ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

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

Volume II
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AN ACT to amend and reenact article seventeen, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting housing discrimination against individuals with disabilities; amending definitions and defining group residential homes; eliminating special zoning requirements for group residential facilities and group residential homes; eliminating the complaint process for residents of a contiguous area of a zoning district in which a group residential facility is located; and providing that group residential homes are not subject to licensure.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. GROUP RESIDENTIAL FACILITIES.

§27-17-1. Definitions.

§27-17-2. Permitted use of group residential facilities; restrictions.

§27-17-3. License from director of health; application; regulations; revocation.

§27-17-4. Exclusion by private agreement void.
services which are of lifelong or extended duration and are individually planned and coordinated.

(b) "Behavioral disability" means a disability of a person which: (1) Is attributable to severe or persistent mental illness, emotional disorder or chemical dependency; and (2) results in substantial functional limitations in self-direction, capacity for independent living or economic self-sufficiency.

c) "Group residential facility" means a facility which is owned or leased by a behavioral health service provider and which: (1) Provides residential services and supervision for individuals who are developmentally disabled or behaviorally disabled; (2) is occupied as a residence by not more than eight individuals who are developmentally disabled and not more than three supervisors, or is occupied as a residence by not more than twelve individuals who are behaviorally disabled and not more than three supervisors; (3) is licensed by the department of health or the division of human services; and (4) complies with the state fire commission for residential facilities.

d) "Group residential home" means a building owned or leased by developmentally disabled or behaviorally disabled persons for purposes of establishing a personal residence. A behavioral health service provider may lease a building to such persons if the provider providing services to the persons without a license provided for in this article.

§27-17-2. Permitted use of group residential facilities; restrictions.

Both a group residential facility and a group residential home shall be a permitted residential use of property for the purposes of zoning and shall be a permitted use in all zones or districts. No county commission, governing board of a municipality or planning commission shall require a group residential facility, its owner or operator, to obtain a conditional use permit, special use permit, special exception or variance for location of such facility in any zone or district.

§27-17-3. License from director of health; application; regulations; revocation.
(a) No group residential facility shall be established, maintained or operated unless a license therefor shall be first obtained from the director of health, except that a group residential facility for behaviorally disabled juveniles shall be deemed to satisfy all requirements of this section by obtaining a license from the commissioner of human services. The application for such license shall contain such data and facts as the director may require. The director may promulgate reasonable regulations for the conduct of such facilities, including, but not limited to, a statement of the rights of patients in group residential facilities for the mentally and physically impaired to ensure the adequate care and supervision of such patients, and shall have the authority to investigate and inspect any such facility, and may revoke the license of any such facility for good cause after notice and hearing.

(b) A group residential home is not required to obtain a license from the director of health.

§27-17-4. Exclusion by private agreement void.

Any restriction, reservation, condition, exception or covenant in any subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease or use of property which would permit residential use of property but prohibit the use of such property as a group residential facility or group residential home shall, to the extent of such prohibition, be void as against the public policy of this state and shall be given no legal or equitable force or effect.

CHAPTER 178

(H. B. 4545—By Delegates Amores, Rowe, Fleischauer, Trump, Johnson, Faircloth and Mahan)

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

AN ACT to amend and reenact sections two, three, four, five, six, eight, nine, thirteen and sixteen, article eleven, chapter five 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 twenty, all relating to the West Virginia human rights act; establishing public policy; defining terms; continuing the human rights commission; providing for appointment and composition of members; providing for organization and administration of commission; describing commission's authority and responsibilities; defining unlawful discriminatory practices; establishing exclusiveness of remedies and exceptions; issuance of notice of a right to sue; injunctions of discriminatory practices; exemption of certain records; establishing a civil action by attorney general; and providing for civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-2. Declaration of policy.

§5-11-3. Definitions.

§5-11-4. Human rights commission continued; status, powers and objects.

§5-11-5. Composition; appointment, terms and oath of members; compensation and expenses.

§5-11-6. Commission organization and personnel; executive director; offices; meetings; quorum; expenses of personnel.

§5-11-8. Commission powers; functions; services.


§5-11-20. Violations of human rights; civil action by attorney general.

§5-11-2. Declaration of policy.

1 It is the public policy of the state of West Virginia to
2 provide all of its citizens equal opportunity for
3 employment, equal access to places of public
4 accommodations, and equal opportunity in the sale,
5 purchase, lease, rental and financing of housing
accommodations or real property. Equal opportunity in the areas of employment and public accommodations is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness or disability. Equal opportunity in housing accommodations or real property is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, blindness, disability or familial status.

The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age, blindness, disability or familial status is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

§5-11-3. Definitions.

When used in this article:

(a) The term "person" means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons;

(b) The term "commission" means the West Virginia human rights commission;

(c) The term "director" means the executive director of the commission;

(d) The term "employer" means the state, or any political subdivision thereof, and any person employing twelve or more persons within the state for twenty or more calendar weeks in the calendar year in which the act of discrimination allegedly took place or the preceding calendar year: Provided, That such terms shall not be taken, understood or construed to include a private club;

(e) The term "employee" shall not include any individual employed by his or her parents, spouse or child;
(f) The term "labor organization" includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or for other mutual aid or protection in relation to employment;

(g) The term "employment agency" includes any person undertaking, with or without compensation, to procure, recruit, refer or place employees. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be an employment agency;

(h) The term "discriminate" or "discrimination" means to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex, age, blindness, disability or familial status and includes to separate or segregate;

(i) The term "unlawful discriminatory practices" includes only those practices specified in section nine of this article;

(j) The term "place of public accommodations" means any establishment or person, as defined herein, including the state, or any political or civil subdivision thereof, which offers its services, goods, facilities or accommodations to the general public, but shall not include any accommodations which are in their nature private. To the extent that any penitentiary, correctional facility, detention center, regional jail or county jail is a place of public accommodation, the rights, remedies and requirements provided by this article for any violation of subdivision (6), section nine of this article shall not apply to any person other than: (1) Any person employed at a penitentiary, correctional facility, detention center, regional jail or county jail; (2) any person employed by a law-enforcement agency; or (3) any person visiting any such employee or visiting any person detained in custody at such facility;

(k) The term "age" means the age of forty or above;
(l) For the purpose of this article, a person shall be considered to be blind only if his central visual acuity does not exceed twenty/two hundred in the better eye with correcting lenses, or if his visual acuity is greater than twenty/two hundred but is occasioned by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees; and

(m) The term “disability” means:

(1) A mental or physical impairment which substantially limits one or more of such person’s major life activities. The term “major life activities” includes functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

(2) A record of such impairment; or

(3) Being regarded as having such an impairment.

For the purposes of this article, this term does not include persons whose current use of or addiction to alcohol or drugs prevents such persons from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

§5-11-4. Human rights commission continued; status, powers and objects.

The West Virginia human rights commission, heretofore created, is hereby continued. The commission shall have the power and authority and shall perform the functions and services as in this article prescribed and as otherwise provided by law. The commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the state and shall strive to eliminate all discrimination in employment and places of public

*Clerk’s Note: This section was also amended by SB 537 (Chapter 261), which passed prior to this act.
accommodations by virtue of race, religion, color, national
origin, ancestry, sex, age, blindness or disability and shall
strive to eliminate all discrimination in the sale, purchase,
 lease, rental or financing of housing and other real
property by virtue of race, religion, color, national origin,
ancestry, sex, blindness, disability or familial status.

Pursuant to the provisions of article ten, chapter four
of this code, the West Virginia human rights commission
shall continue to exist until the first day of July, two
thousand.

§5-11-5. Composition; appointment, terms and oath of
members; compensation and expenses.

The commission shall be composed of nine members,
all residents and citizens of the state of West Virginia and
broadly representative of the several racial, religious and
ethnic groups residing within the state, to be appointed by
the governor, by and with the advice and consent of the
Senate. Not more than five members of the commission
shall be members of the same political party and at least
one member, but not more than three members, shall be
from any one congressional district.

Members of the commission shall be appointed for
terms of three years commencing on the first day of July
of the year of their appointments, except that the nine
members first appointed hereunder shall be appointed for
terms of from one to three years, respectively, so that the
terms of three members of the commission will expire on
the thirtieth day of June of each succeeding year
thereafter. Upon the expiration of the initial terms, all
subsequent appointments shall be for terms of three years
each, except that appointments to fill vacancies shall be for
the unexpired term thereof. Members shall be eligible for
reappointment. Before assuming and performing any
duties as a member of the commission, each commission
member shall take and subscribe to the official oath
prescribed by section 5, article IV of the constitution of
West Virginia, which executed oath shall be filed in the
office of the secretary of state.

The members of the commission shall not receive a
salary, but each appointed member shall be paid fifty
dollars per diem for actual time spent in the performance
of duties under this article and shall be reimbursed for actual and necessary expenses incident to the performance of their duties, upon presentation of an itemized and sworn statement thereof. The foregoing per diem and reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the commission.

§5-11-6. Commission organization and personnel; executive director; offices; meetings; quorum; expenses of personnel.

As soon as practical after the first day of July of each year, the governor shall call a meeting of the commission to be convened at the state capitol. The commission shall at such meeting organize by electing one of its members as chairperson of the commission and one as vice chairperson thereof for a term of one year or until their successors are elected and qualified. At such meeting the commission shall also elect from its membership such other officers as may be found necessary and proper for its effective organization.

The governor shall, by and with the advice and consent of the Senate, appoint an executive director to serve at his or her will and pleasure. The executive director shall serve as secretary of the commission. The executive director shall have a college degree. He or she shall be selected with particular reference to his or her training, experience and qualifications for the position and shall be paid an annual salary, payable in monthly installments, from any appropriations made therefor. The commission, upon recommendation of the executive director and in accordance with the requirements of the civil service law, may employ such personnel as may be necessary for the effective and orderly performance of the functions and services of the commission. The commission shall employ an administrative law judge who shall be an attorney, duly licensed to practice law in the state of West Virginia, for the conduct of the public hearings authorized in subdivision (3), subsection (d), section eight of this article.

The commission shall equip and maintain its offices at the state capitol and shall hold its annual organizational meeting there. The commission may hold other meetings
during the year at such times and places within the state as
may be found necessary and may maintain one branch
office within the state as determined by the commission to
be necessary for the effective and orderly performance of
the functions and services of the commission. Any five
members of the commission shall constitute a quorum for
the transaction of business. Minutes of its meetings shall
be kept by its secretary.

The executive director and other commission
personnel shall be reimbursed for necessary and
reasonable travel and subsistence expenses actually
incurred in the performance of commission services upon
presentation of properly verified expense accounts as
prescribed by law.

§5-11-8. Commission powers; functions; services.

The commission is hereby authorized and empowered:

(a) To cooperate and work with federal, state and local
government officers, units, activities and agencies in the
promotion and attainment of more harmonious
understanding and greater equality of rights between and
among all racial, religious and ethnic groups in this state;

(b) To enlist the cooperation of racial, religious and
ethnic units, community and civic organizations, industrial
and labor organizations and other identifiable groups of
the state in programs and campaigns devoted to the
advancement of tolerance, understanding and the equal
protection of the laws of all groups and peoples;

(c) To receive, investigate and pass upon complaints
alleging discrimination in employment or places of public
accommodations, because of race, religion, color, national
origin, ancestry, sex, age, blindness or disability, and
complaints alleging discrimination in the sale, purchase,
lease, rental and financing of housing accommodations or
real property because of race, religion, color, national
origin, ancestry, sex, blindness, disability or familial status,
and to initiate its own consideration of any situations,
circumstances or problems, including therein any racial,
religious or ethnic group tensions, prejudice, disorder or
discrimination reported or existing within the state relating
to employment, places of public accommodations, housing accommodations and real property;

(d) To hold and conduct public and private hearings, in the county where the respondent resides or transacts business or where agreed to by the parties or where the acts complained of occurred, on complaints, matters and questions before the commission and, in connection therewith, relating to discrimination in employment or places of public accommodations, housing accommodations or real property and during the investigation of any formal complaint before the commission relating to employment, places of public accommodations, housing accommodations or real property to:

(1) Issue subpoenas and subpoenas duces tecum upon the approval of the executive director or the chairperson of the commission; administer oaths; take the testimony of any person under oath; and make reimbursement for travel and other reasonable and necessary expenses in connection with such attendance;

(2) Furnish copies of public hearing records to parties involved therein upon their payment of the reasonable costs thereof to the commission;

(3) Delegate to an administrative law judge who shall be an attorney, duly licensed to practice law in West Virginia, the power and authority to hold and conduct hearings, as herein provided, to determine all questions of fact and law presented during the hearing and to render a final decision on the merits of the complaint, subject to the review of the commission as hereinafter set forth.

Any respondent or complainant who shall feel aggrieved at any final action of an administrative law judge shall file a written notice of appeal with the commission by serving such notice on the executive director and upon all other parties within thirty days after receipt of the administrative law judge's decision. The commission shall limit its review upon such appeals to whether the administrative law judge's decision is:

(A) In conformity with the constitution and the laws of the state and the United States;
(B) Within the commission's statutory jurisdiction or authority;
(C) Made in accordance with procedures required by law or established by appropriate rules of the commission;
(D) Supported by substantial evidence on the whole record; or
(E) Not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(4) To enter into conciliation agreements and consent orders.

Each conciliation agreement shall include provisions requiring the respondent to refrain from the commission of unlawful discriminatory practices in the future and shall contain such further provisions as may be agreed upon by the commission and the respondent.

If the respondent and the commission agree upon conciliation terms, the commission shall serve upon the complainant a copy of the proposed conciliation agreement. If the complainant agrees to the terms of the agreement or fails to object to such terms within fifteen days after its service upon him or her, the commission shall issue an order embodying such conciliation agreement. If the complainant objects to the agreement, he or she shall serve a specification of his or her objections upon the commission within such period. Unless such objections are met or withdrawn within ten days after service thereof, the commission shall notice the complaint for hearing.

Notwithstanding any other provisions of this section, the commission may, where it finds the terms of the conciliation agreement to be in the public interest, execute such agreement, and limit the hearing to the objections of the complainant.

If a conciliation agreement is entered into, the commission shall serve a copy of the order embodying such agreement upon all parties to the proceeding.

Not later than one year from the date of a conciliation agreement, the commission shall investigate whether the
respondent is complying with the terms of such agreement. Upon a finding of noncompliance, the commission shall take appropriate action to assure compliance;

(5) To apply to the circuit court of the county where the respondent resides or transacts business for enforcement of any conciliation agreement or consent order by seeking specific performance of such agreement or consent order;

(6) To issue cease and desist orders against any person found, after a public hearing, to have violated the provisions of this article or the rules of the commission;

(7) To apply to the circuit court of the county where the respondent resides or transacts business for an order enforcing any lawful cease and desist order issued by the commission;

(e) To recommend to the governor and Legislature policies, procedures, practices and legislation in matters and questions affecting human rights;

(f) To delegate to its executive director such powers, duties and functions as may be necessary and expedient in carrying out the objectives and purposes of this article;

(g) To prepare a written report on its work, functions and services for each year ending on the thirtieth day of June and to deliver copies thereof to the governor on or before the first day of December next thereafter;

(h) To do all other acts and deeds necessary and proper to carry out and accomplish effectively the objects, functions and services contemplated by the provisions of this article, including the promulgation of legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, implementing the powers and authority hereby vested in the commission;

(i) To create such advisory agencies and conciliation councils, local, regional or statewide, as in its judgment will aid in effectuating the purposes of this article, to study the problems of discrimination in all or specific fields or instances of discrimination because of race, religion, color, national origin, ancestry, sex, age, blindness, disability or
familial status; to foster, through community effort or otherwise, goodwill, cooperation and conciliation among the groups and elements of the population of this state, and to make recommendations to the commission for the development of policies and procedures, and for programs of formal and informal education, which the commission may recommend to the appropriate state agency. Such advisory agencies and conciliation councils shall be composed of representative citizens serving without pay. The commission may itself make the studies and perform the acts authorized by this subdivision. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster goodwill and cooperation among all elements of the population of the state;

(j) To accept contributions from any person to assist in the effectuation of the purposes of this section and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this section;

(k) To issue such publications and such results of investigation and research as in its judgment will tend to promote goodwill and minimize or eliminate discrimination: Provided, That the identity of the parties involved shall not be disclosed.


It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the state of West Virginia or its agencies or political subdivisions:

(1) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment if the individual is able and competent to perform the services required even if such individual is blind or disabled: Provided, That it shall not be an unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subdivision;
(2) For any employer, employment agency or labor organization, prior to the employment or admission to membership, to: (A) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, sex or age of any applicant for employment or membership; (B) print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specifications or discrimination based upon race, religion, color, national origin, ancestry, sex, disability or age; or (C) deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, sex, age, blindness or disability;

(3) For any labor organization because of race, religion, color, national origin, ancestry, sex, age, blindness or disability of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individual with respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment;

(4) For an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs to:

(A) Select individuals for an apprentice training program registered with the state of West Virginia on any basis other than their qualifications as determined by objective criteria which permit review;

(B) Discriminate against any individual with respect to his or her right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program or other occupational training or retraining program;

(C) Discriminate against any individual in his or her pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs;
(D) Print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for these programs or to make any inquiry in connection with a program which expresses, directly or indirectly, discrimination or any intent to discriminate unless based upon a bona fide occupational qualification;

(5) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his or her race, religion, color, national origin, ancestry, sex, age, blindness or disability;

(6) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to:

(A) Refuse, withhold from or deny to any individual because of his or her race, religion, color, national origin, ancestry, sex, age, blindness or disability, either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of the place of public accommodations;

(B) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, privileges or services of any such place shall be refused, withheld from or denied to any individual on account of race, religion, color, national origin, ancestry, sex, age, blindness or disability, or that the patronage or custom threat of any individual, belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex or age, or who is blind or disabled, is unwelcome, objectionable, not acceptable, undesired or not solicited; or

(7) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman or financial institution to:

(A) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to
harass, degrade, embarrass or cause physical harm or economic loss or to aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory practices defined in this section;

(B) Willfully obstruct or prevent any person from complying with the provisions of this article, or to resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of a duty under this article; or

(C) Engage in any form of reprisal or otherwise discriminate against any person because he or she has opposed any practices or acts forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article.


(a) Except as provided in subsection (b), nothing contained in this article shall be deemed to repeal or supersede any of the provisions of any existing or hereafter adopted municipal ordinance, municipal charter or of any law of this state relating to discrimination because of race, religion, color, national origin, ancestry, sex, age, blindness or disability, but as to acts declared unlawful by section nine of this article the procedure herein provided shall, when invoked, be exclusive and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the complainant concerned. If such complainant institutes any action based on such grievance without resorting to the procedure provided in this article, he or she may not subsequently resort to the procedure herein. In the event of a conflict between the interpretation of a provision of this article and the interpretation of a similar provision contained in any municipal ordinance authorized by charter, the interpretation of the provision in this article shall apply to such municipal ordinance.

(b) Notwithstanding the provisions of subsection (a) of this section, a complainant may institute an action against a respondent in the county wherein the respondent resides or transacts business at any time within ninety days after the complainant is given notice of a right to sue pursuant to this subsection or, if the statute of limitations on the
claim has not expired at the end of such ninety-day period, then at any time during which such statute of limitations has not expired. If a suit is filed under this section the proceedings pending before the commission shall be deemed concluded.

The commission shall give a complainant who has filed a complaint a notice of a right to sue upon: (1) The dismissal of the complaint for any reason other than an adjudication of the merits of the case; or (2) the request of a complainant at any time after the timely filing of the complaint in any case which has not been determined on its merits or has not resulted in a conciliation agreement to which the complainant is a party. Upon the issuance of a right to sue letter pursuant to subdivision (1) or (2), the commission may dismiss the complaint.

Notice of right to sue shall be given immediately upon complainant being entitled thereto, by personal service or certified mail, return receipt requested, which notice shall inform the complainant in plain terms of his or her right to institute a civil action as provided in this section within ninety days of the giving of such notice. Service of the notice shall be complete upon mailing.

(c) In any action filed under this section, if the court finds that the respondent has engaged in or is engaging in an unlawful discriminatory practice charged in the complaint, the court shall enjoin the respondent from engaging in such unlawful discriminatory practice and order affirmative action which may include, but is not limited to, reinstatement or hiring of employees, granting of back pay or any other legal or equitable relief as the court deems appropriate. In actions brought under this section, the court in its discretion may award all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, to the complainant.

(d) The provisions of this section shall be available to all complainants whose active cases are pending before the human rights commission as well as those complainants who file after the effective date of this section.

Notwithstanding any other provisions of this article, it shall not be an unlawful discriminatory practice for the bureau of employment programs to ascertain and record the age, sex, race, religion, color, national origin, ancestry, blindness or disability of any individual for the purpose of making such reports as may from time to time be required by agencies of the federal government or be necessary to show compliance with any rule or regulation issued by any such agency. Said records may be made and kept in the manner required by the federal government: Provided, That such recording of the age, sex, race, religion, color, national origin, ancestry, blindness or disability of any individual shall not be used to discriminate, within the meaning of this article, directly or indirectly, against any such individual as prohibited by all other sections of this article.

§5-11-20. Violations of human rights; civil action by attorney general.

(a) A person has the right to engage in lawful activities without being subject to actual or threatened:

(1) Physical force or violence against him or her or any other person, or

(2) Damage to, destruction of or trespass on property, any of which is motivated by race, color, religion, sex, ancestry, national origin, political affiliation or disability.

(b) Whenever any person, whether or not acting under the color of law, intentionally interferes or attempts to interfere with another person's exercise or enjoyment of rights secured by this article or article eleven-a of this chapter, by actual or threatened physical force or violence against that person or any other person, or by actual or threatened damage to, destruction of or trespass on property, the attorney general may bring a civil action:

(1) For injunctive or other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the rights secured, or

(2) For civil penalties as specified in subsection (c) of this section, or
(3) For both equitable relief and civil penalties. This action must be brought in the name of the state and instituted in the circuit court for the county where the alleged violator resides or has a principal place of business or where the alleged violation occurred.

(c) A civil penalty of not more than five thousand dollars per violation may be assessed against any person violating this section.

(d) Each preliminary, temporary, or permanent injunction issued under this section must include a statement describing the penalties to be imposed for a knowing violation of the order or injunction as provided in subsection (e) of this section. The clerk of the circuit court shall transmit one certified copy of each order or injunction issued under this section to the appropriate law-enforcement agency or agencies having authority over locations where the defendant was alleged to have committed the act giving rise to the action, and service of the order or injunction must be accomplished pursuant to the West Virginia rules of civil procedure.

(e) A person who knowingly violates a preliminary, temporary or permanent injunction issued under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county or regional jail not more than one year, or both fined and imprisoned.

CHAPTER 179

(Com. Sub. for S. B. 624—By Senators Schoonover and Love)

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

AN ACT to amend and reenact section two, article one, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article four of said chapter, all relating to the division of human services; providing a definition of state medicaid agency; continuing and defining the purpose and composition of the advisory council for the medicaid
services fund; and providing for the appointment of its members.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Legislative Purpose and Definitions.

4. State Advisory Board; Medical Services Fund; Advisory Council; General Relief Fund.

ARTICLE 1. LEGISLATIVE PURPOSE AND DEFINITIONS.

§9-1-2. Definitions.

1 The following words and terms when used in this chapter have the meanings indicated unless the context clearly indicates a different meaning, and any amendment of this section applies to any verdict, settlement, compromise or judgment entered after the effective date of the amendments to this section enacted during the regular session of the Legislature, one thousand nine hundred ninety-five.

(a) The term "department" means the state division of human services.

(b) The term "commissioner" means the commissioner of human services.

(c) The term "federal-state assistance" means and includes: (1) All forms of aid, care, assistance and services to or on behalf of persons, which are authorized by, and who are authorized to receive the same under and by virtue of, subchapters one, four, five, ten, fourteen, sixteen, eighteen and nineteen, chapter seven, Title 42, United States Code, as those subchapters have heretofore been and may hereafter be amended, supplemented and revised by acts of Congress, and as those subchapters so amended, supplemented and revised have heretofore been and may hereafter be supplemented by valid rules and regulations promulgated by authorized federal agents and agencies,
and as those subchapters so amended, supplemented and revised have heretofore been and may hereafter be supplemented by rules promulgated by the state division of human services, which division rules shall be consistent with federal laws, rules and regulations, but not inconsistent with state law; and (2) all forms of aid, care, assistance and services to persons, which are authorized by, and who are authorized to receive the same under and by virtue of, any act of Congress, other than the federal social security act, as amended, for distribution through the state division of human services to recipients of any form of aid, care, assistance and services to persons designated or referred to in (1) of this definition and to recipients of state assistance, including by way of illustration, surplus food and food stamps, which Congress has authorized the secretary of agriculture of the United States to distribute to needy persons.

(d) The term "federal assistance" means and includes all forms of aid, care, assistance and services to or on behalf of persons, which are authorized by, and who are authorized to receive the same under and by virtue of, any act of Congress for distribution through the state division of human services, the cost of which is paid entirely out of federal appropriations.

(e) The term "state assistance" means and includes all forms of aid, care, assistance, services and general relief made possible solely out of state, county and private appropriations to or on behalf of indigent persons, which are authorized by, and who are authorized to receive the same under and by virtue of, state division of human services' rules.

(f) The term "welfare assistance" means the three classes of assistance administered by the state division of human services, namely: Federal-state assistance, federal assistance and state assistance.

(g) The term "indigent person" means any person who is domiciled in this state and who is actually in need as defined by department rules and has not sufficient income or other resources to provide for such need as determined by the state division of human services.
(h) The term "domiciled in this state" means being physically present in West Virginia accompanied by an intention to remain in West Virginia for an indefinite period of time, and to make West Virginia his or her permanent home. The state division of human services may by rules supplement the foregoing definition of the term "domiciled in this state", but not in a manner as would be inconsistent with federal laws, rules, and regulations applicable to and governing federal-state assistance.

(i) The term "medical services" means medical, surgical, dental and nursing services, and other remedial services recognized by law, in the home, office, hospital, clinic and any other suitable place, provided or prescribed by persons permitted or authorized by law to give such services; the services to include drugs and medical supplies, appliances, laboratory, diagnostic and therapeutic services, nursing home and convalescent care and such other medical services and supplies as may be prescribed by the persons.

(j) The term "general relief" means cash or its equivalent in services or commodities expended for care and assistance to an indigent person other than for care in a county infirmary, child shelter or similar institution.

(k) The term "secretary" means the secretary of the department of health and human resources.

(l) The term "estate" means all real and personal property and other assets included within the individual's estate as defined in the state's probate law.

(m) The term "services" means nursing facility services, home and community-based services, and related hospital and prescription drug services for which an individual received medicaid medical assistance.

(n) The term "state medicaid agency" means the division of the department of health and human resources that is the federally designated single state agency charged with administration and supervision of the state medicaid program.
ARTICLE 4. STATE ADVISORY BOARD; MEDICAL SERVICES FUND; ADVISORY COUNCIL; GENERAL RELIEF FUND.

§9-4-3. Advisory council.

The advisory council, created by chapter one hundred forty-three, acts of the Legislature, regular session, one thousand nine hundred fifty-three, as an advisory body to the state medicaid agency with respect to the medical services fund and disbursements therefrom and to advise about health and medical services, is continued so long as the medical services fund remains in existence, and thereafter so long as the state medicaid agency considers the advisory council to be necessary or desirable, and it is organized as provided by this section and applicable federal law and has those advisory powers and duties as are granted and imposed by this section and elsewhere by law: Provided, That the continuation of the advisory council is subject to a preliminary performance review pursuant to the provisions of article ten, chapter four of this code, evaluating the effectiveness and efficiency of the advisory council, to be conducted during the interim of the Legislature in the year two thousand by the joint committee on government operations.

The term of office of those members serving on the advisory council, on the effective date of the amendments made to this section by the Legislature during its regular session in the year one thousand nine hundred ninety-eight, shall continue until they are reappointed or replaced in accordance with the provisions of this section.

The advisory council shall consist of not less than nine members, nor more than thirteen members, all but two of whom shall be appointed by the state medicaid agency and serve until replaced or reappointed on a rotating basis. The heads of the public health and public welfare agencies are members ex officio. The remaining members comprising the council consist of a person of recognized ability in the field of medicine and surgery with respect to whose appointment the state medical association shall be afforded the opportunity of making nomination of three qualified persons, one member shall be a person of
recognized ability in the field of dentistry with respect to
whose appointment the state dental association shall be
afforded the opportunity of nominating three qualified
persons, and the remaining members shall be chosen from
persons of recognized ability in the fields of hospital
administration, nursing and allied professions and from
consumers groups, including medicaid recipients,
members of the West Virginia directors of senior and
community services, labor unions, cooperatives and
consumer-sponsored prepaid group practices plans.

The council shall meet on call of the state medicaid
agency.

Each member of the advisory council shall receive
reimbursement for reasonable and necessary travel
expenses for each day actually served in attendance at
meetings of the council in accordance with the state's
travel regulations. Requisitions for the expenses shall be
accompanied by an itemized statement, which shall be
filed with the auditor and preserved as a public record.

The advisory council shall assist the state medicaid
agency in the establishment of rules, standards and bylaws
necessary to carry out the provisions of this section and
shall serve as consultants to the state medicaid agency in
carrying out the provisions of this section.

CHAPTER 180

(Com. Sub. for H. B. 4447—By Mr. Speaker, Mr. Kiss, and Delegates Martin,
Michael, Staton, Mezzatesta, Varner and Ashley)

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

AN ACT to amend and reenact sections two, eight, ten, eleven,
thirteen and sixteen, article fifteen-a, 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 eight new sections, designated sections seventeen,
eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-
three and twenty-four; and to amend and reenact section two,
article fifteen-b of said chapter, all relating to infrastructure
development generally; defining infrastructure revenue bond and needs of the project sponsor; requiring application of mandatory minimum end user rate; establishing uniform statewide percentage of the median household income in a particular geographic area; consideration of surveys of income of households; division of funding assistance among regions; prohibiting water development board members and water development authority officers from receiving any benefit or distribution from West Virginia infrastructure revenue debt service fund; exceptions; increasing portion of dedicated tax to be deposited into infrastructure government obligation debt service fund; authorizing water development authority to issue infrastructure revenue bonds; restrictions; permitted uses of revenue bond proceeds; required documentation from infrastructure council; creation of West Virginia infrastructure revenue debt service fund; sources of funding of revenue debt service fund; purposes for which revenue debt service fund may be used; procedures for the issuance of revenue bonds; revenue bond requirements; authorized revenue bond provisions and agreements; procedures for certification of deficiency in reserves pledged for payment of revenue bonds; liability of water development board members and water development authority officers; trust agreements required to secure revenue bonds; required and authorized trust agreement provisions; requirements of depositories of funds; remedies of bondholders; legality of investments in revenue bonds; redemption and refunding of revenue bonds; providing that revenue bonds do not constitute debt or pledge of state; exemption from taxation; and increasing limitation on amount of outstanding government obligation bonds.

Be it enacted by the Legislature of West Virginia:

That sections two, eight, ten, eleven, thirteen and sixteen, article fifteen-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto eight new sections, designated sections seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four; and that section two, article fifteen-b of said chapter be amended and reenacted, all to read as follows:
Article
15A. West Virginia Infrastructure and Jobs Development Council.
15B. Infrastructure Bonds.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project.
§31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for engineering assistance.
§31-15A-13. Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions.
§31-15A-17. Water development authority empowered to issue infrastructure revenue bonds and refunding bonds; creation of infrastructure revenue debt service fund; funding of infrastructure revenue debt service fund; requirements and manner of such issuance.
§31-15A-19. Legal remedies of infrastructure revenue bondholders or noteholders and trustees.
§31-15A-23. Infrastructure revenue bonds not debt of state, county, municipality or any political subdivision.


1 For purposes of this article:

2 (a) “Bond” or “infrastructure revenue bond” means a revenue bond, note, or other obligation issued by the water development authority pursuant to this article, including bonds to refund such bonds and notes to renew such notes, and notes in anticipation of and payable from the proceeds of such bonds.
8 (b) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended;

9 (c) "Cost" means, as applied to any project to be financed, in whole or in part, with infrastructure revenues or funds otherwise provided pursuant to this article, the cost of planning, acquisition, improvement and construction of the project; the cost of preliminary design and analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies, assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and specifications and other engineering services; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and any other interests required for the acquisition, repair, improvement or construction of the project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth, demolishing or removing any buildings or structures; the cost of constructing any buildings or other improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery, furnishings and equipment; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring, repairing, improving or constructing any project; the cost of placing any project in operation; and all other costs and expenses of any kind or nature incurred or to be incurred by the project sponsor developing the project that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project: Provided, That costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the council or the water
development authority has not determined to be consistent with the purposes and objectives of this article;

(d) “Council” means the West Virginia infrastructure and jobs development council created in section three of this article;

(e) “Division of environmental protection” means the division of environmental protection established under article one, chapter twenty-two of this code, or any successor to all or any substantial part of its powers and duties;

(f) "Division of health" means the division of health created in article one, chapter sixteen of this code, or any successor to all or any substantial part of its powers and duties;

(g) "Economic development authority" means the economic development authority established under article fifteen, chapter thirty-one of the code, or any successor to all or any substantial part of its powers and duties;

(h) "Emergency project" means a project which the council has determined: (1) Is essential to the immediate economic development of an area of the state; and (2) will not likely be developed in that area if construction of the project is not commenced immediately;

(i) "Governmental agency" means any county; municipality; watershed improvement district; assessment district; soil conservation district; sanitary district; public service district; drainage district; regional governmental authority and any other state governmental agency, entity, political subdivision or public corporation or agency authorized to acquire, construct or operate water or wastewater facilities or infrastructure projects;

(j) "Housing development fund" means the West Virginia housing development fund established under article eighteen of this chapter, or any successor to all or any substantial part of its powers and duties;
(k) "Infrastructure fund" means the West Virginia infrastructure fund created and established in section nine of this article;

(l) "Infrastructure project" means a project in the state which the council determines is likely to foster and enhance economic growth and development in the area of the state in which the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes, including, without limitation, tourism and recreational housing, land, air or water transportation facilities and bridges, industrial or commercial projects and facilities, mail order, warehouses, wholesale and retail sales facilities and other real and personal properties, including facilities owned or leased by this state or any other project sponsor, and includes, without limitation: (1) The process of acquiring, holding, operating, planning, financing, demolition, construction, improving, expanding, renovation, leasing or otherwise disposing of the project or any part thereof or interest therein; and (2) preparing land for construction and making, installing or constructing improvements on the land, including water or wastewater facilities or any part thereof, steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage and flood control facilities, whether on or off the site;

(m) "Infrastructure revenue" means all amounts appropriated by the Legislature; all amounts deposited into the infrastructure fund; any amounts received, directly or indirectly, from any source for the use of all or any part of any project completed pursuant to this article; and any other amounts received by the state treasurer, council or the water development authority for the purposes of this article;

(n) "Need of the project sponsors" means there is a public need for a project. The council shall construe a population increase evidenced by the last two decennial censuses in a county in which a project is proposed, as a
factor supporting the conclusion that a need exists for projects in that county.

(o) "Project" means any wastewater facility, water facility project or any combination thereof, constructed or operated or to be constructed or operated by a project sponsor;

(p) "Project sponsor" means any governmental agency or person, or any combination thereof, including, but not limited to, any public utility, which intends to plan, acquire, construct, improve or otherwise develop a project;

(q) "Public service commission" means the public service commission of West Virginia created and established under section three, article one, chapter twenty-four of this code, or any successor to all or any substantial part of its powers and duties;

(r) "Person" means any individual, corporation, partnership, association, limited liability company or any other form of business organization;

(s) "Public utility" means any person or persons, or association of persons, however associated, whether incorporated or not, including, without limitation, any governmental agency, operating a wastewater facility or water facility as a public service, which is regulated by the public service commission as a public utility under chapter twenty-four of this code or which is required to file its tariff with the public service commission;

(t) "State development office" means the West Virginia development office established under article two, chapter five-b of this code, or any successor to all or any substantial part of its powers and duties;

(u) "State infrastructure agency" means the division of health, division of environmental protection, housing development fund, public service commission, state development office, water development authority, economic development authority and any other state agency, division, body, authority, commission, instrumentality or entity which now or in the future receives applications for the funding of, and provides
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161 funding or technical assistance to, the planning,
162 acquisition, construction or improvement of a project;
163 (v) "Waste water facility" means all facilities, land and
164 equipment used for or in connection with treating,
165 neutralizing, disposing of, stabilizing, cooling, segregating
166 or holding waste water, including, without limitation,
167 facilities for the treatment and disposal of sewage,
168 industrial wastes or other wastes, wastewater, and the
169 residue thereof; facilities for the temporary or permanent
170 impoundment of wastewater, both surface and
171 underground; and sanitary sewers or other collection
172 systems, whether on the surface or underground, designed
173 to transport wastewater together with the equipment and
174 furnishings therefor or thereof and their appurtenances
175 and systems, whether on the surface or underground
176 including force mains and pumping facilities therefor;
177 (w) "Water development authority" means the West
178 Virginia water development authority continued pursuant
179 to the provisions of article one, chapter twenty-two-c of
180 this code, or any successor to all or any substantial part of
181 its powers and duties; and
182 (x) "Water facility" means all facilities, land and
183 equipment used for or in connection with the collection
184 and/or storage of water, both surface and underground,
185 transportation of water, storage of water, treatment of water
186 and distribution of water all for the purpose of providing
187 potable, sanitary water suitable for human consumption
188 and use.

