or her administrative experience and ability, to his or  
125 her demonstrated interest in the effective and responsible  
126 regulation of the energy industry and the conservation  
127 and wise use of natural resources. The director shall have  
128 at least a bachelor's degree in a related field and shall have  
129 at least three years of experience in a position of  
130 responsible charge in at least one discipline relating to the  
131 duties and responsibilities for which the director will be  
132 responsible upon assumption of the office of director.  
133 The director may not be a candidate for or hold any other  
134 public office, may not be a member of any political party  
135 committee and shall immediately forfeit and vacate his or  
136 her office as director in the event he or she becomes a  
137 candidate for or accepts appointment to any other public  
138 office or political party committee.

139 (g) The director shall receive an annual salary of sixty-  
140 five thousand dollars and shall be allowed and paid  
141 necessary expenses incident to the performance of his or  
142 her official duties. Prior to the assumption of the duties of  
143 his or her office, the director shall take and subscribe to

144 the oath required of public officers prescribed by section  
145 five, article IV of the constitution of West Virginia and  
146 shall execute a bond, with surety approved by the  
147 governor, in the penal sum of ten thousand dollars, which  
148 executed oath and bond shall be filed in the office of the  
149 secretary of state. Premiums on the bond shall be paid  
150 from the division funds.

#### ARTICLE 11. WATER POLLUTION CONTROL ACT.

##### §22-11-7a. Certification agreements; required provisions; effective date.

1 If the applicant for the water quality certification seeks  
2 certification of activities covered by the United States  
3 army corps of engineers nationwide permit number  
4 twenty-one or twenty-six issued in accordance with 33  
5 U.S.C. §1344 and 33 C.F.R. Part 330 for use at or in  
6 conjunction with a surface coal mining operation as  
7 defined in section three, article three of this chapter, then  
8 certification may be issued subject to the following  
9 conditions:

10 (1) If the applicant's surface coal mining operation  
11 will not impact waters of the state designated as national  
12 resource waters and streams where trout naturally  
13 reproduce and will not impact waters of the state which are  
14 wetlands of one acre or more in size, and if the watershed  
15 above the toe of the farthest downstream permanent  
16 structure authorized pursuant to an United States army  
17 corps of engineers nationwide permit number twenty-one  
18 or twenty-six is less than four hundred eighty acres, then  
19 the director may issue a water quality certification  
20 containing certain conditions including, but not limited to,  
21 the following:

22 (A) All earthwork operations shall be carried out so  
23 that sediment runoff and soil erosion to waters of the state  
24 are controlled and minimized. Best management practices  
25 for water pollution control shall be used by the surface  
26 coal mining operations;

27 (B) Heavy equipment, such as bulldozers, backhoes  
28 and draglines, may not be used or operated within waters  
29 of the state outside of the boundaries of a permanent  
30 structure, unless that use cannot be avoided. If use of

31 heavy equipment within waters of the state outside the  
32 boundaries of a permanent structure is unavoidable, then  
33 the work shall be performed so as to minimize  
34 resuspension of sediments and disturbance to substrates,  
35 banks or riparian vegetation;

36 (C) Any riprap shall be of a composition that does not  
37 cause a diminution of existing water quality by adversely  
38 affecting the biological, chemical or physical properties of  
39 waters of the state. If riprap is used, it shall be of a weight  
40 and size using current and prudent engineering design;  
41 and

42 (D) Removal of riparian vegetation outside the  
43 boundaries of a permanent structure shall be minimized.

44 (2) If the applicant's surface coal mining operation  
45 will not impact waters of the state designated as national  
46 resource waters and streams where trout naturally  
47 reproduce and will not impact waters of the state which are  
48 wetlands of one acre or more in size, and if the watershed  
49 above the toe of the farthest downstream permanent  
50 structure authorized pursuant to an United States army  
51 corps of engineers nationwide permit number twenty-one  
52 or twenty-six is less than four hundred eighty acres, then  
53 the director may issue a water quality certification. The  
54 director shall require that all earthwork operations shall be  
55 carried out so that sediment runoff and soil erosion to  
56 waters of the state are controlled and minimized, and that  
57 best management practices for water pollution control  
58 shall be used by the surface coal mining operations.

59 (3) If the watershed above the toe of the farthest  
60 downstream permanent structure authorized pursuant to  
61 the United States army corps of engineers nationwide  
62 permit number twenty-one or twenty-six is greater than or  
63 equal to four hundred eighty acres, then the director may  
64 further condition a water quality certification on a  
65 requirement that the applicant mitigate the expected water  
66 quality impacts under the following conditions:

67 (A) The water quality certification may require  
68 mitigation at a ratio two acres for every one acre of  
69 permanent loss of waters of the state on the permitted area,  
70 except for waters of the state isolated as a result of the  
71 permanent structure;

72 (B) For waters of the state isolated as a result of a  
73 permanent structure, the maximum mitigation ratio shall  
74 be five-tenths acre of mitigation area for every one acre of  
75 those isolated waters;

76 (C) The director may accept mitigation on the  
77 permitted area, mitigation off the permitted area,  
78 mitigation banking of waters of the state, or any  
79 combination thereof, or any other mitigation measure  
80 acceptable to the director;

81 (D) Upon completion of the work required by an  
82 agreement to conduct operations authorized by this  
83 subsection, the surface coal mining operation shall obtain  
84 a certification from a registered professional engineer that  
85 all mitigation work specified in the agreement has been  
86 completed in accordance with the conditions of the water  
87 quality certification. The director shall promptly review  
88 the certification and provide to the surface coal mining  
89 operation with notice that all mitigation work has been  
90 successfully completed, or that further mitigation work is  
91 necessary to meet the conditions imposed by the water  
92 quality certification. The mitigation amount may not  
93 exceed two hundred twenty-five thousand dollars per acre  
94 of stream disturbed. Those moneys shall be deposited in  
95 the stream restoration fund under the jurisdiction of the  
96 division of environmental protection and any expenditures  
97 from this fund after the thirtieth day of June, one  
98 thousand nine hundred ninety-eight, shall not be  
99 authorized from collections but shall only be authorized  
100 by appropriation by the Legislature.

101 (4) The director may issue a general certification if the  
102 certification consistent with state and federal laws, rules  
103 and regulations, for use of United States army corps of  
104 engineers nationwide permit number twenty-one or  
105 twenty-six for a road crossing on the permitted area  
106 directly impacting less than two hundred linear feet of  
107 waters of the state.

108 (5) The director shall confer with representatives of  
109 the surface coal mining industry and representatives of  
110 environmental organizations with an interest in water  
111 quality in developing a manual of approval options for  
112 mitigation on permitted areas, mitigation off permitted  
113 areas and mitigation involving banking of waters of the  
114 state.

115       (6) The director has twenty working days to make a  
116 determination that an application for a water quality  
117 certification is administratively complete or to give written  
118 notification to the applicant of specific deficiencies. The  
119 director has sixty working days to review an  
120 administratively complete application for a water quality  
121 certification, to issue or waive that certification, or to deny  
122 that certification with specific deficiencies identified, and  
123 to notify the applicant of the final determination:  
124 *Provided*, That public comment and public participation  
125 shall be in accordance with the certification requirements  
126 set forth in article three, chapter twenty-two of this code.

127       (7) The performance evaluation and research division  
128 of the legislative auditor's office shall conduct a  
129 preliminary performance review of the mitigation  
130 program of the division of environmental protection  
131 during the interim of the Legislature in the year one  
132 thousand nine hundred ninety-eight. The joint committee  
133 on government and finance shall authorize a study of the  
134 methods to determine values for stream mitigation. The  
135 joint committee in authorizing the study shall set the  
136 guidelines and issues to be studied. A biannual status  
137 report as to the progress of study shall be provided to the  
138 joint committee on government and finance on or before  
139 the tenth day of July of each year and the tenth day of  
140 January of each year until the study has been completed.  
141 Within thirty days of completion, a copy of the study shall  
142 be provided to the joint committee on government and  
143 finance. The director shall by the thirty-first day of  
144 December of each year provide a report to the joint  
145 committee on government and finance on receipts and  
146 expenditures from the stream restoration fund, the number  
147 of acreage reclaimed by the division through the use of  
148 these funds and the effectiveness of achieving stream  
149 restoration through the payment of the mitigation  
150 amounts into the fund in lieu of reclamation by the  
151 certificate holder.

152       (8) The proposed surface coal mining operation shall  
153 comply with all state and federal laws, rules and  
154 regulations. The director shall review each mitigation  
155 agreement signed on or after the ninth day of March, one  
156 thousand nine hundred ninety-six, to ensure compliance  
157 with all the provisions of this section.

## CHAPTER 145

(Com. Sub. for H. B. 4578—By Delegates Ashley, Martin, Seacrist and Staton)

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

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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.

1 (a) Within one hundred eighty days after the effective  
2 date of this section, the director shall propose legislative  
3 rules for promulgation in accordance with article three,  
4 chapter twenty-nine-a of this code, to the full extent  
5 allowed by federal and state law, one or more rules  
6 establishing a voluntary emissions trading and banking  
7 program that provides incentives to make progress toward  
8 the attainment or maintenance of the national ambient air  
9 quality standards, the reduction or prevention of  
10 hazardous air contaminants or the protection of human  
11 health and welfare and the environment from air  
12 pollution.

13 (b) Any person reducing air emission from a source to  
14 a greater extent than otherwise required by state or federal  
15 law is entitled to an emissions credit in the amount of the

16 excess emission reduction. The director shall establish a  
17 system by legislative rule for quantifying, verifying and  
18 registering all emissions reduction credits, which are  
19 eligible for banking and trading if achieved after the first  
20 day of January, one thousand nine hundred ninety-one, to  
21 the extent permitted by federal law. Credits also shall be  
22 available for permanent shutdowns: *Provided*, That the  
23 credits may be transferred by the depositor to the state  
24 office of economic development or to a public interest  
25 group of the depositor's designation. Except for  
26 voluntary reductions of nitrogen oxides, ten percent of  
27 any emission credits registered with the director shall be  
28 credited to an account for the benefit of the state and  
29 retired from future use, if not used within ten years. All  
30 other emissions reduction credits registered shall remain in  
31 effect until used and debited or retired, if not used within  
32 ten years. The director may charge a reasonable  
33 transaction fee at the time any credits are registered and  
34 shall deposit the fees in the air pollution control fund.

35 (c) Emission credits registered by a person in  
36 accordance with subsection (b) of this section may be used  
37 by the person to satisfy emission reduction requirements  
38 that would otherwise be required under state or federal law  
39 or the credits may be used for the same purpose at another  
40 source, by the person who registered the credit or by  
41 another person to whom the credit was transferred. Same  
42 source use of banked emission credits requires prior  
43 notification to the West Virginia office of air quality. The  
44 rules may not prohibit the transfer of credits among  
45 persons, but shall establish procedures by which transfers  
46 are identified, tracked and accounted for in the program.  
47 The division may establish the emissions trading program  
48 as a state, multistate or regional program as long as the  
49 program contributes to the goal of improving the air  
50 quality in West Virginia and in the air quality region  
51 where the source is located.

52 (d) The director may propose legislative rules for  
53 promulgation in accordance with article three, chapter  
54 twenty-nine-a of this code, establishing classes of volatile  
55 organic compounds, and shall allow banking and trading  
56 of different volatile organic compounds within the same

57 class. In lieu thereof, trading shall be allowed among all  
58 volatile organic compounds where not inconsistent with  
59 federal law and where similar degrees of hazard and  
60 qualitative impact are anticipated with respect to air  
61 quality. For any emissions banking and trading program  
62 used for the purpose of making progress toward attaining  
63 or maintaining the national ambient air quality standard  
64 for ozone, the director may allow reductions of volatile  
65 organic compounds to be substituted for required  
66 reductions of oxides of nitrogen, or reductions of oxides  
67 of nitrogen to be substituted for required reductions of  
68 volatile organic compounds, where appropriate, if not  
69 inconsistent with federal law.

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## CHAPTER 146

(Com. Sub. for H. B. 4228—By Mr. Speaker, Mr. Kiss, and Delegates Martin,  
Varner, Staton, Kuhn, Collins and Linch)

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

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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.

§22-23-2. Restrictions on state rules related to greenhouse gas emissions.

**§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  
3 thousand nine hundred ninety-two United Nations  
4 Framework Convention on Global Climate Change  
5 Treaty("FCCC");

6 (b) A protocol to expand the scope of the FCCC was  
7 negotiated in December, one thousand nine hundred  
8 ninety-seven in Kyoto, Japan ("Kyoto Protocol"),  
9 requiring the United States to reduce emissions of  
10 greenhouse gases such as carbon dioxide and methane by  
11 seven percent from one thousand nine hundred ninety  
12 emission levels during the years two thousand eight to two  
13 thousand twelve, with similar reduction obligations for  
14 other major industrial nations;

15 (c) Developing nations, including China, India,  
16 Mexico, Indonesia and Brazil, are exempt from  
17 greenhouse gas emission limitation requirements in the  
18 FCCC;

19 (d) Developing nations refused in the Kyoto  
20 negotiations to accept any new commitments for  
21 greenhouse gas emission limitations through the Kyoto  
22 Protocol or other agreements;

23 (e) With respect to new commitments under the FCCC,  
24 President William J. Clinton pledged on the twenty-second  
25 day of October, one thousand nine hundred ninety-seven,  
26 that "The United States will not assume binding  
27 obligations unless key developing nations meaningfully  
28 participate in this effort";

29 (f) On the twenty-fifth day of July, one thousand nine  
30 hundred ninety-seven, the United States Senate adopted  
31 Senate Resolution Number Ninety-eight by a vote of  
32 ninety-five to zero, expressing the sentiment of the Senate  
33 that "the United States should not be a signatory to any  
34 protocol to other agreement regarding, the Framework  
35 Convention on Climate Change... which would require the  
36 advice and consent of the Senate to ratification, and which  
37 would mandate new commitments to mitigate greenhouse  
38 gas emissions for the Developed Country Parties, unless  
39 the protocol or other agreement also mandates specific  
40 scheduled commitments within the same compliance  
41 period to mitigate greenhouse gas emissions for  
42 Developing Country Parties";

43 (g) The Kyoto Protocol fails to meet the tests  
44 established for acceptance of new climate change  
45 commitments by President Clinton and by United States  
46 Senate Resolution Number ninety-eight;

47 (h) Achieving the emission reductions proposed by  
48 the Kyoto Protocol would require more than a thirty-five  
49 percent reduction in projected United States carbon  
50 dioxide and other greenhouse gas emissions during the  
51 period between two thousand eight to two thousand twelve;

52 (i) Developing countries exempt from emission  
53 limitations under the Kyoto Protocol are expected to  
54 increase their rates of fossil fuel use over the next two  
55 decades, and to surpass the United States and other  
56 industrialized countries in total emissions of greenhouse  
57 gases;

58 (j) Increased emissions of greenhouse gases by  
59 developing countries would offset any potential  
60 environmental benefits associated with emissions  
61 reductions achieved by the United States and by other  
62 industrial nations;

63 (k) Economic impact studies by the United States  
64 government estimate that legally binding requirements for  
65 the reduction of United States greenhouse gases to one  
66 thousand nine hundred ninety, emission levels would  
67 result in the loss of more than nine hundred thousand jobs

68 in the United States, sharply increased energy prices,  
69 reduced family incomes and wages, and severe losses of  
70 output in energy-intensive industries important to the West  
71 Virginia economy such as aluminum, steel, rubber,  
72 chemicals and utilities;

73 (l) The failure to provide for commitments by  
74 developing countries in the Kyoto Protocol creates an  
75 unfair competitive imbalance between industrial and  
76 developing nations, potentially leading to the transfer of  
77 jobs and industrial development from the United States to  
78 developing countries;

79 (m) Federal implementation of the Kyoto Protocol, if  
80 ratified by the United States Senate, would entail new  
81 congressional legislation whose form and requirements  
82 cannot be predicted at this time, but could include national  
83 energy taxes or emission control allocation schemes that  
84 would preempt state-specific programs intended to reduce  
85 emissions of greenhouse gases;

86 (n) Piecemeal or other uncoordinated state regulatory  
87 initiatives intended to reduce emissions of greenhouse  
88 gases may be inconsistent with subsequent congressional  
89 determinations concerning the Kyoto Protocol, and with  
90 federal legislation implementing the Kyoto Protocol;

91 (o) Individual state responses to the Kyoto Protocol,  
92 including development of new regulatory programs  
93 intended to reduce greenhouse gas emissions, are  
94 premature prior to Senate ratification of that Protocol, in  
95 its current or amended form, and congressional enactment  
96 of related implementing legislation.

**§22-23-2. Restrictions on state rules related to greenhouse gas emissions.**

1 (a) The West Virginia division of environmental  
2 protection shall refrain from proposing or promulgating  
3 any new rule intended, in whole or in part, to reduce  
4 emissions of greenhouse gases from the residential,  
5 commercial, industrial, electric utility or transportation  
6 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  
18 gases, including, but not limited to, the federal  
19 environmental protection agency's "Green Lights"  
20 program, the federal department of energy's climate  
21 challenge program, and similar state and federal initiatives  
22 relying on voluntary participation.

23 (d) This article shall remain in effect until repealed by  
24 an act of the Legislature of the state of West Virginia, or  
25 until ratification of the Kyoto Protocol by the United  
26 States Senate and enactment of federal legislation  
27 implementing the Kyoto Protocol.

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## 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)

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

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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-four, relating to creating a revolving low-interest environmental loan program for small businesses; establishing eligibility, qualifications, requirements, conditions, terms and processing procedures; providing

program funding; and setting forth legislative findings and intent.

*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.

§22-24-2. Definitions.

§22-24-3. Loan application requirements.

§22-24-4. Loan conditions.

§22-24-5. Small business environmental revolving loan account.

§22-24-6. Loan processing.

**§22-24-1. Legislative findings, intent and purpose.**

1       The Legislature hereby finds and declares that, in this  
 2       state the protection and improvement of the environment,  
 3       and the sustainability of small businesses, would be  
 4       collectively enhanced by the establishment of a revolving  
 5       low-interest small business environmental loan program, to  
 6       provide partial relief from the burden small businesses  
 7       face from compliance with existing and new state and  
 8       federal environmental protection rules and regulations.  
 9       The Legislature intends, in providing such a loan program  
 10      for small businesses, that the program will further enable  
 11      small businesses to aggressively comply with or exceed  
 12      environmental obligations and requirements and thereby  
 13      continue as a positive economic force in the state of West  
 14      Virginia.

**§22-24-2. Definitions.**

1       As used in this article, the following words have the  
 2       meanings ascribed to them.

3       (a) "Authority" means the West Virginia economic  
 4       development authority established in article fifteen,  
 5       chapter thirty-one of this code.

6       (b) "Director" means the director of the West Virginia  
 7       division of environmental protection.

8 (c) "Division" means the West Virginia division of  
9 environmental protection as established in article one of  
10 this chapter.

11 (d) "Eligible borrower" means a small business as  
12 defined in subsection (g) of this section that:

13 Is required or needs to conduct a qualifying  
14 environmental project as defined in subsection (f) of this  
15 section.

16 An eligible borrower also means a small business that  
17 desires to refinance the remaining balance of a debt that  
18 was incurred between the first day of January, one  
19 thousand nine hundred ninety-two, and the effective date  
20 of this article, and that meets, or would have met, at the  
21 time of the original loan application, the requirements of  
22 this subsection. The refinancing option is not available  
23 for applications received by the authority more than two  
24 years after the effective date of this article. Funds  
25 available for refinanced loans may not, at any time, exceed  
26 forty percent of the total funds available plus the  
27 outstanding balance of funded loans.

28 (e) "Environmental project" means:

29 (1) Any environmental equipment purchases and  
30 installations thereof;

31 (2) Any associated transportation, technical or  
32 consulting services for installation or modification of  
33 environmental equipment;

34 (3) Any equipment, purchase and installation  
35 necessary to effect a process change that in the director's  
36 judgment yields significant environmental benefits; or

37 (4) Any combination of subdivision (1), (2) or (3) of  
38 this subsection.

39 (f) "Qualifying environmental project" means an  
40 environmental project as described in subsection (e) of  
41 this section that is to be undertaken at a location in West  
42 Virginia and used for the purpose of:

43 (1) Effecting pollution elimination, minimization,  
44 prevention, recycling or abatement measures;

45 (2) Improving conditions or operations  
46 environmentally or substantially improving compliance  
47 with local, city, state, interstate or federal rules, regulations  
48 or laws pertaining to the environment and human health;  
49 or

50 (3) Purchasing equipment to establish environmental  
51 information, computing, consulting or laboratory services.

52 (g) "Small business" means a business that:

53 (1) Is properly registered with the appropriate  
54 agencies to do business in this state;

55 (2) Is actively conducting business in this state;

56 (3) Is current with all workers' compensation and  
57 unemployment premiums and state taxes; and

58 (4) Employs less than fifty full-time employees as  
59 defined in subsection (h) of this section within the entire  
60 company, business or corporation inside and outside this  
61 state.

62 (h) "Total number of full-time employees" means all  
63 full-time employees, plus all part-time employees counted  
64 as full-time employee equivalents, plus all full and part-  
65 time equivalent employees providing any type of service  
66 by contract or by any other arrangement.

### §22-24-3. Loan application requirements.

1 (a) Any eligible small business may apply for a small  
2 business environmental loan by submitting two identical  
3 copies of an application to the authority, on forms  
4 provided by the authority.

5 (b) The director shall determine environmental  
6 program qualification as provided by section two of this  
7 article, and based on the following factors:

8 (1) Pertinent environmental benefits of the project,  
9 including expected eliminations or reductions of regulated  
10 pollutants, solid wastes, hazardous wastes and in the use of

11 toxic and hazardous chemicals, as well as expected  
12 benefits from recycling programs, and pollution  
13 prevention measures;

14 (2) The degree of compliance with applicable  
15 environmental rules, regulations, laws and statutes; and

16 (3) Borrower's past environmental compliance  
17 performance, including history of compliance, violations,  
18 permitting difficulties and reporting record.

**§22-24-4. Loan conditions.**

1 A loan made to an eligible borrower as provided by  
2 this article shall:

3 (a) Have an interest rate not to exceed one half of the  
4 federal prime interest rate, but in no case may the annual  
5 rate be less than four percent;

6 (b) Have repayment terms not to exceed ten years;

7 (c) Have collateral terms acceptable to the authority;  
8 and

9 (d) Be in an amount of not less than five thousand  
10 dollars nor more than one hundred fifty thousand dollars;  
11 but in no case may the amount exceed ninety percent of  
12 the cost of the project.

**§22-24-5. Small business environmental revolving loan  
account.**

1 The small business environmental revolving loan  
2 account is hereby established in the authority and will be  
3 made available for environmental loans defined by this  
4 article for any type of qualifying environmental project.  
5 Loans may be issued only during the five-year period  
6 commencing on the effective date of this article unless the  
7 time period is otherwise extended by the Legislature. The  
8 administration of this loan program is authorized for one  
9 year beyond the last payment date for any outstanding  
10 loan.

11 The environmental revolving loan account shall be  
12 funded by appropriations from the Legislature and, at the  
13 director's discretion, by using portions of penalties and  
14 fines that are collected from various sources, including

15 violators that economically benefited by noncompliance:  
16 *Provided*, That the maximum value of all active  
17 outstanding loans, combined with funds in reserve at any  
18 time, may not exceed five million dollars.

19 Interest income from the small business environmental  
20 loan program as well as appropriations from the  
21 Legislature shall be used to defray the operating costs of  
22 the program, including, but not limited to, administration,  
23 facilities, salaries and travel. Any excess interest income  
24 shall be used to reestablish the loan program to its  
25 maximum authorized limit of five million dollars, with  
26 additional excesses returned to the state's general revenue  
27 account. If interest income is not projected to provide the  
28 necessary operating funds for all aspects of the small  
29 business environmental loan program for any one year,  
30 the authority shall request the necessary funding in the  
31 annual budget request.

#### §22-24-6. Loan processing.

1 The authority shall: (a) Process small business  
2 environmental loan applications and assure that a copy is  
3 forwarded to the director for eligibility review; (b)  
4 confirm that the director has certified the environmental  
5 acceptability of the project; (c) verify the borrower's  
6 eligibility as provided by section two of this article; (d)  
7 evaluate the borrower's financial stability, needs and  
8 ability to repay based upon an appropriate examination of  
9 financial information, including, but not limited to,  
10 income and credit histories, income tax returns, financial  
11 statements and collateral offered to secure the loan; (e)  
12 process loans for payments; and (f) establish loan  
13 processing procedures that include, but are not limited to,  
14 loan approvals, accounting, authorizations for payments,  
15 loan repayments and auditing of the small business  
16 environmental loan program. The authority shall  
17 implement reporting requirements that include the total  
18 number of full-time employees of the loan recipient on  
19 the thirtieth day of September of each calendar year for  
20 the term of the loan.

21 The authority shall act upon loan requests within  
22 forty-five days of receipt of a complete application as  
23 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)

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

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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.

1 (a) A memorandum of trust that satisfies both of the  
2 following requirements may be presented for recordation  
3 in the office of the clerk of the county commission of any  
4 county in which real property that is subject to the trust is  
5 located:

6 (1) The memorandum shall be executed by the  
7 currently acting trustee or trustees of the trust, and, if  
8 living, by the settlor or settlors, personally, or by a duly  
9 appointed attorney-in-fact or conservator of the settlor or  
10 settlors, and shall be acknowledged in the manner a deed  
11 must be acknowledged in order to be recorded.

12 (2) The memorandum shall contain at least the  
13 following information with respect to the trust:

- 14           (i) The existence of the trust and the date of the trust;
- 15           (ii) The names and mailing addresses of the settlor or  
16 settlors and of the currently acting trustee or trustees of  
17 the trust, the names and mailing addresses of any  
18 successor trustee or trustees, and the circumstances under  
19 which any successor trustee or trustees will assume trust  
20 powers;
- 21           (iii) The revocability or irrevocability of the trust; and
- 22           (iv) A verbatim recitation of the trust powers specified  
23 in the trust relative to the acquisition, sale, disposition, or  
24 encumbering of real property by the trustee or trustees or  
25 the conveyance or disposition of real property by the  
26 trustee or trustees and any restrictions upon those powers,  
27 or a statement that the trust powers include at least all  
28 those trust powers contained in section three, article five-a,  
29 chapter forty-four of this code as they existed at the date  
30 of the execution of the trust.
- 31           (b) A memorandum of trust may also set forth the  
32 substance or actual text of any or all of the provisions of  
33 the trust.
- 34           (c) A memorandum of trust that satisfies the  
35 provisions of this section constitutes notice only of the  
36 information contained therein.
- 37           (d) Upon the presentation of a memorandum of trust  
38 that satisfies the provisions of this section and the payment  
39 of the requisite fee, the clerk shall record the  
40 memorandum of trust with the records of deeds and list it  
41 in the grantor index under the name of the settlor or  
42 settlors and in the grantee index under the names of the  
43 then-acting trustee or trustees.
- 44           (e) Nothing herein shall be construed or deemed to  
45 require recordation of any original trust agreement or  
46 other governing instrument which establishes the trust  
47 identified in the memorandum of trust.

## CHAPTER 149

(Com. Sub. for H. B. 4309—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 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

10 that the income therefrom shall be applied by the trustee  
 11 to the support and maintenance of a beneficiary or  
 12 beneficiaries of the trust in being at the time of the  
 13 creation of the trust, other than the creator of the trust, for  
 14 the life of such beneficiary or beneficiaries, without being  
 15 subject to the liabilities of, or alienation by, such  
 16 beneficiary or beneficiaries: *Provided*, That no trust,  
 17 whenever executed or created, may be deemed to be  
 18 invalid or terminated, and title to trust assets may not be  
 19 merged, merely because a creditor asserts that the trustee  
 20 or trustees are the same person or persons as the  
 21 beneficiaries of the trust.

#### CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

##### ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

##### §44-5-15. Nonmerger of trusts.

1 (a) No trust is invalid or terminated, and title to trust  
 2 assets is not merged, because the trustee or trustees are the  
 3 same person or persons as the beneficiaries of the trust.

4 (b) This section applies to all trusts whenever executed  
 5 or created.

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## CHAPTER 150

(Com. Sub. for H. B. 4311—By Mr. Speaker, Mr. Kiss, and Delegates  
 Jenkins, Staton, Varner, Trump and Dalton)

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

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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 appraisalment of a decedent's estate; and establishing a

ninety-day time period for filing an appraisal 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.**

1       The real and personal estate of every deceased person,  
2 or in which such deceased person had an interest at the  
3 time of his or her death, shall be appraised by the personal  
4 representative of such deceased person. Such personal  
5 representative, after first taking an oath for the purpose,  
6 shall list and appraise at its real and actual value all the real  
7 estate and all the tangible property of every description  
8 owned by the deceased at the time of his or her death,  
9 including, but not limited to, all real estate and tangible  
10 property in which the decedent had an interest as joint  
11 tenant or otherwise or in which any beneficial interest  
12 passes to another person by reason of the death of such  
13 decedent whose estate is being so appraised and  
14 irrespective of whether such real estate or tangible  
15 property is subject to administration and located in each  
16 county or the counties, as the case may be. The personal  
17 representative shall also list and appraise at its real and  
18 actual value all of the decedent's intangible property of  
19 every description, including moneys, credits, investments,  
20 annuities, life insurance policies, (irrespective of whether  
21 such policies are payable to named beneficiaries or in trust  
22 or otherwise), judgments and decrees for moneys, notes,  
23 bonds, accounts and all other evidences of debt, whether  
24 owing to him or her by persons or corporations in or out  
25 of the state, and the number and value, including both the  
26 par value, if any, and the actual value, of any shares of

27 capital stock owned by the decedent in any corporation,  
28 and every other item of intangible property of whatsoever  
29 nature or kind, including all intangible property in which  
30 the decedent had an interest as joint tenant or otherwise or  
31 in which any beneficial interest passes to another by  
32 reason of the death of such decedent, and irrespective of  
33 whether such intangible property is subject to  
34 administration and whether located in this state or  
35 elsewhere. Any real estate or interest therein so appraised  
36 shall be identified with particularity and description, shall  
37 identify the source of title in the decedent and the location  
38 of such realty for purposes of real property ad valorem  
39 taxation. In addition to all other information required by  
40 law, the appraisement shall contain and include a  
41 questionnaire designed and formulated by the tax  
42 commissioner which is designed for the purpose of  
43 examining the personal representative to determine that he  
44 or she has made a thorough and proper search and  
45 investigation as to the existence and value of each and  
46 every kind and species of property required to be  
47 included within, and subject to appraisement by, the  
48 provisions of this or any other section of this code, which  
49 said questionnaire shall be completed and answered upon  
50 the oath or adjuration of the personal representative or  
51 fiduciary.

52 The appraisement, list and questionnaire aforesaid  
53 shall be executed in triplicate and shall be signed by the  
54 personal representative and be returned to the clerk of the  
55 county commission by whom such personal representative  
56 was appointed or to the fiduciary supervisor within ninety  
57 days of the date of qualification of the personal  
58 representative. Such clerk or supervisor shall inspect such  
59 appraisement, list and questionnaire, see that the same are  
60 in proper form, and that all property, if any, suggested by  
61 the questionnaire is included within the appraisement. If  
62 such appraisement, list and questionnaire are returned to a  
63 fiduciary supervisor within ten days after they are received  
64 and approved by him or her, such supervisor shall deliver  
65 two copies of the same to the clerk of the county

66 commission. Upon receipt of the appraisal, list and  
67 questionnaire, the clerk of the county commission shall  
68 record the same, with the certificate of approval of the  
69 supervisor, and mail one copy of the same to the tax  
70 commissioner of West Virginia. The date of return of an  
71 appraisal shall be entered by the clerk of the county  
72 commission in his or her record of fiduciaries. Every  
73 such appraisal and list shall be prima facie evidence of  
74 the value of the property embraced therein, and that the  
75 personal estate embraced therein which is subject to  
76 administration came to the hands of the personal  
77 representative. No person shall be permitted by any  
78 means whatsoever to avoid the appraisal and listing of  
79 his or her estate and of all property, real, tangible and  
80 intangible, of whatsoever nature and kind, in which a  
81 beneficial interest passes to another by reason of the death  
82 of the decedent and irrespective of whether such property  
83 is subject to administration as herein provided, nor shall  
84 his or her personal representative be permitted to do so.  
85 Any personal representative who fails, refuses or declines  
86 to comply with the provisions of this section shall be  
87 guilty of a misdemeanor and, upon conviction thereof,  
88 shall be fined not less than twenty-five dollars nor more  
89 than five hundred dollars.

90 Every personal representative shall have authority to  
91 retain or hire the services of such expert or experts as may  
92 be deemed appropriate to assist and advise him or her in  
93 and about his or her duties in appropriately and accurately  
94 appraising all or any part of the assets or property to be  
95 appraised according to the provisions of this section.  
96 Such expert or experts so retained or hired shall be  
97 compensated a reasonable sum by the personal  
98 representative from the assets coming into his or her hands  
99 or of which he or she is embraced, which compensation  
100 and the reasonableness thereof shall be subject to review  
101 and approval by the county commission, upon  
102 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)

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

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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.**

1 (a) Upon the return of the appraisalment by the  
2 personal representative to the county clerk, the estate of  
3 his or her decedent shall, by order of the county  
4 commission to be then made, be referred to a fiduciary  
5 commissioner for proof and determination of debts and  
6 claims, establishment of their priority, determination of the  
7 amount of the respective shares of the legatees and  
8 distributees, and any other matter necessary and proper  
9 for the settlement of the estate: *Provided*, That in counties  
10 where there are two or more such commissioners, the  
11 estates of decedents shall be referred to such  
12 commissioners in rotation, in order that, so far as possible,  
13 there may be an equal division of the work.  
14 Notwithstanding any other provision of this code to the  
15 contrary, a fiduciary commissioner may not charge to the  
16 estate a fee greater than three hundred dollars and  
17 expenses for the settlement of an estate, except upon: (i)  
18 Approval of the personal representative; or (ii) a  
19 determination by the county commission after a hearing  
20 that complicating issues or problems attendant to such  
21 settlement substantiate the allowance of a greater fee.

22 (b) If the personal representative shall deliver to the  
23 clerk an appraisalment of the assets of the estate showing  
24 their value to be fifty thousand dollars or less, exclusive of  
25 real estate specifically devised and nonprobate assets, or, if  
26 it appears to the clerk that there is only one beneficiary of  
27 the probate estate and that the beneficiary is competent at  
28 law, the clerk shall record said appraisalment and publish a  
29 notice once a week for two successive weeks in a  
30 newspaper of general circulation within the county of  
31 administration of the estate, substantially as follows:

32 NOTICE OF PENDING  
33 OR UNADMINISTERED ESTATE

34 "Notice is hereby given that settlement of the estate of  
35 the following named decedents will proceed without  
36 reference to a fiduciary commissioner unless within ninety  
37 days from the first publication of this notice such  
38 reference is requested by a party in interest or an unpaid

39 creditor files a claim and good cause is shown to support  
40 reference to a fiduciary commissioner.

41 Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

42 \_\_\_\_\_

43

Clerk of the County Commission of

44

\_\_\_\_\_ County, West Virginia.”

45 The clerk shall charge to the personal representative,  
46 and receive, the reasonable cost of publication of the  
47 notice. If an unpaid creditor files a claim against the  
48 estate, the personal representative has twenty days after the  
49 date of the filing of a claim against the estate of the  
50 decedent to approve or reject the claim before the estate is  
51 referred to a fiduciary commissioner. If the personal  
52 representative approves all claims as filed, then no  
53 reference may be made.

54 The personal representative shall, within a reasonable  
55 time after the date of recordation of the appraisalment in  
56 such case: (i) File a waiver of final settlement in  
57 accordance with the provisions of section twenty-nine of  
58 this article; or (ii) make a report to the clerk of his  
59 receipts, disbursements and distribution and submit an  
60 affidavit stating that all claims against the estate for  
61 expenses of administration, taxes and debts of the  
62 decedent have been paid in full. The clerk shall collect a  
63 fee of ten dollars for recording such report and affidavit,  
64 and for publication of the notice hereafter provided, the  
65 fee to be in lieu of any other fee provided by law for  
66 recording a report of settlement of the accounts of a  
67 decedent's personal representative. At least once a month  
68 the clerk shall cause to be published once a week for two  
69 successive weeks in a newspaper of general circulation  
70 within the county of the administration of the estate, with  
71 regard to reports received in the prior month, a notice  
72 substantially as follows:

73

NOTICE OF FILING OF ESTATE ACCOUNTS  
OR WAIVERS OF FINAL SETTLEMENT

74

75 "I have before me the account or waiver of final  
76 settlement of the executor(s) or administrator(s) of the  
77 estates of the following deceased persons:

78 \_\_\_\_\_  
79 \_\_\_\_\_  
80 \_\_\_\_\_

81 Any person having a claim against the estate of any  
82 such deceased person, or who has any beneficial interest  
83 therein, may appear before me or the county commission  
84 at any time within thirty days after first publication of this  
85 notice, and request reference of said estate to a  
86 commissioner or object to confirmation of the accounting.  
87 In the absence of such request or objection, the  
88 accounting may be approved by the county commission.

89 \_\_\_\_\_  
90 Clerk of the County Commission  
91 of \_\_\_\_\_ County, W. Va."

92 If no such request or objection is made to the clerk or  
93 to the county commission, the county commission may  
94 confirm the report of the personal representative, and  
95 thereupon the personal representative and his surety shall  
96 be discharged; but if such objection or request is made,  
97 the county commission may confirm the accounting and  
98 record the same, or may refer the estate to one of its  
99 fiduciary commissioners: *Provided*, That the personal  
100 representative has twenty days after the date of the filing  
101 of a claim or claims against the estate of the decedent to  
102 approve or reject the claim before the estate is referred to  
103 a fiduciary commissioner and if all claims are approved as  
104 filed, then no reference may be made.