§31-15A-8. Exemption of certain emergency projects from
1 certificate of public convenience and necessity
2 requirements; review of certain emergency
3 projects by public service commission; and
4 exemption for North Fork Hughes River
5 watershed project.

1 (a) If the council determines a project to be an
2 emergency and the emergency project will be funded
3 solely with grant money for the extension of an existing
4 certificated water facility or wastewater facility, and if the
5 council finds in its recommendation that the construction
and acquisition of the emergency project will have no
effect on the public utility's customer rates and will have
no significant effect on its operational costs as a result of
the project cost, then the emergency project is exempt
from the requirement to obtain a certificate of public
convenience and necessity under section eleven, article
two, chapter twenty-four of this code. If the public utility
is a public service district, it is exempt from the approval
of the public service commission required under section
twenty-five, article thirteen-a, chapter sixteen of this code.

(b) Any public utility, and any other entity that will
operate as a public utility, must obtain a certificate of
public convenience and necessity pursuant to section
eleven, article two, chapter twenty-four of this code for
any emergency project that is not exempt under
subsection (a) of this section. The public service
commission shall render its final decision on any
application for a certificate within one hundred twenty
days of the filing of the application: Provided, That the
thirty-day prefiling requirement is not required. If the
project sponsor is a public service district, then the project
will be exempted from the approval requirements of
section twenty-five, article thirteen-a, chapter sixteen of
this code.

(c) Projects that are not emergency projects are subject
to the requirements of section eleven, article two, chapter
twenty-four of this code to the extent they would be
otherwise.

(d) The North Fork Hughes River watershed project,
proposed to enhance economic growth and development
through tourism as provided in subsection (l), section two
of this article and to include a water facility project as
defined in subsection (n), section two of this article, is
hereby specifically exempted from any requirement
imposed by this article, except that the provisions of
subsection (a) of this section are specifically made
applicable to the project. The project is hereby
specifically authorized and the public land corporation
shall have and may exercise the power of eminent domain
and all authority otherwise prescribed by law to acquire
necessary land and rights-of-way, to include approximately four hundred seventy-eight acres, in connection with the project. Funding for the project shall be provided by the federal government from the Appalachian regional commission through the United States soil conservation service. Upon completion of the project, the property acquired shall be transferred to the state park system. The commissioner of the division of tourism and parks or the successor to the commissioner's powers and duties is directed to expand the boundaries of North Bend state park to include the project area and to operate the expanded park property, including improved recreational facilities, from funds appropriated for that purpose.

§31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for engineering assistance.

(a) To further accomplish the purpose and intent of this article, the water development authority shall use the moneys in the infrastructure fund created pursuant to section nine of this article, upon receipt of one or more recommendations from the council pursuant to section five of this article, to make loans, with or without interest, loan guarantees or grants and to provide other assistance, financial, technical or otherwise, to finance all or part of the costs of infrastructure projects or projects to be undertaken by a project sponsor: Provided, That any moneys disbursed from the infrastructure fund in the form of grants shall not exceed twenty percent of the total funds available for the funding of projects. No loan, loan guarantee, grant or other assistance shall be made or provided except upon a determination by the council that the loan, loan guarantee, grant or other assistance and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of this article, based upon an application submitted to the council: Provided, however, That no grant shall be made to a project sponsor that is not a governmental agency or a not for profit corporation under the provisions of section 501(c) of the Internal Revenue Code of 1986, as amended. Applications for loans, loan guarantees, grants
or other assistance may be submitted by a project sponsor for one or more infrastructure projects on preliminary application forms prepared by the council pursuant to section four of this article. Any recommendation of the council approving a loan, loan guarantee, grant or other assistance shall include a finding and determination by the council that the requirements of this section have been met. The council shall base any decisions to loan money for projects to project sponsors pursuant to this article solely on the need of the project sponsors.

(b) The council has the authority in its sole discretion to make grants to project sponsors if it finds that: (1) The level of rates for the users would otherwise be an unreasonable burden given the users' likely ability to pay; or (2) the absence of a sufficient number of users prevents funding of the project except through grants. Provided, That no project sponsor shall receive infrastructure grant money in an amount in excess of fifty percent of the total cost of the project. Therefore, the council may consider the economic or financial conditions of the area to be served. As a condition for receipt of a grant under this subsection, the council may require, in addition to any other conditions, that the applicant pursue other state or federal grant or loan programs. Upon a recommendation by the council, the water development authority shall provide the grant in accordance with the recommendation. The council shall develop criteria to be considered in making grants to project sponsors which shall require consideration of the economic or financial conditions of the area to be served and the availability of other funding sources. The council shall adopt procedural rules regarding the manner in which grants will be awarded in conformity with this section. The procedural rules shall be adopted pursuant to article three, chapter twenty-nine-a of this code.

(c) Notwithstanding any other provision of this article to the contrary, the council shall apply a mandatory minimum end user utility rate that must be met by the project sponsor before funding assistance may be awarded. The mandatory minimum end utility rate shall be based upon a uniform statewide percentage of the
median household income in a particular geographic area and said rate shall not exceed six tenths of one percent: Provided, That funding assistance made from the proceeds of any general obligation bonds and revenue bonds issued after the fifteenth day of March, one thousand nine hundred ninety-eight, after transfers required to make the state match for the water and wastewater revolving loan programs pursuant to article two, chapter twenty-two-c and article thirteen-c, chapter sixteen of this code, shall be provided by the council on a pro rata basis divided equally among the congressional districts of this state as delineated in accordance with section three, article two, chapter one of this code: Provided, however, That infrastructure projects as defined in subsection (1), section two of this article shall not be subject to pro rata distribution. When determining median household income of a geographic area of the project to be served, the council shall consider any surveys of the income of the households that will be served by the project.

(d) No loan or grant funds may be made available for a project if the project to be funded will provide subsidized services to certain users in the service area of the project.

(e) Notwithstanding any other provision of this article to the contrary, engineering studies and requirements imposed by the council for preliminary applications shall not exceed those engineering studies and requirements which are necessary for the council to determine the economic feasibility of the project. If the council determines that the engineering studies and requirements for the preapplication would impose an undue hardship on any project sponsor, the council may provide funding assistance to project sponsors to defray the expenses of the preapplication process from moneys available in the infrastructure fund for making loans: Provided, That the council may only provide funding assistance in an amount equal to five thousand dollars or fifty percent of the total preapplication cost of the project, whichever amount is greater. If the project is ultimately approved for a loan by the council, the amount of funding assistance provided to
the project sponsor for the preapplication process shall be included in the total amount of the loan to be repaid by the project sponsor. If the project is not ultimately approved by the council, then the amount of funding assistance provided to the project sponsor will be considered a grant by the council and the total amount of the assistance shall be forgiven. In no event may the amount of funding assistance provided to all project sponsors exceed, in the aggregate, one hundred thousand dollars annually.

(f) The council shall report to the governor, the speaker of the House of Delegates and the president of the Senate during each regular and interim session of the Legislature, on its activities and decisions relating to distribution or planned distribution of grants and loans under the criteria to be developed pursuant to this article.


Eighty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for the cost of projects as defined in subsection (n), section two of this article. Twenty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (l), section two of this article. Project sponsors of infrastructure projects shall follow the application process as established by this article: Provided, That notwithstanding any provision of this article to the contrary, all applications for any infrastructure project shall be submitted to the council for community and economic development, or its successor, for review, recommendation and approval regarding infrastructure project funding.

§31-15A-13. Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions.
No part of the infrastructure fund or the West Virginia infrastructure revenue debt service fund shall inure to the benefit of or be distributable to the water development board directors or officers of the water development authority except that the water development authority is authorized and empowered to pay reasonable compensation, other than to members of the water development board, including the chairman, vice chairman, secretary-treasurer for services rendered and to make loans and exercise its other powers as previously specified in furtherance of its corporate purpose: Provided, That no loans shall be made, and no property shall be purchased or leased from, or sold, leased or otherwise disposed of, to any water development board member or officer of the water development authority.


(a) There shall be dedicated an annual amount from the collections of the tax collected pursuant to article thirteen-a, chapter eleven of this code for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development in this state as provided in this article.

(b) Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-five, the first sixteen million dollars of the tax collected pursuant to article thirteen-a, chapter eleven of this code shall be deposited to the credit of the West Virginia infrastructure general obligation debt service fund created pursuant to section three, article fifteen-b of this chapter: Provided, That beginning on the first day of July, one thousand nine hundred ninety-eight, the first twenty-four million dollars of the tax annually collected pursuant to article thirteen-a of this code shall be deposited to the credit of the West Virginia infrastructure general obligation debt service fund created pursuant to section three, article fifteen-b of this chapter.
(c) Notwithstanding any provision of subsection (b) of this section to the contrary: (1) none of the collections from the tax imposed pursuant to section six, article thirteen-a, chapter eleven of this code shall be so dedicated or deposited; and (2) the portion of the tax imposed by article thirteen-a, chapter eleven and dedicated for purposes of medicaid and the division of forestry pursuant to section twenty-a of said article thirteen-a shall remain dedicated for the purposes set forth in said section twenty-a.

(d) On or before the first day of May of each year, commencing the first day of May, one thousand nine hundred ninety-five, the council, by resolution, shall certify to the treasurer and the water development authority the principal and interest coverage ratio and amount for the following fiscal year on any infrastructure general obligation bonds issued pursuant to the provisions of article fifteen-b of this chapter.

§31-15A-17. Water development authority empowered to issue infrastructure revenue bonds and refunding bonds; creation of infrastructure revenue debt service fund; funding of infrastructure revenue debt service fund; requirements and manner of such issuance.

(a) To accomplish the purpose and intent of this article, the water development authority is hereby empowered at the written request of the council to issue from time to time infrastructure revenue bonds of the state in such principal amounts as the council deems necessary to make loans and loan guarantees and other forms of financial assistance to project sponsors for one or more projects or infrastructure projects: Provided, That the water development authority may not issue any such bonds, other than refunding bonds, unless the council by resolution determines that the aggregate cost of the projects or infrastructure projects expected to be constructed during any annual period exceeds (1) the projected annual infrastructure revenues for the same period, and (2) the principal and interest payments not otherwise pledged to the infrastructure revenue debt
(b) The proceeds of infrastructure revenue bonds shall be used solely for the purpose of making loans and loan guarantees and other forms of financial assistance to sponsors of one or more projects or infrastructure projects, and shall be deposited in one or more special accounts with the trustee under the trust agreement securing such bonds and disbursed from time to time for projects or infrastructure projects in accordance with this article: Provided, That notwithstanding any provision of this code to the contrary, twenty percent of the funds deposited in the special account shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (i), section two of this article.

(c) The water development authority may not authorize the disbursement of any proceeds of infrastructure revenue bonds unless it has received documentation from the council pursuant to the provisions of section ten of this article.

(d) There is hereby created in the water development authority a special fund which shall be designated and known as the "West Virginia Infrastructure Revenue Debt Service Fund," into which shall be transferred solely from the loan repayments deposited in the infrastructure fund the amounts certified by the director of the water development authority as necessary to pay the principal, premium, if any, and interest on infrastructure revenue bonds and any reserve requirements, subject to the terms of any agreement with the holders of the infrastructure revenue bonds. All amounts deposited in the West Virginia infrastructure revenue debt service fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any infrastructure revenue bonds authorized by this article: Provided, That amounts on deposit in the fund may be used to establish or maintain reserves created for the purposes of securing
such infrastructure revenue bonds. The pledge shall be valid and binding from the time the pledge is made, and the West Virginia infrastructure revenue debt service fund so pledged shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the water development authority irrespective of whether the parties have notice thereof.

(e) Except as may otherwise be expressly provided in this article or by resolution of the water development authority, every issue of infrastructure revenue bonds shall be special obligations of the water development authority payable solely from amounts in the West Virginia infrastructure revenue debt service fund, and the reserves created for this purpose by the water development authority, without preference or priority among the bonds regardless of when issued, subject only to any agreements with the holders of any bonds to the contrary. All such bonds are hereby declared to be negotiable instruments.

(f) Infrastructure revenue bonds shall be authorized by resolution of the water development authority. These bonds shall bear such dates and shall mature at such times, in case of any note or renewal thereof not exceeding five years from the date of issue of the original note, and in the case of any bond not exceeding fifty years from the date of issue, as the resolution may provide. Infrastructure revenue bonds shall bear interest at a rate or rates, including variable rates, shall be taxable or tax-exempt, shall be in the denominations, shall be in registered form, shall carry the registration privileges, shall be payable in the medium and place of payment, and shall be subject to the terms of redemption as the water development authority may authorize. Infrastructure revenue bonds may be sold by the water development authority at public or private sale at the price the water development authority determines in consultation with the council. Infrastructure revenue bonds shall be executed by the chairman and the vice chairman of the water development authority, either or both of whom may use a
facsimile signature. The official seal of the water development authority or a facsimile thereof shall be affixed thereto or printed thereon and attested by manual or facsimile signature by the secretary-treasurer of the water development authority. If any officer whose signature, or a facsimile of whose signature appears on any infrastructure revenue bond ceases to be such officer before delivery of such bond, such signature or facsimile is nevertheless sufficient for all purposes to the same extent as if he or she had remained in office until such delivery, and if the seal of the water development authority has been changed after a facsimile has been imprinted on such bond, the facsimile will continue to be sufficient for all purposes.

(g) Any resolution authorizing any infrastructure revenue bonds may contain provisions, subject to any agreement with bondholders or noteholders which may then exist, which agreements shall be part of the contract with the holder thereof, with respect to the pledge of or other use and disposition of amounts in the infrastructure revenue debt service fund; the setting aside of reserve funds; the disposition of any assets of the water development authority; limitations on the purpose to which the proceeds of sale of bonds may be applied; the authorization of notes issued in anticipation of the issuance of bonds; an agreement of the water development authority to do all things necessary for the authorization, issuance and sale of such bonds in such amounts as may be necessary for the timely retirement of such notes; limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; the refunding of outstanding bonds and the renewal of outstanding notes; the procedures, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated; the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given; and any other matter which in any way affects the security for or protection of the bonds.

(h) In the event that the sum of all reserves pledged to the payment of the bonds is less than the minimum reserve
requirements established in any resolution or resolutions authorizing the issuance of the bonds, the chairman or the director of the water development authority shall certify, on or before the first day of December of each year, the amount of such deficiency to the governor of the state for inclusion, if the governor shall so elect, of the amount of such deficiency in the budget to be submitted to the next session of the Legislature for appropriation to the water development authority to be pledged for payment of such bonds: Provided, That the Legislature shall not be required to make any appropriations so requested, and the amount of such deficiencies shall not constitute a debt or liability of the state.

(i) Neither the officers or board members of the water development authority, nor any person executing the infrastructure revenue bonds, shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.


(a) Any infrastructure revenue bonds issued by the water development authority under this article shall be secured by a trust agreement between the water development authority and a corporate trustee, which trustee may be any trust company or banking institution having the powers of a trust company within this state.

(b) Any trust agreement may pledge or assign the infrastructure revenue debt service fund. Any trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as are reasonable and proper and not in violation of law, including the provisions contained in section seventeen of this article, and covenants setting forth the duties of the water development authority in respect to the payment of the principal of and interest, charges and fees on loans made to, or bond purchases from, governmental agencies from the proceeds of the bonds, and the custody, safeguarding and application of all moneys. Any banking institution or trust company
incorporated under the laws of this state which may act as
depository of the proceeds of bonds or of the
infrastructure debt service fund shall furnish such
indemnifying bonds or pledge securities as are required
by the water development authority. The trust agreement
may set forth the rights and remedies of the bondholders
and noteholders and of the trustee and may restrict
individual rights of action by bondholders and
noteholders as customarily provided in trust agreements or
trust indentures securing similar bonds and notes. The
trust agreement may contain such other provisions as the
water development authority deems reasonable and proper
for the security of the bondholders or noteholders. All
expenses incurred in carrying out the provisions of any
such trust agreement may be treated as part of the cost of
the construction, renovation, repair, improvement or
acquisition of a project or infrastructure project.

§31-15A-19. Legal remedies of infrastructure revenue
bondholders or noteholders and trustees.

Any holder of infrastructure revenue bonds issued
pursuant to this article and the trustee under any trust
agreement, except to the extent the rights given by this
article may be restricted by the applicable resolution or
trust agreement, may by civil action, mandamus or other
proceedings protect and enforce any rights granted under
the laws of this state or granted under this article, by the
trust agreement or by the resolution in the issuance of the
bonds, and may enforce and compel the performance of
all duties required by this article, pursuant to the trust
agreement or resolution, to be performed by the water
development authority or any officer thereof.


All infrastructure revenue bonds issued pursuant to
this article shall be lawful investments for banking
institutions, societies for savings, building and loan
associations, savings and loan associations, deposit
guarantee associations, trust companies, and insurance
companies, including domestic for life and domestic not
for life insurance companies.

(a) The water development authority, subject to such agreements with noteholders or bondholders as may then exist, shall have the power, from any funds available therefor, to purchase or redeem infrastructure revenue bonds of the water development authority.

(b) If the infrastructure revenue bonds are then redeemable, the price of the purchase shall not exceed the redemption price then applicable, plus accrued interest to the next interest payment date thereon. If the infrastructure revenue bonds are not then redeemable, the price of the purchase shall not exceed the redemption price applicable on the first date after the purchase upon which the bonds become subject to redemption, plus accrued interest to such date. Upon purchase or redemption, the bonds shall be canceled.


Any infrastructure revenue bonds issued pursuant to the provisions of this article and at any time outstanding may at any time and from time to time be refunded by the water development authority by the issuance of its refunding revenue bonds in an amount it deems necessary to refund the principal of the bonds to be refunded, together with any unpaid interest thereon, to provide additional funds for the water development authority to accomplish the purpose of this article, and to pay any premiums and commissions necessary to be paid in connection therewith. Any refunding may be effected whether the infrastructure revenue bonds to be refunded shall have then matured or shall thereafter mature: Provided, That the holders of any infrastructure revenue bonds so to be refunded shall not be compelled without their consent to surrender their infrastructure revenue bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding revenue bonds issued pursuant to this article shall be payable from the West Virginia infrastructure revenue debt service fund, and shall
be subject to the provisions contained in section seventeen
of this article, and shall be secured in accordance with the
provisions of sections seventeen and eighteen of this
article.

§31-15A-23. Infrastructure revenue bonds not debt of state,
county, municipality or any political subdivision.

Infrastructure revenue bonds issued pursuant to the
provisions of this article shall not constitute a debt or a
pledge of the faith and credit or taxing power of this state
or of any county, municipality or any other political
subdivision of this state. The holders or owners thereof
shall have no right to have taxes levied by the Legislature
or the taxing authority of any county, municipality or any
other political subdivision of this state for the payment of
the principal thereof or interest thereon. The bonds shall
be payable solely from the revenues and funds pledged
for their payment as authorized by this article. All such
bonds shall contain on the face thereof a statement to the
effect that the bonds, as to both principal and interest, are
not debts of the state or any county, municipality or
political subdivision thereof, but are payable solely from
revenues and funds pledged for their payment.

§31-15A-24. Infrastructure revenue bonds exempt from
taxation.

The exercise of the powers granted to the water
development authority by this article will be in all respects
for the benefit of the people of the state, for the
improvement of their health, safety, convenience and
welfare and for the enhancement of their residential,
agricultural, recreational, economic, commercial and
industrial opportunities and is for a public purpose. As
the construction, acquisition, repair or renovation of
projects or infrastructure projects will constitute the
performance of essential governmental functions, the
water development authority shall not be required to pay
any taxes or assessments upon any project or upon any
property acquired or used by the water development
authority or upon the income therefrom. The
infrastructure revenue bonds and all interest and income
thereon shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except estate taxes.

ARTICLE 15B. INFRASTRUCTURE BONDS.

§31-15B-2. Infrastructure general obligation bonds; amount; when may issue.

Bonds of the state of West Virginia, under authority of the infrastructure improvement amendment of 1994, of the par value not to exceed in the aggregate three hundred million dollars, are hereby authorized to be issued and sold solely for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development as provided for by the constitution and the provisions of this article.

These bonds may be issued by the governor upon resolution by the infrastructure council and certification to the governor. The bonds shall bear such date and mature at such time, bear interest at such rate not to exceed eight percent per annum, be in such amounts, be in such denominations, be in such registered form, carry such registration privileges, be due and payable at such time and place and in such amounts, and subject to such terms of redemption as such resolution may provide: Provided, That in no event may the amount of bonds outstanding exceed an amount for which twenty-four million dollars would not be sufficient to provide annual service on the total amount of debt outstanding.

Both the principal and interest of the bonds shall be payable in the lawful money of the United States of America and the bonds and the interest thereon shall be exempt from taxation by the state of West Virginia, or by any county, district or municipality thereof, which fact shall appear on the face of the bonds as part of the contract with the holder of the bond.

The bonds shall be executed on behalf of the state of West Virginia, by the manual or facsimile signature of the treasurer thereof, under the great seal of the state or a facsimile thereof, and countersigned by the manual or facsimile signature of the auditor of the state.
CHAPTER 181

(S. B. 772—By Senators Plymale, Walker, Craigo, Fanning, Jackson, Helmick and Minear)

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

AN ACT to amend and reenact sections three and five, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to employment of a deputy director; and the submission of the financial statements and financial plans.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§ 5-16-3. Public employees insurance agency continued; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board; expiration of agency.

§ 5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.

§ 5-16-3. Public employees insurance agency continued; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board; expiration of agency.

(a) The public employees insurance agency is continued, and consists of the director, the finance board, the advisory board and any employees who may be authorized by law. The director shall be appointed by the governor, with the advice and consent of the Senate. He
or she shall serve at the will and pleasure of the governor, unless earlier removed from office for cause as provided by law. The director shall have at least three years experience in health insurance administration prior to appointment as director. The director shall receive an annual salary established by the governor not to exceed sixty-five thousand dollars and actual expenses incurred in the performance of official business. The director shall employ such administrative, technical and clerical employees as are required for the proper administration of the insurance programs provided for in this article. The director shall perform such duties as are required of him or her under the provisions of this article and is the chief administrative officer of the public employees insurance agency. The director may employ a deputy director: 

Provided, That the director shall report each year to the joint committee on government and finance on the agency's total contract costs for consultant contracts and the costs of the deputy director's position for the fiscal years one thousand nine hundred ninety-eight through two thousand.

(b) All positions in the agency, except for the director, his or her personal secretary, the deputy director and the chief financial officer shall be included in the classified service of the civil service system pursuant to article six, chapter twenty-nine of this code. Any person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included in this subsection on or after the effective date of this article shall not be required to take and pass qualifying or competitive examinations upon or as a condition to being added to the classified service: Provided, That no person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included in this subsection as of the effective date of this section shall be thereafter severed, removed or terminated in his or her employment prior to his or her entry into the classified service except for cause as if the person had been in the classified service when severed, removed or terminated.
(c) The director is responsible for the administration and management of the public employees insurance agency as provided for in this article and in connection with his or her responsibility shall have the power and authority to make all rules necessary to effectuate the provisions of this article. Nothing in section four or five of this article shall limit the director's ability to manage on a day-to-day basis the group insurance plans required or authorized by this article, including, but not limited to, administrative contracting, studies, analyses and audits, eligibility determinations, utilization management provisions and incentives, provider negotiations, provider contracting and payment, designation of covered and noncovered services, offering of additional coverage options or cost containment incentives, pursuit of coordination of benefits and subrogation, or any other actions which would serve to implement the plan or plans designed by the finance board.

(d) The public employees insurance agency shall terminate in the manner provided in article ten, chapter four of this code, on the first day of July, two thousand one, unless extended by legislation enacted before the termination date: Provided, That the public employees insurance agency advisory board, created in section six of this article, shall terminate in the manner provided in article ten, chapter four of this code on the first day of July, one thousand nine hundred ninety-six.

§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.

(a) The purpose of the finance board created by this article is to bring fiscal stability to the public employees insurance agency through development of an annual financial plan designed to meet the agency's estimated total financial requirements, taking into account all revenues projected to be made available to the agency, and apportioning necessary costs equitably among participating employers, employees and retired employees and providers of health care services.
(b) The finance board shall retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group health insurance plans, to estimate the total financial requirements of the public employees insurance agency for each fiscal year and to review and render written professional opinions as to financial plans proposed by the finance board. The finance board shall also employ the actuary to develop alternative financing options and to perform such other services as may be requested by the finance board. All reasonable fees and expenses for actuarial services shall be paid by the public employees insurance agency. Any financial plan or modifications to a financial plan approved or proposed by the finance board pursuant to this section shall be submitted to and reviewed by the actuary, and may not be finally approved and submitted to the governor and to the Legislature without the actuary's written professional opinion that the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the agency, excluding incurred but unreported claims, for the fiscal year for which the plan is proposed. The actuary's opinion on the initial plan required by subsection (d) of this section shall allow for a target of forty-five days of accounts payable to be carried over into the next fiscal year. The actuary's opinion on the financial plan for fiscal year one thousand nine hundred ninety-two shall allow for between thirty and forty-five days of accounts payable to be carried over into the next fiscal year. The actuary's opinion on the financial plan for any succeeding fiscal year shall allow for no more than thirty days of accounts payable to be carried over into the next fiscal year. The actuary's opinion for any fiscal year shall not include a requirement for establishment of a reserve fund.

(c) All financial plans required by this section shall include the design of a benefit plan or plans. All financial plans shall establish:

(1) Maximum levels of reimbursement which the public employees insurance agency makes to categories of health care providers;
Any necessary cost containment measures for implementation by the director;

(3) The levels of premium costs to participating employers; and

(4) The types and levels of cost to participating employees and retired employees.

The financial plans may provide for different levels of costs based on the insureds' ability to pay. The finance board may establish different levels of costs to retired employees based upon length of employment with a participating employer, ability to pay, or other relevant factors. The financial plans may also include optional alternative benefit plans with alternative types and levels of cost. The finance board may develop policies which encourage the use of West Virginia health care providers.

In addition, the finance board may allocate a portion of the premium costs charged to participating employers to subsidize the cost of coverage for participating retired employees, on such terms as the finance board determines are equitable and financially responsible.

(d) Initial plan. — The director shall convene the first meeting of the finance board no later than the fifteenth day of September, one thousand nine hundred ninety. For presentation by the director at the first meeting, the governor shall prepare an estimate of the total amount of general and special revenues which the state has or will have available to fund the public employees insurance agency and its programs for the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-one.

Notwithstanding any provision of this article to the contrary, during any meeting authorized by subsection (h) of this section to review implementation of the initial financial plan in light of actual experience, the finance board, in its discretion, may elect to redesign the initial financial plan so that revenues generated will meet all incurred and projected program and administrative costs of the public employees insurance agency by the end of
the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-two, rather than by the thirtieth day of June, one thousand nine hundred ninety-one. Before implementing any such modifications, the finance board shall obtain a written professional opinion from its actuary stating that the modified plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the public employees insurance agency for the remainder of fiscal year one thousand nine hundred ninety-one and for fiscal year one thousand nine hundred ninety-two, allowing for between thirty and forty-five days of accounts payable to be carried over into fiscal year one thousand nine hundred ninety-three. The finance board shall also afford interested and affected persons an opportunity to offer comment on the modified plan at a public meeting of the finance board. Regardless of whether or not the finance board modifies the initial financial plan as authorized by this subsection, the finance board shall prepare a financial plan for fiscal year one thousand nine hundred ninety-two in accordance with subsection (e) of this section.

The finance board shall prepare, no later than the tenth day of November, one thousand nine hundred ninety, a proposed financial plan designed to generate revenues sufficient to meet all program and administrative costs of the public employees insurance agency which have already been incurred but are unpaid, or which the actuary estimates will be incurred and paid during the remainder of fiscal year one thousand nine hundred ninety-one, excluding incurred but unreported claims. The finance board shall establish in the proposed financial plan a target of forty-five days of accounts payable which may be carried over into the next fiscal year.

The finance board shall request its actuary to review the proposed financial plan and to render a written professional opinion stating whether the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the public employees insurance agency for the fiscal year. The actuary's report shall explain the basis of his or her
opinion. If the actuary concludes that the proposed
financial plan will not generate sufficient revenues to meet
all anticipated costs, then the finance board shall make
necessary modifications to the proposed plan to ensure
that all actuarially-determined financial requirements of
the agency will be met.

Upon obtaining the actuary's opinion and making all
necessary modifications to the proposed plan, the finance
board shall conduct two or more public hearings to
receive public comment on the proposed financial plan,
shall review such comments, and shall finalize and approve
the financial plan no later than the twentieth day of
November, one thousand nine hundred ninety. Employees shall be notified of any changes in the types
and levels of employee costs or benefits contained in the
financial plan at least thirty days prior to the date of
implementation of the financial plan.

The finance board shall submit to the governor and to
the Legislature the final, approved financial plan no later
than the first day of December, one thousand nine
hundred ninety. The financial plan shall become effective
and shall be implemented by the director on the first day
of January, one thousand nine hundred ninety-one.

(e) Plan for fiscal year one thousand nine hundred ninety-two. — No later than the first day of December,
one thousand nine hundred ninety, the governor shall
prepare and provide to the finance board an estimate of
the total amount of general and special revenues which the
state will have available to fund the public employees
insurance agency and its programs for the fiscal year
beginning the first day of July, one thousand nine
hundred ninety-one. The finance board shall request its
actuary to estimate the total financial requirements of the
public employees insurance agency for the fiscal year.

The finance board shall prepare a proposed financial
plan designed to generate revenues sufficient to meet all
estimated program and administrative costs of the public
employees insurance agency for the fiscal year. The
proposed financial plan shall allow for between thirty and
forty-five days of accounts payable to be carried over into
the next fiscal year. Before final adoption of the proposed financial plan, the finance board shall request its actuary to review the plan and to render a written professional opinion stating whether the plan will generate sufficient revenues to meet all estimated program and administrative costs of the public employees insurance agency for the fiscal year. The actuary's report shall explain the basis of its opinion. If the actuary concludes that the proposed financial plan will not generate sufficient revenues to meet all anticipated costs, then the finance board shall make necessary modifications to the proposed plan to ensure that all actuarially-determined financial requirements of the agency will be met.

Upon obtaining the actuary's opinion, the finance board shall conduct one or more public hearings in each congressional district to receive public comment on the proposed financial plan, shall review such comments, and shall finalize and approve the financial plan.

The finance board shall submit to the governor and to the Legislature its final, approved financial plan for fiscal year one thousand nine hundred ninety-two, together with the actuary's final written opinion, no later than the first day of May, one thousand nine hundred ninety-one. The financial plan shall become effective and shall be implemented by the director on the first day of July, one thousand nine hundred ninety-one.

(f) Annual plans. — The finance board shall prepare, in the manner provided in subsection (e) of this section, an annual financial plan for fiscal year one thousand nine hundred ninety-three and each fiscal year thereafter during which the finance board remains in existence. Any such financial plan shall be designed to allow thirty days or less of accounts payable to be carried over into the next fiscal year. For each such fiscal year, the governor shall provide his or her estimate of total revenues to the finance board no later than the first day of July of the preceding fiscal year. The finance board shall submit its final, approved financial plan, after obtaining the necessary actuary's opinion and conducting one or more public hearings in each congressional district, to the governor
and to the Legislature no later than the first day of
January preceding the fiscal year. The financial plan for a
fiscal year shall become effective and shall be
implemented by the director on the first day of July of
such fiscal year. In addition to each final, approved
financial plan required under this section, the finance
board shall also simultaneously submit financial
statements based on generally accepted accounting
practices (GAAP) and the final, approved plan restated on
an accrual basis of accounting, which shall include
allowances for incurred but not reported claims:
Provided, That the financial statements and the accrual-
based financial plan restatement shall not affect the
approved financial plan.

(g) The provisions of chapter twenty-nine-a of this
code shall not apply to the preparation, approval and
implementation of the financial plans required by this
section.

(h) The finance board shall meet on at least a
quarterly basis to review implementation of its current
financial plan in light of the actual experience of the
public employees insurance agency. The board shall
review actual costs incurred, any revised cost estimates
provided by the actuary, expenditures, and any other
factors affecting the fiscal stability of the plan, and may
make any additional modifications to the plan necessary
to ensure that the total financial requirements of the
agency for the current fiscal year are met. The financial
board may not increase the types and levels of cost to
employees during its quarterly review except in the event
of a true emergency.

(i) For any fiscal year in which legislative
appropriations differ from the governor's estimate of
general and special revenues available to the agency, the
finance board shall, within thirty days after passage of the
budget bill, make any modifications to the plan necessary
to ensure that the total financial requirements of the
agency for the current fiscal year are met.

(j) The types and levels of costs to employers,
employees and retired employees participating in public
employees insurance agency group insurance plans which are currently in effect on the effective date of this article are hereby authorized. The types and levels of costs to employees participating in public employees insurance agency group insurance plans which are currently in effect on the effective date of this article shall remain in effect unless and until changed or authorized to be changed by the finance board in a financial plan prepared and approved in accordance with this section.

CHAPTER 182

(H. B. 4694—By Delegates Michael, Doyle, Campbell, Border, Leach, Kelley and Laird)

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

AN ACT to amend and reenact section eighteen, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public employees insurance program funds and authorizing receipt and retainment of interest on those funds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of treasurer with respect thereto.

(a) All employers operating from state general revenue or special revenue funds or federal funds or any combination of those funds shall budget the cost of insurance coverage provided by the public employees insurance agency to current and retired employees of the
employer as a separate line item, titled “PEIA”, in its respective annual budget and are responsible for the transfer of funds to the director for the cost of insurance for employees covered by the plan. Each spending unit shall pay to the director its proportionate share from each source of funds. Any agency wishing to charge general revenue funds for insurance benefits for retirees under section thirteen of this article shall provide documentation to the director that the benefits cannot be paid for by any special revenue account or that the retiring employee has been paid solely with general revenue funds for twelve months prior to retirement.

(b) If the general revenue appropriation for any employer, excluding county boards of education, is insufficient to cover the cost of insurance coverage for the employer’s participating employees, retired employees and surviving dependents, the employer shall pay the remainder of the cost from its “personal services” or “unclassified” line items. The amount of the payments for county boards of education shall be determined by the method set forth in section twenty-four, article nine-a, chapter eighteen of this code: Provided, That local excess levy funds shall be used only for the purposes for which they were raised: Provided, however, That after approval of its annual financial plan, but in no event later than the thirty-first day of December of each year, the finance board shall notify the Legislature and county boards of education of the maximum amount of employer premiums that the county boards of education shall pay for covered employees during the following fiscal year.

(c) All other employers not operating from the state general revenue fund shall pay to the director their share of premium costs from their respective budgets. The finance board shall establish the employers’ share of premium costs to reflect and pay the actual costs of the coverage including incurred but not reported claims.

(d) The contribution of the other employers (namely: A county, city or town) in the state; any separate corporation or instrumentality established by one or more
counties, cities or towns, as permitted by law; any
45 corporation or instrumentality supported in most part by
counties, cities or towns; any public corporation charged
46 by law with the performance of a governmental function
and whose jurisdiction is coextensive with one or more
47 counties, cities or towns; any comprehensive community
mental health center or comprehensive mental retardation
facility established, operated or licensed by the secretary
of health and human resources pursuant to section one,
article two-a, chapter twenty-seven of this code, and which
is supported in part by state, county or municipal funds;
and a combined city-county health department created
pursuant to article two, chapter sixteen of this code for
their employees shall be the percentage of the cost of the
employees' insurance package as the employers
determine reasonable and proper under their own
particular circumstances.

(e) The employee's proportionate share of the
premium or cost shall be withheld or deducted by the
employer from the employee's salary or wages as and
when paid and the sums shall be forwarded to the director
with any supporting data as the director may require.

(f) All moneys received by the public employees
insurance agency shall be deposited in a special fund or
funds as are necessary in the state treasury and the
treasurer of the state is custodian of the fund or funds and
shall administer the fund or funds in accordance with the
provisions of this article or as the director may from time
to time direct. The treasurer shall pay all warrants issued
by the state auditor against the fund or funds as the
director may direct in accordance with the provisions of
this article. All funds received by the agency, including,
but not limited to, basic insurance premiums,
administrative expenses and optional life insurance
premiums, shall be deposited in the West Virginia
consolidated investment pool with the West Virginia
investment management board, with the interest income a
proper credit to all such funds.
AN ACT to amend article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-one-e; and to amend and reenact section one, article six-a of said chapter, all relating to automobile liability insurance; establishing a procedure for written notification of an offer to settle for policy limits to an underinsured motorist coverage carrier; setting forth notice requirements; establishing requirements for preservation of subrogation rights by underinsured motorist coverage carrier; eliminating requirement that notice of cancellation of coverage be given by registered or certified mail; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

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

Article

6. The Insurance Policy.
6A. Cancellation or Nonrenewal of Automobile Liability Policies.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31e. Notice of proposed settlement for policy limits to underinsured motorist coverage carrier; waiver of subrogation; time limits.

1 (a) When an automobile liability insurer indemnifying a tortfeasor offers to pay its full policy limits of coverage for bodily injury or death to a claimant in a claim
involving a motor vehicle accident, conditioned upon an
underinsured motorist coverage carrier waiving its rights
of subrogation against the tortfeasor, then the claimant or
the liability insurer indemnifying the tortfeasor may give
to the underinsured motorist coverage carrier notice in
writing that an offer to settle for policy limits has been
made by the liability insurer indemnifying the tortfeasor.

(b) The notice shall be in writing and sent by certified
mail, return receipt requested, to the underinsured motorist
coverage carrier, and it shall state plainly the following
information:

(1) The name and address of the underinsured
motorist coverage claimant;

(2) The name and address of the person in whose
name the underinsured motorist coverage is written;

(3) The policy number of the policy under which the
underinsured motorist coverage is written;

(4) The name of the tortfeasor;

(5) The name of the insurance company and the
policy number for the insurance policy indemnifying the
tortfeasor under which an offer to settle for policy limits
has been made;

(6) A statement that the company indemnifying the
tortfeasor has offered to settle with the claimant for policy
limits, conditioned upon the waiver by the underinsured
motorist coverage carrier of its subrogation rights against
the tortfeasor; and

(7) A statement that under the law the underinsured
motorist coverage carrier has sixty days to preserve its
subrogation rights against the tortfeasor by providing
written notice of its intention to do so and by paying to
the claimant an amount equal to the policy limits that have
been offered to the claimant by the liability insurance
company indemnifying the tortfeasor.

(c) The underinsured motorist coverage carrier is
considered to have fully waived its rights of subrogation
against the tortfeasor, unless within sixty days from receipt
of the notice described in subsection (b) above, the
underinsured motorist coverage carrier sends in writing by
certified mail, return receipt requested, to the claimant and
to the liability insurer indemnifying the tortfeasor written
notice that it does not waive its rights of subrogation
against the tortfeasor. This notice is not effective unless
the notice to the claimant is accompanied by payment to
the claimant of an amount equal to the policy limits which
had been offered by the liability insurance company
indemnifying the tortfeasor. If the underinsured motorist
carrier fails to send the notice provided for in this
subsection or fails to pay the sum required by this
subsection within the time specified, then the underinsured
motorist coverage carrier is considered to have waived its
subrogation rights against the tortfeasor, and the claimant
may proceed to consummate the settlement about which
notice had been provided, as set forth in subsections (a)
and (b) of this section.

(d) If the underinsured motorist carrier gives notice
and tenders the payment, as required in subsection (c) of
this section, then the underinsured motorist carrier is and
remains subrogated to the rights of the claimant as to the
tortfeasor to the extent of any and all sums paid by the
underinsured motorist carrier to the claimant, as provided
under current law. The payment by the underinsured
motorist coverage carrier of the amount equal to the
policy limits offered by the liability insurer indemnifying
the tortfeasor, as provided for in this section, shall not
serve in any way to waive, change or increase the amount
of the applicable underinsured motorist coverage beyond
the underlying underinsured motorist coverage policy
limits.

(e) The provisions of this section shall apply only to
written notices sent to underinsured motorist coverage
 carriers on or after the effective date of this section.

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.
No insurer once having issued or delivered a policy providing automobile liability insurance in this state insuring a private passenger automobile may, after the policy has been in effect for sixty days, or in case of renewal effective immediately, issue or cause to issue a notice of cancellation during the term of the policy except for one or more of the reasons specified in this section:

(a) The named insured fails to discharge when due any of his or her obligations in connection with the payment of premium for the policy or any installment of the premium;

(b) The policy was obtained through material misrepresentation;

(c) The insured violates any of the material terms and conditions of the policy;

(d) The named insured or any other operator, either resident in the same household or who customarily operates an automobile insured under the policy:

(1) Has had his or her operator's license suspended or revoked during the policy period including suspension or revocation for failure to comply with the provisions of article five-a, chapter seventeen-c of this code, regarding consent for a chemical test for intoxication: Provided, That when a license is suspended for sixty days by the commissioner of motor vehicles because a person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, pursuant to subsection (l), section two, article five-a, chapter seventeen-c of this code, the suspension shall not be grounds for cancellation; or

(2) Is or becomes subject to epilepsy or heart attacks, and the individual cannot produce a certificate from a physician testifying to his or her ability to operate a motor vehicle.
(e) The named insured or any other operator, either resident in the same household or who customarily operates an automobile insured under such policy is convicted of or forfeits bail during the policy period for any of the following:

(1) Any felony or assault involving the use of a motor vehicle;

(2) Negligent homicide arising out of the operation of a motor vehicle;

(3) Operating a motor vehicle while under the influence of alcohol or of any controlled substance or while having an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight;

(4) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting as required by law;

(5) Theft of a motor vehicle or the unlawful taking of a motor vehicle;

(6) Making false statements in an application for a motor vehicle operator's license;

(7) A third violation, committed within a period of twelve months, of any moving traffic violation which constitutes a misdemeanor, whether or not the violations were repetitious of the same offense or were different offenses. Notwithstanding any of the provisions of this section to the contrary, no insurance company may cancel a policy of automobile liability insurance without first giving the insured thirty days' notice of its intention to cancel: Provided, That cancellation of the insurance policy by the insurance carrier for failure of consideration to be paid by the insured upon initial issuance of the insurance policy is effective upon the expiration of ten days' notice of cancellation to the insured.
CHAPTER 184

(H. B. 2550—By Delegates Jenkins, L. White, Thompson and Beane)

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

AN ACT to amend and reenact section three, article six-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to cancellation or nonrenewal of automobile liability insurance policies; providing that such cancellation notices may include the amount of premium due.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-3. Insurer to specify reasons for cancellation; immunity from liability or suit.

In every instance in which a policy or contract of automobile liability insurance which has been in effect sixty days or which has been renewed is canceled by the insurer, the insurer or its duly authorized agent shall, in the notice of cancellation or at the written request of the named insured, specify the reason or reasons relied upon by the insurer for the cancellation. These reasons shall be stated in a written notice and shall, if not provided in the notice of cancellation, be made within thirty days after the request: Provided, That there shall be no liability on the part of, and no cause of action shall arise against, any insurer or its agents or its authorized investigative sources for any statements made with probable cause by the insurer, agent or investigative source in a written notice required to be given pursuant to this section. A notice of cancellation for nonpayment of premium is not void on the grounds that the notice includes the amount of premium due or the date by which payment was to be paid.
CHAPTER 185

(H. B. 4283—By Delegates Thompson, Beane, L. White, Kominar and Johnson)

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

AN ACT to amend article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a, relating to annuity valuation mortality tables; commissioner to propose rules adopting national association of insurance commissioners' model proposal.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-9a. Annuity mortality tables.

1 The commissioner shall propose rules, on or before the first day of July, one thousand nine hundred ninety-eight, adopting the national association of insurance commissioners' model proposal "Recognizing Annuity Mortality Tables For Use In Determining Reserve Liabilities," which incorporates the "Annuity 2000 Mortality Table" and the "1994 Group Annuity Reserving Table."
CHAPTER 186
(H. B. 4259—By Mr. Speaker, Mr. Kiss, and Delegates Beane, L. White, Thompson, Faircloth and Johnson)

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

AN ACT to amend and reenact article sixteen-e, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the regulation of limited benefits insurance policies; providing definitions; providing limitations on premium rate increases; providing for premium corrections; providing for the amount and timing of premium corrections; requiring reports to the commissioner; providing for civil penalties; requiring notice of cancellation or nonrenewal; providing requirements for limited benefits policy provisions; allowing the insurance commissioner to prevent an insurer from avoiding premium correction requirements by offering a new form of policy or certificate; and requiring a report to the Legislature by the commissioner.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16E. LIMITED BENEFITS ACCIDENT AND SICKNESS INSURANCE POLICIES AND CERTIFICATES.

§33-16E-1. Scope of article.
§33-16E-2. Definitions.
§33-16E-3. Identification of level premium limited benefits forms.
§33-16E-4. Premium rate increases.
§33-16E-5. Premium corrections required.
§33-16E-6. Amount and timing of premium corrections.
§33-16E-7. Report to be filed with commissioner; form; examinations.
§33-16E-8. Penalties.
§33-16E-9. Notice of cancellation or nonrenewal.
§33-16E-10. Prohibition against preexisting conditions, waiting periods, elimination periods and probationary periods in replacement policies.

§33-16E-11. Applicability of other provisions.

§33-16E-12. Commissioner to promulgate rules.

§33-16E-13. Commissioner’s authority to reject new policy or certificate forms.

§33-16E-14. Commissioner’s report to the Legislature.

§33-16E-1. Scope of article.

The provisions of this article apply to all limited benefits policies and certificates delivered or issued for delivery in this state after the ninth day of July, one thousand nine hundred ninety-three.

§33-16E-2. Definitions.

For purposes of this article:

(a) “Limited benefits policy” means any individual or group accident and sickness insurance policy, including all riders thereto (and certificates in the case of a group policy), that covers one or more residents of this state and that is not required to offer or provide all benefits mandated by any other applicable provision of this chapter. Such policies include, but are not limited to, accident only, sickness only disability, sickness only, accident only disability, hospital indemnity, specified disease and travel accident insurance policies: Provided, That the following types of policies and certificates are excluded from the definition of "limited benefits policy":

(1) Credit accident and sickness insurance;
(2) Long-term care insurance;
(3) Medicare supplement insurance;
(4) Minimum benefits accident and sickness insurance issued pursuant to section fifteen, article fifteen of this chapter or article sixteen-c of this chapter;
(5) Accident and sickness policies which provide benefits for loss of income due to disability;
(6) Major medical policies;
(7) Dental policies; and

(8) Vision policies.

(b) "Limited benefits form" means a compilation of policy terms that has been approved by the commissioner for use as a prototype for limited benefits policies, or a compilation of policy terms that has been used as the prototype for one or more limited benefits policies, regardless of whether that compilation has been approved by the commissioner. The existence of a form may be inferred from the existence of one or more policies that do not conform to any form that has been approved by the commissioner. Limited benefits forms that are used by a particular insurer and that, in the opinion of the commissioner, are substantially identical with respect to the risks covered and benefits provided shall be regarded as a single limited benefits form.

(c) "Insurer" means an insurer that offers or has in force any limited benefits policies.

(d) "Correction date" means the thirty-first day of December of the year one thousand nine hundred ninety-nine and of every third year thereafter.

(e) "Incurred claims" for a particular limited benefits form during a particular period of time means the aggregate amount of all claims incurred during that period on all limited benefits policies based on that form, regardless of when individual claims are paid: Provided, That if both West Virginia residents and residents of one or more other states are covered under a group limited benefits policy, only claims incurred on behalf of West Virginia residents shall be taken into account in determining the amount of claims incurred on the policy.

(f) "Earned premiums" for a particular limited benefits form during a particular period of time means the aggregate amount all premiums earned during that period on all policies based on that form, regardless of when specific premiums are paid: Provided, That if both West Virginia residents and residents of one or more other states are covered under group limited benefits policy,
only premiums earned for coverage extended to West Virginia residents shall be taken into account in determining the amount of premiums earned on the policy.

(g) "Net level premium" for a particular limited benefits form means a hypothetical premium per limited benefits policy that is of such amount that, over the lifetime of the limited benefits policy beginning at the time of issue of the policy, the present value of the net level premiums for the policy equals the present value of the claims expected to be incurred on the policy. The net level premium shall be determined using the same assumptions as are used in pricing calculations, with appropriate provision for adverse deviation.

(h) "Net level premium reserve" means a reserve calculated so that at any point in time the reserve amount is the present value of benefits expected to be incurred in the future minus the present value of future net level premiums.

(i) "Modified net level premium reserve" means net level premium reserve reduced by the investment income component of such reserve.

§33-16E-3. Identification of level premium limited benefits forms.

(a) A limited benefits form shall be regarded as a level premium limited benefits form only if the form has been identified as provided in this section.

(b) On or before the first day of December, one thousand nine hundred ninety-eight, each insurer shall identify, in writing to the commissioner, those limited benefits forms approved by the commissioner (pursuant to section eight, article six of this chapter) prior to the first day of July, one thousand nine hundred ninety-eight, that are level premium limited benefits forms.

(c) An insurer submitting a form to the commissioner for approval (pursuant to section eight, article six of this chapter) after the first day of July, one thousand nine hundred ninety-eight, shall clearly indicate, in the written
documents filed with the commissioner to submit the
form, that the form is a level premium limited benefits
form.

(d) An insurer using a form that is not subject to prior
approval by the commissioner shall identify the form as a
level premium limited benefits form, in writing to the
commissioner:

(1) On or before the first day of December, one
thousand nine hundred ninety-eight, if at least one policy
based on the form was delivered or issued for delivery in
this state prior to the first day of July, one thousand nine
hundred ninety-eight; or

(2) Within six months of the first instance in which a
policy is delivered or issued for delivery in this state, if no
such policies were delivered or issued for delivery in West
Virginia prior to the first day of July, one thousand nine
hundred ninety-eight.

(e) A limited benefits form that is subject to prior
approval by the commissioner and that has not been so
approved shall not be regarded as a level premium limited
benefits form.

§33-16E-4. Premium rate increases.

(a) The commissioner may not approve a premium
rate increase for a limited benefits form unless the form is
expected, over its lifetime and given the rate increase, to
return at least seventy-five percent (in the case of a group
form) or sixty-five percent (in the case of an individual
form) of its earned premiums to policyholders and
certificate holders as incurred claims: Provided, That for
purposes of this requirement, any premium refunds that
have been paid for the form pursuant to this article shall
be regarded as incurred claims. At the request of an
insurer, the commissioner may apply a minimum
percentage that is less than the applicable percentage
otherwise provided in this subsection if the insurer
demonstrates to the satisfaction of the commissioner that
special circumstances justify the use of that lesser
percentage in order to allow the insurer a reasonable profit
on policies based on the form. Special circumstances include, but are not limited to:

(1) The cost of developing the form is unusually high; or
(2) The expenses of marketing or administering the form are unusually high; or
(3) The form covers unusual risks or incorporates unique features.

(b) For purposes of this article, the following shall be treated as individual limited benefits forms:

(1) Forms used as a prototypes for limited benefits policies (or certificates thereto in the case of group policies) that are marketed to individuals through the mail or mass media advertising, including both print and broadcast advertising; and
(2) Forms used as a prototypes for limited benefits policies (or certificates thereto in the case of group policies), however marketed, that are sold so that the individual insured makes the decision to purchase the insurance and is responsible for paying all costs of the insurance, including payment by salary reductions for cafeteria plans under section one hundred twenty-five of the Internal Revenue Code.

§33-16E-5. Premium corrections required.

(a) Except as otherwise provided in this section, an insurer shall make a premium correction for a particular limited benefits form and correction date if the comparison percentage for that form and date is not at least sixty-five percent (in the case of a group form) or fifty-five percent (in the case of an individual form). At the request of an insurer, the commissioner may apply a minimum percentage that is less than the applicable percentage otherwise provided in this subsection if the insurer demonstrates to the satisfaction of the commissioner that special circumstances justify the use of that lesser percentage in order to allow the insurer a
reasonable profit on policies based on the form. Special circumstances include, but are not limited to:

(1) The cost of developing the form was unusually high; or

(2) The expenses of marketing or administering the form are unusually high; or

(3) The form covers unusual risks or incorporates unique features.

(b) The comparison percentage for a limited benefits form that is not a level premium limited benefits form shall be calculated by dividing the incurred claims for the form during the three-year period ending on the correction date by the earned premiums for the form during the same period, and multiplying that quotient by one hundred: Provided, That for correction dates after the thirty-first day of December, two thousand two, comparison percentages for level premium limited benefits forms also shall be calculated in this fashion.

(c) The comparison percentage for a level premium limited benefits form shall be calculated as follows: Provided, That for correction dates after the thirty-first day of December, two thousand two, the comparison percentage for such forms instead shall be calculated as described in subsection (b) of this section:

(1) Add the incurred claims for the form during the period that begins on the ninth day of July, one thousand nine hundred ninety-three, and ends on the correction date, to the modified net level premium reserve for the form as of the correction date: Provided, That any premium refunds that have been paid for the form pursuant to this article shall be added to the incurred claims when performing this calculation;

(2) Divide the sum thus obtained by the earned premiums for the form during the period that begins on the ninth day of July, one thousand nine hundred ninety-three, and ends on the correction date; and then
(3) Multiply the quotient thus obtained by one hundred.

(d) If, in the opinion of the commissioner, a comparison percentage that is calculated by the method described in subsection (c) of this section would not accurately predict the percentage of earned premiums returned to policyholders and certificate holders over the lifetime of a particular limited benefits form, the commissioner may require that a different method be used to calculate a comparison percentage for the form.

(e) Notwithstanding any other provision of this section, an insurer may not be required to make a premium correction for a particular limited benefits form and correction date if the earned premiums for the form during the period that begins on the ninth day of July, one thousand nine hundred ninety-three, and ends on the correction date is less than five hundred thousand dollars.

§33-16E-6. Amount and timing of premium corrections.

(a) A premium correction may be a refund of premiums, a reduction in premiums, or an increase in benefits. All premium corrections shall satisfy the requirements of this section, and any refund or reduction of premiums, or increase in benefits that does not satisfy those requirements may not be regarded as a premium correction for purposes of this article.

(b) The total amount of a premium refund for a particular form shall equal the amount of additional claims that, if incurred on the correction date, would cause the comparison percentage for the form to equal the minimum percentage for the form, with both percentages being determined according to section five of this article. The refund shall be allocated among those persons who are policyholders as of the correction date for which the refund is made. Individual refunds shall be in proportion to the total amount of premiums earned for each individual’s policy over the entire period that the policy has been in force. A premium refund that satisfies the requirements of this section shall not be regarded as an instance of unfair discrimination in rates or premiums for
purposes of subsection (7), section four, article eleven of this chapter or as a rebate of premiums for purposes of subsection (8), section four, article eleven of this chapter.

(c) A reduction of premiums or an increase in benefits shall be such that the amount returned to policyholders or certificate holders as incurred claims over the lifetime of the form is at least equal to the minimum percentage for the form determined according to section five of this article: Provided, That for purposes of this requirement, any premium refunds that have been paid for the form pursuant to this article shall be regarded as incurred claims. Once implemented, the reduction or increase shall affect all policies, whether newly issued or renewed, that are based on the form for which the correction is made.

(d) A reduction of premiums or increase in benefits must be approved in advance by the commissioner. The commissioner may approve a reduction or increase only if the insurer establishes, to the satisfaction of the commissioner, that the reduction or increase satisfies the requirements of this section. Prior to approving or disapproving a reduction or increase, the commissioner may request, and the insurer shall provide, all information that, in the opinion of the commissioner, is reasonably related to the commissioner's decision. To evaluate a reduction or increase, the commissioner may retain professionals or specialists, including, but not limited to, independent actuaries, to perform services that are reasonably necessary to evaluate the reduction or increase. The cost of those services shall be borne by the insurer that has requested approval of the reduction or increase: Provided, That the amount borne by an insurer in connection with a single reduction or increase shall not exceed two thousand five hundred dollars.

(e) Premium refunds shall be tendered to individual policyholders, and reductions in premiums or increases in benefits shall be implemented, on the later of the first day of October of the year immediately following the correction date for which the correction is made or the date which is sixty days after the commissioner issues a decision on a request for approval of a reduction in
 premiums or an increase in benefits. Every individual
premium refund tendered later than the required tender
date shall include interest for the period beginning on the
required tender date and ending on the date on which the
refund is tendered, at the rate established by the tax
commissioner under section seventeen-a, article ten,
chapter eleven of this code as of the actual tender date.
The commissioner may withdraw approval of a premium
reduction or benefit increase that is not implemented by
the date required by this subsection unless the insurer
establishes to the satisfaction of the commissioner, that the
failure to implement the reduction or increase by that date
was neither willful nor a result of the insurer's negligence.
Insurers shall request approval of a premium reduction or
benefits increase no later than the first day of July of the
same year; Provided, That the commissioner may accept
a request for approval made after that date if, in the
opinion of the commissioner, the timing of the request will
not impair the commissioner's evaluation of the request
and will allow any such reduction or increase to be
implemented on or before the date required by this
subsection. If the requirements of any other state or
federal law restrict the implementation of any premium
reduction or benefit increase on the date otherwise
required by this subsection, such reduction or increase
shall be implemented on the earliest date allowed by such
other state or federal law.

(f) A premium refund that, once allocated, would
result in individual refunds of less than ten dollars per
policyholder may be retained by the insurer and placed in
a fund to be used to offset any future rate increases for the
form; Provided, That if the insurer subsequently pays
individual refunds for the same form, any amount earlier
placed into the fund for the same form shall be added to
the amount of the premium refund, and the total amount
allocated among individual policyholders as described in
subsection (b) of this section.

(g) Notwithstanding any other provision of this article,
if a particular limited benefits policy was issued for
delivery prior to the ninth day of July, one thousand nine
hundred ninety-three, an insurer shall not be required to pay individual refunds to the holder of that policy.

§33-16E-7. Report to be filed with commissioner; form; examinations.

(a) Every insurer shall annually file with the commissioner a report on the limited benefits forms used or available for use by the insurer during the period.

(1) The report shall be filed no later than the first day of June: Provided, That the commissioner for good cause shown may extend the filing date for a particular report for up to ninety days.

(2) The report shall be prepared on a form prescribed by the commissioner, and shall contain all of the information required by that form. The report shall provide this information for every limited benefits form actually used by the insurer during the preceding calendar year, and for every form that as of the final day of the reporting period was approved by the commissioner.

(3) The report shall be executed by the insurer in the manner prescribed by the commissioner.

(b) The commissioner may examine the records and files of any insurer to determine whether the insurer has complied with the provisions of this article.

§33-16E-8. Penalties.

(a) Any insurer that fails to comply with the provisions of this article is subject to the following civil penalties:

(1) An insurer that has failed to file a limited benefits report by the applicable filing date (determined with regard to any extensions of time granted by the commissioner) is subject to a penalty of two thousand five hundred dollars, and an additional penalty of two thousand five hundred dollars for each month or fraction thereof during which the failure continues;

(2) An insurer that has filed a report that is incomplete or inaccurate in any material respect is subject to a penalty of two thousand five hundred dollars, and an additional
penalty of two thousand five hundred dollars for every month or fraction thereof during which the insurer fails to correct all material defects in the report; and

(3) An insurer that has failed to make a premium correction during the time prescribed by this article is subject to a penalty of five thousand dollars, and an additional penalty of five thousand dollars for each month or fraction thereof during which the failure continues.

(b) Penalties established by this section may not be imposed if the insurer establishes, to the satisfaction of the commissioner, that the failure upon which the penalty is based was neither willful nor a result of the insurer’s negligence.

c) Penalties imposed under this section shall be paid to the commissioner, who shall transfer amounts so received to the general revenue fund of this state. A penalty shall be due when the insurer receives written notice from the commissioner stating the amount of the penalty and describing the failure for which it is imposed. Notice of a penalty does not preclude the imposition of additional penalties for subsequent months or fractions thereof during which the failure identified in the notice continues, or the imposition of penalties for other failures.

d) The imposition of penalties under this section are in addition to, and not in lieu of, any other penalties, charges, sanctions, or liabilities allowed by law.

§33-16E-9. Notice of cancellation or nonrenewal.

No insurer may cancel or nonrenew a limited benefits policy, or a certificate thereto in the case of a group policy, unless written notice of such cancellation or nonrenewal is forwarded to the policyholder or certificate holder not less than sixty days prior to the expiration date of the policy or certificate.

§33-16E-10. Prohibition against preexisting conditions, waiting periods, elimination periods and probationary periods in replacement policies.

(a) If a limited benefits policy replaces another limited benefits policy providing similar coverage, the insurer issuing the replacement policy shall waive any time
periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new limited benefits policy to the extent that such time was spent under the original policy or certificate.

(b) If a limited benefits policy replaces another limited benefits policy providing similar coverage that has been in effect for at least six months, the replacement policy may not provide any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods.

§33-16E-11. Applicability of other provisions.

Except as otherwise provided, all the provisions of article fifteen of this chapter are applicable to individual limited benefits policies and all provisions of article sixteen of this chapter are applicable to group limited benefits policies.

§33-16E-12. Commissioner to promulgate rules.

The commissioner may promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the implementation, regulation and enforcement of the provisions of this article.

§33-16E-13. Commissioner's authority to reject new policy or certificate forms.

The commissioner may disapprove any new limited benefits form if the commissioner determines that the new form likely will be used by the insurer in lieu of an existing form so as to allow the insurer to avoid making premium corrections on the existing form.

§33-16E-14. Commissioner's report to the Legislature.

The commissioner shall prepare a report to the Legislature, to be delivered during the regular session of the Legislature held in the year two thousand two. The commissioner's report shall evaluate the provisions of this article (including, but not limited to, the provisions that establish a method for computed comparison percentages for level premium limited benefits policies) and may include proposed changes or alternatives to those provisions.
CHAPTER 187

(Com. Sub. for S. B. 361—By Senators Hunter, White, Kessler and Ball)

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

AN ACT to amend and reenact section twenty-four, article twenty-five-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto two new articles, designated articles twenty-five-c and forty-two, all relating to managed care plans and their patients’ rights; and providing for direct access to women’s health care providers.

Be it enacted by the Legislature of West Virginia:

That section twenty-four, article twenty-five-a, chapter thirty-three 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 two new articles, designated articles twenty-five-c and forty-two, all to read as follows:

Article


42. Women’s Access to Health Care Act.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


1 (a) Except as otherwise provided in this article, provisions of the insurance laws and provisions of hospital or medical service corporation laws are not applicable to any health maintenance organization granted a certificate of authority under this article. The provisions of this article shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this state except with respect to its
health maintenance corporation activities authorized and regulated pursuant to this article. The provisions of this article shall not apply to an entity properly licensed by a reciprocal state to provide health care services to employer groups, where residents of West Virginia are members of an employer group, and the employer group contract is entered into in the reciprocal state. For purposes of this subsection, a "reciprocal state" means a state which physically borders West Virginia and which has subscriber or enrollee hold harmless requirements substantially similar to those set out in section seven-a of this article.

(b) Factually accurate advertising or solicitation regarding the range of services provided, the premiums and copayments charged, the sites of services and hours of operation, and any other quantifiable, nonprofessional aspects of its operation by a health maintenance organization granted a certificate of authority, or its representative shall not be construed to violate any provision of law relating to solicitation or advertising by health professions: Provided, That nothing contained in this subsection shall be construed as authorizing any solicitation or advertising which identifies or refers to any individual provider or makes any qualitative judgment concerning any provider.

(c) Any health maintenance organization authorized under this article shall not be considered to be practicing medicine and is exempt from the provisions of chapter thirty of this code, relating to the practice of medicine.

(d) The provisions of sections fifteen and twenty, article four (general provisions); section seventeen, article six (noncomplying forms); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); article nine (administration of deposits); article twelve (agents, brokers, solicitors and excess line); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-b (uniform health care administration act); section three, article sixteen (required policy provisions); section three-f, article sixteen (treatment of temporomandibular
disorder and craniomandibular disorder); section eleven,
article sixteen (coverage of children); section thirteen,
article sixteen (equal treatment of state agency); section
fourteen, article sixteen (coordination of benefits with
medicaid); article sixteen-a (group health insurance
cconversion); article sixteen-d (marketing and rate practices
for small employers); article twenty-five-c (health
maintenance organization patient bill of rights); article
twenty-seven (insurance holding company systems);
article thirty-four-a (standards and commissioner's
authority for companies deemed to be in hazardous
financial condition); article thirty-five (criminal sanctions
for failure to report impairment); article thirty-seven
(managing general agents); article thirty-nine (disclosure
of material transactions); article forty-one (privileges and
immunity); and article forty-two (women's access to health
care) shall be applicable to any health maintenance
organization granted a certificate of authority under this
article. In circumstances where the code provisions made
applicable to health maintenance organizations by this
section refer to the "insurer", the "corporation" or words of
similar import, the language shall be construed to include
health maintenance organizations.

(e) Any long-term care insurance policy delivered or
issued for delivery in this state by a health maintenance
organization shall comply with the provisions of article
fifteen-a of this chapter.

(f) A health maintenance organization granted a
certificate of authority under this article shall be exempt
from paying municipal business and occupation taxes on
gross income it receives from its enrollees, or from their
employers or others on their behalf, for health care items
or services provided directly or indirectly by the health
maintenance organization. This exemption applies to all
taxable years through the thirty-first day of December,
one thousand nine hundred ninety-six. The commissioner
and the tax department shall conduct a study of the
appropriations of imposition of the municipal business
and occupation tax or other tax on health maintenance
organizations, and shall report to the regular session of the
Legislature, one thousand nine hundred ninety-seven, on
their findings, conclusions and recommendations, together
ARTICLE 25C. HEALTH MAINTENANCE ORGANIZATION PATIENT BILL OF RIGHTS.

§33-25C-1. Short title.
This article may be referred to as the "Patients’ Bill of Rights".

(a) "Commissioner" means the commissioner of insurance.
(b) "Managed care plan" or "plan" means any health maintenance organization or prepaid limited health care organization.
(c) "Provider" means any physician, hospital or other person or organization which is licensed or otherwise authorized in this state to provide health care services or supplies.

All managed care plans must provide to subscribers on a form prescribed by the commissioner a notice of certain subscriber rights. The notice shall address the following areas:

(1) The ability of the subscriber to pursue grievance and hearing procedures without reprisal from the managed care plan;
(2) How the subscriber may choose providers within the plan;
(3) The subscriber’s right to privacy and confidentiality;
(4) The subscriber’s ability to examine and offer corrections to their own medical records;
(5) The subscriber’s right to be informed of plan policies and any charges for which the subscriber will be responsible;

(6) The subscriber’s ability to obtain evidence of the medical credentials of a plan provider such as diploma and board certifications;

(7) The right of subscriber’s to have coverage denials reviewed by appropriate medical professionals consistent with plan review procedures;

(8) Any other areas the commissioner may by rule require.

ARTICLE 42. WOMEN'S ACCESS TO HEALTH CARE ACT.


This article shall be known and may be cited as the "Women's Access To Health Care Act".

§33-42-2. Legislative findings and purpose.

The Legislature finds and declares that adequate delivery of health care services to women requires direct access to primary and preventative obstetrical and gynecological services, which services may be provided as "well woman examinations", and direct access without prior authorization to prenatal and obstetrical services for pregnant women.


For purposes of this article:

(1) "Advanced nurse practitioner" means a certified nurse-midwife, or an advanced nurse practitioner certified to practice in family practice, women’s health (ob/gyn), or primary care adult, geriatric or pediatric practice,
6 practicing within the lawful scope of that provider's practice.

8 (2) “Health benefit policy” means any individual or group plan, policy or contract for health care services issued, delivered, issued for delivery, or renewed in this state by a health care corporation, health maintenance organization, accident and sickness insurer, fraternal benefit society, nonprofit hospital service corporation, nonprofit medical service corporation or similar entity, when the policy or plan covers hospital, medical or surgical expenses.

17 (3) "Women's health care provider" means an obstetrician/gynecologist, advanced nurse practitioner certified to practice in women's health (ob/gyn), certified nurse-midwife or physician assistant-midwife practicing within the lawful scope of that provider's practice.

§33-42-4. Limitations on conditions of coverage.

1 No health benefits policy may require as a condition to the coverage of basic primary and preventative obstetrical and gynecological services that a woman first obtain a referral from a primary care physician: Provided, That for a health maintenance organization authorized under article twenty-five-a of this chapter, direct access, at least annually, to a women's health care provider for purposes of a well woman examination shall satisfy the foregoing requirement. No health benefits policy may require as a condition to the coverage of prenatal or obstetrical care that a woman first obtain a referral for those services by a primary care physician.

§33-42-5. Required disclosure.

1 Every health benefits policy that is issued, delivered, issued for delivery or renewed in this state on or after the first day of July, one thousand nine hundred ninety-eight, shall disclose in writing to enrollees, subscribers and insureds, in clear and accurate language, the female enrollee's right of direct access to a women's health care provider of her choice. The information required to be disclosed shall include, at a minimum, any specific
women's health care services that are excluded from coverage and the health benefits policy's right to limit coverage to medically necessary and appropriate women's health care services.


No health benefits policy may impose additional copayments or deductibles for female enrollees' direct access to in-network, participating women's health care providers unless the same additional cost-sharing is imposed for other types of health care services not delineated in this article.

§33-42-7. Limitation on number of women's health care providers.

A health benefits policy may limit the number of women's health care providers in a network: Provided, that a sufficient number of providers are available to serve a defined population or geographic service area so that female enrollees will have direct and timely access to women's health care providers.

CHAPTER 188

(Com. Sub. for S. B. 725—By Senators Wooton, Craigo, Jackson, Walker, White, Buckalew and Scott)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]
delinquency; eliminating certain obsolete references and provisions; providing for attendance at juvenile proceedings by certain persons, in the discretion of the presiding judicial officer; providing authorization for informal resolution by prepetition diversion; clarifying that proceedings are formally instituted by the filing with the court of a juvenile petition; authorizing the court to require participation in noncustodial counseling a juvenile's parent, guardian or custodian; providing that certain examinations are discretionary with the court; clarifying who may demand a jury trial in a juvenile proceeding; eliminating certain referrals to or instances of custody by juvenile probation officers; eliminating certain obsolete provisions relating to taking juveniles into custody by way of warrant, capias or attachment; requiring a showing of probable cause in certain instances; requiring certain procedures and notifications when a juvenile is taken into custody; requiring the department of health and human resources to make certain reports to the court; providing for further disposition of adjudicated status offenders beyond the initial mandatory referral to the department of health and human resources; providing for appeal of such orders of further disposition; expanding and extending the teen court program as an alternative to juvenile adjudication and/or disposition for certain juveniles; clarifying restrictions on the appointment of juvenile probation officers; and requiring that the director of the division of juvenile services propose certain legislative rules for promulgation.

**Be it enacted by the Legislature of West Virginia:**

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

**ARTICLE S. JUVENILE PROCEEDINGS.**

§49-5-1. Definitions.
§49-5-2. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; constitutional guarantees; hearings; evidence and transcripts.

§49-5-2a. Prepetition diversion to informal resolution.

§49-5-3. Noncustodial counseling of a juvenile.

§49-5-3a. Informal adjustment counseling by probation officer.

§49-5-4. Wards of the court.

§49-5-6. Jury trial under article.

§49-5-7. Institution of proceedings by petition; notice to juvenile and parents; subpoena.

§49-5-8. Taking a juvenile into custody.

§49-5-8a. Detention hearing; counsel.

§49-5-9. Preliminary hearing; counsel; improvement period.

§49-5-11. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders.

§49-5-11a. Status offenders: Intervention and services by state department pursuant to initial disposition; enforcement; further disposition; detention; out-of-home placement; state department custody; least restrictive alternative; appeal.

§49-5-12. Prosecuting attorney to represent petitioner.

§49-5-13a. Examination, diagnosis and classification; period of custody.

§49-5-13d. Teen court program.

§49-5-15. Juvenile probation officers; appointment; salary; facilities; expenses; duties; powers.

§49-5-16a. Rules governing juvenile facilities.

§49-5-1. Definitions.

1 As used in this article:

2 (a) "Adult" means a person who is at least eighteen years of age.

3 (b) "Child" means a person who has not attained the age of eighteen years, or a person who is otherwise subject to the juvenile jurisdiction of a court pursuant to this article.

4 (c) "Extrajudicial statement" means any utterance, written or oral, which was made outside of court.

5 (d) "Juvenile" has the same meaning as the term "child".