**§44-2-2. Fiduciary commissioner to publish notice of time for receiving claims against decedents estates.**

1 Each month the fiduciary commissioner shall publish  
2 a notice designating the date by which claims against the  
3 estate or estates referred to him during the previous  
4 calendar month must be presented. The date so  
5 designated by the fiduciary commissioner shall be ninety

6 days from the date of the first publication of the notice  
7 hereinafter set forth. The notice shall be to the following  
8 effect:

9 To the Creditors and Beneficiaries of the Estate(s) of  
10 \_\_\_\_\_  
11 \_\_\_\_\_

12 (Naming the decedent or decedents, as the case may be)

13 All persons having claims against the estate(s) of the  
14 said \_\_\_\_\_,

15 (Naming the decedent or decedents, as the case may  
16 be) deceased, whether due or not, are notified to exhibit  
17 same, with the voucher thereof, legally verified, to the  
18 undersigned, at (designating the place) on or before the  
19 \_\_\_\_ day of \_\_\_\_\_, otherwise they may  
20 by law be excluded from all benefit of said estate(s). All  
21 beneficiaries of said estate(s) may appear on or before  
22 said day to examine said claims and otherwise protect their  
23 interests.

24 Given under my hand this \_\_\_\_ day of \_\_\_\_\_

25 \_\_\_\_\_  
26 Fiduciary Commissioner,

27 County of \_\_\_\_\_

28 Such notice shall be published as a Class II legal  
29 advertisement in compliance with the provisions of article  
30 three, chapter fifty-nine of this code, and the publication  
31 area for such publication shall be the county. The  
32 publication of such notice shall be equivalent to personal  
33 service on the creditors, distributees and legatees, or any of  
34 them.

**§44-2-29. Waiver of final settlement.**

1 In all estates of decedents subject to administration  
2 under this article where a release of lien, if required by the  
3 provisions of article eleven, chapter eleven of this code,  
4 has been filed with the clerk and more than ninety days  
5 have elapsed since the filing of any notice required by the  
6 provisions of this article, even though such estate may  
7 have been referred to a fiduciary commissioner, a final

8 settlement may be waived by a waiver containing an  
9 affidavit made by the personal representative, that the time  
10 for filing of claims has expired, that no known and unpaid  
11 claims exist against the estate, and that all beneficiaries  
12 have each been advised of the share or shares to which  
13 each is entitled from the estate and signed by every  
14 beneficiary.

15 In the case of a deceased beneficiary or a beneficiary  
16 under a disability, the duly qualified fiduciary or agent of  
17 such beneficiary may sign in lieu of such beneficiary. A  
18 fiduciary or agent signing such waiver shall be responsible  
19 to the beneficiary for any loss resulting from such waiver.

20 The waiver shall be recorded as in the case of and in  
21 lieu of a settlement as provided in section one, article two  
22 of this chapter.

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## CHAPTER 152

(S. B. 771—By Senators Wooton, Ball, Bowman,  
Dittmar, Kessler, Ross and Schoonover)

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

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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.**

1           (a) The family law masters holding office on the first  
2 day of June, one thousand nine hundred ninety-eight, by  
3 virtue of appointments made under the prior enactments  
4 of this article shall continue their service for a term of  
5 office ending on the thirtieth day of June, one thousand  
6 nine hundred ninety-nine. Before the first day of July,  
7 one thousand nine hundred ninety-nine, the governor  
8 shall appoint family law masters in such numbers and to  
9 serve for geographical regions of the state as provided for  
10 under the provisions of section four of this article, with  
11 terms commencing on the first day of July, one thousand  
12 nine hundred ninety-nine, and on a like date in every  
13 fourth year thereafter, and ending on the thirtieth day of  
14 June, two thousand three, and on a like date in every  
15 fourth year thereafter. Upon the expiration of his or her  
16 term, a family law master may continue to perform the  
17 duties of the office until the governor makes the  
18 appointment, or for sixty days after the date of the  
19 expiration of the master's term, whichever is earlier. If a  
20 vacancy occurs in the office of family law master, the  
21 governor shall, within thirty days after such vacancy  
22 occurs, fill the vacancy by appointment for the unexpired  
23 term: *Provided*, That if the remaining portion of the  
24 unexpired term to be filled is less than one year, the  
25 governor may, in his or her discretion, simultaneously  
26 appoint an individual to the unexpired term and to the  
27 next succeeding full four-year term.

28           (b) An individual may be reappointed to succeeding  
29 terms as a family law master to serve in the same or a  
30 different region of the state.

31           (c) Removal of a master during the term for which he  
32 or she is appointed shall be as follows:

33           (1) Upon a recommendation by the judicial hearing  
34 board created pursuant to the rules of procedure for the

35 handling of complaints against justices, judges, magistrates  
36 and family law masters, if the supreme court of appeals  
37 shall find that a family law master has violated the judicial  
38 code of ethics or that the master, because of advancing  
39 years and attendant physical or mental incapacity, should  
40 not continue to serve, the supreme court of appeals may,  
41 in lieu of or in addition to any disposition authorized by  
42 such rules, remove the family law master from office; and

43 (2) The supreme court of appeals may remove a  
44 master when conduct of the family law master evidences  
45 incompetence, unsatisfactory performance, misconduct,  
46 neglect of duty or physical or mental disability.

**§48A-4-4. Assignment of family law masters by geographical regions.**

1 (a) There shall be a total of twenty-six family law  
2 masters, not more than fourteen of whom shall be  
3 full-time masters, to serve throughout the state. During  
4 the year immediately preceding the appointment of law  
5 masters as provided for in section one of this article, the  
6 supreme court of appeals shall apportion the state into  
7 geographical regions which may be single-master regions  
8 or multi-master regions, or a combination of both.  
9 County boundaries shall be strictly observed and no  
10 county may be divided among two or more regions.  
11 Otherwise, in making such apportionment, the supreme  
12 court of appeals shall construct regions which provide, as  
13 nearly as is practicable, for the caseload of each master to  
14 be equal to that of other masters. Mathematical exactness  
15 as to caseload is not required and deviations from an  
16 absolute standard may be based upon concerns, other than  
17 caseload, including, but not limited to, deviations dictated  
18 by the following considerations:

19 (1) Judicial circuits;

20 (2) Geographical features which affect the time and  
21 expense of travel;

22 (3) Traditional patterns of practice by members of the  
23 bar; and

24 (4) Population variances between regions.

25 (b) In the region that includes Kanawha County, of the  
26 masters appointed, not less than two shall be part-time  
27 masters.

28 (c) Notwithstanding the provisions of subsection (a) of  
29 this section, for the time period extending from the first  
30 day of August, one thousand nine hundred ninety-six,  
31 until the thirtieth day of June, one thousand nine hundred  
32 ninety-nine, there shall temporarily be a total of  
33 twenty-seven family law masters, not more than fourteen  
34 of whom shall be full-time masters, to serve throughout  
35 the state, and the additional part-time position of family  
36 law master created by this subsection shall be assigned to  
37 the region that includes Marshall County.

38 (d) Nothing contained herein shall prohibit the chief  
39 justice of the supreme court of appeals from temporarily  
40 assigning a family law master from one geographical  
41 region to another geographical region, as caseload,  
42 disqualification, recusal, vacation or illness may dictate. In  
43 each such case of temporary assignment, the chief justice  
44 shall appoint only those persons currently serving as  
45 family law masters and appointed pursuant to section one  
46 of this article.

47 (e) The administrative office of the supreme court  
48 shall promulgate any procedural rule necessary to  
49 delineate the duties of the part-time and full-time law  
50 masters consistent with this article.

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## CHAPTER 153

(Com. Sub. for H. B. 4250—By Delegates Osborne,  
Mahan, Sparks, Heck and Johnson)

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

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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.**

1 Vacancies in positions in a paid fire department shall  
2 be filled, so far as practicable, by promotions from among  
3 individuals holding positions in the next lower grade in  
4 the department. Promotions shall be based upon  
5 experience and by competitive examinations to be  
6 provided by the firemen's civil service commission:  
7 *Provided, however,* That no individual shall be eligible for  
8 promotion from the lower grade to the next higher grade  
9 until such individual shall have completed at least two  
10 years of continuous service in the next lower grade in the  
11 department immediately prior to said examination and has  
12 completed the registered apprenticeship and certification  
13 program under article twenty-nine-a, chapter thirty of this  
14 code: *Provided,* That completion of the registered  
15 apprenticeship and certification program as a requirement  
16 for promotion shall apply only to those firefighters  
17 employed since the twelfth day of June, one thousand nine  
18 hundred eighty-seven. The commission shall have the  
19 power to determine in each instance whether an increase in  
20 salary constitutes a promotion.

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## CHAPTER 154

(H. B. 4042—By Delegates Buchanan, Givens, Dalton,  
Kominar, Tillis and Faircloth)

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[Passed February 11, 1998; in effect ninety days from passage. Approved by the Governor.]

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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.**

- 1 (a) *Enforcement of laws.* — The state fire marshal shall  
2 enforce all laws of the state having to do with:
  - 3 (1) Prevention of fire;
  - 4 (2) The storage, sale and use of any explosive,  
5 combustible or other dangerous article in solid, flammable  
6 liquid or gas form;
  - 7 (3) The installation and maintenance of equipment of  
8 all sorts intended to extinguish, detect and control fires;
  - 9 (4) The means and adequacy of exit, in case of fire,  
10 from buildings and all other places in which persons work,  
11 live or congregate from time to time for any purpose,  
12 except buildings used wholly as dwelling houses for no  
13 more than two families;
  - 14 (5) The suppression of arson.
- 15 (b) *Assistance upon request.* — Upon request, the state  
16 fire marshal shall immediately assist any chief of any  
17 recognized fire company or department.
- 18 (c) *Enforcement of regulations.* — The state fire  
19 marshal shall enforce the regulations promulgated by the

20 state fire commission as authorized by section three of this  
21 article.

22 (d) *Inspections generally.* — The state fire marshal shall  
23 inspect all state, county and municipally owned  
24 institutions, all public and private schools, theaters,  
25 churches and other places of public assembly as to fire  
26 exits and reasonable safety standards and report his  
27 findings and recommendations to the proper  
28 administrative heads.

29 (e) *Right of entry.* — The state fire marshal may at all  
30 reasonable hours enter any building or premises, other  
31 than dwelling houses, for the purpose of making an  
32 inspection, which he may deem necessary to be made  
33 under the provisions of this article.

34 (f) *Investigations.* — The state fire marshal may at any  
35 time investigate as to the origin or circumstances of any  
36 fire or explosion or attempt to cause fire or explosion  
37 occurring in the state. The state fire marshal shall have the  
38 authority at all times of the day or night, in performance  
39 of the duties imposed by the provisions of this article, to  
40 investigate where any fires or attempt to cause fires shall  
41 have occurred, or which at the time may be burning.  
42 Notwithstanding the above provisions of this subsection,  
43 prior to entering any building or premises for the  
44 purposes of such investigation, the state fire marshal shall  
45 obtain a proper search warrant: *Provided*, That the same  
46 shall not be necessary where there is permissive waiver or  
47 the state fire marshal is an invitee of the individual having  
48 legal custody and control of the property, building or  
49 premises to be searched.

50 (g) *Testimony.* — The state fire marshal, in making an  
51 inspection or investigation, when in his judgment such  
52 proceedings are necessary, may take the statements or  
53 testimony under oath of all persons who may be cognizant  
54 of any facts or have any knowledge about the matter to be  
55 examined and inquired into, and may have the statements  
56 or testimony reduced to writing; and shall transmit a copy  
57 of such statements or testimony so taken to the

58 prosecuting attorney for the county wherein the fire or  
59 explosion or attempt to cause a fire or explosion occurred.  
60 Notwithstanding the above, no person shall be compelled  
61 to testify or give any such statement under this subsection.

62 (h) *Arrests; warrants.* — The state fire marshal, any  
63 full-time deputy fire marshal or any full-time assistant fire  
64 marshal employed by the state fire marshal pursuant to  
65 section eleven of this article is hereby authorized and  
66 empowered:

67 (1) To arrest any person anywhere within the confines  
68 of the state of West Virginia, or have him arrested, for any  
69 violation of the arson-related offenses of article three,  
70 chapter sixty-one of this code or of the explosives-related  
71 offenses of article three-e of chapter sixty-one of this  
72 code: *Provided*, That any and all persons so arrested shall  
73 be forthwith brought before the magistrate or circuit  
74 court.

75 (2) To make complaint in writing before any court or  
76 officer having jurisdiction and obtain, serve and execute  
77 an arrest warrant when knowing or having reason to  
78 believe that anyone has committed an offense under any  
79 provision of this article, of the arson-related offenses of  
80 article three, chapter sixty-one of this code, or of the  
81 explosives-related offenses of article three-e of chapter  
82 sixty-one of this code. Proper return shall be made on all  
83 arrest warrants before the tribunal having jurisdiction over  
84 such violation.

85 (3) To make complaint in writing before any court or  
86 officer having jurisdiction and obtain, serve and execute a  
87 warrant for the search of any premises that may possess  
88 evidence or unlawful contraband relating to violations of  
89 this article, of the arson-related offenses of article three,  
90 chapter sixty-one of this code, or of the explosives-related  
91 offenses of article three-e of chapter sixty-one of this  
92 code. Proper return shall be made on all search warrants  
93 before the tribunal having jurisdiction over such violation.

94 (i) *Witnesses and oaths.* — The state fire marshal is  
95 empowered and authorized to issue subpoenas and  
96 subpoenas duces tecum to compel the attendance of  
97 persons before him to testify in relation to any matter  
98 which is, by the provision of this article, a subject of  
99 inquiry and investigation by the state fire marshal and  
100 cause to be produced before him such papers as he may  
101 require in making such examination. The state fire  
102 marshal is hereby authorized to administer oaths and  
103 affirmations to persons appearing as witnesses before him.  
104 False swearing in any matter or proceeding aforesaid shall  
105 be deemed perjury and shall be punishable as such.

106 (j) *Deputizing members of fire departments in this*  
107 *state.* — The state fire marshal may deputize a member of  
108 any fire department, duly organized and operating in this  
109 state, who is approved by the chief of his department and  
110 who is properly qualified, to act as his assistant for the  
111 purpose of making inspections with the consent of the  
112 property owner or the person in control of such property  
113 and such investigations as may be directed by the state fire  
114 marshal, and the carrying out of such orders as may be  
115 prescribed by him, to enforce and make effective the  
116 provisions of this article and any and all regulations  
117 promulgated by the state fire commission under authority  
118 of this article: *Provided*, That in the case of a volunteer  
119 fire department, only the chief thereof or his single  
120 designated assistant may be so deputized.

121 (k) *Written report of examinations.* — The state fire  
122 marshal shall, at the request of the county commission of  
123 any county or the municipal authorities of any  
124 incorporated municipality in this state, make to them a  
125 written report of the examination made by him regarding  
126 any fire happening within their respective jurisdictions.

127 (l) *Report of losses by insurance companies.* — It shall  
128 be the duty of each fire insurance company or association  
129 doing business in this state, within ten days after the  
130 adjustment of any loss sustained by it that exceeds fifteen  
131 hundred dollars, to report to the state fire marshal, upon  
132 forms furnished by him, such information regarding the  
133 amount of insurance, the value of the property insured

134 and the amount of claim as adjusted, as in the judgment of  
135 the state fire marshal it is necessary for him to know. This  
136 report is in addition to any such information required by  
137 the state insurance commissioner. Upon the request of the  
138 owner or insurer of any property destroyed or injured by  
139 fire or explosion, or in which an attempt to cause a fire or  
140 explosion may have occurred, the state fire marshal shall  
141 make a written report to the person requesting the same of  
142 the result of the examination made by him regarding the  
143 property.

144 (m) *Issuance of permits and licenses.* — The state fire  
145 marshal is authorized to issue permits and licenses as  
146 required in this article.

147 (n) *Issuance of citations for fire and life safety*  
148 *violations.* — The state fire marshal, any full-time deputy  
149 fire marshal, and any full-time assistant fire marshal are  
150 hereby authorized, and any person deputized pursuant to  
151 subsection (j) of this section who is approved by the chief  
152 of his department and who is properly qualified, may be  
153 authorized by the state fire marshal, to issue citations, in  
154 their respective jurisdictions, for fire and life safety  
155 violations of the state fire code and as provided for by the  
156 rules promulgated by the state fire commission in  
157 accordance with article three, chapter twenty-nine-a of this  
158 code: *Provided,* That a summary report of all citations  
159 issued pursuant to this section by persons deputized under  
160 subsection (j) of this section shall be forwarded  
161 semiannually to the state fire marshal in such form and  
162 containing such information as he may by regulation  
163 require, including the violation for which the citation was  
164 issued, the date of issuance, the name of the person issuing  
165 the citation and the person to whom the citation was  
166 issued. The state fire marshal may at any time revoke the  
167 authorization of a person deputized pursuant to subsection  
168 (j) of this section to issue citations, if in the opinion of the  
169 state fire marshal, the exercise of such authority by such  
170 person is inappropriate.

171 Violations for which citations may be issued include,  
172 but are not limited to:

173 (1) Overcrowding places of public assembly;

- 174 (2) Locked or blocked exits in public areas;  
175 (3) Failure to abate a fire hazard;  
176 (4) Blocking of fire lanes or fire department  
177 connections; and  
178 (5) Tampering with, or rendering inoperable except  
179 during necessary maintenance or repairs, on-premise  
180 firefighting equipment, fire detection equipment and fire  
181 alarm systems.

182 No person deputized pursuant to subsection (j) of this  
183 section may be authorized to issue a citation unless that  
184 person has satisfactorily completed a law-enforcement  
185 officer training course designed specifically for fire  
186 marshals. The course shall be approved by the law-  
187 enforcement training subcommittee of the governor's  
188 committee on criminal justice and highway safety and the  
189 state fire commission. In addition, no person deputized  
190 pursuant to subsection (j) of this section may be  
191 authorized to issue a citation until evidence of liability  
192 coverage of such person has been provided, in the case of  
193 a paid municipal fire department by the municipality  
194 wherein the fire department is located, or in the case of a  
195 volunteer fire department, by the county commission of  
196 the county wherein the fire department is located or by the  
197 municipality served by such volunteer fire department,  
198 and that evidence of liability coverage has been filed with  
199 the state fire marshal.

200 (o) *Penalties for violations.* — Any person who  
201 violates any fire and life safety regulation of the state fire  
202 code shall be guilty of a misdemeanor and, upon  
203 conviction thereof, shall be fined not more than one  
204 hundred dollars or imprisoned in the county jail not more  
205 than ninety days, or both fined and imprisoned.

206 Each and every day during which any illegal erection,  
207 construction, reconstruction, alteration, maintenance or use  
208 continues after knowledge or official notice that same is  
209 illegal, shall be deemed a separate offense.

## CHAPTER 155

(Com. Sub for S. B. 389—By Senators Ball,  
White, Hunter and Love)

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[Passed March 14, 1998; to take effect July 1, 1998. Approved by the Governor.]

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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.**

1           (a) On or before the first day of July, one thousand  
2 nine hundred ninety-one, an operational smoke detector  
3 shall be installed in the immediate vicinity of each  
4 sleeping area within all one- and two-family dwellings,  
5 including any "manufactured home" as that term is  
6 defined in subsection (j), section two, article nine, chapter  
7 twenty-one of this code. Such smoke detector shall be  
8 capable of sensing visible or invisible particles of  
9 combustion and shall meet the specifications and be  
10 installed as provided for in the National Fire Protection  
11 Association Standard 74, "Standard for the Installation,  
12 Maintenance and Use of Household Fire Warning  
13 Equipment", 1989 edition, and in the manufacturer's  
14 specifications. When activated, the smoke detector shall

15 provide an alarm suitable to warn the occupants of the  
16 danger of fire.

17 (b) The owner of each dwelling described in  
18 subsection (a) of this section shall provide, install and  
19 replace the operational smoke detectors required by this  
20 section. So as to assure that the smoke detector continues  
21 to be operational, in each dwelling described in subsection  
22 (a) of this section which is not occupied by the owner  
23 thereof, the tenant in any such dwelling shall perform  
24 routine maintenance on the smoke detectors within such  
25 dwelling.

26 (c) Where a dwelling is not occupied by the owner and  
27 is occupied by an individual who is deaf or hearing  
28 impaired, the owner shall, upon written request by or on  
29 behalf of such individual, provide and install a smoke  
30 detector with a light signal sufficient to warn the deaf or  
31 hearing-impaired individual of the danger of fire.

32 (d) An automatic fire sprinkler system installed in  
33 accordance with the National Fire Protection Association  
34 Standard 13D, "Standard for the Installation of Sprinkler  
35 Systems in Residential Occupancies", 1989 edition, may be  
36 provided in lieu of smoke detectors.

37 (e) After investigating a fire in any dwelling described  
38 in subsection (a) of this section, the local investigating  
39 authority shall issue to the owner a smoke detector  
40 installation order in the absence of the required smoke  
41 detectors.

42 (f) After the first day of July, one thousand nine  
43 hundred ninety-eight, an operational carbon monoxide  
44 detector with a suitable alarm shall be installed in  
45 accordance with the manufacturer's direction:

46 (1) In any newly constructed residential unit which  
47 has a fuel-burning heating or cooking source, including,  
48 but not limited to, an oil or gas furnace or stove;

49 (2) In any residential unit which is connected to a  
50 newly constructed building, including, but not limited to, a  
51 garage, storage shed or bar, which has a fuel-burning  
52 heating or cooking source, including, but not limited to,  
53 an oil or gas furnace or stove.

54 (g) When repair or maintenance work is undertaken  
55 on a fuel-burning heating or cooking source or a venting  
56 system in an existing residential unit, the person making  
57 the repair or performing the maintenance shall inform the  
58 owner or lessor of the unit of the dangers of carbon  
59 monoxide poisoning and recommend the installation of a  
60 carbon monoxide detector.

61 (h) Any person who violates any provision of this  
62 section is guilty of a misdemeanor and, upon conviction  
63 thereof, shall be fined not less than fifty dollars nor more  
64 than one hundred dollars.

65 (i) A violation of this section shall not be deemed by  
66 virtue of such violation to constitute evidence of  
67 negligence or contributory negligence or comparative  
68 negligence in any civil action or proceeding for damages.

69 (j) A violation of this section shall not constitute a  
70 defense in any civil action or proceeding involving any  
71 insurance policy.

72 (k) Nothing in this section shall be construed to limit  
73 the rights of any political subdivision in this state to enact  
74 laws imposing upon owners of any dwelling or other  
75 building described in subsection (a) or (f) of this section a  
76 greater duty with regard to the installation, repair and  
77 replacement of the smoke detectors or carbon monoxide  
78 detectors than is required by this section.

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## CHAPTER 156

(Com. Sub. for H. B. 4005—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)  
[By Request of the Executive]

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

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AN ACT to amend and reenact section four, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority and duties of the director of the division of forestry with regard to forest fires, and limiting the liability of certain persons for

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.**

1       Upon receiving notice of any fire which is injuring or  
2       endangering forest land within the state, the director of the  
3       division of forestry or his or her duly authorized  
4       representatives shall employ all necessary means to  
5       confine, extinguish or suppress the fire. For these  
6       purposes, any temporary or permanent employee of the  
7       division of forestry or any other agency of the state and  
8       any volunteer shall, under the general supervision of the  
9       director of the division of forestry, have the right and  
10      authority to enter upon public or private lands, to destroy  
11      fences thereon, to plow such lands, and in case of extreme  
12      emergency, to set backfires thereon. No person  
13      performing or reasonably attempting to perform any of  
14      the activities authorized by the preceding sentence under  
15      the general supervision of the director of the division of  
16      forestry, whether as a temporary or permanent employee  
17      of the division of forestry or any other agency of the state  
18      or as a volunteer, shall be liable in damages for the death  
19      of or injury to any person or for damage to any property  
20      as a result of his or her performance of such activities to  
21      an extent greater than the applicable limits of any liability  
22      insurance coverage available to such person under any  
23      liability insurance policy or policies issued to the division  
24      of forestry, any other agency of the state involved in  
25      suppressing the forest fire, any volunteer fire department

26 of which such person was a member and which volunteer  
27 fire department was responding to the forest fire at the  
28 time of the incident alleged to have caused such death,  
29 personal injury or property damage, or any combination  
30 thereof. The limitation of liability established by the  
31 preceding sentence shall not apply if the death, personal  
32 injury or property damage alleged was caused by such  
33 person's willful or criminal misconduct, gross negligence  
34 or reckless misconduct, or by a conscious, flagrant  
35 indifference to the rights or safety of any person harmed  
36 by such conduct. The director of the division of forestry  
37 and any duly authorized representative may employ  
38 persons to detect fires which may injure or endanger  
39 forest land and may likewise summon or employ persons  
40 to assist in extinguishing such fires, who shall be paid for  
41 the actual time so employed, at a rate per hour to be  
42 determined by the director of the division of forestry:  
43 *Provided*, That the rate per hour shall not exceed the rate  
44 per hour paid for any comparable labor or skills by the  
45 division of forestry. Any person so summoned who shall  
46 fail or refuse to assist in extinguishing any such fire shall,  
47 unless such failure or refusal to assist is due to physical  
48 inability, be guilty of a misdemeanor.

49 Expenditures for detecting, confining, extinguishing  
50 or suppressing fires described in this section shall be  
51 charged against the state. The director of the division of  
52 forestry or his or her representative shall prepare, as soon  
53 as practicable, a sworn statement with the names of all  
54 persons who were summoned or employed to assist in  
55 fighting such fires, the time so spent by each, as well as the  
56 names of persons who furnished equipment, subsistence or  
57 supplies, or transportation therefor, and the amount of  
58 money due each for such services, subsistence, supplies or  
59 transportation. Requisitions shall be issued and payment  
60 of the sums due shall be made in the same manner as is  
61 provided for the making of other expenditures by the  
62 director of the division of forestry.

## CHAPTER 157

(Com. Sub. for H. B. 2785—By Delegate Mezzatesta)

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[Passed March 11, 1998; in effect ninety days from passage. Approved by the Governor.]

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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.

#### \*§17C-15-19. Additional lighting equipment.

- 1 (a) Any motor vehicle may be equipped with not more  
2 than two side cowl or fender lamps which shall emit an  
3 amber or white light without glare.
- 4 (b) Any motor vehicle may be equipped with not  
5 more than one running board courtesy lamp on each side  
6 thereof which shall emit a white or amber light without  
7 glare.
- 8 (c) Except for school buses as provided in this  
9 subsection, any motor vehicle may be equipped with not  
10 more than two back-up lamps either separately or in  
11 combination with other lamps, but any such back-up lamp  
12 shall not be lighted when the motor vehicle is in forward  
13 motion. School buses used for the transportation of  
14 school children in this state, whether owned and operated  
15 by a county board of education or privately owned and  
16 operated under contract with a county board of  
17 education, shall be equipped with two back-up lamps, one

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\*Clerk's Note: This section was also amended by SB 682 (Chapter 212), which passed subsequent to this act.

18 on each side of the rear door, with white lens or reflectors,  
19 capable of lighting the roadway and objects to the rear of  
20 the bus for safe backing during darkness, and which, at the  
21 option of the county board of education, may each  
22 provide fifty candlepower in illumination intensity instead  
23 of thirty-two candlepower.

24 (d) Any vehicle may be equipped with lamps which  
25 may be used for the purpose of warning the operators of  
26 other vehicles of the presence of a vehicular traffic hazard  
27 requiring the exercise of unusual care in approaching,  
28 overtaking or passing, and when so equipped may display  
29 such warning in addition to any other warning signals  
30 required by this article. The lamps used to display such  
31 warning to the front shall be mounted at the same level  
32 and as widely spaced laterally as practicable and shall  
33 display simultaneously flashing white or amber lights, or  
34 any shade of color between white and amber. The lamps  
35 used to display such warning to the rear shall be mounted  
36 at the same level and as widely spaced laterally as  
37 practicable, and shall show simultaneously flashing amber  
38 or red lights, or any shade of color between amber and  
39 red.

40 (e) Vehicles used by "rural mail carriers" in carrying or  
41 delivering mail in rural areas may be equipped with amber  
42 flashing lights. Such lights shall be on the front and rear  
43 of the vehicle and may be activated when the vehicle is  
44 stopped or decreasing speed in order to stop in the course  
45 of carrying, delivering or picking up mail along the route.

46 (f) Vehicles used as the lead car in a funeral procession  
47 are hereby authorized to be equipped with, but are not  
48 required to use, purple lamps or purple flashing lights.  
49 Such lamps may be used for the purpose of warning the  
50 operators of other vehicles of the presence of a vehicular  
51 traffic hazard requiring the exercise of unusual care in  
52 approaching, overtaking or passing a funeral procession,  
53 and when so equipped may display such warning in  
54 addition to any other warning signals required by this  
55 article. The lamps or flashing lights used to display such  
56 warning to the front shall be mounted at the same level  
57 and as widely spaced laterally as practicable and shall  
58 display simultaneously either illuminated or flashing  
59 purple lights. The lamps used to display such warning to  
60 the rear shall be mounted at the same level and as widely  
61 spaced laterally as practicable, and shall show  
62 simultaneously flashing or illuminated purple lights.

## CHAPTER 158

(Com. Sub. for H. B. 2605—By Delegates Beach, Kelley, Cann and Amores)

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

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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  
2 distributors, shipping terminals and other establishments  
3 across the state are disposing of food that could be made  
4 available to those in need. However, many potential food  
5 donors are discouraged from donating this food because  
6 of potential liability. The United States Congress has  
7 recognized the need to encourage food distributors to  
8 make otherwise disposed-of food products available to

9 those in need and has adopted Title 42 United States Code  
10 § 1791 entitled the “Bill Emerson Good Samaritan Food  
11 Donation Act.” This federal law encourages state and  
12 local governments to enact good samaritan or donor  
13 liability limitation laws to encourage private cooperative  
14 efforts to provide food for hungry people within their  
15 respective jurisdictions. The Legislature finds that this is a  
16 worthy goal, and therefore it is appropriate for the state to  
17 encourage participation in food donation programs by  
18 providing a statutory framework to protect food donors  
19 from liability for their good faith efforts.

**§55-7D-2. Definitions.**

1 As used in this section:

2 (a) “Apparently fit grocery product” means a  
3 grocery product that meets all quality and labeling  
4 standards imposed by federal, state and local laws and  
5 regulations even though the product may not be readily  
6 marketable due to appearance, age, freshness, grade, size,  
7 surplus or other conditions.

8 (b) “Apparently wholesome food” means food that  
9 meets all quality and labeling standards imposed by  
10 federal, state and local laws and regulations even though  
11 the food may not be readily marketable due to  
12 appearance, age, freshness, grade, size, surplus or other  
13 conditions.

14 (c) “Donate” means to give without requiring  
15 anything of monetary value from the recipient, except that  
16 the term includes donations by one nonprofit organization  
17 to another nonprofit organization, notwithstanding that the  
18 donor organization has charged a nominal fee to the  
19 donee organization, if the ultimate recipient or user is not  
20 required to give anything of monetary value.

21 (d) “Food” means any raw, cooked, processed or  
22 prepared edible substance, ice, beverage or ingredient used  
23 or intended for use, in whole or in part, for human  
24 consumption.

25 (e) “Gleaner” means a person who harvests a donated  
26 agricultural crop for free distribution to the needy or for

27 donation to a nonprofit organization for ultimate  
28 distribution to the needy.

29 (f) "Grocery product" means a nonfood grocery  
30 product, including disposable paper or plastic products,  
31 household cleaning supplies, laundry detergent or other  
32 household item.

33 (g) "Gross negligence" means voluntary and  
34 conscious conduct, including a failure to act, by a person  
35 who, at the time of the conduct, knew that the conduct was  
36 likely to be harmful to the health or well-being of another  
37 person.

38 (h) "Intentional misconduct" means conduct by a  
39 person with knowledge, at the time of the conduct, that the  
40 conduct is harmful to the health or well-being of another  
41 person.

42 (i) "Nonprofit organization" means an incorporated  
43 or unincorporated entity that:

44 (1) Is operating for religious, charitable or educational  
45 purposes; and

46 (2) Does not provide net earnings to or operate in any  
47 other manner that inures to the benefit of, any officer,  
48 employee or shareholder of the entity.

49 (j) "Person" means an individual, corporation,  
50 partnership, organization, association or governmental  
51 entity, including a retail grocer, wholesaler, hotel, motel,  
52 manufacturer, restaurant, caterer, farmer, nonprofit food  
53 distributor or hospital. In the case of a corporation,  
54 partnership, organization, association or governmental  
55 entity, the term includes an officer, director, partner,  
56 deacon, trustee, council member or other elected or  
57 appointed individual responsible for the governance of the  
58 entity.

**§55-7D-3. Limiting liability of persons or corporations who  
donate food or grocery products; exceptions.**

1 (a) A person or gleaner is not subject to civil liability  
2 or criminal liability arising from the nature, age,  
3 packaging or condition of apparently wholesome food or  
4 an apparently fit grocery product which the person or

5 gleaner donates in good faith to a nonprofit organization  
6 for ultimate distribution without profit or gain to needy  
7 individuals: *Provided*, That this limitation on liability  
8 does not apply to an injury to or the death of an ultimate  
9 user or recipient of the food or grocery product which  
10 results from an act or omission of the person or gleaner  
11 which constitutes gross negligence or intentional  
12 misconduct.

13 (b) A nonprofit organization is not subject to civil  
14 liability or criminal liability arising from the nature, age,  
15 packaging or condition of apparently wholesome food or  
16 an apparently fit grocery product which the nonprofit  
17 organization received as a donation in good faith from a  
18 person or gleaner for ultimate distribution without profit  
19 or gain to needy individuals: *Provided*, That this  
20 limitation on liability does not apply to an injury to or the  
21 death of an ultimate user or recipient of the food or  
22 grocery product which results from an act or omission of  
23 the nonprofit organization which constitutes gross  
24 negligence or intentional misconduct.

**§55-7D-4. Limitation of liability for landowners or occupiers  
who allow collection or gleaning of donations;  
exceptions.**

1 Any person who is a landowner or occupier and who  
2 allows the collection or gleaning of donations on his or  
3 her property by gleaners or representatives of a nonprofit  
4 organization, whether paid or unpaid, for ultimate  
5 donation without profit or gain to needy individuals is not  
6 subject to civil liability or criminal liability that arises due  
7 to the injury or death of the gleaner or representative  
8 while engaged in collecting or gleaning on the property:  
9 *Provided*, That this limitation on liability does not apply  
10 to an injury or death that results from an act or omission  
11 of the landowner or occupier which constitutes gross  
12 negligence or intentional misconduct.

**§55-7D-5. Construction.**

1 Nothing in this article shall be construed to supersede  
2 state or local health regulations, nor to restrict the state  
3 department of health or any county or municipal health  
4 officer to regulate, inspect or ban the use of any donated  
5 food for human consumption.

## CHAPTER 159

(S. B. 573—By Senators White, Minear, Hunter, Walker, Sharpe, Dittmar, Ball, Schoonover, Fanning, Snyder, Helmick, Anderson, Deem, Bowman, McKenzie, Kessler, Ross, Dugan, Scott, Boley, Craigo, Love, Kimble and Plymale)

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

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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-2. Definitions.
- §48-2B-3. Visitation for grandparents.
- §48-2B-4. Proceedings for visitation for grandparents.
- §48-2B-5. Factors affecting a decision to grant visitation for grandparents.
- §48-2B-6. Interview of child by judge.
- §48-2B-7. Proof required.
- §48-2B-8. Orders.
- §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-12. Penalties for violation of order of visitation.

**§48-2B-1. Legislative findings; intent.**

1       The Legislature finds that circumstances arise where it  
 2       is appropriate for circuit courts of this state to order that  
 3       grandparents of minor children may exercise visitation  
 4       with their grandchildren. The Legislature further finds  
 5       that in such situations, as in all situations involving  
 6       children, the best interests of the child or children are the  
 7       paramount consideration. It is the express intent of the  
 8       Legislature that the provisions for grandparent visitation  
 9       that are set forth in this article are exclusive.

**§48-2B-2. Definitions.**

1       For purposes of this article:

2       (1) "Child" means a person under the age of eighteen  
 3       years who has not been married or otherwise emancipated.

4       (2) "Grandparent" means a biological grandparent, a  
 5       person married or previously married to a biological  
 6       grandparent, or a person who has previously been granted  
 7       custody of the parent of a minor child with whom  
 8       visitation is sought.

**§48-2B-3. Visitation for grandparents.**

1       A grandparent of a child residing in this state may, by  
 2       motion or petition, make application to the circuit court of

3 the county in which that child resides for an order  
4 granting visitation with his or her grandchild.

**§48-2B-4. Proceedings for visitation for grandparents.**

1 (a) The provisions of this subsection apply to all  
2 proceedings for divorce, custody, legal separation,  
3 annulment or establishment of paternity. After the  
4 commencement of the proceeding, a grandparent seeking  
5 visitation with his or her grandchild may, by motion, apply  
6 to the circuit court for an order granting visitation. A  
7 grandparent moving for an order of visitation will not be  
8 afforded party status, but may be called as a witness by the  
9 court, and will be subject to cross-examination by the  
10 parties.

11 (b) The provisions of this subsection apply when no  
12 proceeding for divorce, custody, legal separation,  
13 annulment or establishment of paternity is pending. A  
14 grandparent may petition the circuit court for an order  
15 granting visitation with his or her grandchild, regardless of  
16 whether the parents of the child are married. If the  
17 grandparent filed a motion for visitation in a previous  
18 proceeding for divorce, custody, legal separation,  
19 annulment or establishment of paternity, and a decree or  
20 final order has issued in that earlier action, the  
21 grandparent may petition for visitation if the  
22 circumstances have materially changed since the entry of  
23 the earlier order or decree.