6 (e) "Res gestae" means a spontaneous declaration made by a person immediately after an event and before the person has had an opportunity to conjure a falsehood.
(f) "Violation of a traffic law of West Virginia" means a violation of any provision of chapter seventeen-a, seventeen-b, seventeen-c or seventeen-d of this code except a violation of section one or two, article four, chapter seventeen-c of this code (hit and run) or of section one, article five of said chapter (negligent homicide), section two of said article (driving under the influence of alcohol, controlled substances or drugs) or section three of said article (reckless driving).

§49-5-2. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; constitutional guarantees; hearings; evidence and transcripts.

(a) The circuit court has original jurisdiction of proceedings brought under this article.

(b) If during a criminal proceeding in any court it is ascertained or appears that the defendant is under the age of nineteen years and was under the age of eighteen years at the time of the alleged offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court. The circuit court shall assume jurisdiction of the case in the same manner as cases which are originally instituted in the circuit court by petition.

(c) Notwithstanding any other provision of this article, magistrate courts have concurrent juvenile jurisdiction with the circuit court for a violation of a traffic law of West Virginia or for any violation of chapter twenty of this code. Juveniles are liable for punishment for violations of these laws in the same manner as adults except that magistrate courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws.

(d) Notwithstanding any other provision of this article, municipal courts have concurrent juvenile jurisdiction with the circuit court for a violation of any municipal ordinance regulating traffic or for any municipal curfew ordinance which is enforceable. Municipal courts may impose the same punishment for these violations as a circuit court exercising its juvenile jurisdiction could properly impose, except that municipal courts have no
jurisdiction to impose a sentence of incarceration for the violation of these laws.

(e) A juvenile may be brought before the circuit court for proceedings under this article only by the following means:

(1) By a juvenile petition requesting that the juvenile be adjudicated as a status offender or a juvenile delinquent; or

(2) By certification or transfer to the juvenile jurisdiction of the circuit court from the criminal jurisdiction of the circuit court, from any foreign court, or from any magistrate court or municipal court in West Virginia.

(f) If a juvenile commits an act which would be a crime if committed by an adult, and the juvenile is adjudicated delinquent for that act, the jurisdiction of the court which adjudged the juvenile delinquent continues until the juvenile becomes twenty-one years of age. The court has the same power over that person that it had before he or she became an adult, and has the further power to sentence that person to a term of incarceration: Provided, That any such term of incarceration may not exceed six months. This authority does not preclude the court from exercising criminal jurisdiction over that person if he or she violates the law after becoming an adult or if the proceedings have been transferred to the court's criminal jurisdiction pursuant to section ten of this article.

(g) A juvenile is entitled to be admitted to bail or recognizance in the same manner as an adult and shall be afforded the protection guaranteed by Article III of the West Virginia constitution.

(h) A juvenile has the right to be effectively represented by counsel at all stages of proceedings under the provisions of this article. If the juvenile or the juvenile's parent or custodian executes an affidavit showing that the juvenile cannot afford an attorney, the court shall appoint an attorney, who shall be paid in
accordance with article twenty-one, chapter twenty-nine of this code.

(i) In all proceedings under this article, the juvenile shall be afforded a meaningful opportunity to be heard. This includes the opportunity to testify and to present and cross-examine witnesses. The general public shall be excluded from all proceedings under this article except that persons whose presence is requested by the parties and other persons whom the circuit court determines have a legitimate interest in the proceedings may attend: Provided, That in cases in which a juvenile is accused of committing what would be a felony if the juvenile were an adult, an alleged victim or his or her representative may attend any related juvenile proceedings, at the discretion of the presiding judicial officer: Provided, however, That in any case in which the alleged victim is a juvenile, he or she may be accompanied by his or her parents or representative, at the discretion of the presiding judicial officer.

(j) At all adjudicatory hearings held under this article, all procedural rights afforded to adults in criminal proceedings shall be afforded the juvenile unless specifically provided otherwise in this chapter.

(k) At all adjudicatory hearings held under this article, the rules of evidence applicable in criminal cases apply, including the rule against written reports based upon hearsay.

(l) Except for res gestae, extrajudicial statements made by a juvenile who has not attained fourteen years of age to law-enforcement officials or while in custody are not admissible unless those statements were made in the presence of the juvenile's counsel. Except for res gestae, extrajudicial statements made by a juvenile who has not attained sixteen years of age but who is at least thirteen years of age to law-enforcement officers or while in custody, are not admissible unless made in the presence of the juvenile's counsel or made in the presence of, and with the consent of, the juvenile's parent or custodian, and the parent or custodian has been fully informed regarding the juvenile's right to a prompt detention hearing, the
juvenile's right to counsel, including appointed counsel if
the juvenile cannot afford counsel, and the juvenile's
privilege against self-incrimination.

(m) A transcript or recording shall be made of all
transfer, adjudicatory and dispositional hearings. At the
conclusion of each of these hearings, the circuit court shall
make findings of fact and conclusions of law, both of
which shall appear on the record. The court reporter shall
furnish a transcript of the proceedings at no charge to any
indigent juvenile who seeks review of any proceeding
under this article if an affidavit is filed stating that neither
the juvenile nor the juvenile's parents or custodian have
the ability to pay for the transcript.

§49-5-2a. Prepetition diversion to informal resolution.

Before a juvenile petition is formally filed with the
court, the court may refer the matter to a state department
worker or probation officer for preliminary inquiry to
determine whether the matter can be resolved informally
without the formal filing of a petition with the court.

§49-5-3. Noncustodial counseling of a juvenile.

The court at any time, or the department or other
official upon a request from a parent, guardian or
custodian, may, before proceedings under this article are
formally instituted by the filing of a petition with the
court, refer a juvenile alleged to be delinquent or a status
offender to a counselor at the department or a community
mental health center, or other professional counselor in
the community. In the event the juvenile refuses to
respond to this referral, the department may serve a notice
by first class mail or personal service of process upon the
juvenile, setting forth the facts and stating that a
noncustodial order will be sought from the court directing
the juvenile to submit to counseling. The notice shall set
forth the time and place for the hearing on the matter.
The court or referee after a hearing may direct the
juvenile to participate in a noncustodial period of
counseling that may not exceed six months. Upon
recommendation of the department or request by the
juvenile's parent, custodian or guardian, the court or
referee may allow or require the parent, custodian or guardian to participate in this noncustodial counseling.

No information obtained as the result of this counseling is admissible in a subsequent proceeding under this article.

§49-5-3a. Informal adjustment counseling by probation officer.

(a) Before a petition is formally filed with the court, the probation officer or other officer of the court designated by it, subject to its direction, may give counsel and advice to the parties with a view to an informal adjustment if it appears:

(1) The admitted facts bring the case within the jurisdiction of the court;

(2) Counsel and advice without an adjudication would be in the best interest of the public and the juvenile; and

(3) The juvenile and his parents, guardian or other custodian consent thereto with knowledge that consent is not obligatory.

(b) The giving of counsel and advice pursuant to this section may not continue longer than six months from the day it is commenced unless extended by the court for an additional period not to exceed six months.

§49-5-4. Wards of the court.

A person under the age of eighteen years who appears before the circuit court in proceedings under this article shall be considered a ward of the court and protected accordingly. The court or judge thereof may request the county health officer in any county employing a full-time health officer to make a physical and mental examination of the wards of the court as defined in this section. The health officer shall, as promptly as may be, furnish to the court or judge a written report of these examinations on forms to be furnished to the health officer by the court. In those counties not employing a full-time health officer, the court or judge may designate a reputable physician of the county to make mental and physical examinations pursuant to this section and render written reports to the
court. When any such mental and physical examination is
made and any such report rendered, the state shall pay to
the examining physician a sum not to exceed ten dollars
for each such mental and physical examination, upon
certification of the fact of such examination by the court
or the judge thereof.

§49-5-6. Jury trial under article.

In a proceeding under this article, the juvenile, the
juvenile's counsel or the juvenile's parent or guardian, or
any one of them may demand, or the judge of his or her
own motion, may order a jury of twelve persons to try any
question of fact.

§49-5-7. Institution of proceedings by petition; notice to
juvenile and parents; subpoena.

(a) (1) A petition alleging that a juvenile is a status
offender or a juvenile delinquent may be filed by a person
who has knowledge of or information concerning the facts
alleged. The petition shall be verified by the petitioner,
shall set forth the name and address of the juvenile's
parents, guardians or custodians, if known to the
petitioner, and shall be filed in the circuit court in the
county where the alleged status offense or act of
delinquency occurred: Provided, That any proceeding
under this chapter may be removed, for good cause
shown, in accordance with the provisions of section one,
article nine, chapter fifty-six of this code. The petition
shall contain specific allegations of the conduct and facts
upon which the petition is based, including the
approximate time and place of the alleged conduct; a
statement of the right to have counsel appointed and
consult with counsel at every stage of the proceedings; and
the relief sought.

(2) Upon the filing of the petition, the court shall set a
time and place for a preliminary hearing as provided in
section nine of this article and may appoint counsel. A
copy of the petition and summons may be served upon
the respondent juvenile by first class mail or personal
service of process. If a juvenile does not appear in
response to a summons served by mail, no further
proceeding may be held until the juvenile is served a copy of the petition and summons by personal service of process. If a juvenile fails to appear in response to a summons served in person upon him or her, an order of arrest may be issued by the court for that reason alone.

(b) The parents, guardians or custodians shall be named in the petition as respondents, and shall be served with notice of the proceedings in the same manner as provided in subsection (a) of this section for service upon the juvenile and required to appear with the juvenile at the time and place set for the proceedings unless such respondent cannot be found after diligent search. If any such respondent cannot be found after diligent search, the court may proceed without further requirement of notice: Provided, That the court may order service by first class mail to the last known address of such respondent. The respondent shall be afforded fifteen days after the date of mailing to appear or answer.

(c) The court or referee may order the issuance of a subpoena against the person having custody and control of the juvenile ordering him or her to bring the juvenile before the court or referee.

(d) When any case of a juvenile charged with the commission of a crime is certified or transferred to the circuit court, the court or referee shall forthwith cause the juvenile and his or her parents, guardians or custodians to be served with a petition, as provided in subsections (a) and (b) of this section. In the event the juvenile is in custody, the petition shall be served upon the juvenile within ninety-six hours of the time custody began, and if the petition is not served within that time, the juvenile shall be released forthwith.

(e) The clerk of the court shall promptly notify the department of health and human resources of all proceedings under this article.

§49-5-8. Taking a juvenile into custody.

(a) In proceedings formally instituted by the filing of a petition, the circuit court, a juvenile referee or a
magistrate may issue an order directing that a juvenile be
taken into custody before adjudication only upon a
showing of probable cause to believe that one of the
following conditions exists: (1) The petition shows that
grounds exist for the arrest of an adult in identical
circumstances; (2) the health, safety and welfare of the
juvenile demand such custody; (3) the juvenile is a
fugitive from a lawful custody or commitment order of a
juvenile court; or (4) the juvenile is alleged to be a
juvenile delinquent with a record of willful failure to
appear at juvenile proceedings and custody is necessary to
assure his or her presence before the court. A detention
hearing pursuant to section eight-a of this article shall be
held by the judge, juvenile referee or magistrate
authorized to conduct such hearings without unnecessary
delay and in no event may any delay exceed the next day.

(b) Absent a court order, a juvenile may be taken into
custody by a law-enforcement official only if one of the
following conditions exists: (1) Grounds exist for the
arrest of an adult in identical circumstances; (2)
emergency conditions exist which, in the judgment of the
officer, pose imminent danger to the health, safety and
welfare of the juvenile; (3) the official has reasonable
grounds to believe that the juvenile has left the care of his
or her parents, guardian or custodian without the consent
of such person, and the health, safety and welfare of the
juvenile is endangered; (4) the juvenile is a fugitive from a
lawful custody or commitment order of a juvenile court;
or (5) the official has reasonable grounds to believe the
juvenile to have been driving a motor vehicle with any
amount of alcohol in his or her blood.

(c) Upon taking a juvenile into custody, with or
without a court order, the official shall:

(1) Immediately notify the juvenile's parent, guardian,
custodian or, if the parent, guardian or custodian cannot
be located, a close relative;

(2) Release the juvenile into the custody of his or her
parent, guardian or custodian unless:
(A) Circumstances present an immediate threat of serious bodily harm to the juvenile if released;

(B) No responsible adult can be found into whose custody the juvenile can be delivered: Provided, That each day the juvenile is detained, a written record must be made of all attempts to locate such a responsible adult; or

(C) The juvenile has been taken into custody for an alleged act of delinquency for which secure detention is permissible.

(3) If the juvenile is an alleged status offender, immediately notify the department of health and human resources, and, if the circumstances of either paragraph (A) or (B), subdivision (2) of this subsection exist and the requirements therein are met, the official may detain the juvenile, but only in a nonsecure or staff-secure facility;

(4) Take the juvenile without unnecessary delay before a juvenile referee or judge of the circuit court for a detention hearing pursuant to section eight-a of this article: Provided, That if no judge or juvenile referee is then available in the county, the official shall take the juvenile without unnecessary delay before any magistrate then available in the county for the sole purpose of conducting such a detention hearing. In no event may any delay in presenting the juvenile for a detention hearing exceed the next day after he or she is taken into custody.

(d) In the event that a juvenile is delivered into the custody of a sheriff or director of a detention facility, the sheriff or director shall immediately notify the court or juvenile referee. The sheriff or director shall immediately provide to every juvenile who is delivered into his or her custody a written statement explaining the juvenile's right to a prompt detention hearing, his or her right to counsel, including appointed counsel if he or she cannot afford counsel, and his or her privilege against self-incrimination. In all cases when a juvenile is delivered into a sheriff's or detention center director's custody, that official shall release the juvenile to his or her parent, guardian or custodian by the end of the next day unless the juvenile
has been placed in detention after a hearing conducted pursuant to section eight-a of this article.

§49-5-8a. Detention hearing; counsel.

(a) The judge, juvenile referee or magistrate shall inform the juvenile of his or her right to remain silent, that any statement may be used against him or her and of his or her right to counsel, and no interrogation may be made without the presence of a parent or counsel. If the juvenile or his or her parent, guardian or custodian has not retained counsel, counsel shall be appointed as soon as practicable. The referee, judge or magistrate shall hear testimony concerning the circumstances for taking the juvenile into custody and the possible need for detention in accordance with section two, article five-a of this chapter. The sole mandatory issue at the detention hearing is whether the juvenile should be detained pending further court proceedings. The court shall, if the health, safety and welfare of the juvenile will not be endangered thereby, release the juvenile on recognizance to his or her parents, custodians or an appropriate agency; however, if warranted, the court may require bail, except that bail may be denied in any case where bail could be denied if the accused were an adult. The court shall:

(1) Immediately notify the juvenile’s parent, guardian or custodian or, if the parent, guardian or custodian cannot be located, a close relative;

(2) Release the juvenile into the custody of his or her parent, guardian or custodian unless:

(A) Circumstances present an immediate threat of serious bodily harm to the juvenile if released;

(B) No responsible adult can be found into whose custody the juvenile can be delivered: Provided, That each day the juvenile is detained, a written record must be made of all attempts to locate such a responsible adult; or

(C) The juvenile is charged with an act of delinquency for which secure detention is permissible; and
(3) If the juvenile is an alleged status offender, immediately notify the department of health and human resources, and, if the circumstances of either paragraph (A) or (B), subdivision (2) of this subsection exist and the requirements therein are met, the court may order the juvenile detained, but only in a nonsecure or staff-secure facility. Any juvenile detained pursuant to this subdivision shall be placed in the legal custody of the department of health and human resources pending further proceedings by the court.

(b) The judge of the circuit court or the juvenile referee may, in conjunction with the detention hearing, conduct a preliminary hearing pursuant to section nine of this article: Provided, That all parties are prepared to proceed and the juvenile has counsel during such hearing.

§49-5-9. Preliminary hearing; counsel; improvement period.

(a) Following the filing of a juvenile petition, unless a preliminary hearing has previously been held in conjunction with a detention hearing with respect to the same charge contained in the petition, the circuit court or referee shall hold a preliminary hearing. In the event that the juvenile is being detained, the hearing shall be held within ten days of the time the juvenile is placed in detention unless good cause is shown for a continuance. If no preliminary hearing is held within ten days of the time the juvenile is placed in detention, the juvenile shall be released on recognizance unless the hearing has been continued for good cause. If the judge is in another county in the circuit, the hearing may be conducted in that other county. The preliminary hearing may be waived by the juvenile, upon advice of counsel. At the hearing, the court or referee shall:

(1) If the juvenile is not represented by counsel, inform the juvenile and his or her parents, guardian or custodian or any other person standing in loco parentis to him or her of the juvenile's right to be represented at all stages of proceedings under this article and the right to have counsel appointed;
(2) Appoint counsel by order entered of record, if counsel has not already been retained, appointed or knowingly waived;

(3) Determine after hearing if there is probable cause to believe that the juvenile is a status offender or a juvenile delinquent. If probable cause is not found, the juvenile, if in detention, shall be released and the proceedings dismissed. If probable cause is found, the case shall proceed to adjudication. At this hearing or as soon thereafter as is practicable, the date for the adjudicatory hearing shall be set to give the juvenile and the juvenile’s parents and attorney at least ten days’ notice, unless notice is waived by all parties;

(4) In lieu of placing the juvenile in a detention facility, the court may place the juvenile in the temporary legal and/or physical custody of the department. If the juvenile is detained, the detention may not continue longer than thirty days without commencement of the adjudicatory hearing unless good cause for a continuance is shown by either party or, if a jury trial is demanded, no longer than the next regular term of the court: Provided, That a juvenile who is alleged to be a status offender may not be placed in a secure detention facility; and

(5) Inform the juvenile of the right to demand a jury trial.

(b) The juvenile may move to be allowed an improvement period for a period not to exceed one year. If the court is satisfied that the best interest of the juvenile is likely to be served by an improvement period, the court may delay the adjudicatory hearing and allow a noncustodial improvement period upon terms calculated to serve the rehabilitative needs of the juvenile. At the conclusion of the improvement period, the court shall dismiss the proceeding if the terms have been fulfilled; otherwise, the court shall proceed to the adjudicatory stage. A motion for an improvement period may not be construed as an admission or be used as evidence.
§49-5-11. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders.

At the outset of an adjudicatory hearing, the court shall inquire of the juvenile whether he or she wishes to admit or deny the allegations in the petition. The juvenile may elect to stand mute, in which event the court shall enter a general denial of all allegations in the petition.

(a) If the respondent juvenile admits the allegations of the petition, the court shall consider the admission to be proof of the allegations if the court finds: (1) The respondent fully understands all of his or her rights under this article; (2) the respondent voluntarily, intelligently and knowingly admits all facts requisite for an adjudication; and (3) the respondent in his or her admission has not set forth facts which constitute a defense to the allegations.

(b) If the respondent juvenile denies the allegations, the court shall dispose of all pretrial motions and the court or jury shall proceed to hear evidence.

(c) If the allegations in a petition alleging that the juvenile is delinquent are admitted or are sustained by proof beyond a reasonable doubt, the court shall schedule the matter for disposition pursuant to section thirteen of this article.

(d) If the allegations in a petition alleging that the juvenile is a status offender are admitted or sustained by clear and convincing proof, the court shall refer the juvenile to the department of health and human resources for services, pursuant to section eleven-a of this article and order the department to report back to the court with regard to the juvenile's progress at least every ninety days or until the court, upon motion or sua sponte, orders further disposition under section eleven-a of this article or dismisses the case from its docket.

(e) If the allegations in a petition are not sustained by proof as provided in subsections (c) and (d) of this
section, the petition shall be dismissed and the juvenile shall be discharged if he or she is in custody.

(f) Findings of fact and conclusions of law addressed to all allegations in the petition shall be stated on the record or reduced to writing and filed with the record or incorporated into the order of the court.

§49-5-11a. Status offenders: Intervention and services by state department pursuant to initial disposition; enforcement; further disposition; detention; out-of-home placement; state department custody; least restrictive alternative; appeal.

(a) Services provided by the department for juveniles adjudicated as status offenders shall be consistent with the provisions of article five-b of this chapter and shall be designed to develop skills and supports within families and to resolve problems related to the juveniles or conflicts within their families. Services may include, but are not limited to, referral of juveniles and parents, guardians or custodians and other family members to services for psychiatric or other medical care, or psychological, welfare, legal, educational or other social services, as appropriate to the needs of the juvenile and his or her family.

(b) If necessary, the department may petition the circuit court:

(1) For a valid court order, as defined in section four, article one of this chapter, to enforce compliance with a service plan or to restrain actions that interfere with or defeat a service plan; or

(2) For a valid court order to place a juvenile out of home in a nonsecure or staff-secure setting, and/or to place a juvenile in custody of the department.

(c) In ordering any further disposition under this section, the court is not limited to the relief sought in the department’s petition and shall make every effort to place juveniles in community-based facilities which are the least restrictive alternatives appropriate to the needs of the juvenile and the community.
(d) The disposition of the juvenile may not be affected by the fact that the juvenile demanded a trial by jury or made a plea of denial. Any order providing disposition other than mandatory referral to the department for services is subject to appeal to the supreme court of appeals.

(e) Following any further disposition by the court, the court shall inquire of the juvenile whether or not appeal is desired and the response shall be transcribed; a negative response may not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available to the juvenile or his or her counsel, if it is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.

§49-5-12. Prosecuting attorney to represent petitioner.

The prosecuting attorney shall represent the petitioner in all proceedings under this article before the court, referee or magistrate having juvenile jurisdiction.

§49-5-13a. Examination, diagnosis and classification; period of custody.

As a part of the dispositional proceeding for a juvenile who has been adjudicated delinquent, the court may, upon its own motion or upon request of counsel, order the juvenile to be delivered into the custody of the director of the division of juvenile services, who shall cause the juvenile to be transferred to a juvenile diagnostic center for a period not to exceed thirty days. During this period, the juvenile shall undergo examination, diagnosis, classification, and a complete medical examination and shall at all times be kept apart from the general juvenile inmate population in the director's custody. Not later than thirty days after commitment pursuant to this section, the juvenile shall be remanded and delivered to the custody of the director, an appropriate agency or any other person that the court by its order directs. Within ten days after the end of the examination, diagnosis and classification, the director of the division of juvenile services shall make or cause to be made a report to the
§49-5-13d. Teen court program.

(a) Notwithstanding any provision of this article to the contrary, any juvenile who is alleged to have committed a status offense or an act of delinquency which would be a misdemeanor if committed by an adult, and who is otherwise subject to the provisions of this article may be given the option of proceeding in a teen court program as an alternative to the filing of a formal petition under section seven of this article or proceeding to a disposition as provided by section eleven-a or thirteen of this article, as the case may be. The decision to enter the teen court program as an alternative procedure shall be made by the circuit court, juvenile probation officer, the department and parent, guardian or custodian of the juvenile: Provided, That before the option is extended, the circuit court first finds that the offender is a suitable candidate for the program. Any juvenile who does not successfully cooperate in and complete the teen court program and any disposition imposed therein shall be returned to the circuit court for further disposition as provided by section eleven-a or thirteen of this article, as the case may be.

(b) The teen court program shall be administered by the governor's committee on crime, delinquency and correction.

(c) The following provisions apply to all teen court programs:

(1) The judge for each teen court proceeding shall be an acting or retired circuit court judge or an active member of the West Virginia state bar, who serves on a voluntary basis. Bar members shall be offered continuing legal education credit for this service.

(2) Any juvenile who selects the teen court program as an alternative disposition shall agree to serve thereafter on at least two occasions as a teen court juror.
(3) Volunteer students from grades seven through twelve of the schools within the county shall be selected to serve as defense attorney, prosecuting attorney, court clerk and bailiff for each proceeding.

(4) Disposition in a teen court proceeding shall consist of requiring the juvenile to perform sixteen to forty hours of community service, the duration and type of which shall be determined by the teen court jury from a standard list of available community service programs provided by the county juvenile probation system and a standard list of alternative consequences which are consistent with the purposes of this article. The performance of the juvenile shall be monitored by the county juvenile probation system. The juvenile shall also perform two sessions of teen court jury service, and, if considered appropriate by the judge, participate in an education program. Nothing in this section may be construed so as to deny availability of the services provided under section eleven-a of this article to juveniles who are otherwise eligible therefor.

(d) The rules for administration, procedure and admission of evidence shall be determined by the chief circuit judge, but in no case may the court require a juvenile to admit the allegation against him or her as a prerequisite to participation in the teen court program. A copy of these rules shall be provided to every teen court participant.

(e) Teen court programs operated pursuant to this section are pilot projects to be utilized from the effective date of this section until the first day of July, one thousand nine hundred ninety-nine, in the circuit courts in three of the counties of this state. The supreme court of appeals is to determine the counties in which the pilot projects will be utilized based upon its determination of those counties which have recently experienced the most significant increases in the commission of criminal and status offenses by juveniles.

§49-5-15. Juvenile probation officers; appointment; salary; facilities; expenses; duties; powers.
(a) (1) Each circuit court, subject to the approval of the supreme court of appeals and in accordance with the rules of the supreme court of appeals, shall appoint one or more juvenile probation officers and clerical assistants for the circuit. A probation officer or clerical assistant may not be related by blood or marriage to the appointing judge.

(2) The salary for juvenile probation officers and clerical assistants shall be determined and fixed by the supreme court of appeals. All expenses and costs incurred by the juvenile probation officers and their staff shall be paid by the supreme court of appeals in accordance with its rules. The county commission of each county shall provide adequate office facilities for juvenile probation officers and their staff. All equipment and supplies required by juvenile probation officers and their staff shall be provided by the supreme court of appeals.

(3) A juvenile probation officer may not be considered a law-enforcement official under any provision of this chapter.

(b) The clerk of a court shall notify, if practicable, the chief probation officer of the county, or his or her designee, when a juvenile is brought before the court or judge for proceedings under this article. When notified, or if the probation officer otherwise obtains knowledge of such fact, he or she or one of his or her assistants shall:

(1) Make investigation of the case; and

(2) Furnish information and assistance that the court or judge may require.

§49-5-16a. Rules governing juvenile facilities.

The director of the division of juvenile services within the department of military affairs and public safety shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, outlining policies and procedures governing the operation of those correctional, detention, predispositional detention centers and other facilities wherein juveniles may be housed. These policies and
procedures shall include, but are not limited to, standards of cleanliness, temperature and lighting; availability of medical and dental care; provision of food, furnishings, clothing and toilet articles; supervision; procedures for enforcing rules of conduct consistent with due process of law; and visitation privileges. A juvenile in custody or detention has, at a minimum, the following rights, and the policies prescribed shall ensure that:

1. A juvenile may not be punished by physical force, deprivation of nutritious meals, deprivation of family visits or imposition of solitary confinement;

2. A juvenile shall be afforded an opportunity to participate in physical exercise each day;

3. Except for sleeping hours, a juvenile in a state facility may not be locked alone in a room unless that juvenile is not amenable to reasonable direction and control;

4. A juvenile shall be provided with his or her own clothing or individualized clothing which is clean and supplied by the facility, and shall also be afforded daily access to showers;

5. A juvenile shall be afforded constant access to writing materials and may send mail without limitation, censorship or prior reading, and may receive mail without prior reading, except that mail may be opened in the juvenile's presence, without being read, to inspect for contraband;

6. A juvenile may make and receive regular local phone calls without charge and long distance calls to his or her family without charge at least once a week, and receive visitors daily and on a regular basis;

7. A juvenile shall be afforded immediate access to medical care as needed;

8. A juvenile in a juvenile detention facility or juvenile corrections facility shall be provided access to education, including teaching, educational materials and books;
46 (9) A juvenile shall be afforded reasonable access to an attorney upon request; and
48 (10) A juvenile shall be afforded a grievance procedure, including an appeal mechanism.
50 Upon admission to a detention facility or juvenile corrections facility, a juvenile shall be furnished with a copy of the rights provided him or her by virtue of this section and as further prescribed by rules proposed and promulgated pursuant to this section.

CHAPTER 189

(S. B. 720—By Senators Wooton, Craigo, Jackson, Walker, White, Buckalew and Scott)

[Passed March 10, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one; and to amend and reenact sections one and three, article five-d of said chapter, all relating to providing for regular judicial review of certain juvenile proceedings.

Be it enacted by the Legislature of West Virginia:

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

Article
5D. Multidisciplinary Teams.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-21. Quarterly judicial review of juvenile proceedings.
For cases under this article in which the provisions of section three, article five-d of this chapter apply, the court wherein the juvenile proceeding is pending shall conduct regular judicial review of the case with the multidisciplinary treatment team and a juvenile probation officer in attendance. Such judicial review may be conducted as often as is considered necessary by the court, but shall be conducted at least once every three calendar months until the case is wholly resolved and finally dismissed from the docket of the court.

In conducting the judicial review required by this section, the court shall address the extent of progress in the case, treatment and service needs, permanent placement planning for the juvenile any uncontested issues and any other matters that the court considers pertinent. An order reflecting the matters considered, any uncontested rulings and the scheduling of an evidentiary hearing on any contested issue shall be issued by the court within ten judicial days of the judicial review.

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-1. Purpose; additional cases and teams.

(a) The purpose of this article is to provide a system for evaluation of and coordinated service delivery for children who may be victims of abuse or neglect and children undergoing certain status offense and delinquency proceedings. It is the further purpose of this article to establish, as a complement to other programs of the department of health and human resources, a multidisciplinary screening, advisory and planning system to assist courts in facilitating permanency planning, following the initiation of judicial proceedings, to recommend alternatives and to coordinate evaluations and in-community services. It is the further purpose of this article to ensure that children are safe from abuse and neglect and to coordinate investigation of alleged child abuse offenses and competent criminal prosecution of offenders to ensure that safety, as determined appropriate by the prosecuting attorney.
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18 (b) Nothing in this article precludes any multidisciplinary team from considering any case upon the consent of the members of the team.

§49-5D-3. Multidisciplinary treatment planning process.

1 (a) (1) On or before the first day of January, one thousand nine hundred ninety-five, a multidisciplinary treatment planning process shall be established within each county of the state, either separately or in conjunction with a contiguous county by the secretary of the department with advice and assistance from the prosecutor's advisory council as set forth in section four, article four, chapter seven of this code.

2 (2) Treatment teams shall assess, plan and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families when a judicial proceeding has been initiated involving the child or children and for juveniles and their families involved in status offense or delinquency proceedings when, in a status offense proceeding, the court refers the juvenile for services pursuant to sections eleven and eleven-a, article five of this chapter, and when, in a delinquency proceeding, the court is considering placing the juvenile in the department's custody and/or placing the juvenile out-of-home at the department's expense, pursuant to section thirteen of said article.

3 (b) Each treatment team shall be convened and directed by the child's or family's case manager. The treatment team shall consist of the child's custodial parent(s) or guardian(s), other immediate family members, the attorney(s) representing the parent(s) of the child, if assigned by a judge of the circuit court, the child, if the child is over the age of twelve, and if the child's participation is otherwise appropriate, the child, if under the age of twelve when the team determines that the child's participation is appropriate, the guardian ad litem, the prosecuting attorney or his or her designee, and any other agency, person or professional who may contribute to the team's efforts to assist the child and family.
(c) The treatment team shall coordinate their activities and membership with local family resource networks, and coordinate with other local and regional child and family service planning committees to assure the efficient planning and delivery of child and family services on a local and regional level.

(d) State, county and local agencies shall provide the multidisciplinary treatment teams with any information requested in writing by the team as allowable by law or upon receipt of a certified copy of the circuit court's order directing said agencies to release information in its possession relating to the child. The team shall assure that all information received and developed in connection with the provisions of this article remain confidential. For purposes of this section, the term "confidential" shall be construed in accordance with the provisions of section one, article seven of this chapter.

CHAPTER 190

(Com. Sub. for H. B. 2135—By Delegates Amores, Hunt, Thompson, Seacrist, Tillis, Faircloth and Thomas)

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

AN ACT to amend and reenact section one, article seven, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to confidentiality of juvenile records.

Be it enacted by the Legislature of West Virginia:

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

§49-7-1. Confidentiality of records.

(a) Except as otherwise provided in this chapter, all records and information concerning a child or juvenile
which are maintained by the state department, as defined in section four, article one of this chapter, a child agency or facility, court or law-enforcement agency shall be kept confidential and shall not be released or disclosed to anyone, including any federal or state agency.

(b) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning a child or juvenile, except adoption records, juvenile court records and records disclosing the identity of a person making a complaint of child abuse or neglect shall be made available:

(1) Where otherwise authorized by this chapter;

(2) To:

(A) The child;

(B) A parent whose parental rights have not been terminated; or

(C) The attorney of the child or parent;

(3) With the written consent of the child or of someone authorized to act on the child's behalf; or

(4) Pursuant to a subpoena or order of a court of record; however, a subpoena for such records may be quashed by a court for good cause.

(c) In addition to those persons or entities to whom information may be disclosed under subsection (b) of this section, information related to child abuse or neglect proceedings, except information relating to the identity of the person reporting or making a complaint of child abuse or neglect, shall be made available, upon request, to:

(1) Federal, state or local government entities, or any agent of such entities, including law-enforcement agencies and prosecuting attorneys, having a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect;

(2) The child fatality review team;

(3) Child abuse citizen review panels;
(4) Multidisciplinary investigative and treatment teams; or

(5) A grand jury, circuit court or family law master, upon a finding that information in the records is necessary for the determination of an issue before the grand jury, circuit court or family law master.

(d) In the event of a child fatality or near fatality due to child abuse and neglect, information relating to such fatality or near fatality shall be made public by the department of health and human resources and to the entities described in subsection (c) of this section, all under the circumstances described in that subsection: Provided, That information released by the department of health and human resources pursuant to this subsection shall not include the identity of a person reporting or making a complaint of child abuse or neglect. For purposes of this subsection, “near fatality” means any medical condition of the child which is certified by the attending physician to be life-threatening.

(e) Except in juvenile proceedings which are transferred to criminal proceedings, law-enforcement records and files concerning a child or juvenile shall be kept separate from the records and files of adults and not included within the court files. Law-enforcement records and files concerning a child or juvenile shall only be open to inspection pursuant to the provisions of sections seventeen and eighteen, article five of this chapter.

(f) Any person who willfully violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in the county or regional jail for not more than six months, or be both fined and confined. A person convicted of violating the provisions of this section shall also be liable for damages in the amount of three hundred dollars or actual damages, whichever is greater.

(g) Notwithstanding the provisions of this section, or any other provision of this code to the contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious crime shall be made available to the public.
AN ACT to amend and reenact section seventeen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article five-e, chapter forty-nine of said code by adding thereto a new section, designated section seven, all relating to the provision of education opportunities to juveniles in secure predispositional detention centers; providing that the state department of education is responsible for providing education opportunities to such juveniles; and providing seniority rights to certain education employees working at the secure predispositional detention centers.

Be it enacted by the Legislature of West Virginia:

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

Chapter 18A. School Personnel.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-17. Health and other facility employee salaries.

1 (a) The minimum salary scale for professional personnel and service personnel employed by the state department of education to provide education and support services to residents of state department of health and
human resources facilities, corrections facilities providing
services to juvenile and youthful offenders and in the West
Virginia schools for the deaf and the blind is the same as
set forth in sections two, three and eight-a of this article.
Additionally, those personnel shall receive the equivalent
of salary supplements paid to professional and service
personnel employed by the county board of education in
the county wherein each facility is located, as set forth in
sections five-a and five-b of this article. Professional
personnel and service personnel in these facilities who
earn advanced classification of training after the effective
date of this section shall be paid the advanced salary from
the date the classification of training is earned. The
professional personnel shall be certified, licensed or
trained, and shall meet other eligibility classifications as
may be required by the provisions of this chapter and by
state board regulations for comparable instructional
personnel who are employed by county boards of
education. The professional personnel shall be paid at the
equivalent rate of pay of teachers as set forth in section
two of this article, but outside the public support plan, plus
the equivalent of the salary supplement paid to teachers
employed by the county board of education in the county
in which each facility is located, as set forth in section
five-a of this article.

(b) Professional personnel employed by the
department to provide educational service to residents in
state department of health and human resources facilities,
corrections facilities providing services to juvenile and
youthful offenders or in the West Virginia schools for the
deaf and the blind shall be afforded all the rights,
privileges and benefits established for the professional
personnel under this article: Provided, That the benefits
shall apply only within the facility at which the
professional personnel are employed: Provided, however,
That benefits shall exclude salaries unless explicitly
provided for under this or other sections of this article:
Provided further, That seniority for the professional
personnel shall be determined on the basis of the length of
time that the employee has been professionally employed
at the facility, regardless of which state agency was the actual employer.

(c) Nothing contained in this section shall be construed to mean that professional personnel and service personnel employed by the department of education to provide educational and support services to residents in state department of health and human resources facilities, corrections facilities providing services to juvenile and youthful offenders and the West Virginia schools for the deaf and the blind are other than state employees.

(d) (1) Notwithstanding any other provision of this section to the contrary, professional and service personnel employed in an educational facility operated by the West Virginia department of education shall accrue seniority at that facility on the basis of the length of time the employee has been employed at the facility. Any professional or service personnel whose employment at the facility was preceded immediately by employment with the county board previously providing education services at the facility or whose employment contract was with the county board previously providing education services at the facility: (A) Shall retain any seniority accrued during employment by the county board; (B) shall accrue seniority as a regular employee with the county board during employment at the facility; (C) shall attain continuing contract status in accordance with section two, article two, chapter eighteen-a of this code with both the county and the facility if the sum of the years employed by the county and the facility equals the statutory number required for continuing contract status; and (D) shall retain and continue to accrue county and facility seniority in the event of reemployment by the county as a result of direct transfer from the facility or recall from the preferred list.

(2) Reductions in work force in the facility or employment by the facility or county board shall be made in accordance with the provisions of sections seven-a and eight-b, article four, chapter eighteen-a of this code: Provided, That only years of employment within the facility shall be considered for purposes of reduction in force within the facility.
(3) The seniority conferred in this section applies retroactively to all affected professional and service personnel, but the rights incidental to the seniority shall commence as of the effective date of this section.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-7. Provision of educational services for juveniles placed in predispositional detention facilities.

(a) The state board of education is authorized to provide for adequate and appropriate education opportunities for juveniles placed in secure predispositional detention centers operated by or under contract with the division of juvenile services.

(b) Subject to appropriations by the Legislature, the state board is authorized: (1) To provide education programs and services for juveniles on the grounds of secure predispositional detention centers; (2) to hire classroom teachers and other school personnel necessary to provide adequate and appropriate education opportunities to these juveniles; and (3) to provide education services for the detained juveniles on a twelve-month basis.

(c) The division of juvenile services shall cooperate with the state board and the state superintendent in the establishment and maintenance of education programs authorized under this section. Subject to appropriations by the Legislature, the division of juvenile services shall provide, or cause to be provided, adequate space and facilities for the education programs. The state board may not be required to construct, improve or maintain any building, other improvement to real estate or fixtures attached thereto at any secure predispositional detention center for the purpose of establishing and maintaining an education program.

(d) The state board may develop and approve rules in accordance with article three-a, chapter twenty-nine-a of this code for the education of juveniles in secure predispositional detention centers.
AN ACT to repeal chapter one hundred eighty-five of the Acts of the Legislature, one thousand nine hundred fifty-five; and to amend and reenact section four, article five-e, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the Kanawha home for children; transferring all responsibility for the home to the division of juvenile services within the department of military affairs and public safety; authorizing the division of juvenile services to enter into a lease agreement with the county commission of the county of Kanawha for the home; providing for the home to be operated, managed and maintained as a secure predispositional detention facility for certain juveniles under the control of the division of juvenile services; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred eighty-five of the Acts of the West Virginia Legislature, one thousand nine hundred fifty-five, be repealed; and that section four, article five-e, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-4. Transfer of Kanawha home for children to the division of juvenile services.

1 (a) "Kanawha home for children" means the county home for the detention of juvenile delinquents or children charged with delinquency as established by the county commission of Kanawha County pursuant to the provisions of a local bill, House Bill No. 141, enacted by the Legislature on the fourteenth day of February, one
thousand nine hundred fifty-five, as set forth in the Acts of the West Virginia Legislature, Regular Session, 1955, ch. 185.

(b) After the effective date of the amendment to this section, enacted during the regular session of the Legislature, one thousand nine hundred ninety-eight, the division of juvenile services shall assume all responsibility for funding, operating, maintaining, administering and managing the Kanawha home for children. To this end, the director of the division of juvenile services may enter into a lease agreement with the Kanawha county commission, for the premises and all improvements, appurtenances, equipment and furnishings on the premises constituting the Kanawha home for children, and may operate, manage and maintain the facility as one of the several centers under the supervision and control of the division which provide secure predispositional detention of juveniles, including juveniles who have been transferred to adult criminal jurisdiction under section ten, article five of this chapter and juveniles who are awaiting transfer to a juvenile corrections facility.

CHAPTER 193

(S. B. 722—By Senators Wooton, Craigo, Jackson, Walker, White, Buckalew and Scott)

[Passed March 10, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-e, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to authorizing the director of the division of juvenile services, or his or her designee, to consent to medical treatment of any juvenile in the director’s custody.

Be it enacted by the Legislature of West Virginia:

That article five-e, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section six, to read as follows:
ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-6. Director authorized to consent to treatment of juveniles in custody of the division.

1 Notwithstanding any other provision of law to the contrary, the director, or his or her designee, is hereby authorized to consent to the medical treatment of any juvenile in the legal or physical custody of the director or the division.

CHAPTER 194

(Com. Sub. for S. B. 31—By Senators White, Hunter, Walker, Jackson, Deem, Plymale and Wooton)

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

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 five-e, relating to requiring equal pay for equal work for state employees; setting forth legislative findings and purpose; defining terms; prohibiting the state from discriminating on the basis of gender in payment of wages for work of comparable character; creating right of action; establishing the equal pay commission; providing for the appointment of members and the expiration of commission; setting forth duties of the commission; authorizing commission to promulgate legislative rules; and establishing operative date.

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 five-e, to read as follows:

ARTICLE 5E. EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES.
§21-5E-1. Legislative findings and purpose.
§21-5E-3. Discrimination between sexes in payment of wages for work of comparable character prohibited.
§21-5E-4. Employee’s right of action against employer.
§21-5E-5. Establishment of the equal pay commission; appointment of members; and expiration date.
§21-5E-6. Commission’s duties; promulgation of rules.

§21-5E-1. Legislative findings and purpose.

(a) The Legislature hereby finds and declares that it is the public policy of this state to provide all citizens equal opportunity for employment without regard to gender and that gender discrimination in hiring and promotion has played a role in maintaining a segregated workforce in this state.

(b) The Legislature hereby further finds and declares that the existence of wage differentials between equivalent jobs segregated by gender depresses wages and living standards, prevents the maximum utilization of the available labor resources and constitutes an unfair method of competition.

(c) It is therefore the purpose of this article to provide state employees equal pay for work of comparable character, regardless of gender, to create a commission to study both the methodology and funding for the implementation of a gender discrimination prohibition and to establish a procedure to remedy complaints of the failure to provide equal pay for work of comparable character to state employees.


For the purposes of this article:

(1) "Employer" means the state of West Virginia;

(2) "Employee" means any person hired for permanent employment, either full or part-time, or hired for temporary employment for more than six consecutive months, by any department, agency, commission or board of the state created by an act of the Legislature, except any
person employed by the university of West Virginia board of trustees, the board of directors of the state college system or by any state institution of higher education, or a member of the state police, an employee of any constitutional officer who is not classified under the provisions of article six, chapter twenty-nine of this code and any employee of the Legislature. The definition of "employee" does not include any patient or inmate employed in a state institution;

(3) "Wages" means all compensation for performance of service by an employee for an employer, whether paid by the employer or another person, including the cash value of all compensation paid in any medium other than cash;

(4) "Rate" with reference to wages means the basis of compensation for services by an employee for an employer and includes compensation based on the time spent in the performance of those services, or on the number of operations accomplished, or on the quantity produced or handled;

(5) "Unpaid wages" means the difference between the wages actually paid to an employee and the wages required to be paid to an employee pursuant to section three of this article;

(6) "Work of comparable character" means work that may be dissimilar, but whose requirements are comparable or equivalent when viewed as a composite of levels of skill, effort, responsibility and working conditions; and

(7) "Wage gap" means the difference between the median annual earnings of men and women.

§21-5E-3. Discrimination between sexes in payment of wages for work of comparable character prohibited.

(a) No employer shall:

(1) In any manner discriminate between the sexes in the payment of wages for work of comparable character, the performance of which requires comparable skills; or

(2) Pay wages to any employee at a rate less than the
rate other employees of the opposite sex are paid for work
of comparable character, the performance of which
requires comparable skills.

(b) Nothing in subsection (a) of this section prohibits
the payment of different wages to employees where the
payment is made pursuant to:

(1) A bona fide seniority system;

(2) A merit system; or

(3) A system that measures earnings by quantity or
quality of production.

(c) No employee shall be reduced in wages in order to
eliminate an existing, past or future wage discrimination or
to effectuate wage equalization.

(d) No employer shall in any manner discriminate in
the payment of wages to any employee because the
employee has filed a complaint in a proceeding under this
article, or has testified, or is about to testify, or because the
employer believes that the employee may testify, in any
investigation or proceeding pursuant to this article.

(e) Except as otherwise provided in subsection (d),
section six of this article, the provisions of this section
shall not become effective until the Legislature approves
for promulgation the rules proposed by the equal pay
commission under the provisions of subsection (c) of said
section.

§21-5E-4. Employee's right of action against employer.

(a) Any employee whose compensation is at a rate that
is in violation of section three of this article has the right
to file a grievance pursuant to the provisions of article six-
a, chapter twenty-nine of this code.

(b) No agreement for compensation at a rate of less
than the rate to which the employee is entitled under this
article is a defense to any action under this article.

(c) The rights and procedures provided under this
section shall be subject to the provisions of the rules
promulgated by the equal pay commission in accordance with section six of this article.

(d) Except as otherwise provided in subsection (d), section six of this article, the provisions of this section shall not become effective until the Legislature approves for promulgation the rules proposed by the equal pay commission under the provisions of subsection (c) of said section.

§21-5E-5. Establishment of the equal pay commission; appointment of members; and expiration date.

(a) The equal pay commission is hereby established. The commission shall be composed of seven members, as follows:

(1) Two members of the House of Delegates, appointed by the speaker;

(2) Two members of the Senate, appointed by the president; and

(3) Three state employee representatives, including one labor union member representing state employees, as agreed to by the speaker and president; the director of the women's commission, or his or her designee; and the director of the office of equal employment opportunity, or his or her designee.

(b) The commission shall seek input from and invite the commissioner of labor or his or her designee and the director of the personnel division of the department of administration or his or her designee to attend meetings of the commission.

(c) One of the members of the Senate and one of the members of the House of Delegates, as designated by the president and the speaker respectively, shall serve as cochair of the commission.

(d) The members of the House of Delegates, the members of the Senate and the state employee representative members initially appointed shall serve until the thirty-first day of December, one thousand nine hundred ninety-eight. Those members shall thereafter be
appointed to serve two-year terms beginning the first day of January, one thousand nine hundred ninety-nine.

(e) Any member whose term has expired shall serve until his or her successor has been duly appointed. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member shall be eligible for reappointment.

(f) Any vacancies occurring in the membership of the commission shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the commission.

(g) The commission expires on the first day of July, two thousand three.


(a) The equal pay commission shall study both the methodology and funding for the implementation of a gender discrimination prohibition and shall prepare reports for submission to the Legislature which include:

(1) An analysis of state job descriptions which measures the inherent skill, effort, responsibility and working conditions of various jobs and classifications; and

(2) A review of similar efforts to eliminate gender-based wage differentials implemented by other governmental entities in this and other states.

(b) The commission shall submit an initial report with recommendations for implementation of a gender discrimination prohibition to the joint committee on government and finance not later than the first day of July, two thousand, and shall submit status reports annually thereafter.

(c) Based upon the findings and recommendations in its report, the commission may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to implement the provisions of this article.
22 (d) Notwithstanding any other provision of this article, if no legislative rules are approved for promulgation by the Legislature pursuant to this article prior to the first day of July, two thousand one, then the provisions of sections three and four of this article shall become effective on such date.

CHAPTER 195

(Com. Sub. for H. B. 4034—By Delegates Linch, Hunt, Mahan, Staton, Tomblin, Riggs and Thomas)

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

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-five, relating to the regulation of lead abatement, assessment, and inspection activities and establishing licensing requirements for lead inspectors, risk assessors, supervisors, designers, contractors and workers; establishing legislative findings, providing definitions; establishing the powers and duties of the director of the division of health; authorizing the establishment of fees; creating lead abatement, inspector and assessor license requirements; providing license application issuance, denial and revocation procedures; providing lead contractor’s duties and responsibilities; providing exemptions from the notification and licensure requirements; providing for notification of elevated blood-lead levels; requiring reporting of lead abatement projects; establishing accreditation requirements for lead abatement instructors and training programs; providing for suspension or revocations of licenses and procedures therefore; establishing a special revenue account to administer the program; providing civil penalties and fees for violation of the certain provisions of this article; and creating a misdemeanor offense for violations of this article.

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

ARTICLE 35. LEAD ABATEMENT.

§16-35-1. Short title.
§16-35-2. Legislative findings.
§16-35-4. Powers and duties of the director.
§16-35-5. Lead discipline license required.
§16-35-6. Lead abatement contractor’s duties.
§16-35-7. Exemptions from notification and licensure.
§16-35-8. Notification of elevated blood-lead levels required.
§16-35-10. Accreditation of lead abatement training courses.
§16-35-11. Suspension or revocation of license; violations; hearings.
§16-35-12. Special revenue account.

§16-35-1. Short title.

This article may be cited as the West Virginia “Lead Abatement Act.”

§16-35-2. Legislative findings.

(a) The Legislature hereby finds and declares that:

(1) Lead is a toxic substance and harmful to the citizens of this state;

(2) Lead poisoning is a devastating health hazard, particularly to young children, and results in serious long-term health effects;

(3) Children exposed to even low levels of lead exhibit learning disabilities, decreased growth, hyperactivity, impaired hearing, and neurological damage;

(4) Workers and others who come into contact with lead when removing or remediating lead based materials are also at risk of lead poisoning;
(5) Exposure occurs from contact with materials containing lead, including, but not limited to, lead-based paint chips, lead dust, and lead-contaminated soil;

(6) The most significant source of exposure is lead-based paint, particularly in houses built prior to one thousand nine hundred seventy-eight;

(7) The danger posed by lead-based paint hazards can be controlled by abatement or interim controls that limit exposure to lead-based paint hazards; and

(8) The public health and safety of this state will be better protected when all persons who handle lead-contaminated substances are thoroughly trained and knowledgeable regarding safe methods of handling and disposing of such materials.

(b) Therefore, it is the purpose of this article to protect the health of the children of the state and those who undertake remediation of the lead health hazard by establishing guidelines for the assessment and removal of lead hazards from homes and other buildings where children are frequently present and exposed to the danger of lead poisoning.


(a) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil;

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures;

(3) Projects for which there is a written contract to permanently eliminate lead-based paint hazards from a dwelling unit or child-occupied building;
Projects involving the permanent elimination of lead-based paint or lead-contaminated soil; and

Projects involving the permanent elimination of lead-based paint hazards that are conducted in response to federal, state or local abatement orders.

(b) "Child lead poisoning" means that the amount of lead circulating in the blood stream of children is at or exceeds the level defined by the United States center for disease control.

(c) "Child-occupied building" means any of the following structures built before one thousand nine hundred seventy-eight: public or private buildings, or portions thereof, or a room in a residential dwelling or unit, any of which structures are currently visited, or intended to be visited, three hours a day twice a week or more often by a child age six or under, including, but not limited to, day care centers, kindergarten classrooms, schools, camps and recreational facilities.

(d) "Contained work area" means a designated room or rooms, spaces, or other areas, including a decontamination structure, where lead abatement activities are performed, separated from the uncontaminated environment in accordance with OSHA standards.

(e) "Discipline" means any one of the following: lead abatement contractor, lead abatement supervisor, lead inspector, lead risk assessor, lead abatement worker, or lead abatement project designer.

(f) "Director" means the director of the West Virginia division of health or his or her representative.

(g) "Elevated blood-lead level" means a concentration of lead in the blood stream as defined by the United States center for disease control.

(h) "Industrial facility" means any factory, mill, plant, refinery, warehouse, building or complex of buildings or other industrial structures including the land on which it is located.
(i) "Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint or lead hazards and the provision of a report explaining the results of the investigation.

(j) "Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(k) "Lead" means elemental lead and all inorganic and organic lead compounds.

(l) "Lead abatement contractor" means any person who contracts to conduct any lead abatement activity.

(m) "Lead abatement designer" means an individual who designs lead abatement projects.

(n) "Lead abatement project" means an activity in target housing or child-occupied buildings intended to permanently remove or encapsulate lead-based paint, lead-containing dust, lead-containing soil or other lead-containing materials and decontamination of an area, but does not include interim controls which do not permanently eliminate lead hazards.

(o) "Lead abatement worker" means an individual who is employed by a lead abatement contractor for a lead abatement project.

(p) "Lead-based paint" means paint or other surface coatings that contains lead at a level defined by the director by legislative rule as provided in section four of this article.

(q) "Lead hazard" means any condition that may result in exposure to lead including, but not limited to, lead-contaminated dust, lead-contaminated soil, or lead-based paint present on accessible surfaces, friction surfaces,
impact surfaces or other lead sources that could result in adverse effects on human health.

(r) "Lead inspector" means an individual who conducts inspections to determine and report the existence, nature, severity and location of lead-based paint or lead hazards.

(s) "Lead risk assessment" means an investigation of the potential risk to human health or the environment posed by lead abatement projects or lead hazards, including, but not limited to, considerations of toxicity, concentration, form, mobility and potential of exposure.

(t) "Lead risk assessor" means an individual who is responsible for or conducts lead risk assessments and establishes priorities for a lead abatement project.

(u) "Lead supervisor" means a person employed by a lead abatement contractor to supervise workers on a lead abatement project.

(v) "OSHA" means the United States Occupational Safety and Health Administration.

(w) "Owner-occupied housing" means a detached single unit residence owned by the individual living within the unit.

(x) "Person" means any individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit, or instrumentality of federal, state or local government.

(y) "Target housing" means residential structures built prior to one thousand nine hundred seventy-eight that could contain lead-based paint or residential structures that are confirmed by inspection to contain lead-based paint.

§16-35-4. Powers and duties of the director.

1 The director shall administer and enforce this article, and has the following powers and duties:

(1) To propose rules for legislative approval in accordance with the provisions of article three, chapter
twenty-nine-a of this code, necessary to carry out the requirements of this article, including, but not limited to, abatement personnel training guidelines, procedures for the issuance and renewal of lead discipline licenses, establishment of all fees necessary to pay for the implementation and enforcement of this program, and the regulation of lead abatement projects;

(2) To issue, suspend and revoke lead discipline licenses, regulate lead abatement projects, and assess fees and civil penalties pursuant to this article and the rules promulgated hereunder;

(3) To promulgate any emergency rules necessary to gain federal approval of the state lead abatement program in accordance with section three, article fifteen, chapter twenty-nine-a of this code;

(4) To accredit training providers, training courses, examiners, examinations, and grading systems developed for licensing disciplines pursuant to this article;

(5) To order reduction or abatement of identified lead hazards when they may result in child lead poisoning; and

(6) To develop a public awareness campaign on the dangers of lead poisoning and to promote public education of the requirements of this article.

§16-35-5. Lead discipline license required.

(a) It is unlawful for any individual to carry out any lead-risk assessment, inspection or abatement activity for which he or she does not hold an appropriate lead discipline license.

(b) To qualify for a lead discipline license an applicant shall:

(1) Satisfactorily complete a state-accredited training course for a lead discipline and receive a passing grade on an examination administered by a state-accredited examiner; and

(2) Meet the requirements set forth by the director in legislative rule.
(c) Applicants for a lead discipline license shall submit to the division an application and certificate that show satisfactory completion of a training course for a lead discipline and pay the applicable fee to the division.

(d) The director may deny a license if the applicant fails to comply with the application procedures or to satisfy the licensure criteria or to pay the fee. The director shall provide written notice of such denial and an opportunity for reapplication.

(e) The director may grant lead discipline licenses to individuals licensed or certified in another jurisdiction if its requirements are at least as stringent as West Virginia’s requirements.

§16-35-6. Lead abatement contractor’s duties.

A lead abatement contractor shall:

(1) Ensure that each of his or her employees or agents who will come in contact with lead or who will be responsible for a lead abatement project is licensed as required by this article;

(2) Ensure that each lead abatement project is supervised by a licensed lead abatement supervisor;

(3) Maintain sampling records for each contained work area of a lead abatement project until it meets the minimum clearance standards established by the director before allowing reoccupancy; and

(4) Keep a record of each lead abatement project and make the record available to the division and the divisions of commerce, labor, and environmental protection upon request. Records required by this subsection shall be kept for at least three years and shall include at a minimum:

(A) The name, address and license number of the individual who supervised the lead abatement project and each employee or agent who worked on the project;

(B) The location and design of the project, if applicable, and the amount of lead-containing material that was removed;
23 (C) The starting and completion date of each project
24 and a summary of the procedures that were used to
25 comply with all federal and state standards; and
26
27 (D) The name and address of each disposal site where
28 lead-contaminated waste was deposited and the disposal
29 site receipts.

§16-35-7. Exemptions from notification and licensure.

1 (a) Homeowners performing lead abatement or
2 interim abatement controls on their single unit owner-
3 occupied housing are exempt from the requirements of
4 this article.

5 (b) Abatement does not include renovation,
6 remodeling, landscaping or other activities, when the
7 purpose of such activities are not intended to permanently
8 eliminate lead-based paint hazards, but, instead, are
9 designed to repair, restore or remodel a given structure or
10 dwelling, even though these activities may incidentally
11 result in a reduction or elimination of lead-based paint
12 hazards. Abatement also does not include interim
13 controls, operations and maintenance activities, or other
14 measures and activities designed to temporarily, but not
15 permanently reduce lead-based paint hazards.

16 (c) The provisions of this article do not apply to lead-
17 hazard reduction activities or to persons performing such
18 activities when such activities are performed wholly within
19 or on an industrial facility and are performed by persons
20 who are subject to the training requirements of OSHA:
21 Provided, That the provisions of this article do apply to
22 any child-occupied building or area such as a child day
23 care center located at an industrial facility.

§16-35-8. Notification of elevated blood-lead levels required.

1 The director may, by legislative rule, establish
2 requirements for laboratories and lead abatement
3 contractors for mandatory reporting of any persons
4 medically confirmed elevated blood-lead level.

Each owner or other person responsible for the operation of a building, facility, residence or structure where a lead abatement project is to occur shall notify the division in the time specified by the director prior to commencement of each lead abatement project, and comply with all applicable state and federal regulatory requirements for a lead abatement project.

§16-35-10. Accreditation of lead abatement training courses.

(a) The director shall propose legislative rules establishing criteria and procedures for certification of training course curricula and examinations that shall ensure the qualifications of applications for licensure or certification as required in this article. To qualify for certification, a training course shall contain a combination of class instruction, practical application, and public health procedures of a length and content that, to the satisfaction of the director, ensure adequate training for the level and type of responsibility for each named certification category.

(b) All courses certified under this section shall be conducted by instructors whose training and experience is determined by the director to be appropriate for the subject matter being taught and the level of licensure category for which the course is designed. An approved initial course for any category of person engaged in lead-hazard reduction activities shall include all of the following, but not be limited to:

(1) Worker health and safety instruction no less stringent than required under applicable federal law and regulations;

(2) Instruction in the importance of safe work practices in promoting public health, and the importance of proper decontamination procedures in eliminating the risk of contaminating individual workers' home environment; and

(3) Instruction in the workers' rights and obligations under federal and state law.
(c) In addition to developing criteria for classroom instruction pursuant to this section, the director shall develop minimum criteria for hands-on training or on-site instruction. The criteria for certification of training courses shall include minimum trainee competency and proficiency requirements, evidenced through both written examinations and minimum skills demonstration examinations. Upon successful completion of an approved retraining course, the trainee shall be issued a certificate by the director or the accredited training provider under the authority of the director.

(d) All training courses must be recertified annually by the director. The director may establish by legislative rule, reasonable application fees for the accreditation of training courses and discipline examiners, and establish criteria for renewals of training course certification.

§16-35-11. Suspension or revocation of license; violations; hearings.

(a) The director may suspend or revoke a lead abatement discipline license if the licensee:

(1) Fraudulently or deceptively obtains or attempts to obtain a license or knowingly aids another in such fraud or deception;

(2) Fails at any time to meet the qualifications for the license or to comply with the requirements of this article or any applicable legislative rules;

(3) Fails to comply with applicable federal or state standards for lead abatement projects;

(4) Employs or permits an individual not licensed as required by this article to work on a lead abatement project; or

(5) Falsifies or attempts to falsify any document related to a lead abatement project.

(b) The director may investigate all suspected violations of this article or any rule promulgated hereunder. Upon the finding of a violation in connection with any lead abatement project, the director shall issue a
cease and desist order directing that all work on the project is halted forthwith or a notice of violation directing compliance with this article or any rule promulgated hereunder. Posting of cease and desist orders or notice of violations on project sites shall constitute notice of its contents to the property owner and all persons working on the lead abatement project. The director may also deliver a copy of such order or notice by certified mail, return receipt requested, to the property owner and to the contractor.

(c) Hearings regarding violations of this article and any rules promulgated hereunder shall be conducted in accordance with the division's rules of procedure for contested case hearings and declaratory rulings and the administrative procedures act of chapter twenty-nine-a of this code.

§16-35-12. Special revenue account.

The director shall deposit all moneys collected as fees and civil penalties under the provisions of this article a special account in the state treasury to be known as the "lead abatement account". Expenditures from said fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, expenditures are authorized from collections rather than pursuant to an appropriation of the Legislature.


(a) The director may impose a civil penalty of not less than two hundred fifty dollars and not more than five thousand dollars for each separate violation of this article or any rules promulgated hereunder. In any case where a person fails to halt work following the issuance of a cease and desist order by the director, the violation shall be
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presumed to be willful and the person shall be assessed a
civil penalty by the director of not less than ten thousand
dollars nor more than twenty-five thousand dollars for an
initial violation and not less than twenty-five thousand
dollars nor more than fifty thousand dollars for each
subsequent violation. Failure to pay a civil penalty
imposed by the director within thirty days of receipt of
notification constitutes a separate violation.

(b) Notwithstanding any other provision of this code,
any person who violates any provision of this article or
any rule promulgated hereunder is guilty of a
misdemeanor and, upon conviction thereof, shall be fined
not less than two hundred fifty dollars, nor more than fifty
thousand dollars, or confined in the county or regional jail
not more than one year, or both fined and confined.

CHAPTER 196

(Com. Sub. for H. B. 4144—By Delegates Hunt, Linch, Compton, Jenkins,
Faircloth and Riggs)

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

AN ACT to amend and reenact section one, article one, chapter
sixty-four of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; to amend and reenact section
one, article two of said chapter; to further amend said article by
adding thereto a new section, designated section two, all relating
generally to the promulgation of administrative rules by the
various executive or administrative agencies and the procedures
relating thereto; continuing rules previously promulgated by
state agencies; legislative mandate or authorization for the
promulgation of certain legislative rules; authorizing certain of
the agencies to promulgate legislative rules with various
modifications presented to and recommended by the legislative
rule-making review committee; authorizing certain agencies to
promulgate legislative rules as amended by the Legislature;
Authorizing department of administration to promulgate legislative rules relating to purchasing card program; and authorizing division of personnel to promulgate legislative rules relating to administrative rules.

Be it enacted by the Legislature of West Virginia:

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

Article


2. Authorization for Department of Administration to Promulgate Legislative Rules.

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

Under the provisions of article three, chapter twenty-nine-a of the code of West Virginia, the Legislature expressly authorizes the promulgation of the rules described in articles two through eleven of this chapter, subject only to the limitations set forth with respect to each such rule in the section or sections of this chapter authorizing its promulgation. The Legislature declares that all rules now or hereafter authorized under articles two through eleven of this chapter are within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret. Legislative rules promulgated pursuant to the provisions of articles one through eleven of this chapter in effect at the effective date of this section shall continue in full force and effect until reauthorized in this chapter by legislative enactment, or until amended by emergency rule pursuant to the provisions of article three, chapter twenty-nine-a of this code.
All proposed legislative rules for which bills of authorization have been introduced in the Legislature not specifically authorized under articles two through eleven of this chapter are disapproved by the Legislature.

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Department of administration and the auditor.

§64-2-2. Division of personnel.

§64-2-1. Department of administration and the auditor.

The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, under the authority of section ten-a, article three, chapter twelve of this code, modified by the department of administration and the auditor to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of September, one thousand nine hundred ninety-seven, relating to the department of administration and the auditor (state purchasing card program, 148 CSR 7), is authorized.

§64-2-2. Division of personnel.

The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, under the authority of section ten, article six, chapter twenty-nine, of this code, modified by the division of personnel to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of January, one thousand nine hundred ninety-eight, relating to the division of personnel (administrative rule of the West Virginia division of personnel, 143 CSR 1), is authorized, with the following amendment:

"On page 35, Subsection 12.6, by following the words 'wage or salary' by inserting the following: 'or is paid temporary total disability under the provisions of section one, article four, chapter twenty-three of this code,'."
CHAPTER 197

(Com. Sub. for H. B. 4136—By Delegates Hunt, Linch, Compton, Jenkins, Faircloth and Riggs)

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

AN ACT to amend and reenact section one, article three, chapter sixty-four 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 two, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing division of environmental protection to promulgate legislative rules relating to acid rain provisions and permits; authorizing division of environmental protection to promulgate legislative rules relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 63; authorizing division of environmental protection to promulgate legislative rules relating to hazardous waste management; authorizing division of environmental protection to promulgate legislative rules relating to requirements governing water quality standards; authorizing division of environmental protection to promulgate legislative rules relating to prevention and control particulate air pollution from manufacturing process operations; authorizing division of environmental protection to promulgate legislative rules relating to prevention and control of emissions from municipal solid waste landfills; authorizing division of environmental protection to promulgate legislative rules relating to emission standards for
hazardous air pollutants pursuant to 40 CFR Part 63; authorizing division of environmental protection to promulgate legislative rules relating to surface mining and reclamation regulations; authorizing environmental quality board to promulgate legislative rules relating to water quality standards; and authorizing environmental quality board to promulgate legislative rules relating to groundwater standards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Division of environmental protection.
§64-3-2. Environmental quality board.

§64-3-1. Division of environmental protection.

(a) The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, authorized under the authority of section seven, article five, chapter twenty-two, of this code, relating to the division of environmental protection (acid rain provisions and permits, 45 CSR 33), is authorized.

(b) The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, authorized under the authority of section seven, article five, chapter twenty-two of this code, relating to the division of environmental protection (emission standards for hazardous air pollutants pursuant to 40 CFR Part 63, 45 CSR 34), is authorized.

(c) The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, authorized under the authority of section six, article eighteen, chapter twenty-two of this code, relating to the division of environmental protection (hazardous waste management, 33 CSR 20), is authorized.
(d) The legislative rule filed in the state register on the fourteenth day of August, one thousand nine hundred ninety-seven, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the division of environmental protection to prevent and control particulate air pollution from manufacturing process operations, 45 CSR 7) is authorized.

(e) The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, authorized under the authority of section four, article five, chapter twenty-two, of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of January, one thousand nine hundred ninety-eight, relating to the division of environmental protection to prevent and control of emissions from municipal solid waste landfills, 45 CSR 23), is authorized.

(f) The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, authorized under the authority of section seven, article one, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of December, one thousand nine hundred ninety-seven, relating to the division of environmental protection to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities, 45 CSR 25), is authorized.

(g) The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, authorized under the authority of section three, article one, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of January, one thousand nine hundred ninety-eight, relating to the division of environmental protection (surface mining and reclamation regulations, 38 CSR 2), is authorized.

§64-3-2. Environmental quality board.
(a) The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, authorized under the authority of section four, article three, chapter twenty-two-b, of this code, modified by the environmental quality board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of January, one thousand nine hundred ninety-eight, relating to the environmental quality board (requirements governing water quality standards, 46 CSR 1), is authorized until the thirtieth day of October, 1999:

Provided, That the environmental quality board shall review, revise and propose, within this statutory deadline, and in accordance with the provisions of chapter twenty-nine-a of this code, emergency and legislative rules to address the interpretive differences regarding the designation of category A waters and analyze the need for distance prohibitors for the policies of public drinking water intake, with the following amendments:

By deleting the strike-throughs in subdivisions 8.22.1 and 8.22.2;

And,

On page fourteen, subsection 7.2.b after the word ‘NOTE:’ by inserting the following:

‘With the exception of section 7.2.c.5 listed herein exceptions do not apply to trout waters nor the requirements of section 3.’

And on page fourteen, after paragraph 7.2.c.4 by inserting a new paragraph 7.2.c.5, to read as follows:

‘For the upper Blackwater River from the mouth of Yellow Creek to a point 5.1 miles upstream, when flow is less than 7Q10, naturally occurring values for Dissolved Oxygen as established by data collected by the dischargers within this reach and reviewed by the Board and Division of Environmental Protection shall be the applicable criteria.’

And,
On page forty-four, by striking out subsection 8.17.1 in its entirety and inserting in lieu thereof a new subsection 8.17.1 to read as follows:

"Effluent limitations regarding Mn shall not apply where the applicant certifies the stream or stream segment is not category A water."

(b) The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, authorized under the authority of section four, article three, chapter twenty-two-b, of this code, modified by the environmental quality board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of January, one thousand nine hundred ninety-eight, relating to the environmental quality board (requirements governing groundwater standards, 46 CSR 12), is authorized.

CHAPTER 198

(Com. Sub. for S. B. 305—By Senators Ross, Anderson, Bowman, Macnaughtan, Boley and Buckalew)

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]
modifications presented to and recommended by the legislative rule-making review committee; authorizing the division of health to promulgate a legislative rule relating to asbestos abatement licensing; authorizing division of health to promulgate legislative rules relating to fund for breast and cervical cancer; authorizing division of health to promulgate legislative rules relating to certain clinical laboratory licensure; authorizing division of health to promulgate legislative rules relating to drinking water treatment revolving fund; and authorizing division of health to promulgate legislative rules relating to sewage systems.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. State board of health; division of health.

(a) The legislative rule filed in the state register on the eighteenth day of November, one thousand nine hundred ninety-six, authorized under the authority of section three, article thirty-two, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of December, one thousand nine hundred ninety-seven, relating to the division of health (asbestos abatement licensing, 64 CSR 63), is authorized.

(b) The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, authorized under the authority of section eight, article thirty-three, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of December, one thousand nine hundred ninety-seven, relating to the division of health (breast and cervical
(c) The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, under the authority of section ten, article five-j, chapter sixteen of this code, modified by the director of the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of January, one thousand nine hundred ninety-eight, relating to the division of health (clinical laboratory technician and technologist licensure and certification, 64 CSR 57), is authorized.

(d) The legislative rule filed in the state register on the twenty-second day of December, one thousand nine hundred ninety-seven, authorized under the authority of section two, article thirteen-c, chapter sixteen of this code, relating to the division of health (drinking water treatment revolving fund, 64 CSR 49), is authorized.

(e) The legislative rule filed in the state register on the fourth day of June, one thousand nine hundred ninety-seven, authorized under the authority of section seven, article one, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of December, one thousand nine hundred ninety-seven, relating to the division of health (sewage systems, 64 CSR 9), is authorized with the following amendment:

On page 7, subsection 5.1. following the sentence which ends "local health department offices." by inserting the following: "Provided, that the director shall issue a permit for the installation of a National Sanitation Foundation Class I home aeration unit to be installed on a single family dwelling unit when no other approved system can be installed."
CHAPTER 199

(Com. Sub. for H. B. 4200—By Delegates Hunt, Linch, Compton, Jenkins, Faircloth and Riggs)

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

AN ACT to amend and reenact section one, article six, chapter sixty-four 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 two and three, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing fire commission to promulgate legislative rules relating to building code; authorizing fire commission to promulgate legislative rules relating to fire code; authorizing state police to promulgate legislative rules relating to administration; authorizing state police to promulgate legislative rules relating to cadet selection; authorizing state police to promulgate legislative rules relating to carrying of handguns; authorizing state police to promulgate legislative rules relating to contracted services; authorizing state police to promulgate legislative rules relating to vehicle inspections; authorizing state police to promulgate legislative rules relating to grievance procedures; and authorizing director of veterans' affairs to expend funds for headstones or markers.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 64. LEGISLATIVE RULES.

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-1. Fire commission.

§64-6-2. State police.

§64-6-3. Division of veterans' affairs; headstones or markers.

§64-6-1. Fire commission.

(a) The legislative rule filed in the state register on the twenty-second day of October, one thousand nine hundred ninety-seven, modified by the fire commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of January, one thousand nine hundred ninety-eight, relating to the fire commission (state building code, 87 CSR 4), is authorized.