24 (c) When a petition under subsection (b) of this  
25 section is filed, the matter shall be styled "In re  
26 grandparent visitation of [petitioner's(s') name(s)]."

27 (d) The court, on its own motion or upon the motion  
28 of a party or grandparent, may appoint a guardian ad  
29 litem for the child to assist the court in determining the  
30 best interests of the child regarding grandparent visitation.

**§48-2B-5. Factors affecting a decision to grant visitation for grandparents.**

1 (a) The circuit court shall grant reasonable visitation to  
2 a grandparent upon a finding that visitation would be in  
3 the best interests of the child and would not substantially  
4 interfere with the parent-child relationship.

5 (b) In making a determination on a motion or petition  
6 made pursuant to section four of this article, the court  
7 shall consider the following factors:

8 (1) The age of the child;

9 (2) The relationship between the child and the  
10 grandparent;

11 (3) The relationship between each of the child's  
12 parents or the person with whom the child is residing and  
13 the grandparent;

14 (4) The time which has elapsed since the child last had  
15 contact with the grandparent;

16 (5) The effect that such visitation will have on the  
17 relationship between the child and the child's parents or  
18 the person with whom the child is residing;

19 (6) If the parents are divorced or separated, the  
20 custody and visitation arrangement which exists between  
21 the parents with regard to the child;

22 (7) The time available to the child and his or her  
23 parents, giving consideration to such matters as each  
24 parent's employment schedule, the child's schedule for  
25 home, school and community activities, and the child's  
26 and parents' holiday and vacation schedule;

27 (8) The good faith of the grandparent in filing the  
28 motion or petition;

29 (9) Any history of physical, emotional or sexual abuse  
30 or neglect being performed, procured, assisted or  
31 condoned by the grandparent;

32 (10) Whether the child has, in the past, resided with the  
33 grandparent for a significant period or periods of time,  
34 with or without the child's parent or parents;

35 (11) Whether the grandparent has, in the past, been a  
36 significant caretaker for the child, regardless of whether  
37 the child resided inside or outside of the grandparent's  
38 residence;

39 (12) The preference of the parents with regard to the  
40 requested visitation; and

41 (13) Any other factor relevant to the best interests of  
42 the child.

**§48-2B-6. Interview of child by judge.**

1 (a) In considering the factors listed in section five of  
2 this article for purposes of determining whether to grant  
3 visitation, establishing a specific visitation schedule, and  
4 resolving any issues related to the making of any  
5 determination with respect to visitation or the  
6 establishment of any specific visitation schedule, the court,  
7 in its discretion, may interview in chambers any or all  
8 involved children regarding their wishes and concerns.  
9 No person shall be present other than the court, the child,  
10 the child's attorney or guardian ad litem, if any, and any  
11 necessary court personnel.

12 (b) No person shall obtain or attempt to obtain from a  
13 child a written or recorded statement or affidavit setting  
14 forth the wishes and concerns of the child regarding those  
15 visitation matters, and the court, in considering the factors  
16 listed in section five of this article for purposes of  
17 determining whether to grant any visitation, establishing a  
18 visitation schedule, or resolving any issues related to the  
19 making of any determination with respect to visitation or  
20 the establishment of any specific visitation schedule, shall  
21 not accept or consider such a written or recorded  
22 statement or affidavit.

23 (c) A child shall not be called as a witness in any  
24 proceeding to determine whether grandparent visitation  
25 should be awarded.

**§48-2B-7. Proof required.**

1 (a) If a motion for grandparent visitation is filed in a  
2 pending action for divorce, custody, legal separation,  
3 annulment or establishment of paternity pursuant to  
4 subsection (a), section four of this article, the grandparent  
5 shall be granted visitation if a preponderance of the  
6 evidence shows that visitation is in the best interest of the  
7 child and that:

8 (1) The party to the divorce through which the  
9 grandparent is related to the minor child has failed to  
10 answer or otherwise appear and defend the cause of  
11 action; or

12 (2) The whereabouts of the party through which the  
13 grandparent is related to the minor child are unknown to  
14 the party bringing the action and to the grandparent who  
15 filed the motion for visitation.

16 (b) If a petition is filed pursuant to subsection (b),  
17 section four of this article when the parent through whom  
18 the grandparent is related to the grandchild does not: (1)  
19 Have custody of the child; (2) share custody of the child;  
20 or (3) exercise visitation privileges with the child that  
21 would allow participation in the visitation by the  
22 grandparent if the parent so chose, the grandparent shall  
23 be granted visitation if a preponderance of the evidence  
24 shows that visitation is in the best interest of the child.

25 (c) If a petition is filed pursuant to subsection (b),  
26 section four of this article, there is a presumption that  
27 visitation privileges need not be extended to the  
28 grandparent if the parent through whom the grandparent  
29 is related to the grandchild has custody of the child, shares  
30 custody of the child, or exercises visitation privileges with  
31 the child that would allow participation in the visitation by  
32 the grandparent if the parent so chose. This presumption  
33 may be rebutted by clear and convincing evidence that an  
34 award of grandparent visitation is in the best interest of the  
35 child.

#### §48-2B-8. Orders.

1 (a) An order granting or refusing the grandparent's  
2 motion or petition for visitation shall state in writing the  
3 court's findings of fact and conclusions of law.

4 (b) In the court's discretion, an order granting  
5 visitation privileges to a grandparent may require  
6 supervised visitation or may place such conditions upon  
7 visitation that it finds are in the best interests of the child,  
8 including, but not limited to, the following:

9 (1) That the grandparent not attempt to influence any  
10 religious beliefs or practices of the children in a manner  
11 contrary to the preferences of the child's parents;

12 (2) That the grandparent not engage in, permit or  
13 encourage activities, or expose the grandchild to  
14 conditions or circumstances, that are contrary to the  
15 preferences of the child's parents; or

16 (3) That the grandparent not otherwise act in a manner  
17 to contradict or interfere with child-rearing decisions  
18 made by the child's parents.

**§48-2B-9. Effect of remarriage or adoption on visitation for grandparents.**

1 (a) The remarriage of the custodial parent of a child  
2 does not affect the authority of a circuit court to grant  
3 reasonable visitation to any grandparent.

4 (b) If a child who is subject to a visitation order under  
5 this article is later adopted, the order for grandparent  
6 visitation is automatically vacated when the order for  
7 adoption is entered, unless the adopting parent is a  
8 stepparent, grandparent or other relative of the child.

**§48-2B-10. Modification or termination of grandparent visitation.**

1 (a) Any circuit court which grants visitation rights to a  
2 grandparent shall retain jurisdiction throughout the  
3 minority of the minor child with whom visitation is  
4 granted to modify or terminate such rights as dictated by  
5 the best interests of the minor child.

6 (b) A circuit court shall, based upon a petition brought  
7 by an interested person, terminate any grant of the right of  
8 grandparent visitation upon presentation of a  
9 preponderance of the evidence that a grandparent granted  
10 visitation has materially violated the terms and conditions  
11 of the order of visitation.

**§48-2B-11. Attorney's fees; reasonable costs.**

1 In an action brought under the provisions of this  
2 article, a circuit court may order payment of reasonable  
3 attorney's fees and costs based upon the equities of the  
4 positions asserted by the parties to pay such fees and costs.

**§48-2B-12. Penalties for violation of order of visitation.**

1 Any grandparent who knowingly allows contact  
2 between the minor grandchild and a parent or other  
3 person who has been precluded visitation rights with the  
4 child by court order shall, in addition to any other remedy  
5 under section seven of this article, be guilty of a  
6 misdemeanor and, upon conviction thereof, shall be  
7 confined in the county jail not more than thirty days or  
8 fined not less than one hundred dollars nor more than one  
9 thousand dollars.

## CHAPTER 160

(Com. Sub. for H. B. 4314—By Mr. Speaker, Mr. Kiss, and Delegates  
Martin, Staton, Manuel, Fleischauer and Givens)

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[Passed March 13, 1998; in effect July 1, 1998. Approved by the Governor.]

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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.**

1           (a) The education and state employees grievance  
2 board shall consist of three members who are citizens of  
3 the state appointed by the governor by and with the advice  
4 and consent of the Senate for overlapping terms of three  
5 years. No two members may be from the same  
6 congressional district, and no more than two of the  
7 appointed members may be from the same political party.  
8 No person may be appointed to membership on the board  
9 who is a member of any political party executive  
10 committee or holds any other public office or public  
11 employment under the federal government or under the  
12 government of this state. Members are eligible for  
13 reappointment, and any vacancy on the board shall be  
14 filled within thirty days of the vacancy by the governor by  
15 appointment for the unexpired term.

16           A member of the board may not be removed from  
17 office except for official misconduct, incompetence,  
18 neglect of duty, gross immorality or malfeasance, and then  
19 only in the manner prescribed in article six, chapter six of  
20 this code for the removal by the governor of the state  
21 elected officers.

22           The board shall hold at least two meetings yearly at  
23 times and places as it may prescribe and may meet at other  
24 times as may be necessary, the other meetings to be agreed  
25 to in writing by at least two of the members. The  
26 compensation for members of the board is seventy-five  
27 dollars for each calendar day devoted to the work of the  
28 board, but not more than seven hundred fifty dollars  
29 during any one fiscal year. Each member shall be  
30 reimbursed for all reasonable and necessary expenses  
31 actually incurred in the performance of board duties, but  
32 shall submit a request for reimbursement upon a sworn  
33 itemized statement.

34           The board shall administer the grievance procedure at  
35 levels two, three and four, as provided in section five,  
36 article six-a, chapter twenty-nine of this code, and as  
37 provided for in section four of this article and shall  
38 employ at least two full-time hearing examiners on an  
39 annual basis and clerical help as is necessary to implement

40 the legislative intent expressed in section one of this  
41 article.

42 In addition to the authorization granted by this section  
43 over education employees, the board has jurisdiction over  
44 the procedures to be followed in processing grievances  
45 filed under article six-a, chapter twenty-nine of this code.

46 The board shall hire hearing examiners who reside in  
47 different regional educational service agency areas unless  
48 and until the number of hearing examiners exceeds the  
49 number of the areas, at which time two hearing examiners  
50 may be from the same area. If a grievant previously  
51 before a hearing examiner again brings a grievance, a  
52 different hearing examiner is required to hear the  
53 grievance upon written request therefor by any party to  
54 the grievance. These hearing examiners serve at the will  
55 and pleasure of the board.

56 The board shall submit a yearly budget and shall  
57 report annually to the governor and Legislature regarding  
58 receipts and expenditures, number of level four hearings  
59 conducted, synopses of hearing outcomes and other  
60 information as the board determines appropriate. The  
61 board shall further evaluate on an annual basis the level  
62 four grievance process and the performance of all hearing  
63 examiners and include the evaluation in the annual report  
64 to the governor and Legislature. In making the  
65 evaluation, the board shall notify all institutions, employee  
66 organizations and all grievants participating in level four  
67 grievances in the year for which evaluation is being made  
68 and shall provide for the submission of written comment  
69 or the hearing of testimony regarding the grievance  
70 process, or both. The board shall provide suitable office  
71 space for all hearing examiners in space other than that  
72 utilized by any institution as defined in section two of this  
73 article and shall ensure that reference materials are  
74 generally available.

75 The board is authorized to promulgate rules consistent  
76 with the provisions of this article; the rules shall be  
77 adopted in accordance with chapter twenty-nine-a of this  
78 code.

79 (b) Hearing examiners may consolidate grievances,  
80 allocate costs among the parties in accordance with section  
81 eight of this article, subpoena witnesses and documents in  
82 accordance with the provisions of section one, article five,  
83 chapter twenty-nine-a of this code, provide relief found  
84 fair and equitable in accordance with the provisions of this  
85 article, and exercise other powers as provides for the  
86 effective resolution of grievances not inconsistent with any  
87 rules of the board or the provisions of this article.

## CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

### ARTICLE 6A. GRIEVANCE PROCEDURE FOR STATE EM- PLOYEES.

§29-6A-3. Grievance procedure generally.

§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.

#### §29-6A-3. Grievance procedure generally.

1 (a) (1) A grievance shall be filed within the times  
2 specified in section four of this article and shall be  
3 processed as rapidly as possible. The number of days  
4 indicated at each level specified in section four of this  
5 article is the maximum number of days allowed and, if a  
6 decision is not rendered at any level within the prescribed  
7 time limits, the grievant may appeal to the next level:  
8 *Provided*, That the specified time limits shall be extended  
9 whenever a grievant is not working because of accident,  
10 sickness, death in the immediate family or other cause  
11 necessitating the grievant to take personal leave from his  
12 or her employment.

13 (2) Any assertion by the employer that the filing of  
14 the grievance at level one was untimely shall be asserted  
15 by the employer on behalf of the employer at or before  
16 the level two hearing. The grievant prevails by default if a

17 grievance evaluator required to respond to a grievance at  
18 any level fails to make a required response in the time  
19 limits required in this article, unless prevented from doing  
20 so directly as a result of sickness, injury, excusable neglect,  
21 unavoidable cause or fraud. Within five days of the  
22 receipt of a written notice of the default, the employer  
23 may request a hearing before a level four hearing  
24 examiner for the purpose of showing that the remedy  
25 received by the prevailing grievant is contrary to law or  
26 clearly wrong. In making a determination regarding the  
27 remedy, the hearing examiner shall presume the employee  
28 prevailed on the merits of the grievance and shall  
29 determine whether the remedy is contrary to law or clearly  
30 wrong in light of that presumption. If the examiner finds  
31 that the remedy is contrary to law, or clearly wrong, the  
32 examiner may modify the remedy to be granted to  
33 comply with the law and to make the grievant whole.

34 (b) If the employer or its agent intends to assert the  
35 application of any statute, policy, rule or written  
36 agreement or submits any written response to the filed  
37 grievance at any level, a copy of the materials shall be  
38 forwarded to the grievant and any representative of the  
39 grievant named in the filed grievance. Anything  
40 submitted and the grievant's response to the submitted  
41 materials, if any, becomes part of the record. Failure to  
42 assert the statute, policy, rule or written agreement at any  
43 level does not prevent the subsequent submission of the  
44 materials in accordance with the provisions of this  
45 subsection.

46 (c) The grievant may file the grievance at the level  
47 vested with authority to grant the requested relief if each  
48 lower administrative level agrees in writing to filing the  
49 grievance at a higher level. In the event a grievance is  
50 filed at a higher level, the employer shall provide copies to  
51 each lower administrative level.

52 (d) An employee may withdraw a grievance at any  
53 time by notice, in writing, to the level where the grievance  
54 is then current. The grievance may not be reinstated by  
55 the grievant unless reinstatement is granted by the  
56 grievance evaluator at the level where the grievance was

57 withdrawn. If more than one employee is named as  
58 grievant in a particular grievance, the withdrawal of one  
59 employee does not prejudice the rights of any other  
60 employee named in the grievance. In the event a  
61 grievance is withdrawn or an employee withdraws from a  
62 grievance, the employer shall notify, in writing, each lower  
63 administrative level.

64 (e) Grievances may be consolidated at any level by  
65 agreement of all parties.

66 (f) A grievant may be represented by an employee  
67 organization representative, legal counsel or any other  
68 person, including a fellow employee, in the preparation or  
69 presentation of the grievance. At the request of the  
70 grievant, that person or persons may be present at any step  
71 of the procedure: *Provided*, That at level one of the  
72 grievance, as set forth in section four of this article, a  
73 grievant may have only one representative.

74 (g) If a grievance is filed which cannot be resolved  
75 within the time limits set forth in section four of this article  
76 prior to the end of the employment term, the time limit  
77 shall be reduced as agreed to in writing by both parties so  
78 that the grievance procedure may be concluded within ten  
79 days following the end of the employment term or an  
80 otherwise reasonable time.

81 (h) No reprisals of any kind may be taken by any  
82 employer or agent of the employer against any interested  
83 party, or any other participant in the grievance procedure  
84 by reason of the participation. A reprisal constitutes a  
85 grievance, and any person held responsible for reprisal  
86 action is subject to disciplinary action for insubordination.

87 (i) Decisions rendered at all levels of the grievance  
88 procedure shall be dated, in writing setting forth the  
89 decision or decisions and the reasons for the decision, and  
90 transmitted to the grievant and any representative named  
91 in the grievance within the time prescribed. If the grievant  
92 is denied the relief sought, the decision shall include the  
93 name of the individual at the next level to whom appeal  
94 may be made.

95 (j) Once a grievance has been filed, supportive or  
96 corroborative evidence may be presented at any  
97 conference or hearing conducted pursuant to the  
98 provisions of this article. Whether evidence substantially  
99 alters the original grievance and renders it a different  
100 grievance is within the discretion of the grievance  
101 evaluator at the level where the new evidence is presented.  
102 If the grievance evaluator rules that the evidence renders it  
103 a different grievance, the party offering the evidence may  
104 withdraw it, the parties may consent to the evidence, or the  
105 grievance evaluator may decide to hear the evidence or  
106 rule that the grievant must file a new grievance. The time  
107 limitation for filing the new grievance is measured from  
108 the date of the ruling.

109 (k) Any change in the relief sought by the grievant  
110 shall be consented to by all parties or may be granted at  
111 level four within the discretion of the hearing examiner.

112 (l) Forms for filing grievances, giving notice, taking  
113 appeals, making reports and recommendations, and all  
114 other necessary documents shall be made available by the  
115 immediate supervisor to any employee upon request. The  
116 forms shall include information prescribed by the board.  
117 The grievant shall have access to the employer's  
118 equipment for purposes of preparing grievance  
119 documents subject to the reasonable rules of the employer  
120 governing the use of the equipment.

121 (m) Notwithstanding the provisions of section three,  
122 article nine-a, chapter six of this code, or any other  
123 provision relating to open proceedings, all conferences  
124 and hearings pursuant to this article shall be conducted in  
125 private except that, upon the grievant's request,  
126 conferences and hearings at levels two and three shall be  
127 open to employees of the grievant's immediate office or  
128 work area or, at the request of the grievant, shall be public.  
129 Within the discretion of the hearing examiner, conferences  
130 and hearings may be public at level four.

131 (n) No person may confer or correspond with a  
132 hearing examiner regarding the merits of the grievance  
133 unless all parties to the grievance are present.

134 (o) Grievances shall be processed during regular  
135 working hours. Attempts shall be made to process the  
136 grievance in a manner which does not interfere with the  
137 normal operation of the employer.

138 (p) The grievant or the employee selected by a  
139 grievant to represent him or her in the processing of a  
140 grievance through this procedure, or both, shall be granted  
141 necessary time off during working hours for the grievance  
142 procedure without loss of pay and without charge to  
143 annual or compensatory leave credits. In addition to  
144 actual time spent in grievance conferences and hearings,  
145 the grievant or the employee representative, or both, shall  
146 be granted time off during working hours, not to exceed  
147 four hours per grievance, for the preparation of the  
148 grievance without loss of pay and without charge to  
149 annual or compensatory leave credits. However, the first  
150 responsibility of any state employee is the work assigned  
151 by the appointing authority to the employee. An  
152 employee may not allow grievance preparation and  
153 representation activities to seriously affect the overall  
154 productivity of the employee.

155 (q) The aggrieved employee, employing agency and  
156 representatives of both have the right to call, examine and  
157 cross-examine witnesses who are employees of the agency  
158 against which the grievance is lodged and who have  
159 knowledge of the facts at issue.

160 (r) Both parties may produce witnesses other than  
161 employees of the agency against which the grievance is  
162 lodged, and the witnesses are subject to examination and  
163 cross-examination.

164 (s) If an employer or the employer's agent causes a  
165 conference or hearing to be postponed without adequate  
166 notice to employees who are scheduled to appear during  
167 their normal work day, the employees may not suffer any  
168 loss in pay for work time lost.

169 (t) Any grievance evaluator may be excused from  
170 participation in the grievance process for reasonable cause,  
171 including, but not limited to, conflict of interest or  
172 incapacitation, and if this occurs the grievance evaluator at

173 the next higher level shall designate an alternative  
174 grievance evaluator if it is reasonable and necessary.

175 (u) No less than one year following resolution of a  
176 grievance at any level, the grievant may by request in  
177 writing have removed any record of the grievant's identity  
178 from any file kept by the employer.

179 (v) All grievance forms and reports shall be kept in a  
180 file separate from the personnel file of the employee and  
181 may not become a part of the personnel file, but shall  
182 remain confidential except by mutual written agreement  
183 of the parties.

184 (w) The number of grievances filed against an  
185 employer or agent or by an employee is not, per se, an  
186 indication of the employer's or agent's or the employee's  
187 job performance.

188 (x) Any chief administrator with whom a grievance is  
189 filed may appeal a level four decision on the grounds that  
190 the decision:

191 (1) Is contrary to law or a lawfully adopted rule or  
192 written policy of the employer;

193 (2) Exceeds the hearing examiner's statutory  
194 authority;

195 (3) Is the result of fraud or deceit;

196 (4) Is clearly wrong in view of the reliable, probative  
197 and substantial evidence on the whole record; or

198 (5) Is arbitrary or capricious or characterized by abuse  
199 of discretion.

200 The appeal shall follow the procedure regarding  
201 appeal provided the grievant in section four of this article  
202 and provided both parties in section seven of this article.

#### **§29-6A-4. Procedural levels and procedure at each level.**

1 (a) *Level one.*

2 Within ten days following the occurrence of the event  
3 upon which the grievance is based, or within ten days of

4 the date on which the event became known to the grievant,  
5 or within ten days of the most recent occurrence of a  
6 continuing practice giving rise to a grievance, the grievant  
7 or the designated representative, or both, may file a written  
8 grievance with the immediate supervisor of the grievant.  
9 At the request of the grievant or the immediate supervisor,  
10 an informal conference shall be held to discuss the  
11 grievance within three days of the receipt of the written  
12 grievance. The immediate supervisor shall issue a written  
13 decision within six days of the receipt of the written  
14 grievance. If a grievance alleges discrimination or  
15 retaliation by the immediate supervisor of the grievant, the  
16 level one filing may be waived by the grievant and the  
17 grievance may be initiated at level two with the  
18 administrator or his or her designee, within the time limits  
19 set forth in this subsection for filing a grievance at level  
20 one. A meeting may be held to discuss the issues in  
21 dispute, but the meeting is not required.

22 (b) *Level two.*

23 Within five days of receiving the decision of the  
24 immediate supervisor, the grievant may file a written  
25 appeal to the administrator of the grievant's work location,  
26 facility, area office, or other appropriate subdivision of the  
27 department, board, commission or agency. The  
28 administrator or his or her designee shall hold a  
29 conference within five days of the receipt of the appeal  
30 and issue a written decision upon the appeal within five  
31 days of the conference.

32 (c) *Level three.*

33 Within five days of receiving the decision of the  
34 administrator of the grievant's work location, facility, area  
35 office, or other appropriate subdivision of the department,  
36 board, commission or agency, the grievant may file a  
37 written appeal of the decision with the chief administrator  
38 of the grievant's employing department, board,  
39 commission or agency. A copy of the appeal and the  
40 level two decision shall be served upon the director of the  
41 division of personnel by the grievant.

42       The chief administrator or his or her designee shall  
43 hold a hearing in accordance with section six of this article  
44 within seven days of receiving the appeal. The director of  
45 the division of personnel or his or her designee may  
46 appear at the hearing and submit oral or written evidence  
47 upon the matters in the hearing.

48       The chief administrator or his or her designee shall  
49 issue a written decision affirming, modifying or reversing  
50 the level two decision within five days of the hearing.

51       (d) *Level four.*

52       (1) If the grievant is not satisfied with the action taken  
53 by the chief administrator or his or her designee, within  
54 five days of the written decision the grievant may request,  
55 in writing, on a form furnished by the employer, that the  
56 grievance be submitted to a hearing examiner as provided  
57 for in section five of this article. The hearing shall be  
58 conducted in accordance with section six of this article  
59 within fifteen days following the request for the hearing:  
60 *Provided*, That the hearing may be held within thirty days  
61 following the request, or within a time that is mutually  
62 agreed upon by the parties, if the hearing examiner gives  
63 reasonable cause, in writing, as to the necessity for the  
64 delay. A copy of the appeal shall be served by the  
65 grievant upon the director of the division of personnel.  
66 The director of the division of personnel, or his or her  
67 designee, may appear at the hearing and submit oral or  
68 written evidence upon the matters in the hearing.

69       (2) Within thirty days following the hearing, the  
70 hearing examiner shall render a decision in writing to all  
71 parties setting forth findings and conclusions on the issues  
72 submitted. Subject to the provisions of section seven of  
73 this article, the decision of the hearing examiner is final  
74 upon the parties and is enforceable in circuit court.

75       (e) *Expedited grievance process.*

76       (1) A grievance involving suspension without pay,  
77 demotion or dismissal or loss of wages may be initiated at  
78 level two with the administrator of the grievant's work  
79 location, facility, area office, or other appropriate

80 subdivision of the department, board, commission or  
81 agency.

82 (2) An employee may grieve a final action of the  
83 employer involving a dismissal, demotion or suspension  
84 exceeding twenty days directly to the hearing examiner.  
85 The expedited grievance shall be in writing and shall be  
86 filed within ten days of the date of the final action with the  
87 chief administrator and the director of the division of  
88 personnel.

**§29-6A-5. Education and state employees grievance board;  
hearing examiners.**

1 (a) The education employees grievance board, created  
2 by virtue of the provisions of section five, article twenty-  
3 nine, chapter eighteen of this code, is renamed the  
4 education and state employees grievance board and, in  
5 addition to those duties set forth in chapter eighteen, shall  
6 administer the grievance procedure at level four as  
7 provided for in section four of this article. The board has  
8 jurisdiction regarding procedural matters at levels two and  
9 three of the grievance procedure. The board shall  
10 employ, in addition to those persons employed as hearing  
11 examiners for educational employee grievances, at least  
12 two full-time hearing examiners for the purpose of  
13 conducting hearings at level four, as provided in section  
14 four of this article. The hearing examiners are employed  
15 on an annual basis along with the clerical help necessary  
16 to implement the legislative intent expressed in section one  
17 of this article.

18 In addition to the budget required for submission to  
19 the Legislature by virtue of the provisions of section five,  
20 article twenty-nine, chapter eighteen of this code, the  
21 board shall submit a yearly budget and shall report  
22 annually to the governor and the Legislature regarding  
23 proceedings conducted under this article, including  
24 receipts and expenditures, the number of level four  
25 hearings conducted, synopses of hearing outcomes and  
26 other information as the board determines appropriate.  
27 The board shall further evaluate on an annual basis the  
28 level four grievance process and the performance of all  
29 hearing examiners and include the evaluation in the

30 annual report to the governor and the Legislature. In  
31 making the evaluation the board shall notify all  
32 employers, employee organizations, the director of the  
33 division of personnel and all grievants participating in  
34 level four grievances in the year for which evaluation is  
35 being made and shall provide for the submission of  
36 written comment or the hearing of testimony regarding  
37 the grievance process, or both.

38 The board shall provide suitable office space for all  
39 hearing examiners in space other than that utilized by any  
40 employer as defined in section two of this article and shall  
41 ensure that reference materials are generally available.  
42 The board shall provide forms for filing grievances, giving  
43 notice, taking appeals, making reports and  
44 recommendations and other documents as the board  
45 determines necessary for any stage of a grievance under  
46 this article.

47 The board is authorized to propose rules for  
48 promulgation consistent with the provisions of this article,  
49 and in accordance with article three, chapter twenty-nine-a  
50 of this code.

51 (b) Hearing examiners may consolidate grievances,  
52 allocate costs among the parties in accordance with section  
53 eight of this article, subpoena witnesses and documents in  
54 accordance with the provisions of section one, article five,  
55 chapter twenty-nine-a of this code, provide relief as is  
56 determined fair and equitable in accordance with the  
57 provisions of this article, and take any other action to  
58 provide for the effective resolution of grievances not  
59 inconsistent with any rules of the board or the provisions  
60 of this article: *Provided*, That in all cases the hearing  
61 examiner has the authority to provide appropriate  
62 remedies including, but not limited to, making the  
63 employee whole.

#### **§29-6A-6. Hearings generally.**

1 (a) The chief administrator or his or her designee  
2 acting as a grievance evaluator or the hearing examiner  
3 shall conduct all hearings in an impartial manner and shall  
4 ensure that all parties are accorded procedural and

5 substantive due process. All parties shall have an  
6 opportunity to present evidence and argument with respect  
7 to the matters and issues involved, to cross-examine and to  
8 rebut evidence. Reasonable notice of a hearing shall be  
9 sent prior to the hearing to all parties and their named  
10 representative and shall include the date, time and place of  
11 the hearing. Level one, level two and level three hearings  
12 shall be at a convenient place accessible to the aggrieved  
13 employee. All hearings shall be held on the employer's  
14 premises or on other premises mutually agreeable to the  
15 parties and within regular working hours: *Provided*, That  
16 any hearing might continue beyond normal working  
17 hours. Level four hearings shall be at a place to be  
18 designated by the hearing examiner.

19 (b) The employer that is party to the grievance shall  
20 produce prior to the hearing any documents, not  
21 privileged, and which are relevant to the subject matter  
22 involved in the pending grievance, that have been  
23 requested by the grievant, in writing.

24 (c) The chief administrator or his or her designee or  
25 the hearing examiner has the power to: (1) Administer  
26 oaths and affirmations; (2) subpoena witnesses; (3)  
27 regulate the course of the hearing; (4) hold conferences  
28 for the settlement or simplification of the issues; (5)  
29 exclude immaterial, irrelevant or repetitious evidence; (6)  
30 sequester witnesses; (7) restrict the number of advocates;  
31 and (8) take any other action not inconsistent with the  
32 rules of the board or the provisions of this article.

33 (d) All the testimony and evidence at any level three  
34 or level four hearing shall be recorded by mechanical  
35 means, and all recorded testimony and evidence at the  
36 hearing shall be transcribed and certified by affidavit.  
37 The chief administrator is responsible for promptly  
38 providing a copy of the certified transcript of a level three  
39 hearing to any party to that hearing who requests the  
40 transcript. The hearing examiner may also request and be  
41 provided a transcript upon appeal to level four and  
42 allocate the costs for the transcript as prescribed in section  
43 eight of this article. The board is responsible for  
44 promptly providing a copy of the certified transcript of a

45 level four hearing to any party to that hearing who  
46 requests the transcript.

47 (e) Formal rules of evidence may not be applied, but  
48 parties are bound by the rules of privilege recognized by  
49 law. No employee may be compelled to testify against  
50 himself or herself in a grievance involving disciplinary  
51 action. The burden of proof rests with the employer in  
52 disciplinary matters.

53 (f) All materials submitted in accordance with section  
54 three of this article; the mechanical recording of all  
55 testimony and evidence or the transcription of the  
56 testimony, if any; the decision; and any other materials  
57 considered in reaching the decision are the record of a  
58 grievance. The record shall be submitted to any level at  
59 which appeal has been made, and the record shall be  
60 considered, but the development of the record is not  
61 limited thereby.

62 (g) Every decision pursuant to a hearing shall be in  
63 writing and shall be accompanied by findings of fact and  
64 conclusions of law.

65 (h) Prior to the decision any party may propose  
66 findings of fact and conclusions of law.

**§29-6A-7. Enforcement and reviewability; costs; good faith.**

1 (a) The decision of the hearing examiner is final upon  
2 the parties and is enforceable in circuit court.

3 (b) Either party or the director of the division of  
4 personnel may appeal to the circuit court of Kanawha  
5 County or to the circuit court of the county in which the  
6 grievance occurred on the grounds that the hearing  
7 examiner's decision:

8 (1) Is contrary to law or a lawfully adopted rule or  
9 written policy of the employer;

10 (2) Exceeds the hearing examiner's statutory  
11 authority;

12 (3) Is the result of fraud or deceit;

13 (4) Is clearly wrong in view of the reliable, probative  
14 and substantial evidence on the whole record; or

15 (5) Is arbitrary or capricious or characterized by abuse  
16 of discretion or clearly unwarranted exercise of discretion.

17 (c) The appeal shall be filed within thirty days of  
18 receipt of the hearing examiner's decision. The decision  
19 of the hearing examiner is not automatically stayed upon  
20 the filing of an appeal, but a stay may be granted by the  
21 circuit court upon separate motion for a stay.

22 (d) The court's ruling shall be upon the entire record  
23 made before the hearing examiner, and the court may  
24 hear oral arguments and require written briefs. The court  
25 may reverse, vacate or modify the decision of the hearing  
26 examiner or may remand the grievance to the appropriate  
27 chief administrator for further proceedings.

28 (e) Both employer and employee shall at all times act  
29 in good faith and make every possible effort to resolve  
30 disputes at the lowest level of the grievance procedure.  
31 The hearing examiner may make a determination of bad  
32 faith and in extreme instances allocate the cost of the  
33 hearing to the party found to be acting in bad faith. The  
34 allocation of costs shall be based on the relative ability of  
35 the party to pay the costs.

**§29-6A-10. Employee's right to attorney's fees and costs.**

1 If an employee appeals to a circuit court an adverse  
2 decision of a hearing examiner rendered in a grievance  
3 proceeding pursuant to provisions of this article or is  
4 required to defend an appeal and the person substantially  
5 prevails, the adverse party or parties is liable to the  
6 employee, upon final judgment or order, for court costs,  
7 and for reasonable attorney's fees, to be set by the court,  
8 for representing the employee in all administrative  
9 hearings and before the circuit court and the supreme  
10 court of appeals, and is further liable to the employee for  
11 any court reporter's costs incurred during any  
12 administrative hearings or court proceedings: *Provided,*  
13 That in no event shall such attorney's fees be awarded in  
14 excess of a total of one thousand five hundred dollars for

15 the administrative hearings and circuit court proceedings  
16 nor an additional one thousand dollars for supreme court  
17 proceedings: *Provided, however,* That the requirements  
18 of this section shall not be construed to limit the  
19 employee's right to recover reasonable attorney's fees in a  
20 mandamus proceeding brought under section nine of this  
21 article.

**§29-6A-12. Mediation required at request of either party.**

1 Upon the request of either party, the board may  
2 require mediation or other alternative dispute resolution  
3 technique to assist the parties in identifying, clarifying and  
4 resolving issues regarding the grievance. Mediation may  
5 be requested at any time prior to the level four hearing.  
6 All of the information that is provided by parties during  
7 mediation is and shall remain confidential. Mediators  
8 may not be called as witnesses to provide testimony in  
9 unresolved grievances that proceed to a grievance hearing,  
10 and any hearing examiner involved in a mediation process  
11 may not hear the grievance or be consulted regarding the  
12 merits of the grievance.

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## CHAPTER 161

(Com. Sub. for H. B. 4118—By Delegates Cann, Warner, Coleman,  
Linch, Staton and Kominar)

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

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AN ACT to amend and reenact sections one and four, article one, chapter forty-four-a of the code of West Virginia, one thousand 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 conservatorship for missing persons; defining missing person; and providing petition, notice and hearing requirements for appointing 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**

1. **Definitions and General Provisions.**
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-1-4. Definitions.

**§44A-1-1. Short title and legislative findings.**

1 This chapter shall be known and may be cited as the  
2 "West Virginia Guardianship and Conservatorship Act."

3 The Legislature finds that section six, article eight of  
4 the constitution of the state of West Virginia gives it the  
5 discretionary authority to pass legislation which  
6 "...provides that all matters of probate, the appointment  
7 and qualification of personal representatives, guardians,  
8 committees and curators, and the settlements of their  
9 accounts..." be under the exclusive jurisdiction of circuit  
10 courts. The Legislature further finds and declares that the  
11 use of the word "all" does not require an interpretation that  
12 the Legislature must place every aspect of such matters  
13 with circuit courts, but, that because of the discretionary  
14 authority given, the Legislature may transfer, from time to  
15 time, only those matters which it believes would be better  
16 served under the jurisdiction of circuit courts.

17 The Legislature hereby further finds and declares that  
18 legal proceedings requiring a tribunal to determine  
19 whether persons should be appointed to manage the  
20 personal or financial affairs of individuals deemed  
21 mentally incompetent, mentally retarded, mentally

22 handicapped or missing involve considerations of  
23 constitutionally protected rights which can best be  
24 resolved within the circuit courts of this state.

**§44A-1-4. Definitions.**

1 As used in this chapter, unless a different meaning is  
2 clearly required by the context:

3 (1) "Conservator" means a person appointed by the  
4 court who is responsible for managing the estate and  
5 financial affairs of a protected person, and, where the  
6 context plainly indicates, the term "conservator" shall  
7 mean or include a "limited conservator" or a "temporary  
8 conservator."

9 (2) "Guardian" means a person appointed by the court  
10 who is responsible for the personal affairs of a protected  
11 person, and, where the context plainly indicates, the term  
12 "guardian" shall mean or include a "limited guardian" or a  
13 "temporary guardian."

14 (3) "Protected person" means an adult individual,  
15 eighteen years of age or older, who has been found by a  
16 court, because of mental impairment, to be unable to  
17 receive and evaluate information effectively or to respond  
18 to people, events, and environments to such an extent that  
19 the individual lacks the capacity: (A) To meet the  
20 essential requirements for his or her health, care, safety,  
21 habilitation, or therapeutic needs without the assistance or  
22 protection of a guardian; or (B) to manage property or  
23 financial affairs or to provide for his or her support or for  
24 the support of legal dependents without the assistance or  
25 protection of a conservator. A finding that the individual  
26 displays poor judgment, alone, will not be considered  
27 sufficient evidence that the individual is a protected person  
28 within the meaning of this subsection. "Protected person"  
29 also means a person whom a court has determined is a  
30 missing person.

31 (4) "Interested person" means: (A) An individual who  
32 is the subject of a guardianship or conservatorship  
33 proceeding; (B) a guardian or conservator of a protected  
34 person; and (C) any other person with an actual and

35 substantial interest in the proceeding, either generally or as  
36 to a particular matter, as distinguished from a person who  
37 has only a nominal, formal, or technical interest in or  
38 connection with the proceeding.