(b) The legislative rule filed in the state register on the twenty-fourth day of July, one thousand nine hundred ninety-seven, authorized under the authority of section five, article three, chapter twenty-nine, of this code, modified by the fire commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of November, one thousand nine hundred ninety-seven, relating to the fire commission (state fire code, 87 CSR 1), is authorized with the following amendment:

On page one, section §87-1-2, line four, after the word "incident" and the period by striking out the remainder of the section and inserting in lieu thereof the words "Provided, That any fire or explosion involving human fatality, arson or suspected arson shall be reported immediately."

And,

On page one, section §87-1-3, line two, after the word "dwellings" by inserting the words "Provided, That a single unvented fuel fired heater is permitted for
29 demonstration purposes in authorized mercantile
30 applications when installed in accordance with
31 manufacturers recommendations. The single heater must
32 be connected to a permanent source of fuel and shall not
33 be used as a permanent or alternate source of heating.
34 The unvented heater shall be shut off at the end of each
35 business day.”

§64-6-2. State police.
1 (a) The legislative rule filed in the state register on the
2 thirtieth day of July, one thousand nine hundred
3 ninety-seven, under the authority of section twenty-five,
4 article two, chapter fifteen, of this code, modified by the
5 state police to meet the objections of the legislative
6 rule-making review committee and refiled in the state
7 register on the twenty-third day of January, one thousand
8 nine hundred ninety-eight, relating to the state police
9 (administrative regulations, 81 CSR 1), is authorized.

10 (b) The legislative rule filed in the state register on the
11 seventeenth day of July, one thousand nine hundred
12 ninety-seven, under the authority of section twenty-five,
13 article two, chapter fifteen, of this code, modified by the
14 state police to meet the objections of the legislative
15 rule-making review committee and refiled in the state
16 register on the twenty-third day of January, one thousand
17 nine hundred ninety-eight, relating to the state police
18 (cadet selection, 81 CSR 2), is authorized.

19 (c) The legislative rule filed in the state register on the
20 seventeenth day of July, one thousand nine hundred
21 ninety-seven, under the authority of section twenty-five,
22 article two, chapter fifteen, of this code, modified by the
23 state police to meet the objections of the legislative
24 rule-making review committee and refiled in the state
25 register on the twenty-third day of January, one thousand
26 nine hundred ninety-eight, relating to the state police
27 (carrying of handguns by retired or medically discharged
28 members, 81 CSR 6), is authorized.

29 (d) The legislative rule filed in the state register on the
30 seventeenth day of July, one thousand nine hundred
31 ninety-seven, under the authority of section eighteen,
32 article two, chapter fifteen, of this code, modified by the
33 state police to meet the objections of the legislative
34 rule-making review committee and refiled in the state
35 register on the twenty-third day of January, one thousand
nine hundred ninety-eight, relating to the state police (contracted police or security services, 81 CSR 5), is authorized with the following amendment:

"On page 2, Section 3.1, by reinserting the stricken words 'in writing'."

(e) The legislative rule filed in the state register on the seventeenth day of July, one thousand nine hundred ninety-seven, under the authority of section forty-eight, article two, chapter fifteen, of this code, relating to the state police (modified vehicle inspections, 81 CSR 4), is authorized.

(f) The legislative rule filed in the state register on the thirtieth day of July, one thousand nine hundred ninety-seven, under the authority of section six, article two, chapter fifteen, of this code, modified by the state police to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of January, one thousand nine hundred ninety-eight, relating to the state police (police grievance procedure, 81 CSR 8), is authorized.

§64-6-3. Division of veterans' affairs; headstones or markers.

The legislative rule filed in the state register on the tenth day of February, one thousand nine hundred ninety-eight, relating to the division of veterans' affairs (VA headstones or markers, 86 CSR 4) is authorized.

CHAPTER 200

(Com. Sub. for S. B. 317—By Senators Ross, Anderson, Bowman, Macnaughtan, Boley and Buckalew)

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

AN ACT to amend and reenact section one, article eight, chapter sixty-four of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating generally to the
promulgation of administrative rules by the various executive
or administrative agencies and the procedures relating
thereto; legislative mandate or authorization for the
promulgation of certain legislative rules by various executive
and administrative agencies of the state; authorizing certain
of the agencies to promulgate certain legislative rules in the
form that the rules were filed in the state register; authorizing
certain of the agencies to promulgate legislative rules as
amended by the Legislature; authorizing certain of the
agencies to promulgate legislative rules with various
modifications presented to and recommended by the
legislative rule-making review committee; authorizing the
division of motor vehicles to promulgate a legislative rule
relating to the denial, suspension, revocation or nonrenewal
of driving privileges.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANS-
PORTATION TO PROMULGATE LEGISLATIVE
RULES.

§64-8-1. Division of motor vehicles.

1 The legislative rule filed in the state register on the
twenty-fifth day of July, one thousand nine hundred
ninety-seven, authorized under the authority of section
nine, article two, chapter seventeen-a of this code,
modified by the division of motor vehicles to meet the
objections of the legislative rule-making review committee
and refiled in the state register on the second day of
December, one thousand nine hundred ninety-seven,
relating to the division of motor vehicles (denial,
suspension, revocation or nonrenewal of driving privileges,
91 CSR 5), is authorized.
CHAPTER 201

(Com. Sub. for S. B. 329—By Senators Ross, Anderson, Bowman, Macnaughtan, Boley and Buckalew)

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

AN ACT to amend and reenact sections one, two, three, five, seven, nine, eleven and fourteen, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto nine new sections, designated sections twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven and twenty-eight, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; disapproving and not authorizing certain rules; approving an amendment to an existing rule and directing a certain agency to refile the rule with amendment; authorizing commissioner of agriculture to promulgate legislative rules relating to fish processing; authorizing commissioner of agriculture to promulgate legislative rules relating to meat and poultry inspection; authorizing secretary of state to promulgate legislative rules relating to electronic records; authorizing secretary of state to promulgate legislative rules relating to certain filings; authorizing governor's committee on crime, delinquency and correction to promulgate legislative rules relating to basic training academy; authorizing governor's committee on crime, delinquency and correction to promulgate legislative rules relating to
law-enforcement protocol in response to domestic violence; authorizing auditor to promulgate legislative rules relating to transaction fee and rate structure; authorizing auditor to promulgate legislative rules relating to voluntary payroll deductions; authorizing board of dental examiners to promulgate legislative rules relating to professional limited liability companies; authorizing board of medicine to promulgate legislative rules relating to licensing; authorizing board of examiners of psychologists to promulgate legislative rules relating to fees; authorizing board of architects to promulgate legislative rules relating to board; authorizing board of examiners in counseling to promulgate legislative rules relating to licensing; disapproving and not authorizing human rights commission to promulgate legislative rules relating to definition of employer; authorizing board of occupational therapy to promulgate legislative rules relating to board; authorizing board of examiners in optometry to promulgate legislative rules relating to expanded prescriptive authority rules; authorizing board of examiners of radiologic technology to promulgate legislative rules relating to continuing education; authorizing board of examiners of radiologic technology to promulgate legislative rules relating to fees for services; authorizing board of social work examiners to promulgate legislative rules relating to social worker licensure; authorizing soil conservation committee to promulgate legislative rules relating to committee; authorizing treasurer to promulgate legislative rules relating to imprest funds; authorizing treasurer to promulgate legislative rules relating to deposit of moneys by state agencies; authorizing treasurer to promulgate legislative rules relating to payment processing; authorizing treasurer to promulgate legislative rules relating to debt capacity reporting; authorizing treasurer to promulgate legislative rules relating to state debt reporting; authorizing treasurer to promulgate legislative rules relating to selection of state depositories for disbursement of certain accounts; authorizing treasurer to promulgate legislative rules relating to selection of state depositories for receipt accounts; and reauthorizing the board of pharmacy rules relating to rules and regulations of the board of pharmacy.

Be it enacted by the Legislature of West Virginia:
That sections one, two, three, five, seven, nine, eleven and fourteen, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto nine new sections, designated sections twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven and twenty-eight, all to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Commissioner of agriculture.
§64-9-2. Secretary of state.
§64-9-3. Governor's committee on crime, delinquency and correction.
§64-9-5. Auditor.
§64-9-14. Board of examiners of psychologists.
§64-9-20. Board of architects.
§64-9-23. Board of occupational therapy.
§64-9-25. Board of examiners of radiologic technology.
§64-9-26. Board of social work examiners.
§64-9-27. Soil conservation committee.

§64-9-1. Commissioner of agriculture.

1 (a) The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, authorized under the authority of section one, article twenty-nine, chapter nineteen of this code, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of November, one thousand nine hundred ninety-seven,
relating to the commissioner of agriculture (fish
processing, 61 CSR 23A), is authorized.

(b) The legislative rule filed in the state register on the
eighth day of July, one thousand nine hundred
ninety-seven, authorized under the authority of section
three, article two-b, chapter nineteen of this code, modified
by the commissioner of agriculture to meet the objections
of the legislative rule-making review committee and
refiled in the state register on the twenty-third day of
September, one thousand nine hundred ninety-seven,
relating to the commissioner of agriculture (inspection of
meat and poultry, 61 CSR 16), is authorized.

§64-9-2. Secretary of state.

(a) The legislative rule filed in the state register on the
thirty-first day of July, one thousand nine hundred
ninety-seven, authorized under the authority of section
two, article one, chapter fifty-nine of this code, modified
by the secretary of state to meet the objections of the
legislative rule-making review committee and refiled in the
state register on the third day of November, one thousand
nine hundred ninety-seven, relating to the secretary of
state (fees relating to electronic records, 153 CSR 2), is
authorized.

(b) The legislative rule filed in the state register on the
thirty-first day of July, one thousand nine hundred
ninety-seven, authorized under the authority of section
sixty-seven, article one, chapter thirty-one of this code,
modified by the secretary of state to meet the objections
of the legislative rule-making review committee and
refiled in the state register on the fifth day of January, one
thousand nine hundred ninety-eight, relating to the
secretary of state (matters relating to corporations and
other business entity filing, 153 CSR 5), is authorized.

§64-9-3. Governor’s committee on crime, delinquency and
correction.
(a) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-seven, under the authority of section three, article twenty-nine, chapter thirty of this code, modified by the governor's committee on crime, delinquency and correction to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of January, one thousand nine hundred ninety-eight, relating to the governor's committee on crime, delinquency and correction (basic training academy, annual in-service and biennial in-service training standards, 149 CSR 2), is authorized.

(b) The legislative rule filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-seven, authorized under the authority of section nine, article two-a, chapter forty-eight of this code, modified by the governor's committee on crime, delinquency and correction to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of January, one thousand nine hundred ninety-eight, relating to the governor's committee on crime, delinquency and correction (protocol for law enforcement response to domestic violence, 149 CSR 3), is authorized.

§64-9-5. Auditor.

(a) The legislative rule filed in the state register on the sixth day of January, one thousand nine hundred ninety-eight, authorized under the authority of section ten-c, article three, chapter twelve of this code, modified by the auditor to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-eight, relating to the auditor (transaction fee and rate structure, 155 CSR 4), is authorized.
(b) The legislative rule filed in the state register on the
twenty-eighth day of July, one thousand nine hundred
ninety-seven, authorized under the authority of section
thirteen-b, article three, chapter twelve of this code,
modified by the auditor to meet the objections of the
legislative rule-making review committee and refiled in the
state register on the twenty-second day of September, one
thousand nine hundred ninety-seven, relating to the
auditor (standards for voluntary payroll deductions, 155
CSR 3), is authorized.


The legislative rule filed in the state register on the
twenty-eighth day of July, one thousand nine hundred
ninety-seven, authorized under the authority of section
one thousand three hundred four, article thirteen, chapter
thirty-one-b of this code, modified by the board of dental
examiners to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the twenty-first day of November, one
thousand nine hundred ninety-seven, relating to the board
of dental examiners (formation and approval of
professional limited liability companies, 5 CSR 2), is
authorized.


The legislative rule filed in the state register on the
sixteenth day of July, one thousand nine hundred
ninety-seven, authorized under the authority of section
sixteen, article three, chapter thirty of this code, modified
by the board of medicine to meet the objections of the
legislative rule-making review committee and refiled in the
state register on the seventh day of November, one
thousand nine hundred ninety-seven, relating to the board
of medicine (licensing, disciplinary and complaint
procedures, continuing education and physician assistants,
11 CSR 1B), is authorized with the following amendment:
On page five, by striking out all of section 2.6.1 and the first line of section 2.6.2 and inserting in lieu thereof the following language:

2.6.1. A supervising physician may not supervise more than two (2) physician assistants at any one time, except that a physician may supervise up to four (4) hospital employed physician assistants.

2.6.2. A supervising physician may also serve as an alternate supervising physician in the absence of another supervising physician. The supervising physician is legally responsible.


The legislative rule relating to the board of pharmacy (rules and regulations of the board of pharmacy, 15 CSR 1), effective the fourteenth day of June, one thousand nine hundred ninety-three, is reauthorized and shall be refilled by the board of pharmacy, with only the following amendment:

Page 2, Subsection 2.9, is amended by adding at the end of the subsection, the following sentence: 'The terms Pharmacy, Drug Store or Apothecary do not include a free clinic or a physician’s office that dispenses medicines for free.'

§64-9-14. Board of examiners of psychologists.

The legislative rule filed in the state register on the twenty-fifth day of July, one thousand nine hundred ninety-seven, authorized under the authority of section six, article twenty-one, chapter thirty of this code, modified by the board of examiners of psychologists to meet the objections of the legislative rule-making review committee and refilled in the state register on the twenty-third day of January, one thousand nine hundred ninety-eight, relating to the board of examiners of psychologists (fees, 17 CSR 1), is authorized.
§64-9-20. Board of architects.

The legislative rule filed in the state register on the twenty-fifth day of July, one thousand nine hundred ninety-seven, under the authority of section one, article twelve, chapter thirty of this code, modified by the board of architects to meet the objections of the legislative rule-making review committee and refiled in the state register on the third day of December, one thousand nine hundred ninety-seven, relating to the board of architects (rules of the West Virginia board of architects, 2 CSR 1), is authorized.


The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, under the authority of section five, article thirty-one, chapter thirty of this code, modified by the board of examiners in counseling to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of December, one thousand nine hundred ninety-seven, relating to the board of examiners in counseling (licensing, 27 CSR 1), is authorized.


The legislative rule filed in the state register on the thirtieth day of July, one thousand nine hundred ninety-seven, under the authority of section eight, article eleven, chapter five of this code, modified by the human rights commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of November, one thousand nine hundred ninety-seven, relating to the human rights commission (definition of employer under the West Virginia human rights act, 77 CSR 9), is disapproved and not authorized.

§64-9-23. Board of occupational therapy.
The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, authorized under the authority of section six, article twenty-eight, chapter thirty of this code, modified by the board of occupational therapy to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred ninety-seven, relating to the board of occupational therapy (administrative rules of the board of occupational therapy, 13 CSR 1), is authorized.


The legislative rule filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-seven, under the authority of sections two-a and two-b, article eight, chapter thirty of this code, modified by the board of examiners in optometry to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of December, one thousand nine hundred ninety-seven, relating to the board of examiners in optometry (rules for expanded prescriptive authority, 14 CSR 2), is authorized with the amendments set forth below:

On page 3, subdivision 14.2.7.1b before the word “Corticosteroids” by inserting the word “Oral” and after the word “Corticosteroids” by inserting the words “for a duration of no more than six days; and”

On page 3, subdivision 14.2.7.1c, after the word “Analgesics” by inserting a colon and the words “Provided, That no oral narcotic analgesic shall be prescribed for a duration of more than three days”;

And,

On page 3, by striking out subdivision 14.2.7.1.d.

§64-9-25. Board of examiners of radiologic technology.
(a) The legislative rule filed in the state register on the thirtieth day of July, one thousand nine hundred ninety-seven, under the authority of section five, article twenty-three, chapter thirty of this code, modified by the board of examiners of radiologic technology to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of January, one thousand nine hundred ninety-eight, relating to the board of examiners of radiologic technology (continuing education, 18 CSR 2), is authorized.

(b) The legislative rule filed in the state register on the thirtieth day of July, one thousand nine hundred ninety-seven, under the authority of section five, article twenty-three, chapter thirty of this code, modified by the board of examiners of radiologic technology to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of January, one thousand nine hundred ninety-eight, relating to the board of examiners of radiologic technology (schedule of fees for services rendered, 18 CSR 1), is authorized.

§64-9-26. Board of social work examiners.

The legislative rule filed in the state register on the twenty-fifth day of July, one thousand nine hundred ninety-seven, under the authority of section three, article thirty, chapter thirty of this code, modified by the board of social work examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred ninety-eight, relating to the board of social work examiners (qualifications for licensure as a social worker, 25 CSR 1), is authorized with the amendments set forth below:

On page 3, subsection 3.3, line 3 of that paragraph, after the words "applicant" by inserting the following:
"with the exception of employees of the Department of Health and Human Resources,";

And,

On page 3, subsection 3.3, line 3 of that paragraph, after the words "July 1" by striking out the number "1998" and inserting in lieu thereof the number "2000";

And,

On page 4, subdivision 3.3.1(a), line 2 of this paragraph, after the word "college" by striking out the words "prior to July 1, 1998";

And,

On page 4, after subsection 3.3.3, by adding a new subsection 3.3.4 to read as follows:

"The requirements of section 3.3 are to effectuate the Board's goal of meeting the need for professionally trained social workers in West Virginia. However, the Board recognizes the unique position of the Department of Health and Human Resources and, therefore, has created a limited exemption to the requirement that applicants for licensure obtain a degree in social work after July 1, 2000. This exemption is granted with the understanding that the Department will diligently pursue hiring professionally trained social workers. The Board and the Department shall file a progress report with the Joint Committee on Government and Finance on their efforts to achieve this goal on or before December 1, 2000.

And,

Renumbering the remainder of the section.

§64-9-27. Soil conservation committee.
The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, under the authority of section four, article twenty-one-a, chapter nineteen of this code, modified by the soil conservation committee to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of December, one thousand nine hundred ninety-seven, relating to the soil conservation committee (state soil conservation committee, 63 CSR 1), is authorized.


(a) The legislative rule filed in the state register on the third day of July, one thousand nine hundred ninety-seven, under the authority of section two, article two, chapter twelve of this code, modified by the treasurer to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, one thousand nine hundred ninety-seven, relating to the treasurer (establishment of imprest funds, 112 CSR 3), is authorized.

(b) The legislative rule filed in the state register on the third day of July, one thousand nine hundred ninety-seven, under the authority of section two, article two, chapter twelve of this code, modified by the treasurer to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of August, one thousand nine hundred ninety-seven, relating to the treasurer (procedure for the deposit of moneys with the state treasurer’s office by state agencies, 112 CSR 4), is authorized.

(c) The legislative rule filed in the state register on the third day of July, one thousand nine hundred ninety-seven, under the authority of section one, article three, chapter twelve of this code, modified by the
treasurer to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of August, one thousand nine hundred ninety-seven, relating to the treasurer (procedures for processing payments from the state treasury, 112 CSR 8), is authorized.

(d) The legislative rule filed in the state register on the third day of July, one thousand nine hundred ninety-seven, under the authority of section four, article six-b, chapter twelve of this code, modified by the treasurer to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, one thousand nine hundred ninety-seven, relating to the treasurer (reporting of debt capacity, 112 CSR 9), is authorized with the amendment set forth below:

On page two, by striking out all of subsection 2.8 and inserting in lieu thereof a new subsection 2.8 to read as follows:

2.8. "Net tax supported debt" means: (1) general obligation bonds of the state net of any refundings, defeasances, reserve requirements or sinking funds; (2) moral obligation bonds of the state net of any refundings, defeasances, reserve requirements of sinking funds; (3) capital leases, lease purchases, mortgages, installment purchases, certificates of participation and any other debt financing transaction extending beyond one year, net of any refundings, defeasances, reserve requirements or sinking funds, which are payable through an annual appropriation of the Legislature. "Net tax supported debt" includes Lottery bonds, but does not include revenue bonds or any other debt that is self-supporting from enterprise revenues: Provided, That the obligation shall not be excluded to the extent the obligations are in default;
On page three, by striking out all of subsection 2.11 and inserting in lieu thereof a new subsection 2.11 to read as follows:

2.11. "Moral Obligation Bond" is a bond secured by a pledge of revenue and a moral commitment of the state of West Virginia to appropriate funds to make up any deficiency of the revenues needed to pay the debt service.

On page three, by adding a new subsection 2.15 to read as follows:

2.15. "Revenue bonds" are bonds secured by a specified revenue stream, often with a lien imposed on the revenues. The revenue stream may be a tax or assessment or the revenues of the project financed.

On page three, by adding a new subsection 2.16 to read as follows:

2.16. "Lottery bonds" are bonds secured by lottery revenues;

On page three, by adding a new subsection 2.17 to read as follows:

2.17. "Revenues" means: (1) total funds deposited in the general revenue; plus (2) the entire related revenue stream for any net tax supported debt which is funded from a source other than the state's general revenue fund; plus (3) an amount equal to any deductions from the gross general revenue for debt service of tax supported debt before the revenue is added to the general revenue fund.

An example of revenue as defined in this subdivision 2.17.2 of this subsection is the State Road Fund revenues. The total revenues of the State Road Fund (exclusive of Federal funds) are used to repay the Road Bonds and are therefore included in revenue.
An example of revenue as defined in subdivision 2.17.3 of this subsection is the amount of severance tax dedicated for repayment of the Infrastructure Bonds. Those dedicated severance taxes are therefore included in revenue;

On page three, by striking out all of subsection 3.1 and inserting in lieu thereof a new subsection 3.1 to read as follows:

3.1. Annual debt capacity report - The division with the cooperation and support of the Department of Administration, the Department of Tax and Revenue and the Bureau of Employment Programs shall issue an annual report, on or before October 1st of each year. The annual debt capacity report reviews the size and condition of the state's net tax supported debt and estimates the maximum amount of net tax supported debt which should be authorized based upon ratios and guidelines established by the major bond rating agencies. The ratios and guidelines shall be consistently applied based upon the state's definitions.

On page three, subdivision 3.2.4 by striking out the word "and";

And,

On page three by adding the following new subdivisions:

3.2.6. The total debt service as a percentage of revenue;

3.2.7. Current ratios and guidelines as established and/or reported by the major rating agencies; and

3.2.8.
A comparison of West Virginia's ratio to other states with similar bonds ratings.

(e) The legislative rule filed in the state register on the third day of July, one thousand nine hundred ninety-seven, under the authority of section seven, article six-a, chapter twelve of this code, modified by the treasurer to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, one thousand nine hundred ninety-seven, relating to the treasurer (reporting of state debt to the state treasurer's office, 112 CSR 10), is authorized.

(f) The legislative rule filed in the state register on the third day of July, one thousand nine hundred ninety-seven, under the authority of section two, article one, chapter twelve of this code, modified by the treasurer to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, one thousand nine hundred ninety-seven, relating to the treasurer (selection of state depositories for disbursement accounts through competitive bidding, 112 CSR 6), is authorized with the amendment set forth below:

'On page two, subsection 3.5, line one of said subsection, following the words 'the Treasurer', by striking out the words "the bids."

(g) The legislative rule filed in the state register on the third day of July, one thousand nine hundred ninety-seven, under the authority of section two, article one, chapter twelve of this code, modified by the treasurer to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, one thousand nine hundred ninety-seven, relating to the treasurer (selection of state depositories for receipt accounts, 112 CSR 7), is authorized.
CHAPTER 202

(Com. Sub. for S. B. 320—By Senators Ross, Anderson, Bowman, Macnaughtan, Boley and Buckalew)

[Passed March 10, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections three and four, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing division of natural resources to promulgate legislative rules relating to contracted law-enforcement services; authorizing division of natural resources to promulgate legislative rules relating to falconry; authorizing division of natural resources to promulgate legislative rules relating to general hunting; authorizing division of natural resources to promulgate legislative rules relating to hunting and trapping prohibitions; authorizing division of natural resources to promulgate legislative rules relating to special boating rule for Jennings Randolph lake; authorizing division of natural resources to promulgate legislative rules relating to special boating; authorizing division of natural resources to promulgate legislative rules relating to special fishing; authorizing division of natural resources to promulgate legislative rules relating to special migratory bird hunting;
authorizing division of natural resources to promulgate legislative rules relating to special waterfowl hunting; authorizing division of labor to promulgate legislative rules relating to occupational safety and health act; and authorizing board of miner training, education and certification to promulgate legislative rules relating to safety programs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Division of natural resources.

(a) The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, authorized under the authority of section one-e, article seven, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of September, one thousand nine hundred ninety-seven, relating to the division of natural resources (contracted extraordinary law-enforcement services, 58 CSR 13), is authorized.

(b) The legislative rule filed in the state register on the fifth day of December, one thousand nine hundred ninety-seven, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of January, one thousand nine hundred ninety-eight, relating to the division of natural resources (falconry, 58 CSR 65), is authorized.
(c) The legislative rule filed in the state register on the twenty-fifth day of July, one thousand nine hundred ninety-seven, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of August, one thousand nine hundred ninety-seven, relating to the division of natural resources (general hunting, 58 CSR 49), is authorized.

(d) The legislative rule filed in the state register on the twenty-fifth day of July, one thousand nine hundred ninety-seven, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the division of natural resources (prohibitions when hunting and trapping, 58 CSR 47), is authorized.

(e) The legislative rule filed in the state register on the twenty-seventh day of June, one thousand nine hundred ninety-seven, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of December, one thousand nine hundred ninety-seven, relating to the division of natural resources (special boating rule for Jennings Randolph lake, 58 CSR 29), is authorized.

(f) The legislative rule filed in the state register on the twenty-fifth day of July, one thousand nine hundred ninety-seven, authorized under the authority of section twenty-three, article seven, chapter twenty of this code, relating to the division of natural resources (special boating, 58 CSR 26), is authorized.

(g) The legislative rule filed in the state register on the twenty-fifth day of July, one thousand nine hundred ninety-seven, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the division of natural resources (special fishing, 58 CSR 61), is authorized.
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(h) The legislative rule filed in the state register on the twenty-fifth day of July, one thousand nine hundred ninety-seven, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of August, one thousand nine hundred ninety-seven, relating to the division of natural resources (special migratory bird hunting, 58 CSR 56), is authorized.

(i) The legislative rule filed in the state register on the twenty-fifth day of July, one thousand nine hundred ninety-seven, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of August, one thousand nine hundred ninety-seven, relating to the division of natural resources (special waterfowl hunting, 58 CSR 58), is authorized.

§64-10-3. Division of labor.

The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-seven, under the authority of section six, article three-a, chapter twenty-one of this code, modified by the division of labor to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of December, one thousand nine hundred ninety-seven, relating to the division of labor (West Virginia occupational safety and health act, 42 CSR 15), is authorized.

§64-10-4. Board of miner training, education and certification.

The legislative rule filed in the state register on the fourteenth day of January, one thousand nine hundred ninety-seven, under the authority of section six, article seven, chapter twenty-two-a of this code, modified by the board of miner training, education and certification to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the twenty-
sixth day of November, one thousand nine hundred
ninety-seven, relating to the board of miner training,
education and certification (safety training program for
prospective surface coal miners in West Virginia, 48 CSR
3), is authorized with the following amendments:

On page six, subsection 2.9, by striking out the
subsection in its entirety and inserting in lieu thereof the
following:

2.9 Independent coal truck driver certification.

a. Independent coal mine truck drivers who possess an
independent coal truck drivers' certification are not
required to complete the approved surface mining (40
hours) or underground mining (80 hours) apprenticeship
program nor must they possess a coal miners certification
in order to drive a coal truck on mine property.

b. To obtain an independent coal truck driver's
certificate, a prospective independent coal truck driver
must possess a first-aid card, a valid driver's license, and
must successfully complete an eight hour training course,
prescribed by the Board of Miner Training, Education,
and Certification prior to taking the examination.
Successful completion means a score of at least 80
percent.

c. Persons who possess an independent coal truck
driver's certification are limited to driving coal trucks
while on mine property and are not to engage in
reclamation work or other mining activities. This
experience will not be applicable toward a miner's
certificate.

And,

On page six, subsection 2.10, subpart b, line 3, after
the words "prior to" by striking out the words "June 1,
1995" and inserting in lieu thereof the words "January 14,
1997".
AN ACT to amend and reenact section one, article eleven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive and administrative agencies; and authorizing certain agencies to modify certain legislative rules for the limited purpose of updating and making technical corrections to those legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. TECHNICAL CORRECTIONS TO THE CODE OF STATE RULES.

§64-11-1. Division of environmental protection, office of oil and gas.

(a) The legislative rule filed in the state register on the first day of July, one thousand nine hundred ninety-three, authorized under the authority of section two, article six, chapter twenty-two of this code, relating to the division of environmental protection (abandoned wells, 38 CSR 22, renumbered as 35 CSR 6), is authorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);"
(b) The legislative rule filed in the state register on the first day of June, one thousand nine hundred ninety-six, authorized under the authority of section two, article six, chapter twenty-two of this code, relating to the division of environmental protection (coalbed methane wells, 38 CSR 23, renumbered as 35 CSR 3), is authorized with the following amendments:

   “Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);”

(c) The legislative rule filed the first day of July, one thousand nine hundred ninety-three, authorized under the authority of section two, article six, chapter twenty-two of this code, relating to the division of environmental protection (designation of future use and inactive status for oil and gas wells, 38 CSR 21, renumbered as 35 CSR 5), is authorized with the following amendments:

   “Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);”

(d) The legislative rule filed in the state register on the first day of July, one thousand nine hundred ninety-three, authorized under the authority of section two, article six, chapter twenty-two of this code, relating to the division of environmental protection (oil and gas wells and other wells, 38 CSR 18, renumbered as 35 CSR 4), is authorized with the following amendments:

   “Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);”
(e) The legislative rule filed in the state register on the twelfth day of June, one thousand nine hundred eighty-seven, authorized under the authority of section two, article six, chapter twenty-two of this code, relating to the division of environmental protection (oil and gas operations - solid waste, 38 CSR 12, renumbered as 35 CSR 2), is authorized with the following amendment:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);"

(f) The legislative rule filed in the state register on the first day of June, one thousand nine hundred ninety-one, authorized under the authority of section two, article six, chapter twenty-two of this code, relating to the division of environmental protection (miscellaneous Water Pollution Control, 38 CSR 11, renumbered as 35 CSR 1), is authorized with the following amendment:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);"

(g) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-seven, authorized under the authority of section two, article six, chapter twenty-two of this code, relating to the division of environmental protection (dam control, 38 CSR 14), is repealed.

(h) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-seven, authorized under the authority of section two, article six, chapter twenty-two of this code, relating to the division of environmental protection (certification of gas wells, 38 CSR 16), is repealed.
CHAPTER 204

(H. B. 4711—By Delegates Staton, Amores, Pino, Kominar, Coleman, L. White and Faircloth)

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

AN ACT to amend and reenact section two, article twenty-one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to environmental resources; coalbed methane wells and units; definitions; and modifying the definition of coalbed methane well.

Be it enacted by the Legislature of West Virginia:

That section two, article twenty-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:


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

(a) "Review board" means the West Virginia coalbed methane review board which shall be comprised of the members of the West Virginia shallow gas well review board provided for in article eight, chapter twenty-two-c of this code, the state geologist, a representative of the United Mine Workers of America, an employee of the gas industry, and the director of the office of miners' health, safety and training, and the chairman of the review board shall be the chairman of the West Virginia shallow gas review board;

(b) "Coalbed" or "coal seam" means a seam of coal, whether workable or unworkable, and the noncoal roof and floor of said seam of coal;

(c) "Coalbed methane" means gas which can be produced from a coal seam, the rock or other strata in
communication with a coal seam, a mined-out area or a gob well;

(d) "Coalbed methane owner" means any owner of coalbed methane;

(e) "Coalbed methane well" means any hole or well sunk, drilled, bored or dug into the earth for the production of coalbed methane for consumption or sale, including a gob well. The term "well" shall mean a coalbed methane well unless the context indicates otherwise. The term "coalbed methane well" does not include any shaft, hole or well sunk, drilled, bored or dug into the earth for core drilling, production of coal or water, venting gas from a mine area, or degasification of a coal seam, or any coalbed methane well extending from the surface into, but not below, a coal seam being mined after such well or its horizontal extension has been plugged in accordance with section twenty-three of this article;

(f) "Coalbed methane well operator" or "well operator" means any person who has the right to operate or does operate a coalbed methane well;

(g) "Coal operator" means any person who proposes to or does operate a coal mine;

(h) "Coal owner" means any person who owns or leases a coal seam;

(i) "Chief" means the chief of the office of oil and gas of the division of environmental protection provided for in section eight, article one of this chapter;

(j) "Director" means the director of the division of environmental protection;

(k) "Division" means the division of environmental protection;

(l) "Gob well" means a well drilled or vent hole converted to a well pursuant to this article which produces or is capable of producing coalbed methane or other natural gas from a distressed zone created above and below a mined-out coal seam by any prior full seam extraction of the coal;
(m) "Mine" or "mine areas," including the sub-definitions under "mine areas," shall have the same definitions as are provided in section two, article one, chapter twenty-two-a of this code;

(n) "Office" means office of oil and gas provided for in section seven, article one of this chapter;

(o) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary, other representative of any kind, any recognized legal entity, or political subdivision or agency thereof;

(p) "Stimulate" means any action taken to increase the natural flow of coalbed methane or the inherent productivity of a coalbed methane well, including, but not limited to, fracturing, shooting, acidizing or water flooding, but excluding cleaning out, bailing or workover operations;

(q) "Waste" means: (i) Physical waste as the term is generally understood in the gas industry and as provided for in article six of this chapter, but giving special consideration to coal mining operations and the safe recovery of coal; (ii) the locating, drilling, equipping, operating, producing or transporting coalbed methane in a manner that causes or tends to cause a substantial reduction in the quantity of coalbed methane recoverable from a pool under prudent and proper operations, or that causes or tends to cause a substantial or unnecessary or excessive surface loss of coalbed methane; (iii) the drilling of more wells than are reasonably required to recover efficiently and economically the maximum amount of coalbed methane from a pool; or (iv) substantially inefficient, excessive or improper use, or the substantially unnecessary dissipation of reservoir pressure. Waste does not include coalbed methane vented or released from any mine area, the degasification of a coal seam for the purpose of mining coal, the plugging of coalbed methane wells for the purpose of mining coal, or the conversion of coalbed methane wells to vent holes for the purpose of mining coal;
(r) "Workable coalbed" or "workable coal seam" means any seam of coal twenty inches or more in thickness, or any seam of less thickness which is being commercially mined or can be shown to be capable of being commercially mined.

CHAPTER 205

(Com. Sub. for H. B. 4288—By Delegates Martin, Varner, Kuhn, Warner, Collins and Walters)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.] AN ACT to amend and reenact section twenty-one, article one, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section sixty-three, article two of said chapter, all relating to the office of miners health, safety and training; fees for certificate of approval and permits; providing that the fees collected for certificates of approval and permits be placed in the miners' health, safety and training fund; providing for expenditure of moneys placed in the fund; civil penalties assessed on operators of coal mines for health and safety rules; abolishing the special health, safety and training fund; providing that all civil penalties collected be deposited with the state treasurer; and removing the spending authority of the director of the West Virginia office of miners' health, safety and training for these funds.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Office of Miners' Health, Safety and Training; Administration; Enforcement.
ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.


(a) (1) Any operator of a coal mine in which a violation occurs of any health or safety rule or who violates any other provisions of this chapter shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which shall be not more than three thousand dollars, for each violation. Each violation constitutes a separate offense. In determining the amount of the penalty, the director shall consider the operator's history of previous violations, the appropriateness of the penalty to the size of the business of the operator charged, the gravity of the violation and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation. Any revisions to rules relating to the assessment of civil penalties shall be proposed for promulgation as legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(2) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter is subject to a civil penalty assessed by the director under subdivision (3) of this subsection which penalty shall not be more than two hundred fifty dollars for each occurrence of the violation.

(3) A civil penalty shall be assessed by the director only after the person charged with a violation under this chapter or rule promulgated pursuant to this chapter has been given an opportunity for a public hearing and the director has determined, by a decision incorporating the director's findings of fact in the decision, that a violation did occur, and the amount of the penalty which is warranted, and incorporating, when appropriate, an order in the decision requiring that the penalty be paid. Any hearing under this section shall be of record.
(4) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in the order, the director may file a petition for enforcement of the order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall immediately be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be. The director shall certify and file in the court the record upon which such order sought to be enforced was issued. The court has jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order and decision of the director or it may remand the proceedings to the director for any further action it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a circuit court under section twenty of this article, and upon the request of the respondent, those issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the attorney general, attorneys appointed for the director may appear for and represent the director in any action to enforce an order assessing civil penalties under this subdivision.