39 (5) "Limited conservator" means a person appointed  
40 by the court who has only those responsibilities for  
41 managing the estate and financial affairs of a protected  
42 person, as specified in the order of appointment.

43 (6) "Limited guardian" means one appointed by the  
44 court who has only those responsibilities for the personal  
45 affairs of a protected person, as specified in the order of  
46 appointment.

47 (7) "Person" means, generally, a natural person, any  
48 corporation, association, partnership or other business  
49 entity, any political subdivision or other public agency, or  
50 any estate, trust or other collection of properties to which  
51 the law attributes the capacity of having rights or duties.

52 (8) "Living will" means a living will existing and duly  
53 executed in accordance with the provisions of section  
54 three, article thirty, chapter sixteen of this code.

55 (9) "Medical power of attorney" means a power of  
56 attorney existing and duly executed in accordance with  
57 the provisions of section six, article thirty-a, chapter  
58 sixteen of this code.

59 (10) "Missing person" means an adult individual,  
60 eighteen years of age or older, who is absent from his or  
61 her usual place of residence in the state and whose  
62 whereabouts are unknown for a period of six months or  
63 more.

64 (11) "Surrogate decision-maker" means an individual  
65 identified as such by an attending physician in accordance  
66 with the provisions of section seven, article thirty-b,  
67 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-2-6. Notice of hearing.

§44A-2-9. Hearing on petition to appoint.

**§44A-2-1. Filing of petition; jurisdiction; fees.**

1 (a) A petition for the appointment of a guardian or  
2 conservator shall be filed with the clerk of the circuit court  
3 in the county in which the alleged protected person  
4 resides, or, if an alleged protected person has been  
5 admitted to a health care or correctional facility, in the  
6 county in which that facility is located. A petition for the  
7 appointment of a conservator for a missing person shall be  
8 filed with the clerk of the circuit court in the county in  
9 which the missing person last resided.

10 (b) The circuit court in which the proceeding is first  
11 commenced shall have exclusive jurisdiction unless that  
12 court determines that a transfer of venue would be in the  
13 best interests of the person alleged to need protection.

14 (c) The fee for filing a petition shall be seventy  
15 dollars, payable upon filing to the circuit clerk, all of  
16 which shall be retained by the circuit clerk. The person  
17 bringing the petition shall be responsible for fees for  
18 filings of the petition and other papers, for service of  
19 process, and for copies of court documents and  
20 transcripts. In the event that a guardian and/or conservator  
21 is appointed by the court, such fees shall be reimbursed to  
22 the individual who filed the petition from the protected  
23 person's estate, if funds are available. Any person who is  
24 pecuniarily unable to pay such fees and costs as set forth  
25 in article one, chapter fifty-nine of this code, and article  
26 two, chapter fifty-one of this code, will not be required to  
27 pay said fees and costs.

**§44A-2-2. Who may file petition; contents.**

1 (a) A petition for the appointment of a guardian, a  
2 conservator, or both, may be filed by the individual  
3 alleged to be a protected person, by a person who is  
4 responsible for or has assumed responsibility for the  
5 individual's care or custody, by the facility providing care  
6 to the individual, by the person that the individual has  
7 nominated as guardian or conservator, or by any other

8 interested person, including, but not limited to, the  
9 department of health and human resources.

10 (b) A petition for the appointment of a guardian, a  
11 conservator, or both, shall state the petitioner's name, place  
12 of residence, post office address, and relationship to the  
13 alleged protected person, and shall, to the extent known as  
14 of the date of filing, include the following:

15 (1) The alleged protected person's name, date of birth,  
16 place of residence or location and post office address;

17 (2) The names and post office addresses of the alleged  
18 protected person's nearest relatives, in the following order:

19 (i) The spouse and children, if any; or if none

20 (ii) The parents and brothers and sisters, if any; or if  
21 none

22 (iii) The nearest known relatives who would be entitled  
23 to succeed to the person's estate by intestate succession as  
24 set forth in article one, chapter forty-two of this code.

25 Once a relative or several relatives have been identified  
26 in one of the aforementioned categories, relatives in a  
27 lower category do not have to be listed in the petition;

28 (3) The name, place of residence or location and post  
29 office address of the individual or facility that is  
30 responsible for or has assumed responsibility for the  
31 person's care or custody;

32 (4) The name, place of residence or location and post  
33 office address of any person designated as a surrogate  
34 decision-maker for the alleged protected person, or of any  
35 representative or representatives designated under a  
36 durable power of attorney, medical power of attorney or  
37 living will, of which the alleged protected person is the  
38 principal, and the petitioner shall attach a copy of any  
39 such documents, if available;

40 (5) The name, post office address and phone number  
41 of the attorney representing the petitioner in the petition  
42 and appointment proceedings;

43 (6) Whether the person's incapacity will prevent  
44 attendance at the hearing and the reasons therefor;

45 (7) The type of guardianship or conservatorship  
46 requested and the reasons for the request;

47 (8) The proposed guardian or conservator's name, post  
48 office address and, if the proposed guardian or  
49 conservator is an individual, the individual's age,  
50 occupation and relationship to the alleged protected  
51 person;

52 (9) The name and post office address of a guardian  
53 nominated by the alleged protected person if different  
54 from the proposed guardian or conservator, and, if the  
55 person nominated as a guardian or conservator is an  
56 individual, the individual's age, occupation and  
57 relationship to the alleged protected person;

58 (10) The name and post office address of any  
59 guardian or conservator currently acting, whether in this  
60 state or elsewhere;

61 (11) If the appointment of a limited guardian is  
62 requested, the specific areas of protection and assistance to  
63 be included in the order of appointment;

64 (12) If the appointment of a limited conservator is  
65 requested, the specific areas of management and assistance  
66 to be included in the order of appointment; and

67 (13) If the appointment of a conservator is requested  
68 for a missing person, the specific circumstances under  
69 which the person is considered missing.

**§44A-2-6. Notice of hearing.**

1 (a) Upon the filing of the petition and evaluation  
2 report, the court shall promptly issue a notice fixing the  
3 date, hour and location for a hearing to take place within  
4 sixty days.

5 (b) The alleged protected person shall be personally  
6 served with the notice, a copy of the petition, and the  
7 evaluation report not less than fourteen days before the

8 hearing. The person may not waive notice, and a failure  
9 to properly notify the person shall be jurisdictional.

10 (c) A copy of the notice, together with a copy of the  
11 petition, shall be mailed by certified mail, return receipt  
12 requested, by the petitioner, at least fourteen days before  
13 the hearing to all individuals seven years of age or older  
14 and to all entities whose names and post office addresses  
15 appear in the petition. In the case of a missing person, a  
16 copy of the petition for the appointment of a conservator  
17 shall be mailed by certified mail, return receipt requested,  
18 by the petitioner, at least fourteen days before the hearing  
19 to the last known address of the missing person. A copy  
20 of certified mail return receipts shall be filed in the office  
21 of the circuit clerk on or before the date of hearing.

22 (d) The notice shall include a brief statement in large  
23 print of the purpose of the proceedings, and shall inform  
24 the alleged protected person of the right to appear at the  
25 hearing, the right to an attorney and the right to object to  
26 the proposed appointment. Additionally, the notice shall  
27 include the following statement in large print:

28 **POSSIBLE CONSEQUENCES OF A COURT**  
29 **FINDING THAT YOU ARE INCAPACITATED**

30 At the hearing you may lose many of your rights. A  
31 guardian may be appointed to make personal decisions  
32 for you. A conservator may be appointed to make  
33 decisions concerning your property and finances. The  
34 appointment may affect control of how you spend your  
35 money, how your property is managed and controlled,  
36 who makes your medical decisions, where you live,  
37 whether you are allowed to vote and other important  
38 rights.

39 (e) No person may be appointed a guardian or  
40 conservator without first receiving proper notice and  
41 having the opportunity for a hearing.

**§44A-2-9. Hearing on petition to appoint.**

1 (a) The court may hear the petition for the  
2 appointment of a guardian or conservator or may  
3 designate the mental hygiene commissioner in the circuit

4 to serve as the trier of fact at the hearing on the petition:  
5 *Provided*, That the court shall be the trier of fact at the  
6 hearing on a petition for the appointment of a conservator  
7 for a missing person. If a mental hygiene commissioner is  
8 appointed, a mental hygiene commitment proceeding may  
9 not be held simultaneously with a proceeding for the  
10 appointment of a guardian or conservator. The  
11 designated mental hygiene commissioner shall submit  
12 written findings of fact and recommendations to the court  
13 upon conclusion of the hearing. The court may accept or  
14 reject the recommendations of the mental hygiene  
15 commissioner. Only the court may enter an order  
16 appointing a guardian or conservator.

17 (b) The hearing may be held at such convenient place  
18 as the court or mental hygiene commissioner directs,  
19 including the place where the alleged protected person is  
20 located. The hearing shall be closed to the public. The  
21 proposed guardian or conservator shall attend the hearing  
22 except for good cause shown. Any individual or entity  
23 may apply for permission to observe or participate at the  
24 hearing, and the court or mental hygiene commissioner  
25 shall grant the request if reasonably satisfied that the  
26 applicant's participation would be in the best interests of  
27 the alleged protected person.

28 (c) The alleged protected person is entitled to attend  
29 the hearing, to oppose the petition, to be represented by an  
30 attorney, to present evidence, to compel the attendance of  
31 witnesses and to confront and cross-examine all witnesses.  
32 If the alleged protected person is present at the hearing,  
33 the court or mental hygiene commissioner shall verbally  
34 inform the person of such rights, of the contents of the  
35 petition, and of the purpose and legal effect of the  
36 appointment of a guardian or conservator. Except in the  
37 case of a missing person, the hearing shall not proceed if  
38 the alleged protected person is not present unless there is  
39 an affidavit of a physician presented to the court, qualified  
40 expert testimony to warrant a finding that the presence of  
41 the individual is not possible due to a physical inability or  
42 that such presence would significantly impair his or her  
43 health, or evidence that the person refuses to appear.

44 (d) The standard of proof to be applied in  
45 determining whether the alleged protected person is a  
46 person for whom a guardian or conservator should be  
47 appointed is clear and convincing evidence.

48 (e) The court shall make specific findings of fact and  
49 conclusions of law in support of any orders entered.

50 (f) Upon request, a transcript of the proceedings of  
51 appointment shall be provided for the purposes of an  
52 appeal.

53 (g) In the case of a hearing held on a petition for the  
54 appointment of a conservator for a missing person, the  
55 court must be satisfied by clear and convincing evidence  
56 that the person has been missing and their whereabouts are  
57 unknown for six months or more and the appointment of  
58 a conservator is necessary to protect the interests of and to  
59 manage the estate and the financial affairs of the missing  
60 person. If the court finds there is no necessity to appoint  
61 a full conservator, the court may appoint a limited  
62 conservator to manage the estate and financial affairs of  
63 the missing person. The court may, only as a last resort,  
64 appoint a sheriff to serve as a conservator for a missing  
65 person.

#### ARTICLE 4. TERMINATION, REVOCATION AND MODIFICA- TION OF APPOINTMENTS.

##### §44A-4-5. Termination of guardianship or conservatorship of protected person - When authorized.

1 A guardianship or conservatorship of a protected  
2 person shall terminate upon the death of the protected  
3 person, whenever jurisdiction is transferred to another state  
4 or if ordered by the court following a hearing on the  
5 petition of any interested person. In the case of a missing  
6 person, a conservatorship shall terminate when the  
7 person's death is established by the production of a  
8 certified death certificate, the person is presumed dead  
9 pursuant to the provisions of article nine, chapter forty-  
10 four of this code, or the missing person is located.

## CHAPTER 162

(H. B. 4457—By Delegates Hunt, Amores, Rowe,  
Seacrist, Spencer, Webb and Henderson)

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[Passed March 13, 1998; in effect July 1, 1998. Approved by the Governor.]

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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  
2 her deputies of each county within this state, at the time  
3 they are making assessment of the personal property  
4 within such county, to assess and collect a head tax of  
5 three dollars on each dog, male or female; and in addition  
6 to the above, the assessor and his or her deputies shall have  
7 the further duty of collecting any such head tax on dogs  
8 as may be levied by the ordinances of each and every  
9 municipality within the county. However, no head tax  
10 may be levied against any guide or support dog especially  
11 trained for the purpose of serving as a guide, leader,  
12 listener or support for a blind person, deaf person or a  
13 person who is physically or mentally disabled because of  
14 any neurological, muscular, skeletal or psycholological  
15 disorder that causes weakness or inability to perform any  
16 function. Guide or support dogs must be registered as  
17 provided by this section. In the event that the owner,

18 keeper or person having in his or her possession or  
19 allowing to remain on any premises under his or her  
20 control any dog above the age of six months, shall refuse  
21 or fail to pay such tax, when the same is assessed or within  
22 fifteen days thereafter, to the assessor or deputy assessor,  
23 then such assessor or deputy assessor shall certify such tax  
24 to the county dog warden; if there be no county dog  
25 warden he or she shall certify such tax to the county  
26 sheriff, who shall take charge of the dog for which the tax  
27 is delinquent and impound the same for a period of  
28 fifteen days, for which service he or she shall be allowed a  
29 fee of one dollar and fifty cents to be charged against  
30 such delinquent taxpayer in addition to the taxes herein  
31 provided for. In case the tax and impounding charge  
32 herein provided for shall not have been paid within the  
33 period of fifteen days, then the sheriff may sell the  
34 impounded dog and deduct the impounding charge and  
35 the delinquent tax from the amount received therefor, and  
36 return the balance, if any, to the delinquent taxpayer.  
37 Should the sheriff fail to sell the dog so impounded within  
38 the time specified herein, he or she shall kill such dog and  
39 dispose of its body.

40 At the same time as the head tax is assessed, the  
41 assessor and his or her deputies shall, on the forms  
42 prescribed under section four of this article, take down the  
43 age, sex, color, character of hair (long or short) and breed  
44 (if known) and the name and address of the owner, keeper  
45 or harbinger thereof. When the head tax, and extra  
46 charges, if any, are paid, the officer to whom payment is  
47 made shall issue a certificate of registration and a  
48 registration tag for such dog.

49 In addition to the assessment and registration above  
50 provided for, whenever a dog either is acquired or  
51 becomes six months of age after the assessment of the  
52 personal property of the owner, keeper or harbinger  
53 thereof, the said owner, keeper or harbinger of said dog  
54 shall, within ten days after the acquisition or maturation,  
55 register the said dog with the assessor, and pay the head  
56 tax thereon unless the prior owner, keeper or harbinger  
57 paid the head tax.

58 All certificates of registration and registration tags  
59 issued pursuant to the provisions of this section shall be  
60 issued for the fiscal year and shall be valid from the date  
61 on which issued until the thirtieth day of June of that fiscal  
62 year, or until reissued by the assessor or his or her deputy  
63 in the regular performance of his or her duties, but in no  
64 case shall previous registration tags be valid after  
65 September thirtieth of the next ensuing fiscal year.

66 The assessor collecting the head tax on dogs shall be  
67 allowed a commission of ten percent upon all such taxes  
68 collected by him or her, and shall turn in to the county  
69 treasury ninety percent of such taxes so collected, as are  
70 levied by this section; and the assessor shall turn over to  
71 the treasurer or other proper officer of each and every  
72 municipality within the county ninety percent of such  
73 taxes levied by the ordinances of such municipality. All  
74 such dog taxes, except those belonging to municipalities,  
75 shall be accredited to the dog and kennel fund provided  
76 for in section ten of this article. Such dog taxes as are  
77 collected for and turned over to municipalities shall be  
78 deposited by the proper officer of such municipalities to  
79 such fund and shall be expended in such manner as the  
80 law of such municipality may provide. All taxes on dogs  
81 not collected by the assessor shall be collected by the  
82 regular tax collecting officer of the county and placed to  
83 the credit of the dog and kennel fund.

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## 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)

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

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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.**

1 (a) (1) The parkways authority is hereby authorized to  
2 fix, revise, charge and collect tolls for the use of each  
3 parkway project and the different parts or sections thereof,  
4 and to fix, revise, charge and collect rents, fees, charges  
5 and other revenues, of whatever kind or character, for the  
6 use of each economic development project or tourism  
7 project, or any part or section thereof, and to contract with  
8 any person, partnership, association or corporation  
9 desiring the use of any part thereof, including the right-  
10 of-way adjoining the paved portion, for placing thereon  
11 telephone, telegraph, electric light, power or other utility  
12 lines, gas stations, garages, stores, hotels, restaurants and  
13 advertising signs, or for any other purpose except for  
14 tracks for railroad or railway use, and to fix the terms,  
15 conditions, rents and rates of charges for such use. Such  
16 tolls, rents, fees and charges shall be so fixed and adjusted  
17 in respect of the aggregate of tolls, or in respect of the  
18 aggregate rents, fees and charges, from the project or  
19 projects in connection with which the bonds of any issue  
20 shall have been issued as to provide a fund sufficient with  
21 other revenues, if any, to pay: (A) The cost of  
22 maintaining, repairing and operating such project or

23 projects; and (B) the principal of and the interest on such  
24 bonds as the same shall become due and payable, and to  
25 create reserves for such purposes. Such tolls, rents, fees  
26 and other charges shall not be subject to supervision or  
27 regulation by any other commission, board, bureau,  
28 department or agency of the state. The tolls, rents, fees,  
29 charges and all other revenues derived from the project or  
30 projects in connection with which the bonds of any issue  
31 shall have been issued, except such part thereof as may be  
32 necessary to pay such cost of maintenance, repair and  
33 operation and to provide such reserves therefor as may be  
34 provided for in the resolution authorizing the issuance of  
35 such bonds or in the trust agreement securing the same,  
36 shall be set aside at such regular intervals as may be  
37 provided in such resolution or such trust agreement in a  
38 sinking fund which is hereby pledged to, and charged  
39 with, the payment of: (i) the interest upon such bonds as  
40 such interest shall fall due; (ii) the principal of such bonds  
41 as the same shall fall due; (iii) the necessary charges of  
42 paying agents for paying principal and interest; and (iv)  
43 the redemption price or the purchase price of bonds  
44 retired by call or purchase as therein provided. The use  
45 and disposition of moneys to the credit of such sinking  
46 fund shall be subject to the provisions of the resolution  
47 authorizing the issuance of such bonds or of such trust  
48 agreement. Except as may otherwise be provided in such  
49 resolution or such trust agreement, such sinking fund shall  
50 be a fund for all such bonds without distinction or priority  
51 of one over another. The moneys in the sinking fund, less  
52 such reserve as may be provided in such resolution or trust  
53 agreement, if not used within a reasonable time for the  
54 purchase of bonds for cancellation as above provided,  
55 shall be applied to the redemption of bonds at the  
56 redemption price then applicable.

57 (2) (A) In fiscal year one thousand nine hundred  
58 ninety-eight, after the parkways authority has met or  
59 provided for the satisfaction of each requirement imposed  
60 by the provisions of subdivision (1) of this subsection, the  
61 parkways authority shall pay two hundred fifty thousand

62 dollars to the Hatfield-McCoy regional recreation  
63 authority from any remaining balance of revenues  
64 received from economic development projects and  
65 tourism projects.

66 (B) Upon the effective date of this act, the parkways  
67 authority shall seek authorization from the federal  
68 highway administration, the state department of  
69 transportation and the trustee under any trust indenture or  
70 agreement existing as the result of the issuance of any  
71 revenue bonds under the provisions of this article to issue  
72 additional revenue bonds in a total amount not to exceed  
73 six million dollars for the purpose of funding projects of  
74 the Hatfield-McCoy regional recreation authority. Upon  
75 the agreement of all of such entities that the parkways  
76 authority be authorized to do so, as certified to the  
77 parkways authority, the governor and the joint committee  
78 on government and finance, the parkways authority is  
79 authorized to issue additional revenue bonds in a total  
80 amount not to exceed six million dollars. The proceeds of  
81 the revenue bonds shall be used to fund projects of the  
82 Hatfield-McCoy regional recreation authority. Each  
83 issuance of such revenue bonds and the application of the  
84 proceeds thereof shall be subject to each condition,  
85 restriction or other provision of this article applicable to  
86 the issuance of parkway revenue bonds. In the event the  
87 agreement is not certified as required by this subsection,  
88 and until the same is certified, the parkways authority shall  
89 pay two hundred fifty thousand dollars to the Hatfield-  
90 McCoy regional recreation authority in the fiscal year  
91 ending the thirtieth day of June, two thousand, and in each  
92 fiscal year thereafter, for a total of four consecutive years,  
93 for the purpose of funding projects of the Hatfield-  
94 McCoy regional recreation authority. These amounts  
95 shall be paid in quarterly installments from remaining  
96 balances in each such fiscal year of revenues received  
97 from economic development projects and tourism projects  
98 as determined in the manner provided in paragraph (A) of  
99 this subdivision.

100 (b) The parkways authority shall cause, as soon as it is  
101 legally able to do so, all contracts to which it is a party and  
102 which relate to the operation, maintenance or use of any  
103 restaurant, motel or other lodging facility, truck and  
104 automobile service facility, food vending facility or any  
105 other service facility located along the West Virginia  
106 turnpike, to be renewed on a competitive bid basis. All  
107 contracts relating to any facility or services entered into by  
108 the parkways authority with a private party with respect to  
109 any project constructed after the effective date of this  
110 legislation shall be let on a competitive bid basis only. If  
111 the parkways authority receives a proposal for the  
112 development of a project, such proposal shall be made  
113 available to the public in a convenient location in the  
114 county wherein the proposed facility may be located. The  
115 parkways authority shall publish a notice of the proposal  
116 by a Class I legal advertisement in accordance with the  
117 provisions of article three, chapter fifty-nine of this code.  
118 The publication area shall be the county in which the  
119 proposed facility would be located. Any citizen may  
120 communicate by writing to the parkways authority his or  
121 her opposition to or approval to such proposal within a  
122 period of time not less than forty-five days from the  
123 publication of the notice. No contract for the  
124 development of a project may be entered into by the  
125 parkways authority until a public hearing is held in the  
126 vicinity of the location of the proposed project with at  
127 least twenty days' notice of such hearing by a Class I  
128 publication pursuant to section two, article three, chapter  
129 fifty-nine of this code. The parkways authority shall  
130 make written findings of fact prior to rendering a decision  
131 on any proposed project. All studies, records, documents  
132 and other materials which are considered by the parkways  
133 authority in making such findings shall be made available  
134 for public inspection at the time of the publication of the  
135 notice of public hearing and at a convenient location in  
136 the county where the proposed project may be located.  
137 The parkways authority shall promulgate rules in  
138 accordance with chapter twenty-nine-a of this code for the  
139 conduct of any hearing required by this section. Persons  
140 attending any such hearing shall be afforded a reasonable  
141 opportunity to speak and be heard on the proposed  
142 project.

## CHAPTER 164

(Com. Sub. for H. B. 4299—By Mr. Speaker, Mr. Kiss, and Delegates  
Martin, Compton, Leach, Douglas, Staton and Capito)

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

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AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen-b; to amend and reenact section two-b, article four-a, chapter nine of said code; and to further amend said article four-a by adding thereto a new section, designated section three, all relating to creating a children's health program; expanding access to health services to certain eligible children; requiring reporting; defining terms; creating division; creating a children's health policy board, specifying membership and qualifications of members, compensation and expenses, setting forth purpose, powers and duties; providing for employment of a director, setting forth powers and duties; requiring preparation of annual financial plan; creating a special revolving fund known as the West Virginia children's health fund; providing guidelines to be considered by the board and director in developing and planning the program; providing for termination and reauthorization of the program; expanding medicaid coverage to certain eligible children; and creating a special revolving fund known as the West Virginia Title XIX-Medicaid fund.

*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.**
- 9. Human Services.**

**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-9. Public-private partnerships.

**§5-16B-1. Expansion of health care coverage to children; creation of program; legislative directives.**

- 1 (a) It is the intent of the Legislature to expand access  
 2 to health services for eligible children and to pay for this  
 3 coverage by using private, state and federal funds to  
 4 purchase those services or purchase insurance coverage  
 5 for those services. To achieve this intention, the West  
 6 Virginia children's health program is hereby created.  
 7 The program shall be administered by the division of  
 8 children's health within the bureau for medical services of  
 9 the department of health and human resources in  
 10 accordance with the provisions of this article and the  
 11 applicable provisions of Title XXI of the Social Security  
 12 Act of 1997. Participation in the program may be made

13 available to families of eligible children, subject to  
14 eligibility criteria and processes to be established, which  
15 shall not create an entitlement to coverage in any person.  
16 Nothing in this article may be construed to require any  
17 appropriation of state general revenue funds for the  
18 payment of any benefit provided for in this article. In the  
19 event that this article conflicts with the requirements of  
20 federal law, federal law shall govern.

21 (b) In developing a children's health program that  
22 operates with the highest degree of simplicity and  
23 governmental efficiency, the board shall avoid duplicating  
24 functions available in existing agencies and may enter into  
25 interagency agreements for the performance of specific  
26 tasks or duties at a specific or maximum contract price.

27 (c) In developing benefit plans, the board may  
28 consider any cost savings, administrative efficiency or  
29 other benefit to be gained by considering existing  
30 contracts for services with state health plans and  
31 negotiating modifications of those contracts to meet the  
32 needs of the program.

#### §5-16B-2. Definitions.

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

3 (a) "Board" means the children's health policy  
4 board;

5 (b) "Director" means the director of the children's  
6 health program;

7 (c) "Division" means the division of children's health  
8 created within the bureau for medical services in the  
9 department of health and human resources;

10 (d) "Essential community health service provider"  
11 means a health care provider that:

12 (1) Has historically served medically needy or  
13 medically indigent patients and demonstrates a  
14 commitment to serve low-income and medically indigent  
15 populations which make up a significant portion of its  
16 patient population, or, in the case of a sole community

17 provider, serves medically indigent patients within its  
18 medical capability; and

19 (2) Either waives service fees or charges fees based on  
20 a sliding scale and does not restrict access or services  
21 because of a client's financial limitations including, but  
22 not limited to, community mental health centers, school  
23 health clinics, primary care centers, pediatric health clinics  
24 or rural health clinics.

25 (e) "Program" means the West Virginia children's  
26 health program.

### **§5-16B-3. Reporting requirements.**

1 (a) On the first day of January, one thousand nine  
2 hundred ninety-nine and annually thereafter, the director  
3 shall report to the governor and the Legislature regarding  
4 the number of children enrolled in the program or  
5 programs; the average annual cost per child per program;  
6 the number of children enrolled in the Medicaid program,  
7 pursuant to Title XIX of the Social Security Act, the  
8 public employees insurance agency and private sector  
9 insurance programs; the number of remaining uninsured  
10 children; and the effectiveness of the outreach activities  
11 for the previous year. The report shall include any  
12 information that can be obtained regarding the prior  
13 insurance and health status of the children enrolled in  
14 programs created pursuant to this article. Beginning with  
15 the second annual report, the director shall include  
16 information regarding the cost, quality and effectiveness  
17 of the health care delivered to enrollees of this program;  
18 satisfaction surveys; and health status improvement  
19 indicators. The board, in conjunction with other state  
20 health and insurance agencies, shall develop indicators  
21 designed to measure the quality and effectiveness of  
22 children's health programs, which information shall be  
23 included in the annual report.

24 (b) On a quarterly basis, the director shall provide  
25 reports to the legislative oversight commission on health  
26 and human resources accountability on the number of  
27 children served, including the number of newly enrolled  
28 children for the reporting period and current projections

29 for future enrollees; outreach efforts and programs;  
30 statistical profiles of the families served and health status  
31 indicators of covered children; the average annual cost of  
32 coverage per child, the total cost of children served by  
33 provider type, service type and contract type; outcome  
34 measures for children served; reductions in  
35 uncompensated care; performance with respect to the  
36 financial plan and any other information as the legislative  
37 oversight commission on health and human resources  
38 accountability may require.

39 (c) The director shall report initial statistical  
40 information on the children's health program to the  
41 legislative oversight commission on health and human  
42 resources accountability. The report shall include, but not  
43 be limited to, the number of uninsured children eligible  
44 for the program, statistical information regarding the  
45 families of eligible children, and the projected average  
46 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.**

1 (a) There is hereby created the West Virginia  
2 children's health policy board, which shall consist of the  
3 director of the public employees insurance agency, the  
4 secretary of the department of health and human  
5 resources or his or her designee, and five citizen members  
6 appointed by the governor, one of whom shall represent  
7 childrens' interests and one of whom shall be a certified  
8 public accountant, to assume the duties of the office  
9 immediately upon appointment, pending the advice and  
10 consent of the Senate. A member of the Senate, as  
11 appointed by the Senate president and a member of the  
12 House of Delegates, as appointed by the speaker of the  
13 House of Delegates, shall serve as nonvoting members. Of  
14 the citizen members first appointed, one shall serve one  
15 year, two shall serve two years and two shall serve three  
16 years. All future appointments shall be for terms of three  
17 years, except that an appointment to fill a vacancy shall be  
18 for the unexpired term only. Three of the citizen  
19 members shall have at least a bachelor's degree and

20 experience in the administration or design of public or  
21 private employee or group benefit programs and the  
22 children's representative shall have experience that  
23 demonstrates knowledge in the health, educational and  
24 social needs of children. No more than three citizen  
25 members may be members of the same political party and  
26 no board member shall represent or have a pecuniary  
27 interest in an entity reasonably expected to compete for  
28 contracts under this article. Members of the board shall  
29 assume the duties of the office immediately upon  
30 appointment and shall hold an initial meeting not later  
31 than the thirtieth day of June, one thousand nine hundred  
32 ninety-eight. The members shall elect a chairperson. No  
33 member may be removed from office by the governor  
34 except for official misconduct, incompetence, neglect of  
35 duty, neglect of fiduciary duty or other specific  
36 responsibility imposed by this article, or gross immorality.  
37 Vacancies in the board shall be filled in the same manner  
38 as the original appointment.

39 (b) The purpose of the board is to develop plans for  
40 health services or health insurance that are specific to the  
41 needs of children and to bring fiscal stability to this  
42 program through development of an annual financial plan  
43 designed in accordance with the provisions of this article.

44 (c) Notwithstanding any other provisions of this code  
45 to the contrary, any insurance benefits offered as a part of  
46 the programs designed by the board are exempt from the  
47 minimum benefits and coverage requirements of articles  
48 fifteen and sixteen, chapter thirty-three of this code.

49 (d) The board may consider adopting the maximum  
50 period of continuous eligibility permitted by applicable  
51 federal law, regardless of changes in a family's economic  
52 status, so long as other group insurance does not become  
53 available to a covered child.

54 (e) The board shall meet at the time and place as  
55 specified by the call of the chairperson or upon the written  
56 request to the chairperson by at least two members.  
57 Notice of each meeting shall be given in writing to each  
58 member by the chairperson at least three days in advance

59 of the meeting. Four voting members shall constitute a  
60 quorum.

61 (f) For each day or portion of a day spent in the  
62 discharge of duties pursuant to this article, the board shall  
63 pay each of its citizen members the same compensation  
64 and expense reimbursement as is paid to members of the  
65 Legislature for their interim duties.

**§5-16B-5. Director of the children's health program;  
qualifications; powers and duties.**

1 (a) A division director shall be appointed by the  
2 governor, with the advice and consent of the Senate, and  
3 shall be responsible for the implementation, administration  
4 and management of the children's health insurance  
5 program created under this article. The director shall have  
6 at least a bachelor's degree and a minimum of three years  
7 experience in health insurance administration.

8 (b) The director shall employ any administrative,  
9 technical and clerical employees as are required for the  
10 proper administration of the program and for the work of  
11 the board. He or she shall present recommendations and  
12 alternatives for the design of the initial and annual plans  
13 and other actions undertaken by the board in furtherance  
14 of this article.

15 (c) The director, under the supervision of the board, is  
16 responsible for the administration and management of the  
17 program and shall have the power and authority to make  
18 all rules necessary to effectuate the provisions of this  
19 article. Nothing in this article shall limit the director's  
20 ability to manage the program on a day-to-day basis.

21 (d) The director shall have exclusive authority to  
22 execute any contracts as are necessary to effectuate the  
23 provisions of this article: *Provided*, That the board shall  
24 approve all contracts for the provision of services or  
25 insurance coverage under the program. The provisions of  
26 article three, chapter five-a of this code, relating to the  
27 division of purchases of the department of finance and  
28 administration, shall not apply to any contracts for any  
29 health insurance coverage, health services, or professional

30 services authorized to be executed under the provisions of  
31 this article: *Provided, however,* That before entering into  
32 any such contract the director shall invite competitive bids  
33 from all qualified entities and shall deal directly with those  
34 entities in presenting specifications and receiving  
35 quotations for bid purposes. The director shall award  
36 those contracts on a competitive basis taking into account  
37 the experience of the offering agency, corporation,  
38 insurance company or service organization. Before any  
39 proposal to provide benefits or coverage under the plan is  
40 selected, the offering agency, corporation, insurance  
41 company or service organization shall provide assurances  
42 of utilization of essential community health service  
43 providers to the greatest extent practicable. In evaluating  
44 these factors, the director may employ the services of  
45 independent, professional consultants. The director shall  
46 then award the contracts on a competitive basis.

47 (e) The director shall issue requests for proposals from  
48 essential community health service providers for defined  
49 portions of services under the children's health plan  
50 regionally or statewide, and shall, to the greatest extent  
51 practicable, either directly contract with, or require  
52 participating providers to, contract with essential  
53 community health service providers to provide the services  
54 under the plan.

55 (f) Subject to the advice and consent of the board, the  
56 director may require reinsurance of primary contracts, as  
57 contemplated in the provisions of sections fifteen and  
58 fifteen-a, article four, chapter thirty-three of this code.

#### **§5-16B-6. Financial plans requirements.**

1 (a) *Benefit plan design* — All financial plans required  
2 by this section shall establish: (1) The design of a benefit  
3 plan or plans; (2) the maximum levels of reimbursement  
4 to categories of health care providers; (3) any cost  
5 containment measures for implementation during the  
6 applicable fiscal year; and (4) the types and levels of cost  
7 to families of covered children. To the extent compatible  
8 with simplicity of administration, fiscal stability and other  
9 goals of the program established in this article, the

10 financial plans may provide for different levels of costs  
11 based on ability to pay.

12 (b) *Initial plan* — For presentation to the board at the  
13 first meeting, the governor shall prepare: (1) A statement  
14 of goals and objectives of the children's health program;  
15 and (2) an estimate of the total amount of general and  
16 special revenues available to fund the program for the  
17 fiscal year ending on the thirtieth day of June, one  
18 thousand nine hundred ninety-nine. The initial plan is  
19 subject to the following guidelines:

20 (1) The board shall establish a target date for  
21 implementation of the program during the state fiscal year  
22 one thousand nine hundred ninety-nine and may offer the  
23 same benefit package as that offered to children of state  
24 employees insured through the public employees  
25 insurance agency.

26 (2) During state fiscal year one thousand nine  
27 hundred ninety-nine, benefits under this program shall be  
28 made available to children ages six through eighteen  
29 whose custodial parents or guardians have an income  
30 equal to or less than one hundred fifty percent of the  
31 federal poverty level as determined according to eligibility  
32 standards and other criteria approved by the board.

33 (3) All program costs, including the administration of  
34 the program and incurred but unreported claims, shall not  
35 exceed eighty-five percent of the funding available to the  
36 program for the state fiscal year one thousand nine  
37 hundred ninety-nine.

38 (4) The board shall afford interested and affected  
39 persons an opportunity to offer comment on the plan at a  
40 public meeting of the board and, in developing any  
41 proposed plan under this article, shall solicit comments in  
42 writing from interested and affected persons.

43 (c) *Actuary requirements* — Beginning with state fiscal  
44 year two thousand, any financial plan, or modifications,  
45 approved or proposed by the board shall be submitted to  
46 and reviewed by an actuary before final approval. The  
47 financial plan shall be submitted to the governor and h

48 Legislature with the actuary's written professional opinion  
49 that all estimated program and administrative costs of the  
50 agency under the plan, including incurred but unreported  
51 claims, will not exceed ninety percent of the funding  
52 available to the program for the fiscal year for which the  
53 plan is proposed; and, that the financial plan allows for no  
54 more than thirty days of accounts payable to be carried  
55 over into the next fiscal year. This actuarial requirement  
56 is in addition to any requirement imposed by Title XXI  
57 of the Social Security Act of 1997.

58 (d) *Subsequent annual plans* — The board shall  
59 review implementation of its initial or current financial  
60 plan in light of actual experience and shall prepare an  
61 annual financial plan for fiscal year two thousand and  
62 each fiscal year thereafter during which the board remains  
63 in existence. For each fiscal year, the governor shall  
64 provide an estimate of requested appropriations and total  
65 funding available to the board no later than the first day  
66 of July of the preceding fiscal year. The board shall  
67 submit its final, approved financial plan, subject to the  
68 actuarial and public hearing requirements of this article, to  
69 the governor and to the Legislature no later than the first  
70 day of January preceding the fiscal year. The financial  
71 plan for a fiscal year shall become effective and shall be  
72 implemented by the director on the first day of July of  
73 such fiscal year. Annual plans developed pursuant to this  
74 subsection are subject to the provisions of subsections (a)  
75 and (c) of this section and the following guidelines:

76 (1) The aggregate actuarial value of the plan  
77 established as the benchmark plan should be considered as  
78 a targeted maximum or limitation in developing the  
79 benefits package.

80 (2) All estimated program and administrative costs,  
81 including incurred but not reported claims, shall not  
82 exceed ninety percent of the funding available to the  
83 program for the applicable fiscal year.

84 (3) The state's interest in achieving health care  
85 services for all its children at less than two hundred  
86 percent of the federal poverty level shall take precedence  
87 over enhancing the benefits available under this program.

88 (e) The provisions of chapter twenty-nine-a of this  
89 code do not apply to the preparation, approval and  
90 implementation of the financial plans required by this  
91 section.

92 (f) The board shall meet no less than once each  
93 quarter to review implementation of its current financial  
94 plan and, using actuarial data, shall make those  
95 modifications to the plan that are necessary to ensure its  
96 fiscal stability and effectiveness of service. The board  
97 may not increase the types and levels of cost to families of  
98 covered children during its quarterly review except in the  
99 event of a true emergency. The board may not expand  
100 the population of children to whom the program is made  
101 available except in its annual plan.

102 (g) For any fiscal year in which legislative  
103 appropriations differ from the governor's estimate of  
104 general and special revenues available to the agency, the  
105 board shall, within thirty days after passage of the budget  
106 bill, make any modifications to the plan necessary to  
107 ensure that the total financial requirements of the agency  
108 for the current fiscal year are met.

#### **§5-16B-7. West Virginia children's health fund.**

\*1 (a) There is hereby created in the state treasury a  
2 special revolving fund to be known as the "West Virginia  
3 children's health fund", which shall be an interest-bearing  
4 account. All moneys deposited or accrued in this fund  
5 shall be used exclusively:

6 (1) To provide the state's share of the children's health  
7 fund;

8 (2) To cover administrative costs associated with the  
9 children's health program; and

10 (3) To cover outreach activities.

11 (b) Moneys from the following sources may be placed  
12 into the fund:

13 (1) All public funds appropriated by the Legislature  
14 or transferred by any public agency as contemplated or  
15 permitted by applicable federal program laws;

16 (2) All private moneys contributed by corporations,  
17 individuals or other entities to the fund as contemplated  
18 and permitted by applicable federal and state laws;

19 (3) Any accrued interest; and

20 (4) Federal financial participation matching the  
21 amounts referred to in subdivisions (1), (2) and (3) of this  
22 subsection, in accordance with Section 1902 (a) (2) of the  
23 Social Security Act.

24 (c) Any balance remaining in the children's health  
25 fund at the end of any state fiscal year shall not revert to  
26 the state treasury but shall remain in this fund and shall be  
27 used only in a manner consistent with this article.

28 (d) Notwithstanding the provisions of section two,  
29 article two, chapter twelve of this code, funds of the West  
30 Virginia children's health fund may not be redesignated  
31 for any purpose other than those set forth in this  
32 subsection. All state and private moneys received by the  
33 program shall be deposited in the West Virginia  
34 consolidated investment pool with the West Virginia  
35 investment management board, with the interest income a  
36 proper credit to all such funds.

#### **§5-16B-8. Termination and reauthorization.**

1 (a) The program established in this article abrogates  
2 and shall be of no further force and effect, without further  
3 action by the Legislature, upon the occurrence of any of  
4 the following:

5 (1) The date of entry of a final judgment or order by  
6 a court of competent jurisdiction which disallows the  
7 program;

8 (2) The effective date of any reduction in annual  
9 federal funding levels below the amounts allocated and/or  
10 projected in Title XXI of the Social Security Act of 1997;  
11 or

12 (3) The effective date of any federal rule or regulation  
13 negating the purposes or effect of this article.

14 (4) For purposes of subdivisions (2) and (3) of this  
15 subsection, if a later effective date for such reduction or  
16 negation is specified, such date will control.

17 (b) Pursuant to the provisions of article ten, chapter  
18 four of this code, the board shall terminate on the first day  
19 of July, two thousand four, unless extended by legislation  
20 enacted before the termination date.

21 (c) Upon termination of the board and  
22 notwithstanding any provisions to the contrary, the  
23 director may change the levels of costs to covered families  
24 only in accordance with rules proposed to the Legislature  
25 pursuant to the provisions of chapter twenty-nine-a of this  
26 code.

#### **§5-16B-9. Public-private partnerships.**

1 The board and the director are authorized to work in  
2 conjunction with a nonprofit corporation organized  
3 pursuant to the corporate laws of the state, structured to  
4 permit qualification pursuant to section 501(c) of the  
5 Internal Revenue Code for purposes of assisting the  
6 children's health program and funded from sources other  
7 than the state or federal government. Members of the  
8 board may sit on the board of directors of the private  
9 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.**

1 (a) It is the intent of the Legislature that steps be taken  
2 to expand coverage to children and the terminally ill and  
3 to pay for this coverage by fully utilizing federal funds.  
4 To achieve this intention, the department of health and  
5 human resources shall undertake the following:

6 (1) The department shall provide a streamlined  
7 application form, which shall be no longer than two pages,  
8 for all families applying for medical coverage for children  
9 under any of the programs set forth in this section.

10 (2) The department shall provide the option of  
11 hospice care to terminally ill West Virginians who  
12 otherwise qualify for medicaid. The department shall  
13 provide quarterly reports to the legislative oversight  
14 commission on health and human resources accountability  
15 created pursuant to section four, article twenty-nine-e,  
16 chapter sixteen of this code regarding the program  
17 provided for in this subdivision. The report shall include,  
18 but not be limited to, the total number, by age, of newly  
19 eligible clients served, the average annual cost of coverage  
20 per client, and the total cost, by provider type, to serve all  
21 clients.

22 (3) The department shall accelerate the medicaid  
23 option for coverage of medicaid to all West Virginia  
24 children whose family income is below one hundred  
25 percent of the federal poverty level. The department shall  
26 provide quarterly reports to the legislative oversight  
27 commission on health and human resources accountability  
28 regarding the program acceleration provided for in this  
29 subdivision. The report shall include, but not be limited  
30 to, the number of newly eligible clients, by age, served as a  
31 result of the acceleration, the average annual cost of  
32 coverage per client and the total cost of all clients served  
33 by provider type.

34 (4) Effective the first day of July, one thousand nine  
35 hundred ninety-eight, the department shall expand  
36 medicaid coverage for only those West Virginia children  
37 below the age of six years whose family income is below  
38 one hundred fifty percent of the federal poverty level.  
39 This program will be known as the Title XXI-Medicaid  
40 program and administered in accordance with the  
41 applicable provisions contained in Titles XIX and XXI of  
42 the Social Security Act. The department shall coordinate  
43 the eligibility determination, outreach efforts, purchasing  
44 strategies, service delivery system and reporting

45 requirements with the Title XXI program created pursuant  
46 to provisions of article sixteen-b, chapter five of this code.

47 (b) Notwithstanding the provisions of section two-a of  
48 this article, the accruing interest in the medical services  
49 trust fund may be utilized to pay for the programs  
50 specified in subdivisions (2) and (3) of subsection (a) of  
51 this section: *Provided*, That to the extent the accrued  
52 interest is not sufficient to fully fund the specified  
53 programs, the disproportionate share hospital funds paid  
54 into the medical services trust fund after the thirtieth day  
55 of June, one thousand nine hundred ninety-four, may be  
56 applied to cover the cost of the specified programs.

57 (c) On the first day of January, one thousand nine  
58 hundred ninety-five and annually thereafter, the  
59 department shall report to the governor and to the  
60 Legislature information regarding the number of children  
61 and elderly covered by the programs in subdivisions (2)  
62 and (3) of subsection (a), the cost of services by type of  
63 service provided, a cost-benefit analysis of the acceleration  
64 and expansion on other insurers and the reduction of  
65 uncompensated care in hospitals as a result of the  
66 programs.

67 (d) On the first day of January, one thousand nine  
68 hundred ninety-nine, and annually thereafter, the  
69 department shall report to the governor and to the  
70 Legislature information regarding the number of children  
71 enrolled in the Title XIX-Medicaid program as a result of  
72 implementation of the provisions of subdivision (4),  
73 subsection (a) of this section; the number of children  
74 enrolled in the new Title XXI-Medicaid program; the  
75 estimated number of children eligible for enrollment in  
76 either program; the cost of services by type of service  
77 provided in both programs; an analysis of the impact of  
78 the programs on other insurers; and the reduction of  
79 uncompensated care in hospitals as a result of the  
80 programs. The annual report filed by the department  
81 shall also include information relating to any proposed  
82 expansion of the population to be served under the state's  
83 medicaid program, other than the expansions specifically  
84 authorized in this section. The department may not

85 expand the population to be served until sixty days  
86 following the filing of the report required in this  
87 subsection. The department shall make quarterly reports  
88 to the legislative oversight commission on health and  
89 human resources accountability, established pursuant to  
90 section four, article twenty-nine-e, chapter sixteen of this  
91 code regarding the development, implementation and  
92 monitoring of the program.

**§9-4A-3. West Virginia Title XXI-Medicaid fund.**

1 (a) There is hereby created in the state treasury a  
2 special revolving fund to be known as the "West Virginia  
3 Title XXI-Medicaid Fund", which shall be an interest-  
4 bearing account established and maintained to purchase  
5 health services for low-income children.

6 (b) Funds paid into this account shall be derived from  
7 the following sources:

8 (1) Any appropriations by the Legislature;

9 (2) All public funds transferred by any public agency  
10 as permitted by applicable federal law;

11 (3) Any private funds contributed, donated or  
12 bequeathed by corporations, individuals or other entities  
13 to the fund as contemplated and permitted by applicable  
14 federal law; and

15 (4) All interest or return on investments accruing to  
16 the fund.

17 (c) Moneys from this fund shall be used exclusively  
18 for the following purposes:

19 (1) To purchase health care services for the program  
20 defined in subdivision (4), subsection (a) of this section,  
21 associated administrative costs, outreach activities and  
22 eligibility determination costs; and

23 (2) To provide the state's share of the enhanced  
24 federal medical assistance percentage funds.

25 (d) Notwithstanding the provisions of section two,  
26 article two, chapter twelve of this code, moneys with the  
27 Title XXI-Medicaid program may not be redesignated for  
28 any purpose other than those set forth in this subsection.

# CHAPTER 165

(Com. Sub. for H. B. 4471—By Mr. Speaker, Mr. Kiss, and  
Delegates Ashley and Michael)

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[Passed March 11, 1998; in effect ninety days from passage. Approved by the Governor.]

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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.

- 1       (a) The state agency shall administer the certificate of  
2       need program as provided by this article.
- 3       (b) The state agency is responsible for coordinating  
4       and developing the health planning research efforts of the  
5       state and for amending and modifying the state health  
6       plan which includes the certificate of need standards.
- 7       (c) The state agency may seek advice and assistance of  
8       other persons, organizations and other state agencies in the  
9       performance of the state agency's responsibilities under  
10      this article.
- 11      (d) For health services for which competition  
12      appropriately allocates supply consistent with the state  
13      health plan, the state agency shall, in the performance of  
14      its functions under this article, give priority, where  
15      appropriate to advance the purposes of quality assurance,  
16      cost effectiveness and access, to actions which would

17 strengthen the effect of competition on the supply of the  
18 services.

19 (e) For health services for which competition does not  
20 or will not appropriately allocate supply consistent with  
21 the state health plan, the state agency shall, in the exercise  
22 of its functions under this article, take actions, where  
23 appropriate to advance the purposes of quality assurance,  
24 cost effectiveness and access and the other purposes of this  
25 article, to allocate the supply of the services.

26 (f) Notwithstanding the provisions of section seven of  
27 this article, the state agency may charge a fee for the filing  
28 of any application, the filing of any notice in lieu of an  
29 application, the filing of any exemption determination  
30 request or the filing of any request for a declaratory  
31 ruling. The fees charged may vary according to the type  
32 of matter involved, the type of health service or facility  
33 involved or the amount of capital expenditure involved.  
34 The state agency shall implement this subsection by filing  
35 procedural rules pursuant to chapter twenty-nine-a of this  
36 code. The fees charged shall be deposited into a special  
37 fund known as the certificate of need program fund to be  
38 expended for the purposes of this article.

39 (g) No hospital, nursing home or other health care  
40 facility shall add any intermediate care or skilled nursing  
41 beds to its current licensed bed complement. This  
42 prohibition also applies to the conversion of acute care or  
43 other types of beds to intermediate care or skilled nursing  
44 beds: *Provided*, That hospitals eligible under the  
45 provisions of section four-a and subsection (i), section five  
46 of this article may convert acute care beds to skilled  
47 nursing beds in accordance with the provisions of these  
48 sections, upon approval by the state agency. Furthermore,  
49 no certificate of need shall be granted for the construction  
50 or addition of any intermediate care or skilled nursing  
51 beds except in the case of facilities designed to replace  
52 existing beds in unsafe existing facilities. A health care  
53 facility in receipt of a certificate of need for the  
54 construction or addition of intermediate care or skilled  
55 nursing beds which was approved prior to the effective  
56 date of this section shall incur an obligation for a capital

57 expenditure within twelve months of the date of issuance  
58 of the certificate of need. No extensions shall be granted  
59 beyond the twelve-month period.

60 (h) No additional intermediate care facility for the  
61 mentally retarded (ICF/MR) beds shall be granted a  
62 certificate of need, except that prohibition does not apply  
63 to ICF/MR beds approved under the Kanawha County  
64 circuit court order of the third day of August, one  
65 thousand nine hundred eighty-nine, civil action number  
66 MISC-81-585 issued in the case of *E. H. v. Matin*, 168  
67 W.V. 248, 284 S.E.2d 232 (1981).

68 (i) Notwithstanding the provisions of subsection (g),  
69 section five of this article and, further notwithstanding the  
70 provisions of subsection (b), section three of this article, an  
71 existing acute care hospital may apply to the health care  
72 authority for a certificate of need to convert acute care  
73 beds to skilled nursing beds: *Provided*, That the proposed  
74 skilled nursing beds are medicare certified only:  
75 *Provided, however*, That any hospital which converts acute  
76 care beds to medicare certified only skilled nursing beds  
77 shall not bill for any medicaid reimbursement for any  
78 converted beds. In converting beds, the hospital shall  
79 convert a minimum of one acute care bed into one  
80 medicare certified only skilled nursing bed. The health  
81 care authority may require a hospital to convert up to and  
82 including three acute care beds for each medicare certified  
83 only skilled nursing bed: *Provided further*, That a  
84 hospital designated or provisionally designated by the  
85 state agency as a rural primary care hospital may convert  
86 up to thirty beds to a distinct-part nursing facility,  
87 including skilled nursing beds and intermediate care beds,  
88 on a one-for-one basis if the rural primary care hospital is  
89 located in a county without a certified free-standing  
90 nursing facility and the hospital may bill for medicaid  
91 reimbursement for the converted beds: *And provided*  
92 *further*, That if the hospital rejects the designation as a  
93 rural primary care hospital then the hospital may not bill  
94 for medicaid reimbursement. The health care authority  
95 shall adopt rules to implement this subsection which  
96 require that:

97           (1) All acute care beds converted shall be permanently  
98 deleted from the hospital's acute care bed complement and  
99 the hospital may not thereafter add, by conversion or  
100 otherwise, acute care beds to its bed complement without  
101 satisfying the requirements of subsection (b), section three  
102 of this article for which purposes an addition, whether by  
103 conversion or otherwise, shall be considered a substantial  
104 change to the bed capacity of the hospital notwithstanding  
105 the definition of that term found in subsection (ff), section  
106 two of this article.

107           (2) The hospital shall meet all federal and state  
108 licensing certification and operational requirements  
109 applicable to nursing homes including a requirement that  
110 all skilled care beds created under this subsection shall be  
111 located in distinct-part, long-term care units.

112           (3) The hospital shall demonstrate a need for the  
113 project.

114           (4) The hospital shall use existing space for the  
115 medicare certified only skilled nursing beds. Under no  
116 circumstances shall the hospital construct, lease or acquire  
117 additional space for purposes of this section.

118           (5) The hospital shall notify the acute care patient,  
119 prior to discharge, of facilities with skilled nursing beds  
120 which are located in or near the patient's county of  
121 residence.

122           Nothing in this subsection negatively affects the rights  
123 of inspection and certification which are otherwise  
124 required by federal law or regulations or by this code or  
125 duly adopted rules of an authorized state entity.

126           (j) (1) Notwithstanding the provisions of subsection  
127 (g) of this section, a retirement life care center with no  
128 skilled nursing beds may apply to the health care  
129 authority for a certificate of need for up to sixty skilled  
130 nursing beds provided the proposed skilled beds are  
131 medicare certified only. On a statewide basis, a maximum  
132 of one hundred eighty skilled beds which are medicare  
133 certified only may be developed pursuant to this  
134 subsection. The state health plan is not applicable to

135 projects submitted under this subsection. The health care  
136 authority shall adopt rules to implement this subsection  
137 which shall include a requirement that:

138 (A) The one hundred eighty beds are to be distributed  
139 on a statewide basis;

140 (B) There be a minimum of twenty beds and a  
141 maximum of sixty beds in each approved unit;

142 (C) The unit developed by the retirement life care  
143 center meet all federal and state licensing certification and  
144 operational requirements applicable to nursing homes;

145 (D) The retirement center demonstrate a need for the  
146 project;

147 (E) The retirement center offer personal care, home  
148 health services and other lower levels of care to its  
149 residents; and

150 (F) The retirement center demonstrate both short and  
151 long-term financial feasibility.

152 (2) Nothing in this subsection negatively affects the  
153 rights of inspection and certification which are otherwise  
154 required by federal law or regulations or by this code or  
155 duly adopted rules of an authorized state entity.

156 (k) The state agency may order a moratorium upon  
157 the processing of an application or applications for the  
158 development of a new institutional health service filed  
159 pursuant to section three of this article, when criteria and  
160 guidelines for evaluating the need for the new institutional  
161 health service have not yet been adopted or are obsolete.  
162 The moratorium shall be declared by a written order  
163 which shall detail the circumstances requiring the  
164 moratorium. Upon the adoption of criteria for evaluating  
165 the need for the new institutional health service affected  
166 by the moratorium, or one hundred eighty days from the  
167 declaration of a moratorium, whichever is less, the  
168 moratorium shall be declared to be over and affected  
169 applications shall be processed pursuant to section ..  
170 this article.

171 (l) (1) The state agency shall coordinate the collection  
172 of information needed to allow the state agency to develop  
173 recommended modifications to certificate of need  
174 standards as required in this article. When the state agency  
175 proposes amendments or modifications to the certificate  
176 of need standards, it shall file with the secretary of state,  
177 for publication in the state register, a notice of proposed  
178 action, including the text of all proposed amendments and  
179 modifications, and a date, time and place for receipt of  
180 general public comment. To comply with the public  
181 comment requirement of this section, the state agency may  
182 hold a public hearing or schedule a public comment  
183 period for the receipt of written statements or documents.

184 (2) All proposed amendments and modifications to  
185 the certificate of need standards, with a record of the  
186 public hearing or written statements and documents  
187 received pursuant to a public comment period, shall be  
188 presented to the governor. Within thirty days of receiving  
189 the proposed amendments or modifications, the governor  
190 shall either approve or disapprove all or part of the  
191 amendments and modifications, and, for any portion of  
192 amendments or modifications not approved, shall specify  
193 the reason or reasons for nonapproval. Any portions of  
194 the amendments or modifications not approved by the  
195 governor may be revised and resubmitted.

196 (m) The state agency may exempt from or expedite  
197 rate review, certificate of need, and annual assessment  
198 requirements and issue grants and loans to financially  
199 vulnerable health care facilities located in underserved  
200 areas that the state agency and the office of community  
201 and rural health services determine are collaborating with  
202 other providers in the service area to provide cost effective  
203 health care services.

204 (n) Notwithstanding any provision contained in this  
205 article or section and any rule issued by the state agency,  
206 including compliance with certificate of need  
207 requirements, any rural hospital with less than eighty  
208 licensed acute care beds as of the first day of January, one  
209 thousand nine hundred ninety-eight, may convert up to  
210 forty-four percent of existing licensed acute care beds to

211 skilled nursing beds for certification by both medicare  
212 and medicaid for reimbursement purposes provided that  
213 the following conditions are met:

214 (1) There is no overall increase in the bed capacity of  
215 the hospital; one acute care bed is converted to one dually  
216 certified medicare and medicaid skilled nursing bed.

217 (2) All converted acute care beds shall be permanently  
218 deleted from the acute care bed complement of the  
219 hospital, which may not thereafter add, by conversion or  
220 otherwise, acute care beds to its bed complement without  
221 satisfying the requirements of subdivision (4), subsection  
222 (b), section three of this article, for which purposes the  
223 addition, whether by conversion or otherwise, shall be  
224 considered a substantial change to the bed capacity of the  
225 hospital notwithstanding the definition of that term as  
226 found in subsection (e), section two of this article.

227 (3) Prior to the conversion, the occupancy rate for  
228 licensed acute care beds cannot exceed forty percent for  
229 twenty-four consecutive months prior to the first month in  
230 which this section is effective.

231 (4) The hospital shall meet all federal and state  
232 licensing requirements for the provision of skilled nursing  
233 services. Additionally, all skilled nursing beds created  
234 under this exemption shall be located in distinct long-term  
235 care units in a previously constructed part of the hospital  
236 that can be used for that purpose.

237 (5) The hospital is located in a nonmetropolitan  
238 statistical area as defined by the bureau of the census of  
239 the federal government and is located in the same city in  
240 which a hospital providing mental health inpatient services  
241 owned and operated by the state of West Virginia ceased  
242 offering the inpatient services not later than one thousand  
243 nine hundred ninety.

244 (6) Nothing in this section negatively affects the rules  
245 of inspection and certification which are elsewhere  
246 required by federal law or regulations.

## CHAPTER 166

(H. B. 4503—By Delegates Hutchins, Compton, Fleischauer, Rowe,  
Hubbard, Thomas and Miller)

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

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  
3 syndrome.

- 4 (b) "ARC" means AIDS-related complex.
- 5 (c) "Bureau" means the bureau of public health.
- 6 (d) "Commissioner" means the commissioner of the  
7 bureau of public health.
- 8 (e) "Department" means the state department of health  
9 and human resources.
- 10 (f) "Funeral director" shall have the same meaning  
11 ascribed to such term in section four, article six, chapter  
12 thirty of this code.
- 13 (g) "Convicted" includes pleas of guilty and pleas of  
14 nolo contendere accepted by the court having jurisdiction  
15 of the criminal prosecution, a finding of guilty following a  
16 jury trial or a trial to a court, and an adjudicated juvenile  
17 offender as defined in section three, article five-b, chapter  
18 forty-nine of this code.
- 19 (h) "Funeral establishment" shall have the same  
20 meaning ascribed to such term in section four, article six,  
21 chapter thirty of this code.
- 22 (i) "HIV" means the human immunodeficiency virus  
23 identified as the causative agent of AIDS.
- 24 (j) "HIV-related test" means a test for the HIV  
25 antibody or antigen or any future valid test approved by  
26 the bureau, the federal drug administration or the centers  
27 for disease control.
- 28 (k) "Health facility" means a hospital, nursing home,  
29 clinic, blood bank, blood center, sperm bank, laboratory  
30 or other health care institution.
- 31 (l) "Health care provider" means any physician, dentist,  
32 nurse, paramedic, psychologist or other person providing  
33 medical, dental, nursing, psychological or other health  
34 care services of any kind.
- 35 (m) "Infant" means a person under six years of age.
- 36 (n) "Medical or emergency responders" means paid  
37 or volunteer firefighters, law-enforcement officers,  
38 emergency medical technicians, paramedics, or other

39 emergency service personnel, providers or entities acting  
40 within the usual course of their duties; good samaritans  
41 and other nonmedical and nonemergency personnel  
42 providing assistance in emergencies; funeral directors;  
43 health care providers; commissioner of the bureau of  
44 public health; and all employees thereof and volunteers  
45 associated therewith.

46 (o) "Patient" or "test subject" or "subject of the  
47 test" means the person upon whom a HIV test is  
48 performed, or the person who has legal authority to make  
49 health care decisions for the test subject.

50 (p) "Person" includes any natural person, partnership,  
51 association, joint venture, trust, public or private  
52 corporation or health facility.

53 (q) "Release of test results" means a written  
54 authorization for disclosure of HIV-related test results that  
55 is signed, dated and specifies to whom disclosure is  
56 authorized and the time period the release is to be  
57 effective.

58 (r) "Significant exposure" means:

59 (1) Exposure to blood or body fluids through  
60 needlestick, instruments, sharps, surgery or traumatic  
61 events; or

62 (2) Exposure of mucous membranes to visible blood  
63 or body fluids, to which universal precautions apply  
64 according to the national centers for disease control, and  
65 laboratory specimens that contain HIV (e.g. suspensions  
66 of concentrated virus); or

67 (3) Exposure of skin to visible blood or body fluids,  
68 when the exposed skin is chapped, abraded or afflicted  
69 with dermatitis or the contact is prolonged or involving an  
70 extensive area.

71 (s) "Source patient" means any person whose body  
72 fluids have been the source of a significant exposure to a  
73 medical or emergency responder.

74 (t) "Victim" means the person or persons to whom  
75 transmission of bodily fluids from the perpetrator of the

76 crimes of sexual abuse, sexual assault, incest or sexual  
77 molestation occurred or was likely to have occurred in the  
78 commission of such crimes.

**§16-3C-2. Testing.**

1 (a) HIV-related testing may be requested by a  
2 physician, dentist or the commissioner for any of the  
3 following:

4 (1) When there is cause to believe that the test could be  
5 positive;

6 (2) When there is cause to believe that the test could  
7 provide information important in the care of the patient;  
8 or

9 (3) When there is cause to believe that the results of  
10 HIV-testing of samples of blood or body fluids from a  
11 source patient could provide information important in the  
12 care of medical or emergency responders or other  
13 persons identified in regulations proposed by the  
14 department for approval by the Legislature in accordance  
15 with the provisions of article three, chapter twenty-nine-a  
16 of this code: *Provided*, That the source patient whose  
17 blood or body fluids is being tested pursuant to this section  
18 must have come into contact with a medical or emergency  
19 responder or other person in such a way that a significant  
20 exposure has occurred;

21 (4) When any person voluntarily consents to the test.

22 (b) The requesting physician, dentist or the  
23 commissioner shall provide the patient with written  
24 information in the form of a booklet or pamphlet  
25 prepared or approved by the bureau or, in the case of  
26 persons who are unable to read, shall either show a video  
27 or film prepared or approved by the bureau to the patient,  
28 or read or cause to be read to the patient the information  
29 prepared or approved by the bureau which contains the  
30 following information:

31 (1) An explanation of the test, including its purpose,  
32 potential uses, limitations, the meaning of its results and  
33 any special relevance to pregnancy and prenatal care;

- 34       (2) An explanation of the procedures to be followed;
- 35       (3) An explanation that the test is voluntary and may  
36 be obtained anonymously;
- 37       (4) An explanation that the consent for the test may be  
38 withdrawn at any time prior to drawing the sample for the  
39 test and that such withdrawal of consent may be given  
40 orally if the consent was given orally, or shall be in writing  
41 if the consent was given in writing;
- 42       (5) An explanation of the nature and current  
43 knowledge of asymptomatic HIV infection, ARC and  
44 AIDS and the relationship between the test result and those  
45 diseases; and
- 46       (6) Information about behaviors known to pose risks  
47 for transmission of HIV infection.
- 48       (c) A person seeking an HIV-related test who wishes to  
49 remain anonymous has the right to do so, and to provide  
50 written, informed consent through use of a coded system  
51 with no linking or individual identity to the test requests or  
52 results. A health care provider who does not provide HIV-  
53 related tests on an anonymous basis shall refer such a  
54 person to a test site which does provide anonymous  
55 testing, or to any local or county health department which  
56 shall provide for performance of an HIV-related test and  
57 counseling.
- 58       (d) At the time of learning of any test result, the  
59 patient shall be provided with counseling or referral for  
60 counseling for coping with the emotional consequences of  
61 learning any test result. This may be done by brochure or  
62 personally, or both.
- 63       (e) No consent for testing is required and the  
64 provisions of subsection (b) of this section do not apply  
65 for the following:
- 66       (1) A health care provider or health facility  
67 performing an HIV-related test on the donor or recipient  
68 when the health care provider or health facility procures,  
69 processes, distributes or uses a human body part  
70 (including tissue and blood or blood products) donated

71 for a purpose specified under the uniform anatomical gift  
72 act, or for transplant recipients, or semen provided for the  
73 purpose of artificial insemination and such test is  
74 necessary to assure medical acceptability of a recipient or  
75 such gift or semen for the purposes intended;

76 (2) The performance of an HIV-related test in  
77 documented bona fide medical emergencies, as  
78 determined by a treating physician taking into account the  
79 nature and extent of the exposure to another person, when  
80 the subject of the test is unable or unwilling to grant or  
81 withhold consent, and the test results are necessary for  
82 medical diagnostic purposes to provide appropriate  
83 emergency care or treatment to a medical or emergency  
84 responder, or any other person who has come into contact  
85 with a source patient in such a way that a significant  
86 exposure necessitates HIV-testing or to a source patient  
87 who is unable to consent in accordance with regulations  
88 proposed by the department for approval by the  
89 Legislature in accordance with article three, chapter  
90 twenty-nine-a of this code: *Provided*, That necessary  
91 treatment may not be withheld pending HIV test results:  
92 *Provided, however*, That all sampling and HIV-testing of  
93 samples of blood and body fluids, without the expressed  
94 written consent of the test subject, shall be through the use  
95 of a pseudonym and in accordance with regulations  
96 proposed by the department for approval by the  
97 Legislature in accordance with article three, chapter  
98 twenty-nine-a of this code: *Provided further*, That the  
99 department shall propose emergency rules pursuant to the  
100 provisions of section fifteen, article three, chapter twenty-  
101 nine-a of this code on or before the first day of  
102 September, one thousand nine hundred ninety-eight,  
103 addressing such matters as, but not limited to:

104 (A) Sampling and testing of blood and body fluids for  
105 HIV-related infections including: (i) The taking of  
106 samples from source patients; (ii) testing samples; (iii)  
107 confidentiality; (iv) documentation; (v) post-test  
108 counseling; and (vi) notices to the department by health  
109 care providers of: (I) Test results found to be positive and  
110 situations where sampling; and (II) testing was performed  
111 without the written consent of the test subject; and

112 (B) Costs associated with sampling, testing, counseling,  
113 initial prophylactic treatment and compliance with this  
114 article: *Provided, That:* (i) The ordering of samples of  
115 blood or body fluids for HIV-test or testing of available  
116 samples by: (I) A treating physician of a medical or  
117 emergency responder; or (II) a treating physician of the  
118 source patient; and (ii) the disclosure of the results of  
119 HIV-testing of the source patient, in accordance with  
120 regulations proposed by the department for approval by  
121 the Legislature pursuant to article three, chapter twenty-  
122 nine-a of this code, shall be deemed within acceptable  
123 standards of medical care in the state of West Virginia and  
124 shall not create a legal cause of action on the part of the  
125 source patient against: (i) The treating physician of the  
126 medical or emergency responder; or (ii) the treating  
127 physician of the source patient; or (iii) any health care  
128 provider or laboratory assisting such treating physicians.

129 (3) The performance of an HIV-related test for the  
130 purpose of research if the testing is performed in a  
131 manner by which the identity of the test subject is not  
132 known and may not be retrieved by the researcher.

133 (f) Mandated testing:

134 (1) The performance of any HIV-related testing that is  
135 or becomes mandatory shall not require consent of the  
136 subject but will include counseling.

137 (2) The court having jurisdiction of the criminal  
138 prosecution shall order that an HIV-related test be  
139 performed on any persons convicted of any of the  
140 following crimes or offenses:

141 (i) Prostitution; or

142 (ii) Sexual abuse, sexual assault, incest or sexual  
143 molestation.

144 (3) HIV-related tests performed on persons convicted  
145 of prostitution, sexual abuse, sexual assault, incest or  
146 sexual molestation shall be confidentially administered by  
147 a designee of the bureau or the local or county health  
148 department having proper jurisdiction. The commissioner  
149 may designate health care providers in regional jail

150 facilities to administer HIV-related tests on such convicted  
151 persons if he or she deems it necessary and expedient.

152 (4) When the director of the department knows or has  
153 reason to believe, because of medical or epidemiological  
154 information, that a person, including, but not limited to, a  
155 person such as an IV drug abuser, or a person who may  
156 have a sexually transmitted disease, or a person who has  
157 sexually molested, abused or assaulted another, has HIV  
158 infection and is or may be a danger to the public health,  
159 he may issue an order to:

160 (i) Require a person to be examined and tested to  
161 determine whether the person has HIV infection;

162 (ii) Require a person with HIV infection to report to a  
163 qualified physician or health worker for counseling; and

164 (iii) Direct a person with HIV infection to cease and  
165 desist from specified conduct which endangers the health  
166 of others.

167 (5) A person convicted of such offenses shall be  
168 required to undergo HIV-related testing and counseling  
169 immediately upon conviction and the court having  
170 jurisdiction of the criminal prosecution shall not release  
171 such convicted person from custody and shall revoke any  
172 order admitting the defendant to bail until HIV-related  
173 testing and counseling have been performed. The HIV-  
174 related test result obtained from the convicted person is to  
175 be transmitted to the court and, after the convicted person  
176 is sentenced, made part of the court record. If the  
177 convicted person is placed in the custody of the division  
178 of corrections, the court shall transmit a copy of the  
179 convicted person's HIV-related test results to the division  
180 of corrections. The HIV-related test results shall be closed  
181 and confidential and disclosed by the court and the  
182 bureau only in accordance with the provisions of section  
183 three of this article.

184 (6) A person charged with prostitution, sexual abuse,  
185 sexual assault, incest or sexual molestation shall be  
186 informed upon initial court appearance by the judge or  
187 magistrate responsible for setting the person's condition of

188 release pending trial of the availability of voluntary HIV-  
189 related testing and counseling conducted by the bureau.

190 (7) The prosecuting attorney shall inform the victim,  
191 or parent or guardian of the victim, at the earliest stage of  
192 the proceedings of the availability of voluntary HIV-  
193 related testing and counseling conducted by the bureau  
194 and that his or her best health interest would be served by  
195 submitting to HIV-related testing and counseling. HIV-  
196 related testing for the victim shall be administered at his or  
197 her request on a confidential basis and shall be  
198 administered in accordance with the centers for disease  
199 control guidelines of the United States public health  
200 service in effect at the time of such request. The victim  
201 who obtains an HIV-related test shall be provided with  
202 pre- and post-test counseling regarding the nature,  
203 reliability and significance of the HIV-related test and the  
204 confidential nature of the test. HIV-related testing and  
205 counseling conducted pursuant to this subsection shall be  
206 performed by the designee of the commissioner of the  
207 bureau or by any local or county health department  
208 having proper jurisdiction.

209 (8) If a person receives counseling or is tested under  
210 this subsection and is found to be HIV infected, the person  
211 shall be referred by the health care provider performing  
212 the counseling or testing for appropriate medical care and  
213 support services. The local or county health departments  
214 or any other agency providing counseling or testing under  
215 this subsection shall not be financially responsible for  
216 medical care and support services received by a person as  
217 a result of a referral made under this subsection.

218 (9) The commissioner of the bureau or his or her  
219 designees may require an HIV test for the protection of a  
220 person who was possibly exposed to HIV infected blood  
221 or other body fluids as a result of receiving or rendering  
222 emergency medical aid or who possibly received such  
223 exposure as a funeral director. Results of such a test of  
224 the person causing exposure may be used by the  
225 requesting physician for the purpose of determining  
226 appropriate therapy, counseling and psychological  
227 support for the person rendering emergency medical aid

228 including good Samaritans, as well as for the patient, or  
229 individual receiving the emergency medical aid.

230 (10) If an HIV-related test required on persons  
231 convicted of prostitution, sexual abuse, sexual assault,  
232 incest or sexual molestation results in a negative reaction,  
233 upon motion of the state, the court having jurisdiction  
234 over the criminal prosecution may require the subject of  
235 the test to submit to further HIV-related tests performed  
236 under the direction of the bureau in accordance with the  
237 centers for disease control guidelines of the United States  
238 public health service in effect at the time of the motion of  
239 the state.

240 (11) The costs of mandated testing and counseling  
241 provided under this subsection and pre- and  
242 postconviction HIV-related testing and counseling  
243 provided the victim under the direction of the bureau  
244 pursuant to this subsection shall be paid by the bureau.

245 (12) The court having jurisdiction of the criminal  
246 prosecution shall order a person convicted of prostitution,  
247 sexual abuse, sexual assault, incest or sexual molestation to  
248 pay restitution to the state for the costs of any HIV-related  
249 testing and counseling provided the convicted person and  
250 the victim, unless the court has determined such convicted  
251 person to be indigent.

252 (13) Any funds recovered by the state as a result of an  
253 award of restitution under this subsection shall be paid  
254 into the state treasury to the credit of a special revenue  
255 fund to be known as the "HIV-testing fund" which is  
256 hereby created. The moneys so credited to such fund  
257 may be used solely by the bureau for the purposes of  
258 facilitating the performance of HIV-related testing and  
259 counseling under the provisions of this article.

260 (g) Premarital screening:

261 (1) Every person who is empowered to issue a  
262 marriage license shall, at the time of issuance thereof,  
263 distribute to the applicants for the license, information  
264 concerning acquired immunodeficiency syndrome  
265 (AIDS) and inform them of the availability of HIV-related

266 testing and counseling. The informational brochures shall  
267 be furnished by the bureau.

268 (2) A notation that each applicant has received the  
269 AIDS informational brochure shall be placed on file with  
270 the marriage license on forms provided by the bureau.

271 (h) The commissioner of the bureau may obtain and  
272 test specimens for AIDS or HIV infection for research or  
273 epidemiological purposes without consent of the person  
274 from whom the specimen is obtained if all personal  
275 identifying information is removed from the specimen  
276 prior to testing.

277 (i) Nothing in this section is applicable to any insurer  
278 regulated under chapter thirty-three of this code:  
279 *Provided*, That the commissioner of insurance shall  
280 develop standards regarding consent for use by insurers  
281 which test for the presence of the HIV antibody.