(b) Any operator who knowingly violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under section fifteen of this article, or any order incorporated in a final decision issued under this article, except an order incorporated in a decision under subsection (a) of this section or subsection (b), section twenty-two of this article, shall be assessed a civil penalty by the director under subdivision (3), subsection (a) of this section, of not more than five thousand dollars, and for a second or subsequent violation assessed a civil penalty of not more than ten thousand dollars.
(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under subsection (a) of this section or subsection (b), section twenty-two of this article, any director, officer or agent of the corporation who knowingly authorized, ordered or carried out the violation, failure or refusal, is subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this law or any order or decision issued under this law, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in the county jail not more than six months, or both fined and imprisoned. The conviction of any person under this subsection shall result in the revocation of any certifications held by the person under this chapter which certified or authorized the person to direct other persons in coal mining by operation of law and bars that person from being issued any such license under this chapter, except a miner's certification, for a period of not less than one year or for a longer period as may be determined by the director.

(e) Whoever willfully distributes, sells, offers for sale, introduces or delivers in commerce any equipment for use in a coal mine, including, but not limited to, components and accessories of the equipment, who willfully misrepresents the equipment as complying with the provisions of this law, or with any specification or rule of the director applicable to the equipment, and which does not comply with the law, specification or rule, is guilty of a misdemeanor and, upon conviction thereof, is subject to the same fine and imprisonment that may be imposed upon a person under subsection (d) of this section.
(f) (1) There is created in the treasury of the state of West Virginia a special health, safety and training fund. All civil penalty assessments collected under section twenty-one of this article shall be collected by the director and deposited with the treasurer of the state of West Virginia to the credit of the special health, safety and training fund. The fund shall be used by the director who is authorized to expend the moneys in the fund for the administration of this chapter.

(2) After the thirtieth day of June, one thousand nine hundred ninety-eight, the special health, safety and training fund is abolished and any balances remaining in the fund shall be deposited into the state general revenue fund. On and after the first day of July, one thousand nine hundred ninety-eight, all civil penalty assessments collected under section twenty-one of this article shall be collected by the director and paid to the state treasurer for deposit into the state general revenue fund.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-63. No mine to be opened or reopened without prior approval of the director of the office of miners' health, safety and training; certificate of approval; approval fees; extension of certificate of approval; certificates of approval not transferable; section to be printed on certificates of approval.

(a) No mine may be opened or reopened unless prior approval has been obtained from the director of the office of miners' health, safety and training. The director may not unreasonably withhold approval. The operator shall pay a fee of one hundred dollars for the approval, which shall be tendered with the application for approval: Provided, That mines producing coal solely for the operator's use shall be issued a permit without charge if coal production will be less than fifty tons a year.

Within thirty days after the first day of January of each year, the holder of a permit to open a mine shall apply for the extension of the permit for an additional year. The permit, evidenced by a document issued by the
director, shall be granted as a matter of right for a fee of
one hundred dollars if, at the time application is made, the
permit holder is in compliance with the provisions of
section seventy-seven of this article and has paid or
otherwise appealed all coal mine assessments issued to the
mine if operated by the permit holder and imposed under
article one of this chapter. Applications for extension of
permits not submitted within the time required shall be
processed as an application to open or reopen a mine and
shall be accompanied by a fee of one hundred dollars.

(b) Permits issued pursuant to this section are not
transferable.

(c) If the operator of a mine is not the permit holder
as defined in subsection (a) of this section, then the
operator shall apply for and obtain a certificate of
approval to operate the mine on which the permit is held
prior to commencing operations. The operator shall pay a
fee of one hundred dollars, which payment shall be
tendered with the application for approval. The approval,
evidenced by a certificate issued by the director, shall be
granted if, at the time application is made, the applicant is
in compliance with the provisions of section seventy-seven
of this article and has paid or otherwise appealed all coal
mine assessments imposed on the applicant for the
certificate of approval under article one of this chapter.

(d) In addition to the director's authority to file a
petition for enforcement under subdivision (4), subsection
(a), section twenty-one, article one of this chapter, if an
operator holding a certificate of approval issued pursuant
to subsection (c) of this section, has been assessed a civil
penalty in accordance with section twenty-one, article one
of this chapter, and its implementing rules, and the penalty
has become final, fails to pay the penalty within the time
prescribed in the order, the director or the authorized
representative of the director, by certified mail, return
receipt requested, shall send a notice to the operator
advising the operator of the unpaid penalty. If the penalty
is not paid in full within sixty days from the issuance of
the notice of delinquency by the director, then the director
may revoke the operator's certificate of approval:

Provided, That the operator to whom the delinquency
notice is issued has thirty days from receipt of the
delinquency notice to request, by certified mail, return
receipt requested, a public hearing held in accordance with
the procedures of section seventeen, article one of this
chapter, and its implementing rules, including application
for temporary relief. Once the operator's certificate of
approval is revoked pursuant to this subsection, the
operator may not obtain any certificate of approval under
the provisions of this section to operate any other mine
until that operator pays the delinquent penalties that have
become final.

(e) Every firm, corporation, partnership or individual
that contracts to perform services or construction at a coal
mine is considered to be an operator and shall apply for
and obtain a certificate of approval prior to commencing
operations: Provided, That these persons shall only be
required to obtain one certificate annually: Provided,
however, That persons such as, but not limited to,
consultants, mine vendors, office equipment suppliers and
maintenance and delivery personnel are excluded from
this requirement to obtain a certificate of approval.
Operators who are required to obtain a certificate of
approval pursuant to the provisions of this subsection shall
pay a fee of one hundred dollars which shall be tendered
with the application for approval. Approval evidenced by
a certificate issued by the director, shall be granted if, at
the time the application is made, the applicant has paid or
otherwise appealed all coal mine assessments imposed on
the applicant under article one of this chapter.

Within thirty days after the first day of January of
each year, the holder of a certificate of approval shall
apply for the extension of that approval for an additional
year. Applications for extension shall be accompanied by
a fee of one hundred dollars. An extension shall be
granted if, at the time application is made, the applicant
has paid or otherwise appealed all coal mine assessments
imposed on the applicant under article one of this chapter.
All delinquent assessments which have been imposed upon
a certificate of approval holder or applicants under this
section may not be imposed upon any permit holder or
certificate of approval holder or any applicant pursuant to
subsection (a) or (c) of section sixty-three.
(f) The provisions of this section shall be printed on the reverse side of every permit issued under subsection (a) of this section and certificate of approval issued under subsection (d) of this section.

(g) The district mine inspector shall conduct a pre-inspection of the area proposed for underground mining prior to issuance of any new opening permit approval.

(h) After the first day of July, one thousand nine hundred ninety-seven, all moneys collected by the office of miners' health, safety and training for the approval fees set forth in subsections (a), (b) and (e) of this section shall be deposited with the treasurer of the state of West Virginia to the credit of the general administration—operating permit fees fund. The operating permit fees fund shall be used by the director who is authorized to expend the moneys in the fund for the administration of this chapter: Provided, That after the thirtieth day of June, one thousand nine hundred ninety-eight, all moneys collected by the office of miners' health, safety and training for the approval fees set forth in subsections (a), (b) and (e) of this section shall be deposited with the state treasurer to the credit of the general fund.

CHAPTER 206

(H. B. 4414—By Delegates Varner, Staton, Kuhn, Collins, Williams, Martin and Beach)

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

AN ACT to amend and reenact section thirty-five, article one, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to office of miners' health, safety and training; administration; enforcement; mine rescue teams; qualification of members;
and removing the requirement that an applicant for initial
mine rescue training be under fifty years of age.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND
TRAINING; ADMINISTRATION; ENFORCE­
MENT.

§22A-1-35. Mine rescue teams.

(a) It is the responsibility of the operator to provide
mine rescue coverage at each active underground mine.

(b) Mine rescue coverage may be provided by:

(1) Establishing at least two mine rescue teams which
are available at all times when miners are underground; or

(2) Entering into an arrangement for mine rescue
services which assures that at least two mine rescue teams
are available at all times when miners are underground.

(c) As used in this section, mine rescue teams shall be
considered available where teams are capable of
presenting themselves at the mine site(s) within a
reasonable time after notification of an occurrence which
might require their services. Rescue team members will be
considered available even though performing regular
work duties or while in an off-duty capacity. The
requirement that mine rescue teams be available does not
apply when teams are participating in mine rescue contests
or providing rescue services to another mine.

(d) In the event of a fire, explosion or recovery
operations in or about any mine, the director is hereby
authorized to assign any mine rescue team to said mine to
protect and preserve life and property. The director may
also assign mine rescue and recovery work to inspectors,
instructors or other qualified employees of the office as he
or she deems necessary.
(e) The ground travel time between any mine rescue station and any mine served by that station shall not exceed two hours. To ensure adequate rescue coverage for all underground mines, no mine rescue station may provide coverage for more than seventy mines within the two-hour ground travel limit as defined in this subsection.

(f) Each mine rescue team shall consist of five members and one alternate, who are fully qualified, trained and equipped for providing emergency mine rescue service. Each mine rescue team shall be trained by a state certified mine rescue instructor.

(g) Each member of a mine rescue team must have been employed in an underground mine for a minimum of one year. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground meet the experience requirement. The underground experience requirement is waived for those members of a mine rescue team on the effective date of this statute.

(h) An applicant for initial mine rescue training shall pass, on at least an annual basis, a physical examination by a licensed physician certifying his or her fitness to perform mine rescue work. A record that such examination was taken, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the director.

(i) Upon completion of the initial training, all mine rescue team members shall receive at least forty hours of refresher training annually. This training shall be given at least four hours each month, or for a period of eight hours every two months, and shall include:

1. Sessions underground at least once every six months;

2. The wearing and use of a breathing apparatus by team members for a period of at least two hours, while under oxygen, once every two months;
(3) Where applicable, the use, care, capabilities and limitations of auxiliary mine rescue equipment, or a different breathing apparatus;

(4) Mine map training and ventilation procedures.

(j) When engaged in rescue work required by an explosion, fire or other emergency at a mine, all members of mine rescue teams assigned to rescue operations shall, during the period of their rescue work, be employees of the operator of the mine where the emergency exists, and shall be compensated by the operator at the rate established in the area for such work. In no case shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, members of mine rescue teams shall be protected by the workers' compensation subscription of such emergency employer.

(k) During the recovery work and prior to entering any mine at the start of each shift, all rescue or recovery teams shall be properly informed of existing conditions and work to be performed by the designated company official in charge.

(1) For every two teams performing rescue or recovery work underground, one six-member team shall be stationed at the mine portal.

(2) Each rescue or recovery team performing work with a breathing apparatus shall be provided with a backup team of equal number, stationed at each fresh air base.

(3) Two-way communication and a lifeline or its equivalent shall be provided at each fresh air base for all mine rescue or recovery teams and no mine rescue team member shall advance more than one thousand feet inby the fresh air base: Provided, That if a life may possibly be saved and existing conditions do not create an unreasonable hazard to mine rescue team members, the rescue team may advance a distance agreed upon by those persons directing the mine rescue or recovery operations: Provided, however, That a lifeline or its equivalent shall be
provided in each fresh air base for all mine rescue or
recovery teams.

(4) A rescue or recovery team shall immediately
return to the fresh air base when the atmospheric pressure
of any member's breathing apparatus depletes to sixty
atmospheres, or its equivalent.

(1) Mine rescue stations shall provide a centralized
storage location for rescue equipment. This storage
location may be either at the mine site, affiliated mines or
a separate mine rescue structure. All mine rescue teams
shall be guided by the mine rescue apparatus and
auxiliary equipment manual. Each mine rescue station
shall be provided with at least the following equipment:

1. Twelve self-contained oxygen breathing
   apparatuses, each with a minimum of two hours capacity,
   and any necessary equipment for testing such breathing
   apparatuses;

2. A portable supply of liquid air, liquid oxygen,
   pressurized oxygen, oxygen generating or carbon dioxide
   absorbent chemicals, as applicable to the supplied
   breathing apparatuses and sufficient to sustain each team
   for six hours while using the breathing apparatuses during
   rescue operations;

3. One extra, fully charged, oxygen bottle for each
   self-contained compressed oxygen breathing apparatus, as
   required under subdivision (1) of this subsection;

4. One oxygen pump or a cascading system,
   compatible with the supplied breathing apparatuses;

5. Twelve permissible cap lamps and a charging rack;

6. Two gas detectors appropriate for each type of gas
   which may be encountered at the mines served;

7. Two oxygen indicators or two flame safety lamps;

8. One portable mine rescue communication system
   or a sound-powered communication system. The wires or
cable to the communication system shall be of sufficient
tensile strength to be used as a manual communication
system. The communication system shall be at least one thousand feet in length; and

(9) Necessary spare parts and tools for repairing the breathing apparatuses and communication system, as presently prescribed by the manufacturer.

(m) Mine rescue apparatuses and equipment shall be maintained in a manner that will ensure readiness for immediate use. A person trained in the use and care of breathing apparatuses shall inspect and test the apparatuses at intervals not exceeding thirty days and shall certify by signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective action shall be made and recorded by said person. The certification and corrective action records shall be maintained at the mine rescue station for a period of one year and made available on request to an authorized representative of the director.

(n) Authorized representatives of the director have the right of entry to inspect any designated mine rescue station.

(o) When an authorized representative finds a violation of any of the mine rescue requirements, the representative shall take appropriate corrective action in accordance with section fifteen of this article.

(p) Operators affiliated with a station issued an order by an authorized representative will be notified of that order and that their mine rescue program is invalid. The operators shall have twenty-four hours to submit to the director a revised mine rescue program.

(q) Every operator of an underground mine shall develop and adopt a mine rescue program for submission to the director within thirty days of the effective date of this statute: Provided, That a new program need only be submitted when conditions exist as defined in subsection (p) of this section, or when information contained within the program has changed.

(r) A copy of the mine rescue program shall be posted at the mine and kept on file at the operator's mine rescue
station or rescue station affiliate and the state regional office where the mine is located. A copy of the mine emergency notification plan filed pursuant to 30 CFR §49.9(a) will satisfy the requirements of subsection (q) of this section if submitted to the director.

(s) The operator shall immediately notify the director of any changed conditions materially affecting the information submitted in the mine rescue program.

CHAPTER 207

(H. B. 4592—By Delegates Proudfoot, Williams, Stemple, Riggs, Willis, Kelley and Anderson)

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

AN ACT to amend article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections eighteen-a and eighteen-b, all relating to establishing the misdemeanor criminal offense of negligent homicide when a motorboat or vessel is operated in reckless disregard of the safety of others and results in the death of any person and establishing the penalty therefor of imprisonment of not more than one year or fine of not less than one hundred dollars nor more than one thousand dollars, or both imprisonment and fine, and suspending motorboat or vessel operation privileges for a five-year period for one so convicted; establishing the felony criminal offense of operating a motorboat or vessel under the influence of alcohol, controlled substances, other drugs, or a combination thereof, when a motorboat or vessel is operated in reckless disregard of the safety of others and results in the death of any person, and establishing the penalty therefor of imprisonment of not less than one year nor more than ten years and fine of not less than one thousand dollars nor more than three thousand dollars; establishing the misdemeanor criminal offense of operating a motorboat or vessel under the influence of alcohol, controlled substances,
other drugs, or a combination thereof, when a motorboat or vessel is operated in violation of any act forbidden by law and results in the death of any person, and establishing the penalty therefor of imprisonment of not less than ninety days nor more than one year and fine of not less than five hundred dollars nor more than one thousand dollars; establishing the misdemeanor criminal offense of operating a motorboat or vessel under the influence of alcohol, controlled substances, other drugs, or a combination thereof, when a motorboat or vessel is operated in violation of any act forbidden by law and results in the injury of any person other than himself or herself, and establishing the penalty therefor of imprisonment of not less than one day nor more than one year, to include actual confinement of not less than twenty-four hours and fine of not less than two hundred dollars nor more than one thousand dollars; establishing the misdemeanor criminal offense of operating a motorboat or vessel under the influence of alcohol, controlled substances, other drugs, or a combination thereof, and establishing the penalty therefor of imprisonment of not less than one day nor more than six months, to include actual confinement of not less than twenty-four hours and fine of not less than one hundred dollars nor more than five hundred dollars; establishing the misdemeanor criminal offense of knowingly allowing the operation of one’s motorboat or vessel by any person who is under the influence of alcohol, controlled substances, other drugs, or a combination thereof, and establishing the penalty therefor of imprisonment of not more than six months, and fine of not less than one hundred dollars nor more than five hundred dollars; establishing the misdemeanor criminal offense of knowingly allowing the operation of one’s motorboat or vessel by any person who is an habitual user of narcotic drugs or amphetamine, or derivative thereof, and establishing the penalty therefor of imprisonment of not more than six months, and fine of not less than one hundred dollars nor more than five hundred dollars.
months and fine of not less than one hundred dollars nor more than five hundred dollars; establishing the misdemeanor criminal offense of operating a motorboat or vessel while under the age of twenty-one years while he or she has an alcohol blood concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, and for a first offense, establishing the penalty therefor of a fine of not less than twenty-five dollars nor more than one hundred dollars, for a second offense, establishing the penalty therefor of imprisonment of twenty-four hours and a fine of not less than one hundred dollars nor more than five hundred dollars; prohibiting an arrest and charge under different subsections for the same transaction or occurrence; establishing the misdemeanor criminal offense of operating a motorboat or vessel under the influence of alcohol, controlled substances, other drugs, or a combination thereof with one or more persons on board who are less than sixteen years of age and establishing the penalty therefor of imprisonment of not less than two days nor more than twelve months, to include actual confinement of not less than forty-eight hours, and fine of not less than two hundred dollars nor more than one thousand dollars; establishing that a second offense shall constitute a misdemeanor with a penalty of confinement not less than six months nor more than one year, and a discretionary fine of not less than one thousand dollars nor more than three thousand dollars; establishing that a third offense shall constitute a felony with a penalty of confinement in the penitentiary not less than one nor more than three years, and a discretionary fine of not less than three thousand dollars nor more than five thousand dollars; establishing that subsequent offenses which constitute second or third convictions include subsections of this article, any municipal ordinance of this state or statute of the United States or any other state which has the same elements as an offense described in this article; permitting a person to be charged in warrant or indictment or information for a subsequent offense before final adjudication of the subsequent offense; negating a defense of prescribed use of alcohol or controlled substances; defining controlled substances; and, establishing that all sentences herein are mandatory while allowing the court certain discretion.
Be it enacted by the Legislature of West Virginia:

That article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections eighteen-a and eighteen-b, all to read as follows:

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-18a. Negligent homicide; penalties.

§20-7-18b. Operating under influence of alcohol, controlled substances or drugs; penalties.

§20-7-18a. Negligent homicide; penalties.

(a) When the death of any person ensues within one year as a proximate result of injury received by operating any motorboat or vessel anywhere in this state in reckless disregard of the safety of others, the person so operating such motorboat or vessel shall be guilty of negligent homicide.

(b) Any person convicted of negligent homicide shall be punished by imprisonment for not more than one year or by fine of not less than one hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment.

(c) The director shall suspend the privilege to operate a motorboat or vessel in this state for a period of five years from the date of conviction.

§20-7-18b. Operating under influence of alcohol, controlled substances or drugs; penalties.

(a) Any person who:

(1) Operates a motorboat or vessel in this state while:

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

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or
(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so operating does any act forbidden by law or fails to perform any duty imposed by law in the operating of such motorboat or vessel, which act or failure proximately causes the death of any person within one year next following such act or failure; and

(3) Commits such act or failure in reckless disregard of the safety of others, and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to such death, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than ten years and shall be fined not less than one thousand dollars nor more than three thousand dollars.

(b) Any person who:

(1) Operates a motorboat or vessel in this state while:

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

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so operating does any act forbidden by law or fails to perform any duty imposed by law in the operating of such motorboat or vessel, which act or failure proximately causes the death of any person within one
(c) Any person who:

(1) Operates a motorboat or vessel in this state while:

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

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so operating does any act forbidden by law or fails to perform any duty imposed by law in the operating of such motorboat or vessel, which act or failure proximately causes bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(d) Any person who:

(1) Operates a motorboat or vessel in this state while:

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

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or
(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(e) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, operates a motorboat or vessel in this state, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(f) Any person who:

(1) Knowingly permits his or her motorboat or vessel to be operated in this state by any other person who is:

(A) Under the influence of alcohol; or

(B) Under the influence of any controlled substance; or

(C) Under the influence of any other drug; or

(D) Under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.
(g) Any person who:

115 Knowingly permits his or her motorboat or vessel to
116 be operated in this state by any other person who is an
117 habitual user of narcotic drugs or amphetamine or any
118 derivative thereof, is guilty of a misdemeanor and, upon
119 conviction thereof, shall be confined in jail for not more
120 than six months and shall be fined not less than one
121 hundred dollars nor more than five hundred dollars.

122 (h) Any person under the age of twenty-one years
123 who operates a motorboat or vessel in this state while he or
124 she has an alcohol concentration in his or her blood of
125 two hundredths of one percent or more, by weight, but less
126 than ten hundredths of one percent, by weight, shall, for a
127 first offense under this subsection, be guilty of a
128 misdemeanor and, upon conviction thereof, shall be fined
129 not less than twenty-five dollars nor more than one
130 hundred dollars. For a second or subsequent offense
131 under this subsection, such person is guilty of a
132 misdemeanor and, upon conviction thereof, shall be
133 confined in jail for twenty-four hours, and shall be fined
134 not less than one hundred dollars nor more than five
135 hundred dollars.

136 A person arrested and charged with an offense under
137 the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or
138 (i) of this section may not also be charged with an offense
139 under this subsection arising out of the same transaction
140 or occurrence.

141 (i) Any person who:

142 (1) Operates a motorboat or vessel in this state while:
143 (A) He or she is under the influence of alcohol; or
144 (B) He or she is under the influence of any controlled
145 substance; or
146 (C) He or she is under the influence of any other
147 drug; or
148 (D) He or she is under the combined influence of
149 alcohol and any controlled substance or any other drug; or
152 (E) He or she has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

155 (2) The person when so operating has on or within the motorboat or vessel one or more other persons who are unemancipated minors who have not reached their sixteenth birthday, shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than twelve months, which jail term shall include actual confinement of not less than forty-eight hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

164 (j) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section shall, for the second offense under this section, be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than six months nor more than one year, and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

172 (k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section shall, for the third or any subsequent offense under this section, be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than three years, and the court may, in its discretion, impose a fine of not less than three thousand dollars nor more than five thousand dollars.

180 (l) For purposes of subsections (j) and (k) of this section relating to second, third and subsequent offenses, the following types of convictions shall be regarded as convictions under this section:

184 (1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e) or (f) of this section for an offense which occurred on or after the effective date of this section;

188 (2) Any conviction under the provisions of subsection (a) or (b) of this section for an offense which occurred
within a period of five years immediately preceding the
date of the offense; and

(3) Any conviction under a municipal ordinance of
this state or any other state or a statute of the United States
or of any other state of an offense which has the same
elements as an offense described in subsection (a), (b), (c),
(d), (e), (f) or (g) of this section, which offense occurred
after the effective date of this section.

(m) A person may be charged in a warrant or
indictment or information for a second or subsequent
offense under this section if the person has been
previously arrested for or charged with a violation of this
section which is alleged to have occurred within the
applicable time periods for prior offenses, notwithstanding
the fact that there has not been a final adjudication of the
charges for the alleged previous offense. In such case, the
warrant or indictment or information must set forth the
date, location and particulars of the previous offense or
offenses. No person may be convicted of a second or
subsequent offense under this section unless the
conviction for the previous offense has become final.

(n) The fact that any person charged with a violation
of subsection (a), (b), (c), (d) or (e) of this section, or any
person permitted to operate as described under subsection
(f) or (g) of this section, is or has been legally entitled to
use alcohol, a controlled substance or a drug shall not
constitute a defense against any charge of violating
subsection (a), (b), (c), (d), (e), (f) or (g) of this section.

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

(p) The sentences provided herein upon conviction for
a violation of this article are mandatory and shall not be
subject to suspension or probation: Provided, That the
court may apply the provisions of article eleven-a, chapter
sixty-two of this code to a person sentenced or committed
to a term of one year or less. An order for home
detention by the court pursuant to the provisions of article
eleven-b, chapter sixty-two of this code may be used as an
alternative sentence to any period of incarceration
required by this section.
AN ACT to amend and reenact section eight, article twenty-four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing towing companies that have towed an abandoned vehicle, or licensed motor vehicle dealers who have had a vehicle abandoned on their property, to acquire title and registration to that vehicle from the division of motor vehicles when the vehicle is not claimed by the owner or the owner cannot otherwise be determined; providing that the vehicle may then be sold at private sale or public auction by the towing company or licensed motor vehicle dealer; changing notification periods; and placing a monetary cap on application of section.

Be it enacted by the Legislature of West Virginia:

That section eight, article twenty-four, 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 24. DISPOSAL OF ABANDONED MOTOR VEHICLES, JUNKED MOTOR VEHICLES, OLD VEHICLE TIRES AND ABANDONED OR INOPERATIVE HOUSEHOLD APPLIANCES.

§17-24-8. Abandoned or junked motor vehicles; notification to motor vehicle owner and lienholder; charges and fees; exceptions.

(a) The enforcement agency which takes into custody and possession an abandoned motor vehicle or junked motor vehicle shall, within fifteen days after taking custody and possession thereof, notify the last known registered owner of the motor vehicle and all lienholders of record that the motor vehicle has been taken into custody and possession, the notification to be by
registered or certified mail, return receipt requested. The notice shall:

(1) Contain a description of the motor vehicle, including the year, make, model, manufacturer's serial or identification number or any other number which may have been assigned to the motor vehicle by the commissioner of motor vehicles and any distinguishing marks;

(2) Set forth the location of the facility where the motor vehicle is being held and the location where the motor vehicle was taken into custody and possession;

(3) Inform the owner and any lienholders of record of their right to reclaim the motor vehicle within ten days after the date notice was received by the owner or lienholders, upon payment of all towing, preservation and storage charges resulting from taking and placing the motor vehicle into custody and possession; and

(4) State that the failure of the owner or lienholders of record to exercise their right to reclaim the motor vehicle within the ten-day period shall be deemed a waiver by the owner and all lienholders of record of all right, title and interest in the motor vehicle and of their consent to the sale or disposal of the abandoned motor vehicle or junked motor vehicle at a public auction or to a licensed salvage yard or demolisher.

(b) If the identity of the last registered owner of the abandoned motor vehicle or junked motor vehicle cannot be determined, or if the certificate of registration or certificate of title contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county wherein the motor vehicle was located at the time the enforcement agency took custody and possession thereof, and the notice shall be sufficient to meet all requirements of notice pursuant to this article. Any notice
by publication may contain multiple listings of abandoned
motor vehicles and junked motor vehicles. The notice
shall be published within fifteen days after the motor
vehicle is taken into custody and possession and shall have
the same contents required for a notice pursuant to
subsection (a) of this section, except that the ten-day
period shall run from the date the notice is published as
aforesaid.

(c) An enforcement agency which hires any person or
entity to take into custody and possession an abandoned
or junked motor vehicle pursuant to this section shall
notify the person or entity of the name and address of the
registered owner of the motor vehicle, if known, and all
lienholders of record, if any, within fifteen days after the
vehicle is taken into custody and possession: Provided,
That the requirements of this subsection shall not apply to
motor vehicles for which the registered owner thereof
cannot be ascertained by due diligence or investigation.

(d) The person or entity hired by an enforcement
agency to take into custody or possession an abandoned
or junked motor vehicle shall, within thirty days after the
possession, notify the registered owner of the vehicle and
all lienholders of record, if any, as identified by the
enforcement agency pursuant to subsection (c) herein, by
registered mail, return receipt requested, of the location of
the facility where the motor vehicle is being stored and of
the owner's liability for all towing, preservation and
storage charges for the motor vehicle. Upon the issuance
of the notice, the identified owner of the motor vehicle is
liable and responsible for all costs for towing, preservation
and storage of the motor vehicle: Provided, That failure
to issue the notice required by this subsection within thirty
days after possession of the motor vehicle relieves the
identified owner of the motor vehicle of any liability for
charges for towing, preservation and storage in excess of
the sum of the first five days of such charges: Provided,
however, That the requirements of this subsection do not
apply to motor vehicles for which the registered owner
thereof cannot be ascertained by due diligence or
investigation.
(e) For abandoned or junked vehicles having a retail value of one thousand dollars or less, as ascertained by values placed upon vehicles using a standard industry reference book, a person or entity hired by an enforcement agency to tow such an abandoned or junked motor vehicle may, if the motor vehicle is not claimed by the owner or a lienholder after notice within the time set forth in subsection (d) of this section, or if the identity of the last registered owner of the abandoned motor vehicle or junked motor vehicle cannot be determined, or if the certificate of registration or certificate of title contains no address of the owner, or if it is impossible to determine with reasonable certainty the identity and address of all lienholders after publication as set forth in subsection (b) of this section, file an application with the division of motor vehicles for a certificate of title and registration which, upon payment of the appropriate fees, shall be issued. The person or entity may then sell the motor vehicle at private sale or public auction.

(f) For abandoned or junked vehicles having a retail value of one thousand dollars or less, as ascertained by values placed upon vehicles using a standard industry reference book, a licensed motor vehicle dealer, as defined in section one, article one, chapter seventeen-a of this code may, if a motor vehicle is abandoned on the property or place of business of the dealer and is not claimed by the owner or a lienholder after notice within the time set forth in subsection (d) of this section, or if the identity of the last registered owner of the abandoned motor vehicle cannot be determined, or if the certificate of registration or certificate of title contains no address of the owner, or if it is impossible to determine with reasonable certainty the identity and address of all lienholders after publication as set forth in subsection (b) of this section, file an application with the division of motor vehicles for a certificate of title and registration which, upon payment of the appropriate fees, shall be issued. The dealer may then sell the motor vehicle at private sale or public auction.
CHAPTER 209

(Com. Sub. for H. B. 4451—By Delegate Warner)

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

AN ACT to amend and reenact sections four and sixteen, article three; section three, article seven; and sections one, three and five, article ten, all of chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to motor vehicle registration; providing for a permanent, nontransferable license plate for commercial type trailers at a one time fee; eliminating certain classes of registration; circumstances under which vehicles are not to be registered; and suspension of registration.

Be it enacted by the Legislature of West Virginia:

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

Article
3. Original and Renewal of Registration; Issuance of Certificates of Title.
7. Special Stickers.

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

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.

§17A-3-16. Expiration of registration and certificates of title.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.

1 (a) Certificates of registration of any vehicle or 2 registration plates therefor, whether original issues or
duplicates, may not be issued or furnished by the division
of motor vehicles or any other officer charged with the
duty, unless the applicant therefor already has received, or
at the same time makes application for and is granted, an
official certificate of title of the vehicle. The application
shall be upon a blank form to be furnished by the division
of motor vehicles and shall contain a full description of
the vehicle, which description shall contain a
manufacturer's serial or identification number or other
number as determined by the commissioner and any
distinguishing marks, together with a statement of the
applicant's title and of any liens or encumbrances upon
the vehicle, the names and addresses of the holders of the
liens and any other information as the division of motor
vehicles may require. The application shall be signed and
sworn to by the applicant.

(b) A tax is hereby imposed upon the privilege of
effecting the certification of title of each vehicle in the
amount equal to five percent of the value of the motor
vehicle at the time of the certification, to be assessed as
follows:

(1) If the vehicle is new, the actual purchase price or
consideration to the purchaser thereof is the value of the
vehicle. If the vehicle is a used or secondhand vehicle, the
present market value at time of transfer or purchase is the
value thereof for the purposes of this section: Provided,
That so much of the purchase price or consideration as is
represented by the exchange of other vehicles on which
the tax imposed by this section has been paid by the
purchaser shall be deducted from the total actual price or
consideration paid for the vehicle, whether the vehicle be
new or secondhand. If the vehicle is acquired through
gift, or by any manner whatsoever, unless specifically
exempted in this section, the present market value of the
vehicle at the time of the gift or transfer is the value
thereof for the purposes of this section.

(2) No certificate of title for any vehicle may be issued
to any applicant unless the applicant has paid to the
division of motor vehicles the tax imposed by this section
which is five percent of the true and actual value of the
vehicle whether the vehicle is acquired through purchase, by gift or by any other manner whatsoever except gifts between husband and wife or between parents and children: \textit{Provided}, That the husband or wife, or the parents or children previously have paid the tax on the vehicles transferred to the state of West Virginia.

(3) The division of motor vehicles may issue a certificate of registration and title to an applicant if the applicant provides sufficient proof to the division of motor vehicles that the applicant has paid the taxes and fees required by this section to a motor vehicle dealership that has gone out of business or has filed bankruptcy proceedings in the United States bankruptcy court and the taxes and fees so required to be paid by the applicant have not been sent to the division by the motor vehicle dealership or have been impounded due to the bankruptcy proceedings: \textit{Provided}, That the applicant makes an affidavit of the same and assigns all rights to claims for money the applicant may have against the motor vehicle dealership to the division of motor vehicles.

(4) The division of motor vehicles shall issue a certificate of registration and title to an applicant without payment of the tax imposed by this section if the applicant is a corporation, partnership or limited liability company transferring the vehicle to another corporation, partnership or limited liability company when the entities involved in the transfer are members of the same controlled group and the transferring entity has previously paid the tax on the vehicle transferred. For the purposes of this section, control means ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation or equity interests of a partnership or limited liability company entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company.

(5) The tax imposed by this section does not apply to vehicles to be registered as Class H vehicles or Class M vehicles, as defined in section one, article ten of this
chapter, which are used or to be used in interstate commerce. Nor does the tax imposed by this section apply to the titling of Class B vehicles registered at a gross weight of fifty-five thousand pounds or more, or to the titling of Class C semitrailers, full trailers, pole trailers and converter gear: Provided. That if an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner shall surrender to the commissioner the exempted registration, the exempted certificate of title, and pay the tax imposed by this section based upon the current market value of the vehicle: Provided, however, That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for Class B vehicles in excess of fifty-five thousand pounds and Class C semitrailers, full trailers, pole trailers and converter gear may not subject the sale or purchase of the vehicles to the consumers sales tax.

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

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

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

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

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

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

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

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

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

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

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

§17A-3-16. Expiration of registration and certificates of title.

(a) Every vehicle registration under this chapter and every registration card and registration plate issued under this chapter expires at midnight on the last day of the month designated by the commissioner: Provided, That the commissioner may extend the period during which the registration plates may be used.

Certificates of title need not be renewed annually but remain valid until canceled by the division for cause or upon a transfer of any interest shown in the vehicle.

(b) Notwithstanding the provisions of this section or of any provision of this chapter, the commissioner shall adopt a staggered registration system whereby the registration of Class A motor vehicles is for a period of twelve consecutive calendar months, the expiration dates of the registrations to be staggered throughout the year: Provided, That on or after the first day of July, one thousand nine hundred ninety-seven, the commissioner shall also offer an optional two-year registration system, whereby the registration of all vehicles shall be for a period of twenty-four consecutive calendar months, the expiration dates of the registrations to be staggered throughout the year. Under this option, all annual fees due at the time of registration shall be multiplied by two.

(1) On or after the first day of July, one thousand nine hundred ninety-seven, all Class A motor vehicles as
defined in section one, article ten of this chapter, shall be
registered for a period of twelve or twenty-four
consecutive calendar months. There hereby are
established twelve registration periods, each of which shall
start on the first day of each calendar month of the year
and shall end on the last day of the twelfth month from
date of beginning. The period ending on the thirty-first
day of January is designated the first period; that ending
on the twenty-eighth (twenty-ninth) day of February is
designated the second; that ending on the thirty-first day
of March is designated the third; that ending on the
thirtieth day of April is designated the fourth; that ending
on the thirty-first day of May is designated the fifth; that
ending on the thirtieth day of June is designated the sixth;
that ending on the thirty-first day of July is designated the
seventh; that ending on the thirty-first day of August is
designated the eighth; that ending on the thirtieth day of
September is designated the ninth; that ending on the
thirty-first day of October is designated the tenth; that
ending on the thirtieth day of November is designated the
eleventh; and that ending on the thirty-first day of
December is designated the twelfth.

(2) All Class A motor vehicles, which are operated for
the first time upon the public highways of this state to and
including the fifteenth day of any given month are subject
to registration and payment of the fee for the twelve or
twenty-four-month period commencing the first day of
the month of operation. All Class A motor vehicles
operated for the first time upon the public highways of
this state on and after the sixteenth day of any given
month are subject to registration and payment of fee for
the twelve or twenty-four-month period commencing the
first day of the month of the next following calendar
month.