282 (j) Whenever consent of the subject to the  
283 performance of HIV-related testing is required under this  
284 article, any such consent obtained, whether orally or in  
285 writing, shall be deemed to be a valid and informed  
286 consent if it is given after compliance with the provisions  
287 of subsection (b) of this section.

**§16-3C-3. Confidentiality of records; permitted disclosure; no  
duty to notify.**

1 (a) No person may disclose or be compelled to  
2 disclose the identity of any person upon whom an HIV-  
3 related test is performed, or the results of such a test in a  
4 manner which permits identification of the subject of the  
5 test, except to the following persons:

6 (1) The subject of the test;

7 (2) The victim of the crimes of sexual abuse, sexual  
8 assault, incest or sexual molestation at the request of the  
9 victim or the victim's legal guardian, or of the parent or  
10 legal guardian of the victim if the victim is an infant where  
11 disclosure of the HIV-related test results of the convicted  
12 sex offender are requested;

13 (3) Any person who secures a specific release of test  
14 results executed by the subject of the test;

15 (4) A funeral director or an authorized agent or  
16 employee of a health facility or health care provider if the  
17 funeral establishment, health facility or health care  
18 provider itself is authorized to obtain the test results, the  
19 agent or employee provides patient care or handles or  
20 processes specimens of body fluids or tissues and the  
21 agent or employee has a need to know such information:  
22 *Provided*, That such funeral director, agent or employee  
23 shall maintain the confidentiality of such information;

24 (5) Licensed medical personnel or appropriate health  
25 care personnel providing care to the subject of the test,  
26 when knowledge of the test results is necessary or useful to  
27 provide appropriate care or treatment, in an appropriate  
28 manner: *Provided*, That such personnel shall maintain the  
29 confidentiality of such test results. The entry on a  
30 patient's chart of an HIV-related illness by the attending or  
31 other treating physician or other health care provider shall  
32 not constitute a breach of confidentiality requirements  
33 imposed by this article;

34 (6) The bureau or the centers for disease control of  
35 the United States public health service in accordance with  
36 reporting requirements for a diagnosed case of AIDS, or a  
37 related condition;

38 (7) A health facility or health care provider which  
39 procures, processes, distributes or uses: (A) A human  
40 body part from a deceased person with respect to medical  
41 information regarding that person; (B) semen provided  
42 prior to the effective date of this article for the purpose of  
43 artificial insemination; (C) blood or blood products for  
44 transfusion or injection; or (D) human body parts for  
45 transplant with respect to medical information regarding  
46 the donor or recipient;

47 (8) Health facility staff committees or accreditation or  
48 oversight review organizations which are conducting  
49 program monitoring, program evaluation or service  
50 reviews so long as any identity remains anonymous; and

51 (9) A person allowed access to said record by a court  
52 order which is issued in compliance with the following  
53 provisions:

54 (i) No court of this state may issue such order unless  
55 the court finds that the person seeking the test results has  
56 demonstrated a compelling need for the test results which  
57 cannot be accommodated by other means. In assessing  
58 compelling need, the court shall weigh the need for  
59 disclosure against the privacy interest of the test subject  
60 and the public interest;

61 (ii) Pleadings pertaining to disclosure of test results  
62 shall substitute a pseudonym for the true name of the test  
63 subject of the test. The disclosure to the parties of the test  
64 subject's true name shall be communicated confidentially  
65 in documents not filed with the court;

66 (iii) Before granting any such order, the court shall, if  
67 possible, provide the individual whose test result is in  
68 question with notice and a reasonable opportunity to  
69 participate in the proceedings if he or she is not already a  
70 party;

71 (iv) Court proceedings as to disclosure of test results  
72 shall be conducted in camera unless the subject of the test  
73 agrees to a hearing in open court or unless the court  
74 determines that the public hearing is necessary to the  
75 public interest and the proper administration of justice;  
76 and

77 (v) Upon the issuance of an order to disclose test  
78 results, the court shall impose appropriate safeguards  
79 against unauthorized disclosure, which shall specify the  
80 person who may have access to the information, the  
81 purposes for which the information may be used and  
82 appropriate prohibitions on future disclosure.

83 (b) No person to whom the results of an HIV-related  
84 test have been disclosed pursuant to subsection (a) of this  
85 section may disclose the test results to another person  
86 except as authorized by said subsection.

87 (c) Whenever disclosure is made pursuant to this  
88 section, except when such disclosure is made to persons in

89 accordance with subdivisions (1) and (6), subsection (a) of  
90 this section, it shall be accompanied by a statement in  
91 writing which includes the following or substantially  
92 similar language: "This information has been disclosed to  
93 you from records whose confidentiality is protected by  
94 state law. State law prohibits you from making any  
95 further disclosure of the information without the specific  
96 written consent of the person to whom it pertains, or as  
97 otherwise permitted by law. A general authorization for  
98 the release of medical or other information is NOT  
99 sufficient for this purpose."

100 (d) Notwithstanding the provisions set forth in  
101 subsections (a) through (c) of this section, the use of HIV  
102 test results to inform individuals named or identified as  
103 spouses, sex partners or contacts, or persons who have  
104 shared needles that they may be at risk of having acquired  
105 the HIV infection as a result of possible exchange of body  
106 fluids, is permitted: *Provided*, That the bureau shall make  
107 a good faith effort to inform spouses, sex partners,  
108 contacts or persons who have shared needles that they may  
109 be at risk of having acquired the HIV infection as a result  
110 of possible exchange of body fluids: *Provided, however*,  
111 That the bureau shall have no notification obligations  
112 when the bureau determines that there has been no likely  
113 exposure of such persons to HIV from the infected test  
114 subject within the ten-year period immediately prior to the  
115 diagnosis of the infection. The name or identity of the  
116 person whose HIV test result was positive is to remain  
117 confidential. Spouses, contacts, or sex partners or  
118 persons who have shared needles may be tested  
119 anonymously at the state bureau of public health's  
120 designated test sites, or at their own expense by a health  
121 care provider or an approved laboratory of their choice.  
122 A cause of action will not arise against the bureau, a  
123 physician or other health care provider from any such  
124 notification.

125 (e) There is no duty on the part of the physician or  
126 health care provider to notify the spouse or other sexual  
127 partner of, or persons who have shared needles with, an  
128 infected individual of their HIV infection and a cause of  
129 action will not arise from any failure to make such  
130 notification. However, if contact is not made, the bureau  
131 will be so notified.

## CHAPTER 167

(H. B. 4483—By Delegates Capito, Hubbard, Douglas, Mahan  
Hutchins, Compton and Caputo)

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

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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.

- 1 Sexually transmitted diseases, as designated by the
- 2 secretary of the department of health and human
- 3 resources in rules proposed for legislative approval in

4 accordance with the provisions of article three, chapter  
5 twenty-nine-a of this code, are hereby declared to be  
6 infectious, contagious, communicable and dangerous to  
7 the public health. If a conflict exists between a provision  
8 of this article and a provision of article three-c of this  
9 chapter, the provision of article three-c prevails.

#### §16-4-2. Investigations by local health officers.

1 (a) All municipal and county health officers shall:

2 (1) Use every available means to ascertain the  
3 existence of, and to investigate all cases of sexually  
4 transmitted disease coming within their respective  
5 jurisdictions and, when it is necessary, have all cases  
6 treated, if they are not already under treatment;

7 (2) To ascertain the sources and transmission of the  
8 infection; and

9 (3) To institute measures for the protection of other  
10 persons from infection by the infected person, or from  
11 persons reasonably suspected of being so infected, and for  
12 the protection of the public health at all times.

13 (b) A municipal health officer may designate any  
14 member of the city police or health department to make  
15 any investigation required by the provisions of this  
16 section. A county health officer may designate any  
17 discreet person to make any investigation required by the  
18 provisions of this section. Any person conducting an  
19 investigation has all authority necessary for the purpose,  
20 the same as the health officer.

#### §16-4-4. Evidence of infection.

1 The following are prima facie grounds and reasons for  
2 suspecting that a person is infected with a sexually  
3 transmitted disease:

4 (a) Being a person who has been convicted in any  
5 court, or before a police judge, or before a magistrate,  
6 upon any charge growing out of sexual behavior;

7 (b) Being a person reported by a physician as infected  
8 with a sexually transmitted disease, where the person is

9 afterwards reported as having failed to return for  
10 treatment; and

11 (c) Being a person designated in a sexually transmitted  
12 disease report as having a sexual exposure to the infected  
13 person reported.

#### **§16-4-6. Reports by physicians.**

1 (a) Every practicing physician or other person who  
2 makes a diagnosis in or treats a case of sexually  
3 transmitted disease and every superintendent or manager  
4 of a hospital, dispensary or charitable or penal institution  
5 in which there is a case of sexually transmitted disease  
6 shall make two reports of the case, as follows:

7 (1) One report shall be made to the local municipal  
8 health officer, if the party for whom the diagnosis was  
9 made or case treated lives within any municipality having  
10 a health officer, and if the municipality has no health  
11 officer, or if the party lives outside of a municipality, then  
12 to the health officer of the county in which the person  
13 lives;

14 (2) The second report shall be made to the director of  
15 health of the state.

16 (b) The reports required by this section shall state: (1)  
17 The street number and address of the person reported as  
18 diseased; (2) the age, sex, color, race, marital state and  
19 occupation of the person; (3) the date of the onset of the  
20 disease; (4) the anatomical site of the infection and the  
21 date and type of treatment; and (5) persons having a  
22 sexual exposure to the infected person reported, if any are  
23 identified by the infected person. The reports shall be  
24 mailed or delivered to the parties to whom they are  
25 directed within the specifications and time frame  
26 established by the director pursuant to rules proposed for  
27 legislative approval in accordance with the provisions of  
28 article three, chapter twenty-nine-a of this code.

29 (c) Municipal and county health officers shall file and  
30 preserve the reports required by this section: *Provided,*  
31 That all records, reports and other information provided  
32 under this section shall be confidential and exempt from

33 public disclosure under the provisions of chapter twenty-  
34 nine-b of this code: *Provided, however,* That all reports  
35 shall be open to inspection by the director of the division  
36 of health, and by local health officers, or officers whose  
37 duties are connected with executing the laws against these  
38 diseases: *Provided further,* That any person who  
39 knowingly and willfully divulges or discloses any  
40 information entitled to protection under this section is  
41 guilty of a misdemeanor and, upon conviction thereof,  
42 shall be fined not more than five thousand dollars, or  
43 imprisoned in the county jail for not more than one year,  
44 or both fined and imprisoned: *And provided further,* That  
45 the department shall propose regulations relating hereto  
46 for approval by the Legislature in accordance with article  
47 three, chapter twenty-nine-a and such regulations shall  
48 include, but not be limited to, provisions for the  
49 implementation of the confidentiality provisions  
50 pertaining to this section.

#### §16-4-9. Treatment.

1 (a) Every physician or other person who examines or  
2 treats a person having a sexually transmitted disease shall  
3 instruct the person in measures for preventing the spread  
4 of the disease, and to inform him or her of the necessity of  
5 taking treatment until cured.

6 (b) Any person who has been examined and found  
7 infected, or is being treated for a sexually transmitted  
8 disease as provided by this section, shall follow the  
9 directions given by the treating physician or other person  
10 and take precautions as are necessary and are  
11 recommended. Any person starting to take treatment shall  
12 continue the treatment until discharged by the physician  
13 or other person treating him or her.

14 (c) Any infected person who fails to return for further  
15 treatment within ten days after the last date set by the  
16 physician or other person for the patient to return for  
17 further treatment, without lawful excuse therefor, is guilty  
18 of a misdemeanor and shall be punished as provided in  
19 section twenty-six of this article.

20 (d) After the expiration of the ten days .1

21 subsection (c) of this section, the physician or other  
22 person to whom the patient should have returned for  
23 treatment shall, unless he or she has knowledge of good  
24 reasons why the patient failed to return, make a report of  
25 the facts in the case to the local health officer having  
26 proper jurisdiction. The local health officer shall at once  
27 make an investigation to ascertain why the patient failed to  
28 return, and shall take any steps necessary in the matter to  
29 protect the public health, including obtaining the arrest,  
30 detention and quarantine of the patient.

**§16-4-11. Precautions as to exposure to disease.**

1 Whenever any attending physician or other person  
2 knows or has good reasons to believe that any person  
3 having a sexually transmitted disease is conducting  
4 himself or herself, or is about to conduct himself or  
5 herself, in a manner as to expose other persons to  
6 infection, the physician or other person shall at once  
7 notify the local health officer having jurisdiction of the  
8 facts in the case, giving the name and address of the  
9 person. The local health officer, upon receipt of the  
10 notice, shall at once cause an investigation to be made to  
11 ascertain what should be done in the premises, and may do  
12 whatever is necessary to protect the public health.

**§16-4-15. Form and execution of warrant.**

1 (a) Any warrant or order issued pursuant to the  
2 provisions of section fourteen of this article shall be  
3 directed to the chief of police if within a municipality, or  
4 to the county sheriff if not in a municipality or to any  
5 other officer qualified to execute process, directing the  
6 officer to apprehend the person mentioned, and to bring  
7 him or her before the health officer at a time and place set  
8 out in the warrant or order, there to be further dealt with as  
9 provided by law. The officer to whom the warrant is  
10 directed shall execute the warrant in the same manner as  
11 other papers of like character or kind.

12 (b) Pending a hearing in the matter the officer may  
13 for safekeeping, lodge the person apprehended under  
14 warrant, in jail or in any other place of detention that has  
15 been provided for such persons. The health officer may

16 at his or her discretion and by indorsement on the warrant  
17 at the time of its issuance, direct any other disposition to  
18 be made of the person arrested, before trial. The officer  
19 executing the warrant shall be guided by the warrant, but  
20 may not be held responsible if the person arrested escapes.

21 (c) The warrant is sufficient if it is in words and  
22 figures as follows (the blanks to be filled as necessary in  
23 each case):

24 State of West Virginia, Office of .....

25 County (or City) of ..... County (or City) of  
26 ..... Officer.

27 To....., Chief of Police or Sheriff of  
28 ..... City, of County of .....

29 It having been brought to the attention of the  
30 undersigned health officer for (city or county) of  
31 ....., West Virginia, that ....., reported as living  
32 or residing at ..... in(city or county), is infected, or  
33 is reasonably suspected of being infected, with one or  
34 more sexually transmitted diseases by reason of the fact  
35 that ..... has been reported as (set out any reasons  
36 set in section fourteen of this article, or other reasons)

37 .....

38 .....

39 and therefore reasonably suspected of being infected; and  
40 as the diseases have been declared to be infectious,  
41 contagious, communicable and dangerous to the public  
42 health.

43 This warrant commands you to apprehend  
44 ....., if found within your jurisdiction and to  
45 bring ..... before me at my office in the city or  
46 county of ..... on the ..... day of .....,  
47 19 ...., at ..... o'clock, .... M, there to be further dealt with  
48 as provided by law.

49 Given under my hand, this the ..... day of  
50 ....., 19 ....

51 .....  
 52 Health Officer or Commissioner.  
 53 City (or County) of .....  
 54 West Virginia.

**§16-4-24. Offenses by druggists.**

1 (a) No druggist, pharmacist or other person, not a  
 2 licensed physician under the laws of the state, may  
 3 prescribe, recommend, sell, compound or mix any drugs,  
 4 medicines or other substances to be used for the cure or  
 5 alleviation of a sexually transmitted disease, including  
 6 drugs, medicines or substances that are patented,  
 7 proprietary or otherwise, unless:

8 (1) The druggist or pharmacist receives a written  
 9 prescription, formula or order written for the person for  
 10 whom the drugs or medicines are compounded and signed  
 11 by a physician licensed to practice under the laws of the  
 12 state; or

13 (2) The drug being recommended or sold has received  
 14 federal food and drug administration approval for over-  
 15 the-counter use.

16 (b) All drugs, medicines or substances that are known  
 17 to the medical profession as being commonly used for the  
 18 cure or alleviation of sexually transmitted diseases,  
 19 whether the name is on the bottles or labels or not, is  
 20 subject to the prohibitions established pursuant to the  
 21 provisions of this section.

22 (c) All drugstores shall be at all times open to the  
 23 inspection of any local health officer, or to any party  
 24 designated by the director of the sexually transmitted  
 25 diseases program of the state, to determine whether the  
 26 provisions of this section are being carried out by the  
 27 druggists or stores. A sale by a clerk is considered a sale  
 28 by the owner or proprietor, and both may be prosecuted  
 29 under the provisions of this article for a misdemeanor.

# CHAPTER 168

(S. B. 627—By Senators Ross and Helmick)

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

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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-2. Definitions.

### §16-5H-1. Purpose.

1 It is the policy of this state to encourage and promote  
2 the development and utilization of resources to ensure the  
3 effective care and treatment of persons who are dependent  
4 upon the services of others by reason of physical or  
5 mental impairment or who may require limited and  
6 intermittent nursing care, including those individuals who  
7 qualify for and are receiving services coordinated by a  
8 licensed hospice. Such care and treatment requires a living  
9 environment for such persons which, to the extent  
10 practicable, will approximate a normal home environment.  
11 To this end, the guiding principle for administration of the  
12 laws of the state is that such persons shall be encouraged  
13 and assisted in securing necessary care and treatment in  
14 noninstitutional surroundings. In recognition that for  
15 many such persons effective care and treatment can only  
16 be secured from proprietary and voluntary residential

17 board and care homes, it is the policy of this state to  
18 encourage, promote and require the maintenance of  
19 residential board and care homes so as to ensure  
20 protection of the rights and dignity of those using the  
21 services of such residential board and care homes.

22 The provisions of this article are hereby declared to be  
23 remedial and shall be liberally construed to effectuate its  
24 purposes and intents.

### §16-5H-2. Definitions.

1 As used in this article, unless a different meaning  
2 appears from the context:

3 (a) "Deficiency" means a statement of the rule and the  
4 fact that compliance has not been established and the  
5 reasons therefor;

6 (b) "Department" means the state department of health  
7 and human resources;

8 (c) "Director" means the secretary of the department  
9 of health and human resources or his or her designee;

10 (d) "Division" means the division of health of the state  
11 department of health and human resources;

12 (e) "Limited and intermittent nursing care" means  
13 direct hands on nursing care of an individual who needs  
14 no more than two hours of nursing care per day for a  
15 period of time no longer than ninety consecutive days per  
16 episode which may only be provided when the need for  
17 such care meets these factors: (1) The resident requests to  
18 remain in the residential board and care home; (2) the  
19 resident is advised of the availability of other specialized  
20 health care facilities to treat his or her condition; and (3)  
21 the need for such care is the result of a medical pathology  
22 or a result of the normal aging process. Limited and  
23 intermittent nursing care shall only be provided by or  
24 under the supervision of a registered professional nurse  
25 and in accordance with rules promulgated by the  
26 secretary;

27 (f) "Nursing care" means those procedures commonly  
28 employed in providing for the physical, emotional and

29 rehabilitational needs of the ill or otherwise incapacitated  
30 which require technical skills and knowledge beyond that  
31 which the untrained person possesses, including, but not  
32 limited to, such procedures as: Irrigations, catheterization,  
33 special procedures contributing to rehabilitation and  
34 administration of medication by any method which  
35 involves a level of complexity and skill in administration  
36 not possessed by the untrained person;

37 (g) "Person" means an individual and every form of  
38 organization, whether incorporated or unincorporated,  
39 including any partnership, corporation, trust, association  
40 or political subdivision of the state;

41 (h) "Personal assistance" means personal services,  
42 including, but not limited to, the following: Help in  
43 walking, bathing, dressing, feeding or getting in or out of  
44 bed, or supervision required because of the age or mental  
45 impairment of the resident;

46 (i) "Resident" means an individual living in a  
47 residential board and care home for the purpose of  
48 receiving personal assistance or limited and intermittent  
49 nursing services from the home;

50 (j) "Residential board and care home" means any  
51 residence or place or any part or unit thereof, however  
52 named, in this state which is advertised, offered,  
53 maintained or operated by the ownership or management,  
54 whether for a consideration or not, for the express or  
55 implied purpose of providing accommodations, personal  
56 assistance and supervision, for a period of more than  
57 twenty-four hours, to four or more persons who are  
58 dependent upon the services of others by reason of  
59 physical or mental impairment or who may require limited  
60 and intermittent nursing care, including those individuals  
61 who qualify for and are receiving services coordinated by  
62 a licensed hospice: *Provided*, That services utilizing  
63 equipment which requires auxiliary electrical power in the  
64 event of a power failure may not be used unless the  
65 residential board and care home has a backup power  
66 generator: *Provided, however*, That the care or treatment  
67 in a household, whether for compensation or not, of any  
68 person related by blood or marriage, within the degree of

69 consanguinity of second cousin to the head of the  
70 household, or his or her spouse, may not be deemed to  
71 constitute a residential board and care home within the  
72 meaning of this article. Nothing contained in this article  
73 applies to hospitals, as defined under section one, article  
74 five-b of this chapter; or state institutions, as defined under  
75 section three, article one, chapter twenty-five of this code  
76 or section six, article one, chapter twenty-seven of this  
77 code; or residential board and care homes operated by the  
78 federal government or the state government; or institutions  
79 operated for the treatment and care of alcoholic patients;  
80 or offices of physicians; or hotels, boarding homes or  
81 other similar places that furnish to their guests only room  
82 and board; or to homes or asylums operated by fraternal  
83 orders pursuant to article three, chapter thirty-five of this  
84 code;

85 (k) "Secretary" means the secretary of the state  
86 department of health and human resources or his or her  
87 designee; and

88 (l) The term "substantial compliance" means a level of  
89 compliance with the rules such that identified deficiencies  
90 pose no greater risk to resident health or safety than the  
91 potential for causing minimal harm.

92 The secretary may define in rules any term used  
93 herein which is not expressly defined.

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## CHAPTER 169

(H. B. 4102—By Delegates Compton, Hutchins, Caputo,  
Fleischauer, Manuel, Rowe and Leach)

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

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AN ACT to amend and reenact sections three and seven, article five-1, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to long-term care ombudsmen; regional long-term care ombudsmen; qualifications; duties; training; certification; definitions; defining a pecuniary interest in the provision of

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-1, 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  
2 appears from the context:

3 (a) "Government agency" means any department,  
4 division, office, bureau, board, commission, council,  
5 authority, or any other agency or instrumentality created  
6 by the state or political subdivision thereof or to which the  
7 state is a party or by any county or municipality which is  
8 responsible for the regulation, visitation, inspection, or  
9 supervision of long-term care facilities or which provides  
10 services to residents or long-term care facilities;

11 (b) "Long-term care facility" means any nursing  
12 home, personal care home, or residential board and care  
13 home as defined in section two, article five-c of this  
14 chapter; nursing homes operated by the federal  
15 government or the state government; extended care  
16 facilities operated in connection with hospitals; and any  
17 similar institution, residence or place, or any part or unit  
18 thereof, however named, in this state which is advertised,  
19 offered, maintained or operated by the ownership or  
20 management for consideration, for the express and  
21 implied purpose of providing accommodations and care  
22 or personal assistance to one or more persons who are ill  
23 or otherwise incapacitated or are dependent upon the  
24 services of others by reasons of physical or mental

25 impairment and who are not related within the degree of  
26 consanguinity of second cousin to the owner or manager  
27 of the institution, residence or place;

28 (c) "Long-term care ombudsman volunteer" or  
29 "ombudsman volunteer" means any uncompensated  
30 individual who performs the duties enumerated under  
31 section eight of this article: *Provided*, That the individual  
32 has received appropriate certification as set forth in section  
33 nine of this article;

34 (d) "Pecuniary interest" means holding a financial  
35 interest in or deriving financial benefit from the provision  
36 of long-term care, but does not include employment in the  
37 long-term care industry or in the home health care  
38 industry;

39 (e) "Personal assistance" means personal services,  
40 including, but not limited to, the following: Help in  
41 walking, bathing, dressing, feeding or getting in or out of  
42 bed, or supervision required because of the age or mental  
43 impairment of the resident;

44 (f) "Regional long-term care ombudsman" means any  
45 paid staff of a designated regional long-term care  
46 ombudsman program who has obtained appropriate  
47 certification from the state commission on aging and  
48 meets the qualifications set forth in section seven of this  
49 article;

50 (g) "Resident" means an individual living in a nursing  
51 home, personal care home, residential board and care  
52 home, or any long-term care facility as defined in  
53 subsection (b) of this section, or who has lived in such a  
54 setting, or who has made application to live in such a  
55 setting: *Provided*, That nothing in this article may be  
56 construed to give a long-term care ombudsman the right  
57 to obtain the waiting list of a long-term care facility;

58 (h) "State long-term care ombudsman" means an  
59 individual who meets the qualifications of section five of  
60 this article and who is employed by the state commission  
61 on aging to implement the state long-term care  
62 ombudsman program as set forth in this article; and

63 (i) "Guardian" means a person lawfully invested with  
64 the power and charged with the duty of taking care of  
65 another person and managing the property and rights of  
66 another person who for some peculiarity of status or  
67 defect of age, understanding or self control is considered  
68 incapable of administering his or her own affairs, to  
69 include committees or other references under the code.

**§16-5L-7. Regional long-term care ombudsmen; qualifications; duties; training; certification.**

1 (a) Each regional long-term care ombudsman  
2 program shall employ one or more regional long-term  
3 care ombudsmen to effect the purposes of this article.  
4 The regional long-term care ombudsman shall have either:  
5 (1) At least a four-year degree in gerontology, social  
6 work, health, or a related field and demonstrated  
7 experience in one of the following areas: (A) The field of  
8 aging; (B) health care or social service programs; (C)  
9 community programs; or (D) long-term care issues; or (2)  
10 at least a four-year degree in any field and at least three  
11 years of experience in gerontology, social work, health or  
12 a related field. Persons employed in a designated regional  
13 long-term care ombudsman program on the date of  
14 enactment of this article may be given a waiver from these  
15 requirements provided that within one year from the date  
16 of enactment of this article they enter into a program  
17 leading to a degree in gerontology, social work, health or  
18 a related field or complete fifty hours of continuing  
19 education units in gerontology, social work, health or a  
20 related field every two calendar year periods. The  
21 regional long-term care ombudsman shall participate in  
22 ongoing training programs related to his or her duties or  
23 responsibilities. The regional long-term care ombudsman  
24 may not have been employed within the past two years  
25 prior to the date of his or her employment under this  
26 section by any association of long-term care facilities. If a  
27 regional long-term care ombudsman has been employed  
28 within the past two years prior to the date of his or her  
29 employment under this section by a long-term care  
30 facility, or by any organization or corporation that  
31 directly or indirectly regulates, owns or operates a long-  
32 term care facility, that ombudsman may not act with the

33 authority of a regional long-term care ombudsman in the  
34 facility of prior employment or in any other facility  
35 regulated, owned or operated by the same ownership as  
36 the facility of prior employment.

37 (b) Neither the regional long-term care ombudsman  
38 nor any member of his or her immediate family may have,  
39 or have had within the two years preceding his or her  
40 employment under this section, any pecuniary interest in  
41 the provision of long-term care. For the purposes of this  
42 section, the term "immediate family" shall mean the  
43 spouse, children, natural mother, natural father, natural  
44 brothers or natural sisters of the regional long-term care  
45 ombudsman.

46 (c) The duties of the regional long-term care  
47 ombudsman shall include, but are not limited to, the  
48 following:

49 (1) Regularly monitoring long-term care facilities and  
50 investigating complaints filed on behalf of a resident, or  
51 filed on the regional long-term care ombudsman's own  
52 initiative, relating to the health, safety, welfare and rights  
53 of such residents, in accordance with complaint  
54 investigation procedures developed by the state long-term  
55 ombudsman care program: *Provided*, That nothing in this  
56 section shall be construed as to grant a regional long-term  
57 care ombudsman the right of entry to a long-term care  
58 facility's drug rooms or to treatment rooms occupied by a  
59 resident unless prior consent has been obtained from the  
60 resident;

61 (2) Monitoring the development and implementation  
62 of federal, state and local laws, regulations and policies  
63 with respect to long-term care facilities;

64 (3) Training certified volunteers in accordance with  
65 the training and certification program developed by the  
66 state long-term care ombudsman program;

67 (4) Encouraging, cooperating with, and assisting the  
68 development and operation of referral services which can  
69 provide current, valid and reliable information on  
70 long-term care facilities and alternatives to  
71 institutionalization to persons in need of these services and  
72 the general public;

73 (5) Submitting reports as required by the state  
74 long-term care ombudsman program; and

75 (6) Other duties as mandated by the Older Americans  
76 Act of 1965, as amended.

77 (d) The state long-term care ombudsman shall develop  
78 and implement procedures for training and certification of  
79 regional long-term care ombudsmen. Regional long-term  
80 care ombudsmen who satisfactorily complete the training  
81 requirements shall be certified by the state commission on  
82 aging and shall be given identification cards which shall  
83 be presented to employees of a long-term care facility  
84 upon request. No regional long-term care ombudsman  
85 may investigate any complaint filed with the West Virginia  
86 long-term care ombudsman program unless such person  
87 has been certified by the state commission on aging.  
88 Consistent with the provisions of this article and any rules  
89 and regulations promulgated pursuant to section  
90 twenty-one, certified regional long-term ombudsmen  
91 shall be representatives of the state long-term care  
92 ombudsman program.

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## CHAPTER 170

(H. B. 4626—By Delegate Michael)

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

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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  
2 different meaning, as used in this article:

3 (1) "Authority" means the water development  
4 authority provided for in section four, article one, chapter  
5 twenty-two-c of this code.

6 (2) "Capacity development" means the technical,  
7 managerial and financial capability of a public water  
8 system.

9 (3) "Cost" means the cost of all labor, materials,  
10 machinery, equipment, lands, property, rights and  
11 easements, plans and specifications and all other expenses  
12 necessary or incident to the acquisition, construction,  
13 improvement, expansion, extension, repair or  
14 rehabilitation of all or part of a project.

15 (4) "Disadvantaged community" means the service  
16 area of a public water system that meets affordability  
17 criteria established after public review and comment by  
18 the state.

19 (5) "Federal safe drinking water act" means the federal  
20 statute commonly known as the "Safe Drinking Water  
21 Act", 42 U.S.C. 300f et seq., as enacted, amended, and as  
22 may be subsequently amended.

23 (6) "Fund" means the West Virginia drinking water  
24 treatment revolving fund created in this article.

25 (7) "Instrumentality" means the division of health  
26 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 (8) "Local entity" means any municipality, public  
30 utility, or person, including any individual, firm,  
31 partnership, association, not-for-profit corporation or  
32 other corporation organized and existing under the laws  
33 of the state which may construct and operate an eligible  
34 project.

35 (9) "Public water system" means that term as defined  
36 in section nine-a, article one, chapter sixteen of the code.

37 (10) "Project" means a project for improving a  
38 drinking water system for the purpose of achieving or  
39 maintaining compliance with applicable state and federal  
40 drinking water regulations.

41 (11) "Set-aside accounts" means those accounts that  
42 shall be set up for activities required by the federal Safe  
43 Drinking Water Act and the moneys for these accounts  
44 may be taken from the federal capitalization grant for  
45 these nonproject activities before the capitalization grant is  
46 deposited into the fund.

47 (12) "Small system" means a public water system  
48 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.

13       (b) The fund, less the set-aside account moneys, shall  
14 be administered and managed by the water development  
15 authority under the direction of the division of health.  
16 The fund shall be comprised of moneys appropriated to  
17 the fund by the Legislature, moneys allocated to the state  
18 by the federal government expressly for the purpose of  
19 establishing and maintaining a drinking water treatment  
20 revolving fund and set-aside accounts, all receipts from  
21 loans made from the fund, all income from the investment  
22 of moneys held in the fund, and all other sums designated  
23 for deposits to the fund from any source, public or  
24 private. Moneys in the fund shall be used solely to make  
25 loans or provide other allowable financial assistance to  
26 eligible projects for public water systems, as described in  
27 the federal Safe Drinking Water Act.

28       (c) In order to carry out the administration and  
29 management of the fund, the authority and the division of  
30 health are authorized to employ officers, employees,  
31 agents, advisors and consultants, including attorneys,  
32 financial advisors, engineers, other technical advisors and  
33 public accountants, and notwithstanding any provisions of  
34 this code to the contrary, to determine their duties and  
35 compensation without the approval of any other agency or  
36 instrumentality.

37       (d) The authority shall propose legislative rules for  
38 promulgation in accordance with the provisions of article  
39 three, chapter twenty-nine-a of this code to govern the  
40 pledge of loans to secure bonds of the authority.

41       (e) Disbursements from the fund shall be authorized  
42 for payment by the director of the authority or the  
43 director's designee. Moneys in the fund shall not be  
44 commingled with other money of the authority. If not  
45 needed for immediate use or disbursement, moneys in the  
46 fund may be invested or reinvested by the authority in  
47 obligations or securities which are considered lawful  
48 investments for public funds under this code.

49       (f) Pursuant to the provisions of the federal Safe  
50 Drinking Water Act, set-aside accounts shall be set up in  
51 accounts separate from the drinking water treatment  
52 revolving fund. These set-aside accounts shall include, but

53 not be limited to, administration costs, source water  
54 protection, operator training and certification, technical  
55 assistance to systems, local assistance, and other state  
56 activities permitted by the federal Safe Drinking Water  
57 Act. The division of health shall establish and administer  
58 the set-aside accounts as permitted by the federal Safe  
59 Drinking Water Act. An application fee may be charged  
60 and deposited into the administrative account to defray the  
61 cost of administering the program.

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## CHAPTER 171

(Com. Sub. for H. B. 2388—By Delegates Jenkins, Mezzatesta and Spencer)

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

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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**

**22A. Testing of Newborn Infants for Hearing Impairments.**

**22B. Birth Score Program.**

**ARTICLE 22A. TESTING OF NEWBORN INFANTS FOR HEARING IMPAIRMENTS.**

§16-22A-1. Testing required.

§16-22A-2. Rule making authorized.

§16-22A-3. Fees for testing; payment of same.

§16-22A-4. Hearing impairment testing advisory committee established.

**§16-22A-1. Testing required.**

1 The physician or midwife in attendance at, or present  
 2 immediately after, a live birth shall perform, or cause to be  
 3 performed, a test for hearing loss in the infant unless the  
 4 infant's parents refuse under subsection (c), section three  
 5 of this article to have the testing performed. For any  
 6 infant delivered at a nonlicensed facility, including home  
 7 births, the physician or other health care provider shall  
 8 inform the parents of the need to obtain testing within the  
 9 first month of life. The director of the division of health  
 10 shall prescribe the test or tests to be administered in  
 11 accordance with this article.

**§16-22A-2. Rule making authorized.**

1 The director of the division of health shall propose  
 2 legislative rules for promulgation in accordance with the  
 3 provisions of article three, chapter twenty-nine-a of this  
 4 code to: (1) Establish a reasonable fee schedule for tests  
 5 administered pursuant to this article, which shall be used to  
 6 cover program costs not otherwise covered by federal  
 7 grant funds specifically secured for this purpose; (2)  
 8 establish a cost-effective testing protocol based upon

9 available technology and national standards; (3) establish  
10 reporting and referral requirements; and (4) establish a  
11 date for implementation of the testing protocol, which  
12 shall not be later than the first day of July, one thousand  
13 nine hundred ninety-nine.

**§16-22A-3. Fees for testing; payment of same.**

1 (a) Testing required under this article shall be a  
2 covered benefit reimbursable by all health insurers except  
3 for health insurers that offer only supplemental coverage  
4 policies or policies which cover only specified diseases.  
5 All policies issued pursuant to articles fifteen, sixteen,  
6 twenty-four and twenty-five-a of chapter thirty-three of  
7 this code shall provide coverage for the testing required  
8 under this article.

9 (b) The department of health and human resources  
10 shall pay for testing required under this article when the  
11 newborn infant is eligible for medical assistance under the  
12 provisions of section twelve, article five, chapter nine of  
13 this code.

14 (c) In the absence of a third-party payor, the parents  
15 of a newborn infant shall be informed of the testing  
16 availability and its costs and they may refuse to have the  
17 testing performed. Charges for the testing required under  
18 this article shall be paid by the hospital or other health  
19 care facility where the infant's birth occurred: *Provided,*  
20 That nothing contained in this section may be construed  
21 to preclude the hospital or other health care facility from  
22 billing the infant's parents directly.

**§16-22A-4. Hearing impairment testing advisory committee established.**

1 (a) There is hereby established a West Virginia hearing  
2 impairment testing advisory committee which shall advise  
3 the director of the division of health regarding the  
4 protocol, validity, monitoring and cost of testing  
5 procedures required under this article. This committee is  
6 to meet four times per year for the initial two years and on  
7 the call of the director thereafter. The director shall . . .

8 as the chair and shall appoint twelve members, one  
9 representing each of the following groups:

10 (1) A representative of the health insurance industry;

11 (2) An otolaryngologist or otologist;

12 (3) An audiologist with experience in evaluating  
13 infants;

14 (4) A neonatologist;

15 (5) A pediatrician;

16 (6) A hospital administrator;

17 (7) A speech or language pathologist;

18 (8) A teacher or administrative representative from the  
19 West Virginia school of the deaf;

20 (9) A parent of a hearing-impaired child;

21 (10) A representative from the office of early  
22 intervention services within the department of health and  
23 human resources;

24 (11) A representative from the state department of  
25 education; and

26 (12) A representative from the West Virginia  
27 commission for the deaf and hard-of-hearing.

28 (b) Members of this advisory committee shall serve  
29 without compensation. A majority of members constitutes  
30 a quorum for the transaction of all business. Members  
31 shall serve for two-year terms and may not serve for more  
32 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.**

1 (a) The Legislature hereby finds that until 1984, West  
2 Virginia had one of the highest rates of postneonatal  
3 mortality in the United States, which is defined as infants  
4 dying between one month and one year of age. In the  
5 early 1980s, studies in West Virginia showed that infants at  
6 greatest risk of dying during the first year after birth had  
7 poor attendance at regular physician visits and often  
8 received minimal health care. The system for assessing  
9 infants at risk for postneonatal mortality, debilitating  
10 conditions and developmental delays was erratic and many  
11 West Virginia physicians were poorly trained about risk  
12 assessment. Uniform guidelines for at-risk infants to enter  
13 care did not exist.

14 (b) In 1985, the birth scoring system, a cooperative  
15 effort between the division of health and the West Virginia  
16 university department of pediatrics was initiated. The  
17 goals of the scoring system were: (1) To identify  
18 newborns at greatest risk for death between one month  
19 and one year of age; and (2) to link high risk infants with  
20 physicians for close follow-up during the first year of life.

21 (c) Since its inception, the birth scoring system has  
22 been expanded to identify and link infants at risk for  
23 debilitating conditions and developmental delays with  
24 necessary and available services. The program has been  
25 greatly successful in identifying at-risk newborns and in  
26 obtaining appropriate medical care for those infants.

27 (d) With the success of the birth scoring system at  
28 reducing postneonatal mortality rates in the state, it is the  
29 intention of the Legislature to establish the birth score  
30 system as a universal, preventive program to be enacted at  
31 the delivery of each newborn in the state. The purpose of  
32 this article is to ensure that all of the state's birthing  
33 hospitals and facilities adopt and implement this  
34 prevention program.

#### **§16-22B-2. Birth score program established.**

1 (a) The division of health within the department of  
2 health and human resources is hereby authorized to  
3 establish and implement a birth score program designed to  
4 combat postneonatal mortality and to detect debilitating

5 conditions and possible developmental delays in newborn  
6 infants in the state.

7 (b) The purpose and goals of the birth score program  
8 are to reduce the incidence of postneonatal mortality and  
9 disease by:

10 (1) Identifying newborns at greatest risk for death  
11 between one month and one year of age; and

12 (2) Linking these infants with physicians for close  
13 follow-up during the first year of life.

14 (c) The birth score of a newborn infant shall be  
15 determined pursuant to the program established by the  
16 division of health by trained hospital or birthing facility  
17 personnel immediately after the infant is delivered.

**§16-22B-3. Determination of birth score; referral to physician.**

1 (a) Any hospital or birthing facility in which an infant  
2 is born, any physician attending the infant, or any other  
3 person attending the infant if not under the care of a  
4 physician, shall require and ensure that a birth score is  
5 determined for the newborn infant in order to assess the  
6 level of risk for postneonatal mortality, debilitating  
7 conditions and developmental delays: *Provided*, That no  
8 birth score shall be determined or birth score program  
9 implemented if the parent or guardian objects to the birth  
10 score program on the grounds that it conflicts with their  
11 religious tenets and practices. Any infant delivered at a  
12 nonlicensed facility, including, but not limited to, home  
13 births, shall have a birth score determined by the child's  
14 primary physician within ten days of birth, subject to the  
15 exception set forth in this subsection.

16 (b) When any infant receives a high risk birth score, as  
17 determined by the program established by this article, the  
18 parents shall be informed of the birth score and its  
19 implications, and then linked with a local primary care  
20 physician for a recommended six visits in the first six  
21 months of the infant's life.

22 (c) The division of health, in cooperation with other  
23 state departments and agencies, may provide necessary  
24 medical and other referrals for services related to infants  
25 determined to be at high risk for postneonatal mortality  
26 and other debilitating conditions and developmental  
27 delays.

**§16-22B-4. Rules.**

1        On or before the thirtieth day of June, one thousand  
2        nine hundred ninety-eight, the division of health shall  
3        propose rules for legislative approval in accordance with  
4        the provisions of article three, chapter twenty-nine-a of  
5        this code as may be needed to establish the program,  
6        ensure compliance and assess penalties as needed to  
7        implement the provisions of this article.

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## CHAPTER 172

(H. B. 4300—By Delegates Boggs, Shelton, Osborne, Beach,  
C. White, Hall and Harrison)

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

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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.**

1 (a) The West Virginia rural health advisory panel is  
2 hereby created and the rural health initiative advisory  
3 panel is hereby terminated as of the first day of July, one  
4 thousand nine hundred ninety-five. The advisory panel,  
5 which shall be appointed by the governor after consulting  
6 with the vice chancellor, shall consist of one community  
7 representative from each of the consortia of primary  
8 health care education sites; five members shall be rural  
9 health care providers, two of whom shall be representatives  
10 of rural health care facilities selected from such lists as  
11 may be submitted by associations interested or involved in  
12 the provision of rural health care, two of whom shall be  
13 physicians engaged in the private practice of rural  
14 medicine, and one of whom shall be an advanced nurse  
15 practitioner or a nurse midwife with experience in rural  
16 health care delivery; the dean or designee from each of  
17 the participating health sciences schools, ex officio; one  
18 representative from private colleges; one representative  
19 from the state college system; one site coordinator; the  
20 commissioner of public health, ex officio; and the director  
21 of the office of community and rural health services, ex  
22 officio. Except for the ex officio members, members of  
23 the panel shall serve for staggered three-year terms:  
24 *Provided*, That one third of the initial appointments shall  
25 be designated by the governor for one-year terms and one  
26 third of the initial appointments shall be designated by the  
27 governor for two-year terms.

28 Members of the advisory panel shall be reimbursed  
29 for the cost of reasonable and necessary expenses actually  
30 incurred in the performance of their duties: *Provided*,  
31 That members of the panel who are employed by the state

32 of West Virginia shall not be reimbursed for their  
33 expenses under the provisions of this section.

34 (b) The functions and duties of the panel are to  
35 recommend policies and procedures to the vice chancellor  
36 related to the rural health initiative and to oversee and  
37 coordinate implementation of those policies and proced-  
38 ures.

39 (c) Pursuant to the provisions of article ten, chapter  
40 four of this code, the West Virginia rural health advisory  
41 panel shall continue to exist until the first day of July, two  
42 thousand one, to allow for the completion of a preliminary  
43 performance review by the joint committee on govern-  
44 ment operations.

45 (d) The advisory panel has the power and the duty to  
46 recommend rural health care facilities to be established as  
47 primary health care education sites. Such recommen-  
48 dation shall be made to the vice chancellor in accordance  
49 with the criteria set forth in section seven of this article.  
50 After review of the proposals submitted to the vice  
51 chancellor by the schools of medicine pursuant to section  
52 eight of this article, the panel's recommendation shall  
53 include an estimation of the costs to be allocated per site  
54 from available funds in the university of West Virginia  
55 health sciences account in the line item designated for  
56 rural health initiative site support.

57 (e) The advisory panel shall adopt guidelines  
58 regarding the application by rural health care facilities for  
59 selection as primary health care education sites and shall  
60 approve an application form which provides the panel with  
61 sufficient information to consider the criteria set forth in  
62 section eight of this article. The guidelines and applica-  
63 tion shall be sent by registered mail to each rural health  
64 care facility in the state as soon as practicable after the  
65 effective date of this section.

66 (f) The advisory panel shall provide an ongoing  
67 evaluation of the rural health initiative and shall make the  
68 reports required under this article.

69 (g) For purposes of addressing primary care physician  
70 and other health care provider recruitment and retention  
71 efforts, there is hereby created within the rural health  
72 advisory panel a committee on recruitment and retention,  
73 which shall include member representatives of health care  
74 providers, consumers, members of the advisory panel and  
75 the health sciences schools. All member representatives  
76 shall be selected by the vice chancellor for health sciences  
77 in conjunction with the director of the office of  
78 community and rural health. All operational costs of the  
79 recruitment and retention committee shall be paid by the  
80 rural health advisory panel.

81 (1) The recruitment and retention committee and the  
82 vice chancellor of health sciences, in conjunction with the  
83 director of the office of community and rural health  
84 services, may facilitate statewide and interagency  
85 coordination of the recruitment and retention of primary  
86 care physicians and other health care related providers to  
87 serve the state of West Virginia.

88 (2) Such responsibility for and coordination of  
89 primary care physician recruitment and retention efforts  
90 shall include, but are not limited to, working cooperatively  
91 with health care agencies and economic development  
92 agencies of the state.

93 (3) As part of its duties, the recruitment and retention  
94 committee shall provide by the thirty-first day of  
95 December, one thousand nine hundred ninety-eight, and  
96 no less than annually thereafter, a report of its findings to  
97 the legislative oversight commission on education  
98 accountability and the legislative oversight commission on  
99 health and human resources accountability. The report  
100 shall address the success of the state's primary care  
101 physician and other health care related provider  
102 recruitment and retention efforts, recommendations for  
103 improvements in all related areas of recruitment and  
104 retention efforts, recommendations for statutory or  
105 regulatory changes, as well as any other matters which the  
106 recruitment and retention committee or the rural health  
107 advisory panel deems relevant to carrying out the intent of  
108 this article.

## CHAPTER 173

(Com. Sub. for S. B. 25—By Senators Boley, Hunter, Minear, Deem,  
White and Scott)

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

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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.
- §33-43-3. Definitions.
- §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.

§33-43-8. Partial-birth abortions prohibited; criminal penalties; exceptions; hearings by state board of medicine.

**§33-43-1. Short title.**

1 This article shall be known and may be cited as the  
2 "Women's Access To Health Care Act".

**§33-43-2. Legislative findings and purpose.**

1 The Legislature finds and declares that adequate  
2 delivery of health care services to women requires direct  
3 access to primary and preventative obstetrical and  
4 gynecological services, which services may be provided as  
5 "well woman examinations", direct access without prior  
6 authorization to prenatal and obstetrical services for  
7 pregnant women and access to certain services essential to  
8 the physical and psychological integrity of women.

**§33-43-3. Definitions.**

1 For purposes of this article:

2 (1) "Advanced nurse practitioner" means a certified  
3 nurse-midwife, or an advanced nurse practitioner certified  
4 to practice in family practice, women's health (ob/gyn), or  
5 primary care adult, geriatric or pediatric practice,  
6 practicing within the lawful scope of that provider's  
7 practice.

8 (2) "Health benefits policy" means any individual or  
9 group plan, policy or contract for health care services  
10 issued, delivered, issued for delivery or renewed in this  
11 state by a health care corporation, health maintenance  
12 organization, accident and sickness insurer, fraternal  
13 benefit society, nonprofit hospital service corporation,  
14 nonprofit medical service corporation or similar entity,  
15 when the policy or plan covers hospital, medical or  
16 surgical expenses.

17 (3) "Partial-birth abortion" means an abortion in  
18 which the person performing the abortion partially  
19 vaginally delivers a living fetus before killing the fetus and  
20 completing the delivery.

21 (4) "Physician performing a partial-birth abortion"  
22 means a doctor of medicine or osteopathy legally  
23 authorized to practice medicine and surgery in West  
24 Virginia, or any other individual who is legally authorized  
25 by the state to perform abortions: *Provided*, That any  
26 individual who is not a physician or not otherwise legally  
27 authorized by the state to perform abortions, but who  
28 nevertheless directly performs a partial-birth abortion, is  
29 subject to the provisions of this article.

30 (5) "Vaginally delivers a living fetus before killing  
31 the fetus" means deliberately and intentionally delivering  
32 into the vagina a living fetus, or a substantial portion  
33 thereof, for the purpose of performing a procedure that  
34 the physician or person delivering the living fetus knows  
35 will kill the fetus, and kills the fetus.

36 (6) "Women's health care provider" means an  
37 obstetrician/gynecologist, advanced nurse practitioner  
38 certified to practice in women's health (ob/gyn), certified  
39 nurse-midwife or physician assistant-midwife practicing  
40 within the lawful scope of that provider's practice.

#### §33-43-4. Limitations on conditions of coverage.

1 No health benefits policy may require as a condition  
2 to the coverage of basic primary and preventative  
3 obstetrical and gynecological services that a woman first  
4 obtain a referral from a primary care physician: *Provided*,  
5 That for a health maintenance organization authorized  
6 under article twenty-five-a of this chapter, direct access, at  
7 least annually, to a women's health care provider for  
8 purposes of a well woman examination shall satisfy the  
9 foregoing requirement. No health benefits policy may  
10 require as a condition to the coverage of prenatal or  
11 obstetrical care that a woman first obtain a referral for  
12 those services by a primary care physician. No health  
13 benefit policy providing coverage for surgical services in a  
14 hospital inpatient or outpatient setting may deny coverage  
15 for: (1) Reconstruction of the breast following  
16 mastectomy; or (2) reconstructive or cosmetic surgery  
17 required as a result of an injury caused by an act of family  
18 violence as defined in section three, article two-a, chapter  
19 forty-eight of this code, when the person inflicting the

20 injury was convicted of a felony, a lesser included  
21 misdemeanor offense, or a charge of domestic battery for  
22 inflicting the injury.

**§33-43-5. Required disclosure.**

1 Every health benefits policy that is issued, delivered,  
2 issued for delivery or renewed in this state on or after the  
3 first day of July, one thousand nine hundred ninety-eight,  
4 shall disclose in writing to enrollees, subscribers and  
5 insureds, in clear and accurate language, the female  
6 enrollee's right of direct access to a women's health care  
7 provider of her choice. The information required to be  
8 disclosed shall include, at a minimum, any specific  
9 women's health care services that are excluded from  
10 coverage and the health benefits policy's right to limit  
11 coverage to medically necessary and appropriate women's  
12 health care services.

**§33-43-6. Certain cost-sharing prohibited.**

1 No health benefits policy may impose additional  
2 copayments or deductibles for female enrollees' direct  
3 access to in-network, participating women's health care  
4 providers unless the same additional cost-sharing is  
5 imposed for other types of health care services not  
6 delineated in this article.

**§33-43-7. Limitation on number of women's health care providers.**

1 A health benefits policy may limit the number of  
2 women's health care providers in a network: *Provided,*  
3 That a sufficient number of providers are available to  
4 serve a defined population or geographic service area so  
5 that female enrollees will have direct and timely access to  
6 women's health care providers.

**§33-43-8. Partial-birth abortions prohibited; criminal penalties; exceptions; hearings by state board of medicine.**

1 (a) Any person who knowingly performs a partial-  
2 birth abortion and thereby kills a human fetus is guilty of  
3 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)

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

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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.**

1       (a) *Authorization to impose tax.* — (1) Whenever any  
2 business activity or occupation, for which the state  
3 imposed its annual business and occupation or privilege  
4 tax under article thirteen, chapter eleven of this code, prior  
5 to July one, one thousand nine hundred eighty-seven, is  
6 engaged in or carried on within the corporate limits of any  
7 municipality, the governing body thereof shall have  
8 plenary power and authority, unless prohibited by general  
9 law, to impose a similar business and occupation tax  
10 thereon for the use of the municipality.

11       (2) Municipalities may impose a business and  
12 occupation or privilege tax upon every person engaging  
13 or continuing within the municipality in the business of  
14 aircraft repair, remodeling, maintenance, modification and  
15 refurbishing services to any aircraft or to an engine or  
16 other component part of any aircraft as a separate business  
17 activity.

18       (b) *Maximum tax rates.* — In no case shall the rate of  
19 such municipal business and occupation or privilege tax  
20 on a particular activity exceed the maximum rate imposed  
21 by the state, exclusive of surtaxes, upon any business  
22 activities or privileges taxed under sections two-a, two-b,  
23 two-c, two-d, two-e, two-g, two-h, two-i and two-j, article  
24 thirteen of said chapter eleven, as such rates were in effect  
25 under said article thirteen, on January one, one thousand  
26 nine hundred fifty-nine, or in excess of one percent of  
27 gross income under section two-k of said article thirteen,  
28 or in excess of three tenths of one percent of gross value  
29 or gross proceeds of sale under section two-m of said  
30 article thirteen. The rate of municipal business and  
31 occupation or privilege tax on the activity described in

32 subdivision (2), subsection (a) of this section shall be ten  
33 one-hundredths of one percent. The rate of municipal  
34 business and occupation or privilege tax on the activity of  
35 a health maintenance organization holding a certificate of  
36 authority under the provisions of article twenty-five-a,  
37 chapter thirty-three of this code, shall not exceed one half  
38 of one percent to be applied solely to that portion of gross  
39 income received from the medicaid program pursuant to  
40 Title XIX of the Social Security Act, the state employee  
41 programs administered by the public employees insurance  
42 agency pursuant to article sixteen, chapter five of this  
43 code, and other federal programs, for health care items or  
44 services provided directly or indirectly by the health  
45 maintenance organization, that is expended for  
46 administrative expenses; and shall not exceed one half of  
47 one percent to be applied to the gross income received  
48 from enrollees, or from employers on behalf of enrollees,  
49 from sources other than medicaid, state employee  
50 programs administered by the public employees insurance  
51 agency and other federal programs for health care items  
52 or services provided directly or indirectly by the health  
53 maintenance organization: *Provided*, That this tax rate  
54 limitation shall not extend to that part of the gross income  
55 of health maintenance organizations which is received  
56 from the use of real property other than property in which  
57 any such company maintains its office or offices in this  
58 state, whether such income is in the form of rentals or  
59 royalties. This provision concerning the maximum  
60 municipal business and occupation tax rate on the  
61 activities of health maintenance organizations is effective  
62 beginning after the thirty-first day of December, one  
63 thousand nine hundred ninety-six. Any payments of  
64 business and occupation tax made by a health  
65 maintenance organization to a municipality for calendar  
66 year one thousand nine hundred ninety-seven shall not be  
67 subject to recovery by the health maintenance  
68 organization. Administrative expenses shall include all  
69 expenditures made by a health maintenance organization  
70 other than expenses paid for claims incurred or payments  
71 made to providers for the benefits received by enrollees.

72       (c) *Effective date of local tax.* — Any taxes levied  
73 pursuant to the authority of this section may be made  
74 operative as of the first day of the then current fiscal year  
75 or any date thereafter: *Provided*, That any new imposition  
76 of tax or any increase in the rate of tax upon any business,  
77 occupation or privilege taxed under section two-e of said  
78 article thirteen shall apply only to gross income derived  
79 from contracts entered into after the effective date of such  
80 imposition of tax or rate increase, and which effective date  
81 shall not be retroactive in any respect: *Provided, however*,  
82 That no tax imposed or revised under this section upon  
83 public utility services may be effective unless and until the  
84 municipality provides written notice of the same by  
85 certified mail to said public utility at least sixty days prior  
86 to the effective date of said tax or revision thereof.

87       (d) *Exemptions.* — A municipality shall not impose its  
88 business and occupation or privilege tax on any activity  
89 that was exempt from the state's business and occupation  
90 tax under the provisions of section three, article thirteen of  
91 said chapter eleven, prior to July one, one thousand nine  
92 hundred eighty-seven, and determined without regard to  
93 any annual or monthly monetary exemption also specified  
94 therein.

95       (e) *Activity in two or more municipalities.* — Whenever  
96 the business activity or occupation of the taxpayer is  
97 engaged in or carried on in two or more municipalities of  
98 this state, the amount of gross income, or gross proceeds  
99 of sales, taxable by each municipality shall be determined  
100 in accordance with such legislative regulations as the tax  
101 commissioner may prescribe. It being the intent of the  
102 Legislature that multiple taxation of the same gross  
103 income, or gross proceeds of sale, under the same  
104 classification by two or more municipalities shall not be  
105 allowed, and that gross income, or gross proceeds of sales,  
106 derived from activity engaged in or carried on within this  
107 state, that is presently subject to state tax under section  
108 two-c or two-h, article thirteen, chapter eleven of this code,  
109 which is not taxed or taxable by any other municipality of  
110 this state, may be included in the measure of tax for any  
111 municipality in this state, from which the activity was  
112 directed, or in the absence thereof, the municipality in this

113 state in which the principal office of the taxpayer is  
114 located. Nothing in this subsection shall be construed as  
115 permitting any municipality to tax gross income or gross  
116 proceeds of sales in violation of the constitution and laws  
117 of this state or the United States, or as permitting a  
118 municipality to tax any activity that has a definite situs  
119 outside its taxing jurisdiction.

120 (f) Where the governing body of a municipality  
121 imposes a tax authorized by this section, such governing  
122 body shall have the authority to offer tax credits from  
123 such tax as incentives for new and expanding businesses  
124 located within the corporate limits of the municipality.

125 (g) *Administrative provisions.* — The ordinance of a  
126 municipality imposing a business and occupation or  
127 privilege tax shall provide procedures for the assessment  
128 and collection of such tax, which shall be similar to those  
129 procedures in article thirteen, chapter eleven of this code,  
130 as in existence on June thirtieth, one thousand nine  
131 hundred seventy-eight, or to those procedures in article  
132 ten, chapter eleven of this code, and shall conform with  
133 such provisions as they relate to waiver of penalties and  
134 additions to tax.

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## CHAPTER 175

(H. B. 4113—By Mr. Speaker, Mr. Kiss, and Delegate Michael)

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

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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.**

1 (a) Any licensed racing association may be authorized  
2 by the commission to transmit broadcasts of races  
3 conducted at its racetrack to legal wagering entities located  
4 outside this state, which legal wagering entities located  
5 outside this state shall not be subject to the provisions of  
6 subsection (e), section twelve-b of this article: *Provided,*  
7 That as consideration for the televised racing services it  
8 provides, the host racing association shall receive a signal  
9 transmission fee to be paid by the receiving legal wagering  
10 entity which shall be in an amount agreed upon by the  
11 receiving legal wagering entity and the host racing  
12 association. All broadcasts of horse races shall be in  
13 accordance with all of the provisions of the "Federal  
14 Interstate Horseracing Act of 1978", also known as  
15 Public Law 95-515, Section 3001-3007 of Title 15 of the  
16 United States Code.

17 (b) One percent of the total signal transmission fee  
18 provided in subsection (a) of this section shall be paid into  
19 a special fund to be established by the racing commission  
20 for and on behalf of all employees of the licensed racing  
21 association to be used for payments into the pension plan  
22 for all employees of the licensed racing association, and  
23 any thoroughbred horse racetrack which has participated  
24 in the West Virginia thoroughbred development fund for a  
25 period of more than four consecutive calendar years prior  
26 to the thirty-first day of December, one thousand nine  
27 hundred ninety-two shall pay seven and one-half percent  
28 of the signal transmission fee into the West Virginia  
29 thoroughbred development fund established by the racing  
30 commission according to section thirteen-b of this article.  
31 After deducting: (i) The amounts required to be placed

32 into the pension plan for all employees of the licensed  
33 racing association under this section; (ii) the amounts, if  
34 any, required to be paid into the West Virginia  
35 thoroughbred development fund under this section; and  
36 (iii) the direct costs necessary to send a live audio and  
37 visual signal of horse races or dog races from any  
38 racetrack licensed under the provisions of section one of  
39 this article to any legal wagering entities outside this state  
40 for the purpose of pari-mutuel wagering, which direct  
41 costs shall include the cost of satellite equipment necessary  
42 to transmit the signal, a satellite operator and the satellite  
43 time necessary to broadcast the signal and the cost of  
44 telecommunication and facsimile services needed to  
45 communicate necessary information to all legal wagering  
46 entities for the purpose of pari-mutuel wagering,  
47 thoroughbred horseracing associations shall make a  
48 deposit equal to fifty percent of the remainder into the  
49 purse fund established under the provisions of subdivision  
50 (1), subsection (b), section nine of this article.

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## CHAPTER 176

**(S. B. 252—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter,  
Kessler, Oliverio, Ross, Schoonover, Snyder, White, Buckalew, Deem,  
Kimble and Scott)**

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[Passed February 24, 1998; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to repeal section one-a, article fifteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact 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 of said article; and to further amend said article by adding thereto two new sections, designated sections three-a and thirteen, all relating to creating and operating housing authorities; defining terms; repealing section defining other terms; declaring necessity for housing

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.**

- §16-15-1. Definitions.
- §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.
- §16-15-6. Commissioner to receive no compensation; reimbursement for necessary expenditures.
- §16-15-7. Authority a body corporate and politic; powers; investigations or examinations.
- §16-15-7a. Power of authority to include certain stipulations in contracts.
- §16-15-7b. 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.
- §16-15-13. Community and economic development fund.
- §16-15-14. Tax and licensing exemptions.
- §16-15-17. Policy of state as to rentals.
- §16-15-18. Duties of authority and limitation of powers.
- §16-15-19. Power to issue bonds; how bonds secured.
- §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.
- §16-15-21. Powers of authority in connection with the issuance of bonds, incurring obligations under leases and securing payment of bonds.
- §16-15-22. Actions by obligee of authority to enforce performance of contracts and to enjoin unlawful acts.
- §16-15-23. Surrender of possession of development to obligee upon default by authority; appointment of receiver; accounting.
- §16-15-24. Housing authorities empowered to provide housing for farmers of low and moderate income.

§16-15-25. Application for low-cost housing for farmers.

**§16-15-1. Definitions.**

1 The following terms, wherever used or referred to in  
2 this article, shall have the following respective meanings,  
3 unless in any case a different meaning clearly appears  
4 from the context:

5 (1) "Affiliate" means any corporation, entity,  
6 partnership, venture, syndicate or arrangement in which a  
7 housing authority participates by holding an ownership  
8 interest or participating in its governance, including both  
9 controlled and noncontrolled affiliates as herein defined.

10 (2) "Affordable housing" means dwelling units that  
11 may be rented or purchased, as the case may be, by  
12 persons of eligible income, as defined herein.

13 (3) "Annual sinking fund payment" means the  
14 amount of money specified in the resolution or  
15 resolutions authorizing term bonds as payable into a  
16 sinking fund during a particular calendar year for the  
17 retirement of term bonds at maturity after such calendar  
18 year, but shall not include any amount payable by reason  
19 only of the maturity of a bond.

20 (4) "Area of operation" means the geographical area  
21 within which a housing authority owns or operates  
22 housing developments or administers other housing  
23 programs including any city, county or combination  
24 thereof in which it was operating on the effective date of  
25 this article.

26 (5) "Arrangement" means a legal relationship with  
27 another party that may include, but not be limited to, a  
28 general or limited partnership; joint venture; syndicate or  
29 syndication; corporation; limited liability cooperative,  
30 corporation or partnership; an unincorporated association;  
31 a cooperative; a consortium; and all other structures,  
32 organizations, and forms of legal relationships with third  
33 parties.

34 (6) "Authority" or "housing authority" means a  
35 corporate body organized in accordance with the

36 provisions of this article for the purposes, with the powers,  
37 and subject to the restrictions hereinafter set forth. Where  
38 the context requires or permits, this term shall be deemed  
39 to include regional housing authorities and/or controlled  
40 affiliates of a housing authority.

41 (7) "Bond" or "bonds" means any bonds, notes,  
42 interim certificates, debentures, or other obligations issued  
43 by an authority pursuant to this article.

44 (8) "City" means and includes any political subdivision  
45 of this state, whether incorporated or unincorporated,  
46 known as a city, municipality, town or village. With  
47 respect to the provisions of other sections of this article  
48 and their application to housing authorities of counties,  
49 the term "city" shall be construed as referring to a county  
50 unless a different meaning clearly appears from the  
51 context.

52 (9) "Clerk" means the clerk or recorder of the city or  
53 the clerk of the county, as the case may be, or the officer  
54 charged with the duties customarily imposed on the clerk  
55 or recorder.

56 (10) "Commissioner" means one of the members of  
57 the governing board of a housing authority appointed in  
58 accordance with the provisions of this article.

59 (11) "Community facilities" means lands, buildings  
60 and equipment, real and personal property suitable for  
61 recreational, or social assembly, for educational, health, or  
62 welfare purposes and other necessary activities for the use  
63 and benefit of the occupants of housing developments and  
64 the public.

65 (12) "Controlled affiliate" means any affiliate of a  
66 housing authority: (i) In which commissioners, officers,  
67 employees and agents of the authority constitute a  
68 majority of the governing body; or (ii) in which the  
69 authority holds a majority of the ownership interests.

70 (13) "Council" means the chief legislative body of  
71 the city.

72 (14) "County" means and includes any political  
73 subdivision of this state known as a county.

74 (15) "Development" or "housing development"  
75 means and includes all dwellings and associated  
76 appurtenances, including real and personal property, and  
77 all other facilities and improvements of every kind and  
78 description, which a housing authority may own or  
79 operate or in which it may hold an interest under the  
80 provisions of this article, all land upon which such  
81 dwellings, appurtenances, and facilities are situate; all work  
82 and activities undertaken by a housing authority or others  
83 relating to the creation of such property; all tangible and  
84 intangible personal property relating thereto, including all  
85 leases, licenses, agreements, and other instruments and all  
86 rights and obligations arising thereunder, establishing or  
87 confirming ownership, title, or right of use or possession  
88 in or to any such property by a housing authority, all as  
89 more particularly described and authorized in this article.

90 (16) "Farmers of low or moderate income" means  
91 persons or families who at the time of their admission to  
92 occupancy in a dwelling of the authority: (A) Live under  
93 unsafe and unsanitary housing conditions; (B) derive their  
94 principal income from operating or working upon a farm;  
95 and (C) had an aggregate average annual net income for  
96 the three years preceding their admission that was less than  
97 the amount determined by the authority to be necessary,  
98 within its area of operation, to enable them, without  
99 financial assistance, to obtain decent, safe and sanitary  
100 housing.

101 (17) "Governing body" means, in the case of a city,  
102 the council of the city, and in the case of a county, the  
103 county commission.

104 (18) "Government" means the state and federal  
105 governments and any subdivisions, authority or  
106 instrumentality, corporate or otherwise, of either of them.

107 (19) "Guest" means any person, not a resident of the  
108 development, who is present within the development, or  
109 within a dwelling in a development, as an invitee of or

110 otherwise with the express or implied consent of a resident  
111 of the development or dwelling.

112 (20) "Hold an interest" means ownership or control  
113 of, or participation in an arrangement with respect to, a  
114 development by a housing authority or any affiliate  
115 thereof.

116 (21) "Low-cost housing" shall include any housing  
117 accommodations which are or are to be rented at not in  
118 excess of a maximum rate per room, or maximum average  
119 rate per room, which shall be specified or provided by the  
120 housing authority of the city in which such housing  
121 accommodations are or are to be located, or the  
122 Legislature, or a duly constituted agency of the state, or of  
123 the United States of America.

124 (22) "Mayor" means the chief executive of the city,  
125 whether the official designation of his office be mayor,  
126 city manager or otherwise: *Provided*, That the term  
127 "mayor" may also be the chief elected officer of the  
128 municipality regardless of whether or not the corporate  
129 charter provides for a city manager appointed by the city  
130 council who is the chief executive officer.

131 (23) "Noncontrolled affiliate" means affiliate in  
132 which a housing authority participates, but does not  
133 constitute a majority of the governing body nor have a  
134 majority ownership interest.

135 (24) "Obligee of the authority" or "obligee" means  
136 any bondholder, trustee or trustees for any bondholders,  
137 or lessor demising to an authority property used in  
138 connection with a housing development, or any assignee  
139 or assignees of the lessor's interest or any part thereof, and  
140 the federal government when it is a party to any contract  
141 with the authority.

142 (25) "Person" means a family and, where the context  
143 so requires, a household.

144 (26) "Persons of eligible income" means individuals  
145 or families as defined by a public housing authority within  
146 the applicable local, state and federal funding guidelines.

147 (27) "Public agency" means and includes: (i) Any  
148 county; city; village; township; any school, drainage, tax,  
149 improvement or other district; any department, division, or  
150 political subdivision of this state or another state; any  
151 housing authority, housing finance authority, or housing  
152 trust of this state or another state; and any other agency,  
153 bureau, office, authority, or instrumentality of this state or  
154 another state; (ii) any board, agency, commission, division  
155 or other instrumentality of a city or county; and (iii) any  
156 board, commission, agency, department, or other  
157 instrumentality of the United States, or any political  
158 subdivision or governmental unit of any of them.

159 (28) "Regional housing authority" means a housing  
160 authority formed by two or more cities or counties  
161 pursuant to the authority provided in section three-a of  
162 this article.

163 (29) "Resident" means a person residing in a  
164 development of a housing authority, with the consent of  
165 such authority, according to its policies, rules and  
166 procedures.

167 (30) "Slum clearance" means the removal of housing  
168 conditions which shall be considered by the housing  
169 authority of the city in which such conditions exist to be  
170 unsanitary or substandard or a menace to public health.

171 (31) "State" means the state of West Virginia and its  
172 duly constituted government.

**§16-15-2. Legislative declaration of necessity for creation of  
housing authority corporations.**

1 It is hereby declared as a matter of legislative  
2 determination that in order to promote and protect the  
3 health, safety, morals and welfare of the public, it is  
4 necessary in the public interest to provide for the creation  
5 of public corporate bodies to be known as housing  
6 authorities, and to confer upon and vest in said housing  
7 authorities all powers necessary or appropriate in order  
8 that they may engage in low and moderate cost housing  
9 development and slum clearance projects; and that the  
10 powers herein conferred upon the housing authorities.

11 including the power to acquire and dispose of property, to  
12 remove unsanitary or substandard conditions, to construct  
13 and operate housing developments and to borrow, expend  
14 and repay moneys for the purpose herein set forth, are  
15 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.**

1 (a) In each city and in each county there is hereby  
2 created a housing authority which shall be a public body  
3 corporate and politic. No authority hereby created shall  
4 transact any business or exercise its powers hereunder  
5 until or unless the governing body of the city or the  
6 county, by proper resolution, determines that there is need  
7 for an authority: *Provided*, That nothing contained herein  
8 shall be construed as creating an additional housing  
9 authority in a city where a housing authority has been  
10 created pursuant to prior law, but each housing authority  
11 shall continue as a public body corporate and politic and  
12 shall have the area of operation defined in section one of  
13 this article for a city or county housing authority. Each  
14 housing authority created pursuant to this section shall  
15 adopt a name for all legal and operating purposes.

16 (b) The determination as to whether or not there is a  
17 need for an authority: (1) May be made by the governing  
18 body on its own motion; or (2) shall be made by the  
19 governing body upon the filing of a petition signed by  
20 twenty-five residents of the city or county asserting that  
21 there is need for an authority to function in the city or  
22 county and requesting that the governing body so declare.  
23 The governing body shall adopt a resolution declaring  
24 that there is need for a housing authority in the city or  
25 county if it finds: (1) That unsanitary or unsafe inhabited  
26 dwellings exist in the city or county; or (2) that there is a  
27 shortage of safe or sanitary dwellings in the city or county  
28 available to persons of low or moderate income at rental  
29 rates or purchase prices they can afford. In determining

30 whether dwellings are unsafe or unsanitary the governing  
31 body may take into consideration the degree of  
32 overcrowding, the percentage of land coverage, the light,  
33 air, space and access available to the inhabitants of the  
34 dwellings, the size and arrangement of the rooms, the  
35 sanitary facilities, and the extent to which conditions exist  
36 in the dwellings which endanger life or property by fire or  
37 other cause.

38 (c) In any suit, action or proceeding involving the  
39 validity or enforcement of or relating to any contract of  
40 the authority, the authority shall be conclusively deemed  
41 to have become established and authorized to transact  
42 business and exercise its powers hereunder upon proof of  
43 the adoption of a resolution by the governing body  
44 declaring the need for the authority. An adopted  
45 resolution shall be deemed sufficient if it declares that  
46 there is need for an authority and finds in substantially the  
47 foregoing terms (no further detail being necessary) that  
48 either or both of the above-enumerated conditions exist.  
49 A copy of a resolution duly certified by the clerk shall be  
50 admissible in evidence in any suit, action or proceeding.

51 (d) When the governing body of a city adopts a  
52 resolution as aforesaid, it shall promptly notify the mayor  
53 of the adoption. Upon receiving the notice, the mayor  
54 shall appoint five persons as commissioners of the  
55 authority created for the city. When the governing body  
56 of a county adopts a resolution as aforesaid, it shall  
57 appoint five persons as commissioners of the authority  
58 created for the county. The commissioners who are first  
59 appointed shall be designated to serve for terms of one,  
60 two, three, four and five years, respectively, from the date  
61 of their appointment. Thereafter commissioners shall be  
62 appointed for a term of office of five years, except that all  
63 vacancies shall be filled for the unexpired term. No  
64 commissioner of an authority may be an officer or  
65 employee of the city or county for which the authority is  
66 created. A commissioner shall hold office until his or her  
67 successor has been appointed and has qualified, unless  
68 sooner removed according to this article. A certificate of  
69 the appointment or reappointment of any commissioner  
70 shall be filed with the clerk and shall be conclusive

71 evidence of the due and proper appointment of a  
72 commissioner. A commissioner shall receive no  
73 compensation for his or her services, but he or she shall be  
74 entitled to the necessary expenses, including traveling  
75 expenses, incurred in the discharge of his or her duties.

76 (e) For inefficiency or neglect of duty or misconduct  
77 in office, a commissioner of an authority may be removed  
78 by the mayor or by the county commission. A  
79 commissioner shall be removed only after being given a  
80 copy of the charges and notice of a hearing. The charges  
81 shall be sent to the commissioner at least ten days prior to  
82 the hearing and shall notify the commissioner that he or  
83 she has an opportunity to be heard in person or by  
84 counsel. In the event of the removal of any commissioner,  
85 a record of the proceedings, together with the charges and  
86 findings thereon, shall be filed in the office of the clerk.  
87 The powers of each authority shall be vested in its  
88 commissioners.

**§16-15-3a. Regional housing authorities.**

1 (a) Any two or more cities or counties, or any  
2 combination thereof, may, by resolution of their separate  
3 governing bodies, establish a regional housing authority,  
4 by adopting a joint resolution declaring that there is a  
5 need for a regional housing authority to provide decent,  
6 safe and sanitary housing that is affordable to persons of  
7 low and moderate income residing in a multijurisdictional  
8 area and that this need would be more efficiently served  
9 by the establishment of a regional housing authority:  
10 *Provided*, That any authority in existence prior to the  
11 effective date of this article that is providing services  
12 outside of the city or county boundaries will continue to  
13 have jurisdiction in the areas where the authority is  
14 providing services on the effective date of this article.

15 (b) Upon adoption of a resolution by two or more  
16 cities or counties, or a combination thereof, a regional  
17 housing authority shall be established and, except as  
18 otherwise provided in this article, the regional housing  
19 authority shall have perpetual existence, unless dissolved  
20 in accordance with law. Each regional housing authority

21 established pursuant to this section, shall adopt a name for  
22 all legal and operating purposes.

23 (c) A certified copy of the resolutions establishing a  
24 regional housing authority shall serve as conclusive  
25 evidence that the authority has been properly established,  
26 is authorized to transact business, and exercise its powers  
27 under this article.

28 (d) After a regional housing authority has been  
29 established, any additional city or county may elect to  
30 participate as a member of the regional housing authority,  
31 upon adoption of a resolution to that effect: *Provided,*  
32 That a majority of the existing commissioners of the  
33 regional housing authority and all participating political  
34 subdivisions, by action of their respective governing  
35 bodies, shall consent to the additional member or  
36 members.

37 (e) Any city or county may withdraw from  
38 participation in the regional housing authority by  
39 resolution of its governing body. Any withdrawal from  
40 participation shall be subject to the following conditions:

41 (1) The regional housing authority has no bonds,  
42 notes, or other obligations outstanding, or adequate  
43 provision for payment of bonds, notes, or other  
44 obligations, by escrow or otherwise, has been made. Past  
45 performance without breach or default of an obligation  
46 secured only by one or more developments or the income  
47 thereof shall be deemed to be "adequate provision";

48 (2) The withdrawing city or county shall make  
49 adequate provision for the performance of all of its  
50 outstanding obligations and responsibilities as a  
51 participant in the regional housing authority;

52 (3) The withdrawing city or county shall give six  
53 months written notice to the regional housing authority  
54 and all other cities and counties participating therein; or

55 (4) The commissioner or commissioners appointed by  
56 the withdrawing city or county shall be deemed to have  
57 resigned as of the date upon which the withdrawal is  
58 effective. Vacancies on the board of commissioners

59 created by withdrawal of a city or county shall be filled in  
60 such manner as the cities and counties remaining as  
61 participants shall agree.

62 Notwithstanding the withdrawal of any participating  
63 city or county, the legal title to and operating  
64 responsibility for any development located outside the  
65 area of operation of the regional housing authority  
66 remaining after such withdrawal has occurred shall  
67 continue to be vested in the regional housing authority,  
68 unless a different arrangement is made.

69 (f) If only one city or county remains as a participant  
70 in any regional housing authority, the regional housing  
71 authority shall become the housing authority of the  
72 remaining city or county at the discretion of its governing  
73 body, or the regional housing authority shall be dissolved  
74 and its assets and liabilities transferred to another existing  
75 housing authority or to a city or county or other public  
76 agency.

**§16-15-4. Persons prohibited from acquiring interest in  
property or contracts; disclosure of prior interest.**

1 No commissioner or employee of an authority shall  
2 acquire any interest direct or indirect in any development  
3 or in any property included or planned to be included in  
4 any development, nor shall he or she have any interest  
5 direct or indirect in any contract or proposed contract for  
6 materials or services to be furnished or used in connection  
7 with any development. If any member or employee of  
8 any authority owns or controls an interest direct or  
9 indirect in any property included in any development,  
10 which was acquired prior to his or her appointment or  
11 employment, he or she shall disclose the same in writing to  
12 the authority. The disclosure shall be entered upon the  
13 minutes of the authority.

**§16-15-6. Commissioner to receive no compensation;  
reimbursement for necessary expenditures.**

1 No commissioner shall receive any compensation  
2 whether in form of salary, per diem allowances or  
3 otherwise, for or in connection with his or her services as

4 commissioner. Each commissioner shall, however, be  
5 entitled to reimbursement, to the extent of appropriations  
6 or other funds available therefor, for any necessary  
7 expenditures in connection with the performance of his or  
8 her general duties or in connection with the construction  
9 or operation of any development. The authority may  
10 allocate such expenses among its developments in such  
11 manner as it may consider proper.

**§16-15-7. Authority a body corporate and politic; powers;  
investigations or examinations.**

1 (a) An authority shall constitute a body both corporate  
2 and politic, exercising public powers, and having all the  
3 powers necessary or convenient to carry out and effectuate  
4 the purposes and provisions of this article, including the  
5 following powers in addition to others herein granted:

6 (1) To investigate living and housing conditions in the  
7 authority's area of operation and the means and methods  
8 of improving such conditions;

9 (2) To determine whether unsanitary or substandard  
10 housing conditions exist;

11 (3) To study and make recommendations concerning  
12 the city or county plan in relation to the problems of  
13 clearing, replanning, redevelopment and reconstruction of  
14 areas in which unsanitary or substandard conditions exist,  
15 and the providing of housing accommodations for  
16 persons of low and moderate income, and to cooperate  
17 with any city, county or regional planning agency, to  
18 prepare, carry out and operate developments;

19 (4) To provide for the construction, reconstruction,  
20 redevelopment, improvement, alteration or repair of any  
21 development or any part thereof;

22 (5) To take over by purchase, lease or otherwise any  
23 development undertaken by any government;

24 (6) To act as agent for the federal government in  
25 connection with the acquisition, construction, operation  
26 and/or management of a development or any part thereof;

27           (7) To arrange with the city or with a government for  
28 the furnishing, planning, replanning, opening or closing  
29 of streets, roads, roadways, alleys or other places or  
30 facilities, or for the acquisition by the city, county, state or  
31 federal government or any agency, instrumentality or  
32 subdivision thereof, of property, options or property rights  
33 or for the furnishing of property or services in connection  
34 with a development;

35           (8) To sell, lease or rent any of the housing or other  
36 accommodations of any of the lands, buildings, structures  
37 or facilities embraced in any development, and to establish  
38 and revise the rents or charges therefor;

39           (9) To enter upon any building or property in order  
40 to conduct investigations or to make surveys or soundings;  
41 to purchase, lease, obtain options upon, acquire by  
42 eminent domain or otherwise, sell, exchange, transfer,  
43 assign or mortgage any property real or personal or any  
44 interest therein;

45           (10) To acquire any property real or personal or any  
46 interest therein from any person, firm, corporation, or the  
47 city, county, state or federal government or any agency,  
48 instrumentality or subdivision thereof, by gift, grant,  
49 bequest or devise; to own, hold, clear and improve  
50 property; in its discretion, to insure or provide for the  
51 insurance of the property or operations of the authority  
52 against such risks as the authority may deem advisable;

53           (11) To borrow money upon its bonds, notes,  
54 debentures or other evidences of indebtedness, and to  
55 secure the same by mortgages upon property held or to be  
56 held by it or by pledge of its revenues, or in any other  
57 manner;

58           (12) To invest any funds held in reserves or sinking  
59 funds, or any funds not required for immediate  
60 disbursement in property or securities in which savings  
61 banks may legally invest funds subject to their control;

62           (13) To sue and be sued;

63           (14) To have a seal, and to alter it;

64 (15) To have perpetual succession;

65 (16) To make and execute contracts and other  
66 instruments necessary or convenient to the exercise of the  
67 powers of the authority;

68 (17) To form and operate nonprofit corporations and  
69 other affiliates of every kind and description, which may  
70 be wholly or partially owned or controlled, for carrying  
71 out the purposes of this article and in connection with the  
72 exercise of any of the powers of a housing authority;

73 (18) To participate in cooperative arrangements with  
74 persons and for-profit entities whose purpose is solely that  
75 of pecuniary gain, as well as with nonprofit entities and  
76 persons who seek no pecuniary gain. The participation of  
77 a housing authority in any arrangement with other persons  
78 or entities, including for-profit persons and entities, shall  
79 not cause any activity engaged in by the authority to be  
80 characterized as proprietary nor deprive the authority of  
81 any privilege or immunity otherwise existing under law;

82 (19) To participate as a general or limited partner, co-  
83 venturer, shareholder, or otherwise as a principal, an  
84 investor, a lender, a guarantor, a contracting party, or in  
85 any other manner, all upon such terms and conditions, and  
86 with such rights and obligations, as the governing board of  
87 the housing authority shall, from time to time, in its  
88 discretion determine to be appropriate;

89 (20) To make and, from time to time, amend and  
90 repeal bylaws and rules not inconsistent with this article to  
91 carry into effect the powers and purposes of the authority;

92 (21) To conduct examinations and investigations and  
93 to hear testimony and take proof under oath at public or  
94 private hearings on any matter material for its  
95 information;

96 (22) To issue subpoenas requiring the attendance of  
97 witnesses or the production of documents and things, for  
98 the examination of witnesses who are out of the state or  
99 unable to attend before the authority, or excused from  
100 attendance; and

102 (23) To do all things necessary or convenient to carry  
103 out the powers given in this article.

104 (b) Any of the investigations or examinations  
105 provided for in this article may be conducted by the  
106 authority or by a committee appointed by it, consisting of  
107 one or more members thereof, or by counsel, or by an  
108 officer or employee specifically authorized by the  
109 authority to conduct it. Any member of the authority, its  
110 counsel, or any person designated by it to conduct an  
111 investigation or examination, shall have power to  
112 administer oaths, take affidavits and issue subpoenas.

**§16-15-7a. Power of authority to include certain stipulations  
in contracts.**

1 A housing authority, in addition to its other powers,  
2 shall have the power, notwithstanding any provisions of  
3 this code to the contrary, to include in any contract let in  
4 connection with a development, stipulations requiring that  
5 the contractor and any subcontractors comply with  
6 requirements as to minimum wages and maximum hours  
7 of labor, and comply with any conditions which the  
8 federal government may have attached to its financial aid  
9 of the development.

**§16-15-7b. Joint undertakings by authorities; areas of  
operation.**

1 (a) Any two or more authorities may join or cooperate  
2 with one another in the exercise of any or all of their  
3 powers for the purpose of financing, planning,  
4 undertaking, constructing or operating a housing  
5 development or developments located within the area of  
6 operation of any one or more such authorities or for the  
7 administration of other housing programs.

8 (b) The area of operation of a housing authority shall  
9 be one of the following:

10 (1) In the case of a housing authority established by a  
11 city, the authority's area of operation shall be the city and  
12 the area within ten miles from the territorial boundaries  
13 thereof. Depending upon the geographical location of the  
14 city, the area of operation may include portions of one or

15 more counties. It may also include areas lying within the  
16 territorial boundaries of cities outside the city establishing  
17 the housing authority. In order to resolve territorial  
18 conflicts, the following rules shall apply:

19 (A) In the case of the housing authority's home  
20 county, it may operate outside of the area described in this  
21 subsection in the unincorporated areas of the home  
22 county without the need for the county's consent unless  
23 the home county has established its own housing  
24 authority. If the home county has established a housing  
25 authority, then the city's housing authority may operate  
26 outside the area described above only with the consent of  
27 the county housing authority;

28 (B) In the case of incorporated areas of a home  
29 county, the housing authority may only operate within the  
30 territorial boundaries thereof by consent of the other city  
31 and its housing authority, if any;

32 (C) In the case of unincorporated portions of counties  
33 other than the housing authority's home county, it may  
34 operate only with the consent of the governing body of  
35 the other county, regardless of whether the other county  
36 has established a housing authority;

37 (D) In the case of incorporated areas within other  
38 counties, it may operate only with the consent of the  
39 governing body of any city incorporating such areas, and,  
40 if the other city has also established its own housing  
41 authority, with the consent of the other housing authority;

42 (E) Notwithstanding any other provision of this  
43 section, a housing authority may, subject to the limitations  
44 stated in this article, provide rental assistance to persons  
45 residing outside the authority's area of operation as  
46 defined in this section.

47 For purposes of this section, the term "home county"  
48 means the county in which the city establishing the  
49 housing authority is situated.

50 (2) In the case of a housing authority established by a  
51 county, the authority's area of operation shall be all of the  
52 county except that portion which lies within the territorial

53 boundaries of any city in which a housing authority has  
54 been established.

55 (3) In the case of a regional housing authority, the  
56 authority's area of operation shall be an area equivalent to  
57 the total areas of operation which the housing authorities,  
58 if created separately by political subdivisions establishing  
59 the regional housing authority, would have, when  
60 aggregated. The area of operation of a regional housing  
61 authority shall not include any area which lies within the  
62 territorial boundaries of any city or county in which a  
63 housing authority has been established and which city or  
64 county is not a participant in the regional authority:  
65 *Provided, That the housing authority of the city or county*  
66 *and its governing body may consent to the operation of*  
67 *one or more developments by the regional housing*  
68 *authority within the city's or county's territorial*  
69 *boundaries.*

70 (4) Whether due to changes in the boundaries of cities  
71 or counties which have established housing authorities, or  
72 the establishment of new housing authorities, or for any  
73 other reason, territories may exist that include the area of  
74 operation of two or more housing authorities. Such areas  
75 shall be areas of concurrent jurisdiction. No housing  
76 authority whose area of operation includes an area of  
77 concurrent jurisdiction shall construct, acquire or develop  
78 any new housing development within the area of  
79 concurrent jurisdiction without the written agreement of  
80 the other authority.

81 (5) Any housing development established by a  
82 housing authority pursuant to law shall continue to be  
83 maintained and operated by the housing authority  
84 establishing the development or its designee, unless the  
85 development is conveyed to another housing authority or  
86 to a city, county or other public agency or is otherwise  
87 disposed of in accordance with law.

88 (6) Notwithstanding the area of operation as defined  
89 herein, all housing authorities shall have the jurisdiction  
90 and authority to cooperate and contract with any other  
91 housing authorities and other public agencies within this  
92 state and any public agencies of any other state, with the

93 federal government, and with any person, or entity, public  
94 or private, and wherever located, in order to carry out the  
95 purposes of this article. Such cooperation may include,  
96 but shall not be limited to, activities and operations  
97 conducted with the agreement of any public agency.

**§16-15-8. Power to acquire lands, etc., by purchase or by right of eminent domain.**

1 Whenever it shall be deemed necessary by an authority  
2 in connection with the exercise of its powers herein  
3 conferred to take or acquire any lands, structures or  
4 buildings or other rights, either in fee or as easements for  
5 any housing development or slum clearance, the authority  
6 may purchase the same directly or through its agent from  
7 the owner or owners thereof, or failing to agree with the  
8 owner or owners thereof, such authority may exercise the  
9 power of eminent domain in the manner provided for  
10 condemnation proceedings, in section eight, article one  
11 and sections nine and twelve, article two, chapter fifty-four  
12 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.**

1 All developments of an authority shall be subject to  
2 the planning, zoning, sanitary and building laws,  
3 ordinances and regulations applicable to the locality in  
4 which the development is situated. No provisions with  
5 respect to the acquisition, operation or disposition of  
6 property by public bodies shall be applicable to an  
7 authority unless the Legislature shall specifically so state.  
8 No authority shall be required to offer its securities to the  
9 state sinking fund commission at any time, nor shall any  
10 authority be required to turn over any surplus or sinking  
11 funds to the state sinking fund commission.

**§16-15-10. Amount and nature of indebtedness; rights of creditors.**

1 Subject to the restrictions set forth in this article, the  
2 authority may incur any indebtedness and issue any

3 obligations and give any security therefor which it may  
4 deem necessary or advisable in connection with any  
5 development undertaken by it. No statutory limitation  
6 with respect to the nature or amount of indebtedness  
7 which may be incurred by municipalities or other public  
8 bodies shall apply to indebtedness of an authority, unless  
9 the Legislature shall specifically so provide. No  
10 indebtedness of any nature of an authority shall constitute  
11 a debt or obligation of a municipality or the state or any  
12 other subdivision or authority or instrumentality thereof,  
13 or a charge against any property of such municipality, the  
14 state, or other subdivision, agency or instrumentality  
15 thereof. No obligation incurred by the authority shall  
16 give any right against any commissioner of such authority,  
17 but a commissioner shall be liable only for his own  
18 malfeasance. The rights of creditors of an authority shall  
19 be solely against such authority as a corporate body and  
20 shall be satisfied only out of property held by it in its  
21 corporate capacity, and the enforcement of such rights  
22 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.**

1 An authority may, in connection with the borrowing  
2 of funds, or otherwise, enter into any agreement with the  
3 federal government or any agency or subdivision thereof,  
4 providing for supervision and control of the authority or  
5 of any development, and containing such other covenants,  
6 terms and conditions as the authority may deem advisable.

**§16-15-12. Report to mayor or county governing body.**

1 At least once a year, an authority shall file with the  
2 mayor, or the county commission, as appropriate, a report  
3 of its activities for the preceding year, and shall make  
4 recommendations with reference to any legislation or  
5 other action as it deems necessary in order to carry out the  
6 purposes of this article.

**§16-15-13. Community and economic development fund.**

1 (a) The governing body of a housing authority may,  
2 by resolution, create a fund which may be available  
3 through gifts, contributions, grants, bequests, loans, loan  
4 proceeds or other sources. The fund shall be governed by  
5 and administered by the authority as a general purpose  
6 account separate and distinct from any other moneys,  
7 funds or accounts owned or managed by the housing  
8 authority in conjunction or cooperation with any local,  
9 state or federal governmental agency.

10 (b) The fund may be utilized to provide a source from  
11 which the authority may issue grants or loans to enhance  
12 community and economic development in the authority's  
13 area of operation. The grants and/or loans may include,  
14 but are not limited to, housing rehabilitation,  
15 redevelopment reconstruction, community improvement,  
16 home ownership, training and counseling for persons of  
17 eligible income, elimination of public health or safety  
18 hazards, repayment of the authority's bonds or loans and  
19 other like things which fulfill the purposes of this article.

20 (c) The authority shall have an audit of the fund  
21 preformed at the end of each fiscal year conducted in  
22 accordance with generally accepted accounting principles  
23 as part of the authority's annual audit established by the  
24 governing board.

#### **§16-15-14. Tax and licensing exemptions.**

1 (a) The authority shall be exempt from the payment  
2 of any taxes or fees to the state or any subdivision thereof,  
3 or to any officer or employee of the state or any  
4 subdivision thereof. The property of an authority shall be  
5 exempt from all local and municipal taxes. Bonds, notes,  
6 debentures and other evidences of indebtedness of an  
7 authority are declared to be issued for a public purpose  
8 and to be public instrumentalities and, together with  
9 interest thereon, shall be exempt from taxes.

10 (b) All representatives of a housing authority, acting  
11 within the scope of carrying out the business and  
12 conducting the affairs of a housing authority, shall be  
13 exempt from all licensing requirements imposed by any  
14 law with respect to the sale, rental or management of real

15 property or the improvement or development thereof,  
16 including requirements imposing any fee or charge.

**§16-15-17. Policy of state as to rentals.**

1 (a) It is hereby declared to be the policy of this state  
2 that each housing authority shall manage and operate its  
3 housing developments in an efficient manner so as to  
4 enable it to fix the rentals, leases or purchase prices for  
5 dwellings at the lowest possible rates consistent with its  
6 providing decent, safe and sanitary dwellings, and that no  
7 housing authority shall construct or operate any  
8 development for profit, or as a source of revenue to the  
9 city or county.

10 (b) It is the goal of this state to provide access to  
11 decent, safe, sanitary and affordable housing to its  
12 residents. The benefits of this article are not a matter of  
13 right, but of privilege. Persons accepting assistance under  
14 this article shall, by such acceptance thereof, recognize  
15 their responsibilities to the housing authorities providing  
16 such assistance and to other persons living in their vicinity.  
17 Persons accepting benefits are responsible for their own  
18 conduct and for the actions of other members of their  
19 households and of their guests. Housing authorities may  
20 impose and enforce occupancy standards and  
21 requirements to prohibit any criminal or other activity  
22 which threatens the health, safety or right to peaceful  
23 enjoyment of the premises or development by other  
24 residents. If eviction or lease termination are possible  
25 outcomes of the housing authority's enforcement of its  
26 occupancy standards, unless federal law or regulation  
27 provides otherwise, in any eviction or lease termination  
28 proceeding, there must be a finding of either: (1) The  
29 tenant's participation in; or (2) the tenant's knowledge of  
30 the participation of a member of the tenant's household  
31 or a tenant's guest in, criminal activities or other activities  
32 which threaten the health, safety or right to peaceful  
33 enjoyment of the premises or development by other  
34 residents. Unless, otherwise provided by federal law or  
35 regulation, any act done by a guest or member of a  
36 tenant's household is presumed to be known to the tenant.  
37 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.

55 (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;

71 (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.

76 (e) Housing authorities shall endeavor to increase the  
77 availability, from both public and private sector sources, of

78 financing for the purchase of dwellings, and the financing  
79 for home improvements, and repairs for persons of low or  
80 moderate income; and to further endeavor to increase the  
81 availability of sources of equity and other financing for  
82 the development and operation by housing authorities and  
83 private sector entities of decent, safe, and sanitary rental  
84 housing that is affordable to persons of low and moderate  
85 income.

**§16-15-18. Duties of authority and limitation of powers.**

1 (a) In the operation or management of housing  
2 developments an authority shall at all times observe the  
3 following duties with respect to rentals, tenant selection  
4 and home ownership:

5 (1) It may rent or lease dwellings therein only to  
6 persons of eligible income and at rentals within the  
7 financial reach of such persons;

8 (2) It may rent or lease to a tenant housing consisting  
9 of the number of rooms, but no greater number, which it  
10 deems necessary to provide safe and sanitary  
11 accommodations to the proposed occupants thereof,  
12 without overcrowding;

13 (3) Subject only to the limitations contained in this  
14 article or imposed by the federal government, an authority  
15 may lease or rent any dwellings, facilities or other real or  
16 personal property owned, controlled, or possessed by the  
17 authority, or with respect to which the authority has  
18 contractual rights permitting such lease or rental, for such  
19 terms, upon such conditions and lease terms and in  
20 exchange for such rentals as the authority may from time  
21 to time in its discretion determine; further, and without  
22 limiting the foregoing, to establish rents in such manner  
23 and in such amounts as the authority may deem  
24 appropriate, including, but not limited to, rents based upon  
25 family income (determined with such adjustments and  
26 exclusions as the authority deems appropriate), minimum  
27 rents, flat rents, graduated rents, rent ranges, and  
28 maximum rents (any of which may vary among the  
29 authority's developments), and to establish any other  
30 standards and conditions relating to rentals that the

31 authority may deem appropriate to carry out the purposes  
32 of this article;

33 (4) At and subsequent to an acquisition of occupied  
34 property, a housing authority may permit existing tenants  
35 therein to remain in occupancy upon such terms and  
36 conditions and for such periods as the authority shall  
37 deem appropriate, notwithstanding that such tenants do  
38 not qualify as persons of eligible income;

39 (5) A housing authority may operate programs to  
40 increase home ownership by residents of its developments  
41 and by other persons of eligible income; and in such  
42 regard, the housing authority may acquire, rehabilitate,  
43 construct, reconstruct, sell, convey, lease, option, and take  
44 all other actions deemed appropriate to achieve home  
45 ownership of dwellings and associated property by  
46 persons of eligible income. In connection with any  
47 program to encourage such ownership, a housing  
48 authority may dispose of dwellings and other associated  
49 property in exchange or for fair market purchase prices,  
50 and upon such terms and conditions, as the authority  
51 deems appropriate;

52 (6) To develop, acquire, own, lease, and operate  
53 properties and facilities that are nonresidential in  
54 character, which are used for office, administrative,  
55 management, maintenance, commercial, or educational  
56 purposes, or providing services, or carrying out any other  
57 purpose authorized under this article; to acquire, own,  
58 lease, and operate properties and facilities that are both  
59 residential and nonresidential in character;

60 (7) To develop, acquire, own, or lease community  
61 facilities, and to provide such facilities to any public  
62 agency or to any person, agency, institution, or  
63 organization, public or private, for recreational,  
64 educational, health or welfare purposes for the benefit and  
65 use of the housing authority or occupants of its  
66 developments, or persons of eligible income, elderly or  
67 handicapped persons, or any combination of the  
68 foregoing; to operate or manage community facilities,  
69 itself, or as agent or any public agency, or any person,  
70 institution, or organization, public or private; and to

71 receive compensation therefor, if any, as the parties may  
72 agree; community facilities may be utilized by private  
73 persons or organizations with or without charge, upon a  
74 determination by the authority that the utilization would  
75 be advisable to promote the public purposes of this article;  
76 and

77 (8) To carry out plans, programs, contracts and  
78 agreements of every kind and description and to provide  
79 grants, loans, guarantees and other financial assistance to  
80 public or private persons or entities, whether nonprofit or  
81 for-profit, in order to rehabilitate, maintain, procure, and  
82 preserve existing affordable housing stocks in safe, decent  
83 and sanitary condition and to ensure that they remain  
84 affordable to persons of eligible income.

85 (b) A housing authority shall conduct its affairs in  
86 accordance with sound financial and business practices,  
87 taking into account the nature of its activities and intended  
88 purpose. Therefore, a housing authority shall establish  
89 and charge rents no higher than it shall determine to be  
90 necessary to produce revenue which, together with all  
91 other available money, revenue, income and receipts of the  
92 authority from whatever source derived, will be sufficient:

93 (1) To pay when due all indebtedness of the authority;

94 (2) To pay all administrative and other costs of  
95 operating the authority's developments and programs of  
96 assistance;

97 (3) To pay the administrative and other costs of the  
98 maintenance, rehabilitation, renovation, repair, and  
99 replacement of the authority's developments and other  
100 property;

101 (4) To otherwise carry out its purposes under this  
102 article, including acquiring or creating additional housing  
103 developments and acquiring or improving property for  
104 other purposes authorized under this article, including  
105 community facilities, commercial facilities, and all other  
106 facilities and developments authorized under this article;

107 (5) To pay the costs of insurance, including the costs  
108 of claims, liabilities, losses and other expenses incurred in  
109 connection with any self-insurance program;

110 (6) To provide funds for all required payments in lieu  
111 of taxes;

112 (7) To make all payments required under and  
113 otherwise fully perform the authority's obligations under  
114 any contract, agreement, or arrangement entered into by  
115 the authority, including without limitation, those required  
116 in connection with any partnership or joint venture  
117 entered into by the authority;

118 (8) To perform the terms of any commitment or  
119 guarantee issued or given by the authority;

120 (9) To provide a reasonable return on the value of the  
121 property so as to enable the housing authority to continue  
122 to fulfill its duties, including, but not limited to, the  
123 acquisition of additional housing developments, land  
124 acquisition, acquisition or construction of buildings,  
125 equipment, facilities or other real or personal property for  
126 public purposes, including parks or other recreational,  
127 educational, welfare or community facilities within its area  
128 of operation;

129 (10) To accommodate economic factors which affect  
130 the financial stability and solvency of the authority's  
131 developments and programs;

132 (11) To pay the cost of actions occasioned by natural  
133 disasters and other emergencies; and

134 (12) To create and maintain operating and capital  
135 reserves that are reasonable and adequate to ensure the  
136 authority's ability to make all payments referred to herein  
137 and any other matter with respect to which the authority,  
138 in its discretion reasonably exercised, determines that the  
139 creation and maintenance of a reserve is appropriate.

140 Nothing herein shall be construed to limit the amount  
141 which a housing authority may charge for nondwelling  
142 facilities or for dwelling facilities that are not rented to  
143 persons of eligible income: *Provided*, That the authority's

144 actions do not conflict with the purposes of this article:  
145 *Provided, however,* That a housing authority may allow  
146 police officers and maintenance and management  
147 employees, not otherwise eligible for residence, to reside  
148 in its developments.

**§16-15-19. Power to issue bonds; how bonds secured.**

1 An authority shall have power to issue bonds from  
2 time to time, in its discretion, for any of its corporate  
3 purposes. An authority shall also have power to issue or  
4 exchange refunding bonds for the purpose of paying,  
5 retiring, extending or renewing bonds previously issued  
6 by it. An authority may issue such types of bonds as it  
7 may determine, including without limiting the generality  
8 of the foregoing, bonds on which the principal and  
9 interest are payable from income and revenues of the  
10 authority and from grants or contributions from the  
11 federal government or other source. Such income and  
12 revenues securing the bonds may be: Exclusively the  
13 income and revenues of the housing developments  
14 financed, in whole or in part, with the proceeds of such  
15 bonds; exclusively the income and revenues of certain  
16 designated housing developments, whether or not they are  
17 financed, in whole or in part, with the proceeds of such  
18 bonds; or the income and revenues of the authority  
19 generally. Any such bonds may be additionally secured  
20 by a pledge of any income or revenues of the authority, or  
21 a mortgage of any housing development, developments or  
22 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.**

1 (a) Bonds of an authority shall be authorized by its  
2 resolution and may be issued in one or more series and  
3 shall bear such date or dates, mature at such time or times,  
4 bear interest at such rate or rates, be in such denomination  
5 or denominations, be in such form, either coupon or  
6 registered, carry such conversion or registration privileges,  
7 have such rank or priority, be executed in such manner, be

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  
13 taxation of interest thereon if the resolution authorizing  
14 issuance so provides.

15 (b) The bonds may be sold at public sale held after  
16 notice prior to such sale promulgated in the manner as the  
17 authority deems appropriate or, if the resolution  
18 authorizing issuance of the bonds so provides, they may  
19 be sold on a negotiated basis or at private sale without any  
20 public advertisement. At the discretion of the housing  
21 authority, the bonds may be sold at par, or at any discount  
22 or premium, as the resolution authorizing them provides.  
23 A housing authority issuing bonds may enter into  
24 agreements and arrangements with third parties for the  
25 marketing of its bonds as it shall deem appropriate.

26 (c) In case any of the commissioners or officers of the  
27 authority whose signatures appear on any bonds or  
28 coupons shall cease to be such commissioners or officers  
29 before the delivery of such bonds, such signatures shall,  
30 nevertheless, be valid and sufficient for all purposes, the  
31 same as if they had remained in office until such delivery.  
32 Any provisions of any law to the contrary notwithstanding,  
33 any bonds issued pursuant to this article shall be  
34 negotiable.

35 (d) In any suit, action or proceedings involving the  
36 validity or enforceability of any bond of an authority or  
37 the security therefor, any such bond reciting in substance  
38 that it has been issued by the authority to aid in financing  
39 a housing development to provide housing for persons of  
40 eligible income shall be conclusively deemed to have been  
41 issued for a housing development of such character, and  
42 the development shall be conclusively deemed to have  
43 been planned, located and constructed in accordance with  
44 the purposes and provisions of this article.

**§16-15-21. Powers of authority in connection with the issuance  
of bonds, incurring obligations under leases and  
securing payment of bonds.**

1 In connection with the issuance of bonds or the  
2 incurring of obligations under leases and in order to  
3 secure the payment of bonds or obligations, any authority,  
4 in addition to its other powers shall have power:

5 (1) To pledge all or any part of its gross or net rents,  
6 fees or revenues to which its right then exists or may  
7 thereafter come into existence;

8 (2) To mortgage all or any part of its real or personal  
9 property, then owned or thereafter acquired;

10 (3) To covenant against pledging all or any part of its  
11 rents, fees and revenues, or against mortgaging all or any  
12 part of its real or personal property, to which its right or  
13 title then exists or may thereafter come into existence or  
14 against permitting or suffering any lien on revenues or  
15 property; to covenant with respect to limitations on its  
16 right to sell, lease or otherwise dispose of any housing  
17 development or any part thereof; and to covenant as to  
18 what other, or additional debts or obligations may be  
19 incurred by it;

20 (4) To covenant as to the bonds to be issued and as to  
21 the issuance of bonds or otherwise, and as to the issuance  
22 of bonds in escrow or otherwise and as to the use and  
23 disposition of the proceeds thereof; to provide for the  
24 replacement of lost, destroyed or mutilated bonds; to  
25 covenant against extending the time for the payment of its  
26 bonds or interest thereon; and to redeem the bonds, and to  
27 covenant for their redemption and to provide the terms  
28 and conditions thereof;

29 (5) To covenant, subject to the limitations contained in  
30 this article, as to the rents, purchase prices, and fees to be  
31 charged in the operation of a housing development or  
32 developments, the amount to be raised each year or other  
33 period of time by rents, fees, and other revenues, and as to  
34 the use and disposition to be made thereof; to create or to  
35 authorize the creation of special funds for moneys held  
36 for construction or operating costs, debt service, reserves,  
37 or other purposes, and to covenant as to the use and  
38 disposition of the moneys held in such funds;

39 (6) To prescribe the procedure, if any, by which the  
40 terms of any contract with bondholders may be amended

41 or abrogated, the amount of bonds the holders of which  
42 must consent thereto and the manner in which such  
43 consent may be given;

44 (7) To covenant as to use of any or all of its real or  
45 personal property; and to covenant as to the maintenance  
46 of its real and personal property, the replacement thereof,  
47 the insurance to be carried thereon and the use and  
48 disposition of insurance moneys;

49 (8) To covenant as to the rights, liabilities, powers and  
50 duties arising upon the breach by it of any covenant,  
51 condition, or obligation; and to covenant and prescribe as  
52 to events of default and terms and conditions upon which  
53 any or all of its bonds or obligations shall become or may  
54 be declared due before maturity, and as to the terms and  
55 conditions upon which the declaration and its  
56 consequences may be waived;

57 (9) To vest in a trustee or trustees or the holders of  
58 bonds or any proportion of them the right to enforce the  
59 payment of the bonds or any covenants securing or  
60 relating to the bonds; to vest in a trustee or trustees the  
61 right, in the event of a default by said authority, to take  
62 possession and, as long as the authority is in default, to  
63 retain possession and to use, operate and manage any  
64 housing development or part thereof, and to collect the  
65 rents and revenues arising therefrom and to dispose of  
66 such moneys in accordance with the agreement of the  
67 authority with said trustees; to provide for the powers and  
68 duties of a trustee or trustees and to limit the liabilities  
69 thereof; and to provide the terms and conditions upon  
70 which the trustee or trustees or the holders of bonds or  
71 any proportion of them may enforce any covenant or  
72 rights securing or relating to the bonds; and

73 (10) To exercise all or any part or combination of the  
74 powers herein granted; to make covenants other than and  
75 in addition to the covenants herein expressly authorized,  
76 of like or different character; to make covenants and to do  
77 any and all acts and things as may be necessary or  
78 convenient or desirable in order to secure its bonds, or, in  
79 the absolute discretion of said authority, as will tend to  
80 make the bonds more marketable notwithstanding that the  
81 covenants, acts or things may not be enumerated herein.

**§16-15-22. Actions by obligee of authority to enforce performance of contracts and to enjoin unlawful acts.**

1 An obligee of an authority shall have the right in  
2 addition to all other rights which may be conferred on the  
3 obligee, subject only to any contractual restrictions  
4 binding upon the obligee:

5 (1) By mandamus, suit, action or proceeding at law or  
6 in equity to compel said authority and the commissioners,  
7 officers, agents or employees thereof to perform each and  
8 every term, provision and covenant contained in any  
9 contract of said authority with or for the benefit of the  
10 obligee, and to require the carrying out of any or all  
11 covenants and agreements of the authority and the  
12 fulfillment of all duties imposed upon said authority by  
13 this article; and

14 (2) By suit, action or proceeding in equity, to enjoin  
15 any acts or things which may be unlawful, or the violation  
16 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.**

1 An authority shall have power by its resolution, trust  
2 indenture, mortgage, lease or other contract to confer  
3 upon any obligee holding or representing a specified  
4 amount in bonds, or holding a lease, the right, in addition  
5 to all rights that may otherwise be conferred, upon the  
6 happening of an event of default as defined in such  
7 resolution or instrument, by suit, action or proceeding in  
8 any court of competent jurisdiction:

9 (1) To cause possession of any housing development  
10 or any part thereof to be surrendered to the obligee;  
11 possession may be retained by the bondholder or trustee  
12 so long as the authority shall continue in default;

13 (2) To obtain the appointment of a receiver of any  
14 housing development of the authority or any part thereof  
15 and of the rents and profits therefrom. If a receiver is  
16 appointed, he or she may enter and take possession of the  
17 housing development or any part thereof and, so long as  
18 the authority shall continue in default, operate and

19 maintain same, and collect and receive all fees, rents,  
20 revenues, or other charges thereafter arising therefrom,  
21 and shall keep such moneys in a separate account or  
22 accounts and apply the same in accordance with the  
23 obligations of the authority as the court shall direct; and

24 (3) To require the authority and the commissioners  
25 thereof to account as if it and they were the trustees of an  
26 express trust.

**§16-15-24. Housing authorities empowered to provide housing for farmers of low and moderate income.**

1 Housing authorities created for counties and other  
2 authorities whose jurisdiction includes rural areas are  
3 specifically empowered and authorized to borrow money,  
4 accept grants and exercise their other powers to provide  
5 housing for farmers of low and moderate income. In  
6 connection with such developments, housing authorities  
7 may enter into leases or purchase agreements, accept such  
8 conveyances and rent or sell dwellings forming part of  
9 developments to or for farmers of low and moderate  
10 income, as the housing authority deems necessary in order  
11 to assure the achievement of the objectives of this article.  
12 Leases, agreements or conveyances may include such  
13 covenants as the housing authority deems appropriate  
14 regarding dwellings and the tracts of land described in any  
15 such instrument, which covenants shall be deemed to run  
16 with the land where the housing authority deems it  
17 necessary and the parties to such instrument so stipulate.  
18 Nothing contained in this section shall be construed as  
19 limiting any other powers of any housing authority.

**§16-15-25. Application for low-cost housing for farmers.**

1 The owner of any farm operated, or worked upon, by  
2 farmers of low and moderate income in need of safe and  
3 sanitary housing may file an application with a housing  
4 authority requesting that it provide for a safe and sanitary  
5 dwelling or dwellings for occupancy by farmers of low  
6 and moderate income. The applications shall be received  
7 and examined by housing authorities in connection with  
8 the formulation of developments or programs to provide  
9 housing for farmers of low and moderate income.