(c) On or before the first day of July, one thousand
nine hundred ninety-six, all Class T and Class R vehicles
shall be registered for a maximum period of three years or
portion thereof based on the number of years remaining
in the three-year period designated by the commissioner.
(d) On or before the first day of July, two thousand, all Class C trailers shall be registered for the duration of the owner's interest in the trailer and shall not expire until either sold or otherwise permanently removed from the service of the owner.

ARTICLE 7. SPECIAL STICKERS.

§17A-7-3. Operation of house trailer under special stickers; application and fees; expiration; issuance of special stickers to holders of Class B registration plates.

Upon application therefor on a form prescribed by him or her the commissioner may issue to the owner of a house trailer a special one-movement sticker of such design and content, as may be prescribed by him or her: Provided, That such special sticker shall not be issued to any house trailer or trailer dealer. Such sticker shall be valid for the movement of a house trailer one time only over the streets and highways of this state, and no more than one such sticker may be issued for the same house trailer while owned by the same person. A fee of two dollars shall be received by the department for each special sticker. In order that any holder of a Class B registration plate who is engaged in the business of moving house trailers for hire may move a house trailer at the request of the owner thereof without the delay which would be incident to such owner obtaining a special one-movement sticker, any such holder may from time to time apply to the commissioner for a supply of said special one-movement stickers, and upon proper application therefor on a form prescribed by the commissioner and payment of the fee for each such sticker hereinbefore in this section prescribed, the commissioner shall issue to such holder a supply of serially numbered stickers, not in excess of twenty-five upon any one application. Before moving any such house trailer, the holder of the Class B registration plate who has obtained a supply of such special one-movement stickers shall issue such a sticker to the owner thereof and shall make certain that such sticker is affixed to the house trailer prior to the movement thereof. No refund or credit of fees paid by the holder of
ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-1. Classification of vehicles for purpose of registration.

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

§17A-10-5. Public service commission assessment must be paid before vehicle registered; suspension of registration cards and plates issued to motor carriers; privilege to exchange suspended registration cards and plates.

§17A-10-1. Classification of vehicles for purpose of registration.

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

Class A. Motor vehicles of passenger type and trucks with a gross weight of not more than eight thousand pounds;

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

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

Class G. Motorcycles and parking enforcement vehicles;

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

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

Class M. Mobile equipment as defined in subdivision (oo), section one, article one of this chapter;
25 Class R. House trailers;
26 Class T. Trailers or semitrailers of a type designed to be drawn by Class A vehicles and having a gross weight of less than two thousand pounds; and
27 Class Farm Truck. Motor vehicles designated as trucks having a minimum gross weight of more than eight thousand pounds and a maximum gross weight of sixty-four thousand pounds, used exclusively in the conduct of a farming business, engaged in the production of agricultural products by means of: (a) The planting, cultivation and harvesting of agricultural, horticultural, vegetable or other products of the soil; or (b) the raising, feeding and care of livestock, poultry, bees and dairy cattle. Such farm truck shall be used only for the transportation of agricultural products so produced by the owner thereof, or for the transportation of agricultural supplies used in such production, or for private passenger use.

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

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

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

(1) Class A. — The registration fee for all motor vehicles of this class is twenty-eight dollars and fifty cents: Provided, That the registration fees and any other fees required by this chapter for Class A vehicles under the optional biennial staggered registration system shall be multiplied by two and paid biennially to the division.

No license fee shall be charged for vehicles owned by churches, or by trustees for churches, which are regularly used for transporting parishioners to and from church services. Notwithstanding the exemption, the certificate of registration and license plates shall be obtained the same as other cards and plates under this article.
(2) Class B.— The registration fee for all motor vehicles of this class is as follows:

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

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

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

(3) Class G. — The registration fee for each motorcycle or parking enforcement vehicle is eight dollars.

(4) Class H. — The registration fee for all vehicles for this class operating entirely within the state is five dollars; and for vehicles engaged in interstate transportation of persons, the registration fee is the amount of the fees provided by this section for Class B, reduced by the amount that the mileage of the vehicles operated in states other than West Virginia bears to the total mileage operated by the vehicles in all states under a formula to be established by the division of motor vehicles.

(5) Class J. — The registration fee for all motor vehicles of this class is eighty-five dollars. Ambulances and hearses used exclusively as such are exempt from the special fees set forth in this section.

(6) Class M. — The registration fee for all vehicles of this class is seventeen dollars and fifty cents.
(7) **Class Farm Truck.** — The registration fee for all motor vehicles of this class is as follows:

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

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

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

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

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

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

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

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

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

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

(c) The fees paid to the division for a multi-year registration provided for by this chapter shall be the same as the annual registration fee established by this section.
(d) The registration fee for all Class C vehicles shall be fifty dollars. On or before the first day of July, two-thousand, all Class C trailers shall be registered for the duration of the owner's interest in the trailer and shall not expire until either sold or otherwise permanently removed from the service of the owner.

§17A-10-5. Public service commission assessment must be paid before vehicle registered; suspension of registration cards and plates issued to motor carriers; privilege to exchange suspended registration cards and plates.

The commissioner shall not register any vehicle subject to economic regulation by the public service commission unless the assessment for such vehicle provided for in section six, article six, chapter twenty-four-a of this code shall have been paid and notice of such payment shall have been received by the commissioner in the manner provided by said section.

The commissioner shall suspend any registration card and registration plate issued by the department under authority of this section for any vehicle subject to economic regulation by the public service commission, pursuant to chapter twenty-four-a of this code, upon receiving certification in writing from the public service commission that said commission has canceled, suspended or revoked the certificate of convenience and necessity, permit or other operating authority of the motor carrier to whom or to which such registration card and registration plate were issued under the authority provided by the first paragraph of this section: Provided, That the motor carrier to whom or to which said registration card and registration plate were issued shall have the privilege of receiving in exchange for any such suspended registration card and registration plate a registration card and registration plate for a vehicle of a different class as provided by section one of article four of this chapter.
CHAPTER 210

(Com. Sub. for S. B. 374—By Senators Chafin, Wooton, Ross, Prezioso, Dugan, Jackson, Bailey, Deem, Love, Dittmar, Snyder, Anderson, Kessler, Minear and Sprouse)

[Passed March 2, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salvage certificates for certain wrecked or damaged vehicles; fees; applicable taxes; authorizing the commissioner to issue titles for salvage or reconstructed vehicles; fees; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.

(a) In the event a motor vehicle is determined to be a total loss or otherwise designated as "totaled" by any insurance company or insurer, and upon payment of an agreed price as a claim settlement to any insured or claimant owner for the purchase of the vehicle, the insurance company or the insurer shall receive the certificate of title and the vehicle. The insurance company or insurer shall within ten days surrender the certificate of title and a copy of the claim settlement to the division of motor vehicles. The division shall issue a "salvage certificate", on a form prescribed by the commissioner, in the name of the insurance company or the insurer. Such certificate shall contain on the reverse thereof spaces for one successive assignment before a new certificate at an additional fee is required. Upon the sale of the vehicle the insurance company or insurer shall endorse the assignment of ownership on the salvage certificate and
deliver it to the purchaser. The vehicle shall not be titled or registered for operation on the streets or highways of this state unless there is compliance with subsection (c) of this section. In the event a motor vehicle is determined to be damaged in excess of seventy-five percent of its retail price as described in the national automobile dealers association official used car guide, a junk card will be issued in lieu of a salvage certificate.

(b) Any owner, who scraps, compresses, dismantles or destroys a vehicle for which a certificate of title or salvage certificate has been issued, shall, within twenty days, surrender the certificate of title or salvage certificate to the division for cancellation. Any person who purchases or acquires a vehicle as salvage or scrap, to be dismantled, compressed or destroyed, shall within twenty days surrender the certificate to the division. Should a vehicle less than eight years old be determined to be a complete loss as a result of fire, flood or a basket, a photograph of the vehicle shall accompany the surrendered certificate: 

Provided, That the term "basket" means a vehicle which has been damaged more than seventy-five percent of the retail price as described in the national automobile dealers association official used car guide. If the vehicle is to be reconstructed, the owner must obtain a salvage certificate and comply with the provisions of subsection (c) of this section.

(c) If the motor vehicle is a "reconstructed vehicle" as defined in section one, article one of this chapter, it may not be titled or registered for operation until it has been inspected by an official state inspection station and by a representative of the division of motor vehicles who has been designated by the commissioner as an investigator. Following an approved inspection, an application for a new certificate of title may be submitted to the division; however, the applicant shall be required to retain all receipts for component parts, equipment and materials used in the reconstruction. The salvage certificate must also be surrendered to the division before a certificate of title may be issued.
(d) The owner or title holder of any motor vehicle titled in this state which has previously been branded in this state or another state as "salvage", "reconstructed", "flood" or "fire" or an equivalent term under another state's laws shall, upon becoming aware of the brand, apply for and receive a title from the division of motor vehicles on which the brand "reconstructed", "salvage", "flood" or "fire" is shown. A fee of five dollars will be charged for each title so issued.

(e) If application is made for title to a motor vehicle, the title to which has previously been branded "reconstructed", "salvage", "flood" or "fire" by the division of motor vehicles under this section and said application is accompanied by a title from another state which does not carry the brand, the division shall, before issuing the title, affix the brand "reconstructed", "flood" or "fire" to the title. The privilege tax paid on a motor vehicle titled as "reconstructed" under the provisions of this subsection, "flood" or "fire" shall be based on fifty percent of the loan value as described in the national automobile dealers association official used car guide.

(f) The division shall charge a fee of fifteen dollars for the issuance of each salvage certificate but shall not require the payment of the five percent privilege tax. However, upon application for a certificate of title for a reconstructed, flood or fire damaged vehicle, the division shall collect the five percent privilege tax on the fair market value of the vehicle as determined by the commissioner unless the applicant is otherwise exempt from the payment of such privilege tax. A wrecker/dismantler/rebuilder is exempt from the five percent privilege tax upon titling a reconstructed vehicle. The division shall collect a fee of thirty-five dollars per vehicle for inspections of reconstructed vehicles. These fees shall be deposited in a special fund created in the state treasurer's office and may be expended by the division to carry out the provisions of this article. Licensed wreckers/dismantlers/rebuilders may charge a fee not to exceed twenty-five dollars for all vehicles owned by private rebuilders which are inspected at the place of business of a wrecker/dismantler/rebuilder.
(g) A certificate of title issued by the division for a reconstructed vehicle shall contain markings in bold print on the face of the title that it is for a reconstructed, flood or fire damaged vehicle.

Any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars, or imprisoned in the county jail for not more than one year, or both fined and imprisoned.

CHAPTER 211

(S. B. 179—By Senators White, Ball, Fanning, Hunter, Ross, Buckalew, Scott, Deem, Kimble, Oliverio, Schoonover, Wooton, McKenzie, Minear, Sprouse, Anderson, Helmick, Bowman and Walker)

[Passed February 19, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to parking for handicapped persons; defining terms; establishing qualifications; requiring special registration plates and removable windshield placards; establishing expiration dates for special registration plates and permanent removable windshield placards; establishing duties of commissioner; determining violations; authorizing law-enforcement agencies to utilize trained volunteers; and establishing penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. STOPPING, STANDING AND PARKING.
§17C-13-6. Stopping, standing or parking privileges for persons with a mobility impairment; definitions; qualification; special registration plates and removable windshield placards; expiration; application; violation; penalties.

(a) Any owner of a Class A motor vehicle subject to registration under the provisions of article three, chapter seventeen-a of this code, who is:

(1) A person with a mobility impairment;

(2) A relative of a person with a mobility impairment;

(3) A person who regularly resides with a person with a mobility impairment; or

(4) A person who regularly transports a person who has a mobility impairment, may submit an application for a special registration plate or a removable windshield placard.

(b) Any person with a mobility impairment, any relative of a person with a mobility impairment, any person who regularly resides with a person with a mobility impairment or any person who regularly transports a person who has a mobility impairment may submit an application for a special registration plate or a removable windshield placard or both for a Class A vehicle by submitting to the commissioner:

(1) An application on a form prescribed and furnished by the commissioner, specifying whether the applicant desires a special registration plate, a removable windshield placard, or both; and

(2) A certificate issued by a licensed physician stating that the applicant or the applicant's relative is a person with a mobility impairment, or that the person regularly residing with the applicant or regularly transported by the applicant is a person with a mobility impairment, as defined in this section, and furthermore, the physician shall specify whether the disability is temporary (not to exceed six months) or permanent (one to five years or more in expected duration).
Upon receipt of the completed application, the physician's certificate and the regular registration fee for the applicant's vehicle class, if the commissioner finds that the applicant qualifies for the special registration plate or a removable windshield placard as provided in this section, he or she shall issue to the applicant a special registration plate (upon remittance of the regular registration fee), or a removable windshield placard (red for temporary and blue for permanent), or both. Upon request, the commissioner shall also issue to any otherwise qualified applicant one additional placard having the same expiration date as the applicant's original placard. The placard shall be displayed by hanging it from the interior rearview mirror of the motor vehicle so that it is conspicuously visible from outside the vehicle when parked in a designated handicapped parking space. The placard may be removed from the rearview mirror whenever the vehicle is being operated to ensure clear vision and safe driving. Only in the event that there is no suitable rearview mirror in the vehicle may the placard be displayed on the dashboard of the vehicle.

(c) As used in this section, the following terms have the meanings ascribed to them in this subsection:

(1) A person with a "mobility impairment" means a person who, as determined by a licensed physician:

(A) Cannot walk two hundred feet without stopping to rest;

(B) Cannot walk without the use of or assistance from a brace, cane, crutch, prosthetic device, wheelchair, other assistive device or another person;

(C) Is restricted by lung disease to such an extent that the person's force (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(D) Uses portable oxygen;

(E) Has a cardiac condition to such an extent that the person's functional limitations are classified in severity as
Class III or Class IV according to standards established by the American heart association; or

(F) Is severely limited in his or her ability to walk because of an arthritic, neurological, orthopedic or other physical condition;

(2) "Special registration plate" means a registration plate that displays the international symbol of access in a color that contrasts with the background, in letters and numbers the same size as those on the plate, and which may be used in lieu of a regular registration plate;

(3) "Removable windshield placard" (permanent or temporary) means a two-sided, hanger style placard measuring three inches by nine and one-half inches, with all of the following on each side:

(A) The international symbol of access, measuring at least three inches in height, centered on the placard, in white on a blue background for permanent designations and in white on a red background for temporary designations;

(B) An identification number measuring one inch in height;

(C) An expiration date in numbers measuring one inch in height; and

(D) The seal or other identifying symbol of the issuing authority;

(4) "Regular registration fee" means the standard registration fee for a vehicle of the same class as the applicant's;

(5) "Public entity" means state or local government or any department, agency, special purpose district or other instrumentality of a state or local government;

(6) "Public facility" means all or any part of any buildings, structures, sites, complexes, roads, parking lots or other real or personal property, including the site where the facility is located;
(7) "Place(s) of public accommodation" means a facility or facilities operated by a private entity whose operations affect commerce and fall within at least one of the following categories:

(A) Inns, hotels, motels and other places of lodging;

(B) Restaurants, bars or other establishments serving food or drink;

(C) Motion picture houses, theaters, concert halls, stadiums or other places of exhibition or entertainment;

(D) Auditoriums, convention centers, lecture halls or other places of public gatherings;

(E) Bakeries, grocery stores, clothing stores, hardware stores, shopping centers or other sales or rental establishments;

(F) Laundromats, dry cleaners, banks, barber and beauty shops, travel agencies, shoe repair shops, funeral parlors, gas or service stations, offices of accountants and attorneys, pharmacies, insurance offices, offices of professional health care providers, hospitals or other service establishments;

(G) Terminals, depots or other stations used for public transportation;

(H) Museums, libraries, galleries or other places of public display or collection;

(I) Parks, zoos, amusement parks or other places of recreation;

(J) Public or private nursery, elementary, secondary, undergraduate or post-graduate schools or other places of learning and day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies or other social services establishments; and

(K) Gymnasiums, health spas, bowling alleys, golf courses or other places of exercise or recreation;
"Commercial facility" means a facility whose operations affect commerce and which are intended for nonresidential use by a private entity.

Any person who falsely or fraudulently obtains or seeks to obtain the special plate or the removable windshield placard provided for in this section, and any person who falsely certifies that a person is mobility impaired in order that an applicant may be issued the special registration plate or windshield placard hereunder, is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined one hundred dollars.

The commissioner shall set the expiration date for special registration plates and permanent removable windshield placards on the last day of a given month and year, to be valid for a minimum of one year but not more than five years, after which time a new application must be submitted to the commissioner. After the commissioner receives the new application, signed by a certified physician, the commissioner shall issue: (i) A new special registration plate or new permanent removable windshield placard; or (ii) official labels imprinted with the new expiration date and designed so as to be placed over the old dates on the original registration plate or windshield placard.

The commissioner shall set the expiration date of temporary removable windshield placards to be valid for a period of approximately six months after the application was received and approved by the commissioner.

The commissioner shall issue to each applicant who is granted a special registration plate or windshield placard an identification card bearing the applicant's name, assigned identification number and expiration date. The applicant must thereafter carry this identification card on his or her person whenever parking in a handicapped parking space.

A handicapped parking space should comply with the provisions of the Americans with Disabilities Act Guidelines, contained in 28 C.F.R. 36, Appendix A,
Section 4.6. In particular, the parking space should be a minimum of eight feet wide with an adjacent access aisle for vans having side mounted handicap lifts. Access aisles should be marked using diagonal stripes or other appropriate markings denoting that the space is a no-parking zone. Lines or markings on the pavement or curbs for parking spaces and access aisles may be in any color, although blue is the generally accepted color for handicapped parking.

(h) A vehicle from any other state, United States territory or foreign country displaying an officially issued special registration plate, placard or decal bearing the international symbol of access, shall be recognized and accepted as meeting the requirements of this section, regardless of where the plate, placard or decal is mounted or displayed on the vehicle.

(i) Free stopping, standing or parking places marked with the international symbol of access shall be designated in close proximity to all public entities, including state, county and municipal buildings and facilities, places of public accommodation and commercial facilities. These parking places shall be reserved solely for persons with a mobility impairment during the hours that those buildings are open for business.

(j) Any person whose vehicle properly displays a valid, unexpired special registration plate or removable windshield placard may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted: Provided, That this privilege does not mean that the vehicle may park in any zone where stopping, standing or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard. To the extent any provision of any ordinance of any political subdivision of this state is contrary to the provisions of this section, the provisions of this section take precedence and apply.

The privileges provided for in this subsection apply only during those times when the vehicle is being used for
the transportation of a person with a mobility impairment.

Any person who knowingly exercises, or attempts to
exercise, these privileges at a time when the vehicle is not
being used for the transportation of a person with a
mobility impairment is guilty of a misdemeanor and, upon
conviction thereof, in addition to any other penalty he or
she may otherwise incur, shall be fined one hundred
dollars.

(k) Any person whose vehicle does not display a valid,
special registration plate or removable windshield placard
may not stop, stand or park a motor vehicle in an area
designated, zoned or marked for handicapped parking
with signs or instructions displaying the international
symbol of access, either by itself or with explanatory text.
Such signs may be mounted on a post or a wall in front of
the handicapped parking space and instructions may
appear on the ground or pavement, but use of both
methods is preferred. Handicapped parking spaces for
vans having an eight-foot adjacent access aisle should be
designated as "van accessible" but may be used by any
vehicle displaying a valid special registration plate or
removable windshield placard. These spaces are intended
solely for persons with a mobility impairment, as defined
in this section: Provided, That any person in the act of
transporting a person with a mobility impairment as
defined in this section, may stop, stand or park a motor
vehicle not displaying a special registration plate or
removable windshield placard in the area designated for
handicapped parking by the international symbol of
access for the limited purposes of loading or unloading a
passenger with a mobility impairment: Provided,
however, That the vehicle shall be promptly moved after
the completion of this limited purpose.

Any person who violates the provisions of this
subsection is guilty of a misdemeanor and, upon
conviction thereof, shall be fined one hundred dollars.

(l) Signs erected in the future that designate areas as
"handicapped parking" or that display the international
symbol of access shall also include the words "$100 fine".

(m) No person may stop, stand or park a motor
vehicle in an area designated or marked off as an access
259 aisle adjacent to a van-accessible parking space or regular
260 handicapped parking space. Any person, including a
261 driver of a vehicle displaying a valid removable windshield
262 placard or special registration plate, who violates the
263 provisions of this subsection is guilty of a misdemeanor
264 and, upon conviction thereof, shall be fined one hundred
265 dollars.
266
267 (n) Parking enforcement personnel who otherwise
268 enforce parking violations are hereby authorized to issue
269 citations for violations of this section.
269
270 (o) Law-enforcement agencies may establish a
271 program to utilize trained volunteers to collect
272 information necessary to issue citations to persons who
273 illegally park in designated handicapped parking spaces.
274 Any law-enforcement agency choosing to establish a
275 program shall provide for workers' compensation and
276 liability coverage. The volunteers shall photograph the
277 illegally parked vehicle and complete a form, to be
278 developed by supervising law-enforcement agencies, that
279 includes the vehicle's license plate number, date, time and
280 location of the illegally parked vehicle. The photographs
281 must show the vehicle in the handicapped space and a
282 readable view of the license plate. Within the discretion of
283 the supervising law-enforcement agency, the volunteers
284 may issue citations or the volunteers may submit the
285 photographs of the illegally parked vehicle and the form
286 to the supervising law-enforcement agency, who may issue
287 a citation, which includes the photographs and the form, to
288 the owner of the illegally parked vehicle. Volunteers shall
289 be trained on the requirements for citations for vehicles
290 parked in marked, zoned or designated handicapped
291 parking areas by the supervising law-enforcement agency.
291
292 (p) The commissioner shall establish a grace period
293 for individuals who, on the effective date of the
294 amendment adding this subsection, hold special
295 registration plates or removable windshield placards
296 bearing no expiration date to submit their applications for
297 newly issued special registration plates and windshield
298 placards, after which time any undated registration plate or
299 windshield placard is invalid and subject to confiscation
300 by any duly appointed law-enforcement officer.
(q) The commissioner shall adopt and promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this section and provide for an orderly transition to provisions enacted by the Legislature in its regular session in the year one thousand nine hundred ninety-six.

CHAPTER 212

(S. B. 682—By Senators Schoonover, Ross and Helmick)

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

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 approved additional lighting equipment for motor vehicles; authorizing additional lighting equipment to be used by funeral hearses; and authorizing the use of electroluminescent solid state ceramic front identification plates.

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.

(a) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

*Clerk's Note: This section was also amended by HB 2785 (Chapter 157), which passed prior to this act.
(b) Any motor vehicle may be equipped with not more than one running board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(c) Except for school buses as provided in this subsection, any motor vehicle may be equipped with not more than two back-up lamps either separately or in combination with other lamps, but any such back-up lamp shall not be lighted when the motor vehicle is in forward motion. School buses used for the transportation of school children in this state, whether owned and operated by a county board of education or privately owned and operated under contract with a county board of education, shall be equipped with two back-up lamps, one on each side of the rear door, with white lens or reflectors, capable of lighting the roadway and objects to the rear of the bus for safe backing during darkness, and which, at the option of the county board of education, may each provide fifty candlepower in illumination intensity instead of thirty-two candlepower.

(d) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing, and when so equipped may display such warning in addition to any other warning signals required by this article. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red.

(e) Vehicles used by "rural mail carriers" in carrying or delivering mail in rural areas may be equipped with amber flashing lights. Such lights shall be on the front and rear of the vehicle and may be activated when the vehicle is stopped or decreasing speed in order to stop in the course of carrying, delivering or picking up mail along the route.
(f) Notwithstanding any other provision of this code to the contrary, any motor vehicle may be equipped with not more than one electroluminescent solid state ceramic front identification plate without glare, mounted in conformance with the manufacturer’s specifications.

(g) Vehicles used as the lead car in a funeral procession are hereby authorized to be equipped with, but are not required to use, purple lamps or purple flashing lights. Such lamps may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing a funeral procession, and when so equipped may display such warning in addition to any other warning signals required by this article. The lamps or flashing lights used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously either illuminated or flashing purple lights. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing or illuminated purple lights.

CHAPTER 213

(S. B. 164—By Senators Dittmar, Ball, Fanning, Oliverio, Schoonover, Buckalew and Kimble)

[Passed February 11, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section two, article ten, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article thirty-four of said chapter, all relating to municipal court procedures; requiring municipal court judges to complete mandatory training; providing that municipal courts follow the rules of criminal procedure for magistrate courts; providing for appeals from municipal
court to circuit court; creating time frames, bonds and stays for such appeals; providing limited record of such court proceedings; providing for the preparation and designation of such records for appeal, electronic recordation of trials and preparation of transcripts of such proceedings; providing circuit court discretion to schedule oral argument, receive memoranda of law and take evidence; providing factors and standards for appeals of municipal court decisions; establishing time frames for circuit court review of such proceedings; providing actions which the circuit court may take to dispose of such appeals; and clarifying eligibility to the judicial retirement system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

PART II. MUNICIPAL COURT.

§8-10-2. Municipal court for municipalities.

(a) Notwithstanding any charter provision to the contrary, any city may provide by charter provision and any municipality may provide by ordinance for the creation and maintenance of a municipal court, for the appointment or election of an officer to be known as municipal court judge, and for his or her compensation, and authorize the exercise by the court or judge of the jurisdiction and the judicial powers, authority and duties set forth in section one of this article and similar or related judicial powers, authority and duties enumerated in any applicable charter provisions, as set forth in the charter or ordinance.

(b) Effective the first day of July, one thousand nine hundred ninety-eight, any person who assumes the duties
of municipal court judge who has not been admitted to
practice law in this state shall attend and complete the next
available course of instruction in rudimentary principles
of law and procedure. The course shall be conducted by
the municipal league or a like association whose members
include more than one half of the chartered cities and
municipalities of this state. The instruction must be
performed by or with the services of an attorney licensed
to practice law in this state for at least three years. Any
municipal court judge serving on the first day of July, one
thousand nine hundred ninety-eight, shall complete such
course within one year, unless he or she has been admitted
to the practice of law in this state. Any municipal court
judge may, thereafter, attend a course for the purpose of
continuing education. The cost of any course referred to
in this section shall be paid by the municipality which
employs the municipal judge.

(c) Only a defendant who has been charged with an
offense for which a period of confinement in jail may be
imposed is entitled to a trial by jury. If a municipal court
determines, upon demand of a defendant, to
conduct a trial by jury in a criminal matter, it shall follow
the procedures set forth in the rules of criminal procedure
for magistrate courts promulgated by the supreme court
of appeals, except that the jury in municipal court shall
consist of twelve members.

(d) Effective the first day of July, one thousand nine
hundred ninety-eight, a police court judge of any
municipality shall thereafter be referred to as the
municipal court judge.

ARTICLE 34. JUDICIAL REVIEW.

§8-34-1. General right of appeal; recordation of jury trial;
preparation of record.

(a) Every person sentenced under this chapter by any
mayor, acting in a judicial capacity, or municipal court
judge to confinement or to the payment of a fine may
appeal that sentence to the circuit court as provided in this
section. When the municipality is located in more than one
county, the appeal shall be taken to the circuit court of the
county in which the major portion of the territory of the
municipality is located.

(b) For purposes of appeal, when a jury trial is had
before a mayor or in municipal court, that court shall be a
court of limited record. Trials before a mayor or
municipal court when a jury is empaneled shall be
recorded electronically. A magnetic tape or other
electronic recording medium on which a trial is recorded
shall be indexed and securely preserved by the court.
When requested by the municipal prosecutor or by the
defendant, or by any interested person, that court shall
provide a duplicate copy of the tape or other electronic
recording medium of each trial held. For evidentiary
purposes, a duplicate of such electronic recording
prepared by the court shall be a "writing" or "recording" as
those terms are defined in rule 1001 of the West Virginia
rules of evidence, and unless the duplicate is shown not to
reflect the contents accurately, it shall be treated as an
original in the same manner that data stored in a computer
or similar data is regarded as an "original" under such
rule. Unless the requesting party is a defendant
proceeding as an indigent, the party shall pay to the court
an amount equal to the actual cost of the tape or other
medium or the sum of five dollars, whichever is greater.

(c) If the defendant in such a proceeding waives the
right to trial by jury or if no jury trial is required by law,
the matter shall be tried by the mayor or municipal court
judge sitting without a jury. For purposes of appeal, when
a nonjury trial is had before a mayor or municipal court
judge that court shall not be a court of limited record and
the proceedings shall not be electronically recorded.

(d) Any person convicted of an offense by a mayor or
municipal court judge may appeal such conviction to
circuit court as a matter of right by requesting such appeal
within twenty days after the sentencing for such
conviction. The mayor or municipal court judge may
require the posting of bond with good security
conditioned upon the appearance of the defendant as
45 required in circuit court, but such bond may not exceed
46 the maximum amount of any fine which could be
47 imposed for the offense. The bond may be upon the
48 defendant's own recognizance. If no appeal is perfected
49 within such twenty-day period, the circuit court may, not
50 later than ninety days after the sentencing, grant an appeal
51 upon a showing of good cause why such appeal was not
52 filed within the twenty-day period. The filing or granting
53 of an appeal shall automatically stay the sentence of the
54 mayor or municipal court judge.

(e) In the case of an appeal of such a proceeding tried
55 before a jury, the hearing on the appeal before the circuit
56 court shall be a hearing on the record. In the case of an
57 appeal of such a proceeding tried before the mayor or
58 municipal court judge without a jury, the hearing on the
59 appeal before the circuit court shall be a trial de novo,
60 triable to the court, without a jury.

(f) In the case of an appeal of such a proceeding tried
61 before a jury, the following provisions shall apply:

(1) To prepare the record for appeal, the defendant
62 shall file with the circuit court a petition setting forth the
63 grounds relied upon, and designating those portions of the
64 testimony or other matters reflected in the recording, if
65 any, which he or she will rely upon in prosecuting the
66 appeal. The municipal prosecutor may designate
67 additional portions of the recording. Unless otherwise
68 ordered by the circuit court, the preparation of a transcript
69 of the portions of the recording designated by the
70 defendant, and the payment of the cost thereof shall be the
71 responsibility of the defendant: Provided, That such costs
72 may be waived due to the defendant's indigence. The
73 circuit court may, by general order or by order entered in
74 a specific case, dispense with preparation of a transcript
75 and review the designated portions of the recording orally.

(2) The designated portions of the recording or the
76 transcript thereof, as the case may be, and the exhibits,
77 together with all papers and requests filed in the
78 proceeding, constitute the exclusive record for appeal, and
shall be made available to the defendant and the municipal prosecutor.

(3) After the record for appeal is filed in the office of the circuit clerk, the court may, in its discretion, schedule the matter for oral argument or require the parties to submit written memoranda of law. The circuit court shall consider whether the judgment or order of the mayor or municipal court judge is:

(A) Arbitrary, capricious, an abuse of discretion or otherwise not in conformance with the law;

(B) Contrary to constitutional right, power, privilege or immunity;

(C) In excess of statutory jurisdiction, authority or limitations or short of statutory right;

(D) Without observance of procedure required by law;

(E) Unsupported by the evidence; or

(F) Unwarranted by the facts.

(4) The circuit court may take any of the following actions which may be necessary to dispose of the questions presented on appeal, with justice to the defendant and the municipality:

(A) Dismiss the appeal;

(B) Reverse, affirm or modify the judgment or order being appealed;

(C) Remand the case for further proceedings, with instructions to the mayor or municipal court judge;

(D) Finally dispose of the action by entering judgment on appeal; or

(E) Retain the matter and retry the issues of fact, or some part or portions thereof, as may be required by the provisions of subdivision (5) of this subsection.
(5) If the circuit court finds that a record for appeal is deficient as to matters which might be affected by evidence not considered or inadequately developed, the court may proceed to take such evidence and make independent findings of fact to the extent that questions of fact and law may merge in determining whether the evidence was such, as a matter of law, as to require a particular finding. If the circuit court finds that the proceedings below were subject to error to the extent that the defendant was effectively denied a jury trial, the circuit court may, upon motion of the defendant, empanel a jury to reexamine the issues of fact, or some part or portions thereof.

(6) The review by the court and a decision on the appeal shall be completed within ninety days after the appeal is regularly placed upon the docket of the circuit court.

(g) In the case of an appeal of a municipal court proceeding tried without a jury, the defendant shall file with the circuit court a petition for appeal and trial de novo. The exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for appeal and shall be made available to the parties.

(h) Notwithstanding any other provision of this code to the contrary, there shall be no appeal from a plea of guilty where the defendant was represented by counsel at the time the plea was entered: Provided, That the defendant shall have an appeal from a plea of guilty where an extraordinary remedy would lie or where the mayor or municipal court judge lacked jurisdiction.

(i) The designation in this section of a mayor, acting as municipal court judge, or of municipal courts as "courts of limited record" shall not be construed to give standing or eligibility to mayors or municipal court judges to participate or be included in the retirement system for judges of courts of record established under the provisions of article nine, chapter fifty-one of this code.
CHAPTER 214

(H. B. 4241—By Delegates Tucker, Compton, Stalnaker, Kuhn, Pettit, Buchanan and Ennis)

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

AN ACT to amend and reenact section five, article sixteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to general powers and authority of board for municipal public works and increasing bidding threshold before certain contracts are required to be advertised for bids.

Be it enacted by the Legislature of West Virginia:

That section five, article sixteen, 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 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

PART III. GENERAL POWERS AND AUTHORITY.

§8-16-5. Powers of board.

The board shall have plenary power and authority to take all steps and proceedings, and to make and enter into all contracts or agreements necessary, appropriate, useful, convenient or incidental to the performance of its duties and the execution of its powers and authority under this article: Provided, That any contract or agreement relating to the financing, or the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase or equipment of any such works, and any trust indenture with respect thereto as hereafter provided for, shall be approved by the governing body or bodies.

The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board may direct. All such compensation and expenses incurred in carrying out the provisions of this article shall
be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any power or authority herein given it so as to bind said board or any municipality beyond the extent to which money shall have been, or may be provided under the authority of this article. No contract or agreement with any contractor or contractors for labor or materials, or both, exceeding in amount the sum of ten thousand dollars shall be made without advertising for bids, which bids shall be publicly opened and an award made to the lowest responsible bidder, with power and authority in the board to reject any and all bids. After the construction, reconstruction, establishment, acquisition, renovation or equipment of any such works, the board shall maintain, operate, manage and control the same, and may order and complete any improvements, extensions, enlargements, increase or repair (including replacements) of and to the works that the board may deem expedient, if funds therefor be available, or are made available, as provided in this article, and shall establish rules for the use, maintenance and operation of the works, and do all things necessary or expedient for the successful operation thereof. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided under the authority of this article.

CHAPTER 215

(H. B. 4502—By Delegates Proudfoot, Leggett, Williams, Willis, Evans, Stemple and Tillis)

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

AN ACT to amend and reenact section two, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to natural resources; definitions; clarifying that bag limit and creel limit apply to any individual; and providing that game fish includes all game fish hybrids.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-2. Definitions.

As used in this chapter, unless the context clearly requires a different meaning:

"Agency" means any branch, department or unit of the state government, however designated or constituted.

"Alien" means any person not a citizen of the United States.

"Bag limit" or "creel limit" means the maximum number of wildlife which may be taken, caught, killed or possessed by any person.

"Bona fide resident, tenant or lessee" means a person who permanently resides on the land.

"Citizen" means any native born citizen of the United States, and foreign born persons who have procured their final naturalization papers.

"Closed season" means the time or period during which it shall be unlawful to take any wildlife as specified and limited by the provisions of this chapter.

"Commission" means the natural resources commission.

"Commissioner" means a member of the advisory commission of the natural resources commission.

"Director" means the director of the division of natural resources.

"Fishing" or "to fish" means the taking, by any means, of fish, minnows, frogs or other amphibians, aquatic turtles and other forms of aquatic life used as fish bait.
"Fur-bearing animals" include: (a) The mink; (b) the weasel; (c) the muskrat; (d) the beaver; (e) the opossum; (f) the skunk and civet cat, commonly called polecat; (g) the otter; (h) the red fox; (i) the gray fox; (j) the wildcat, bobcat or bay lynx; (k) the raccoon; and (l) the fisher.

"Game" means game animals, game birds and game fish as herein defined.

"Game animals" include: (a) The elk; (b) the deer; (c) the cottontail rabbits and hares; (d) the fox squirrels, commonly called red squirrels, and gray squirrels and all their color phases — red, gray, black or albino; (e) the raccoon; (f) the black bear; and (g) the wild boar.

"Game birds" include: (a) The Anatidae, commonly known as swan, geese, brants and river and sea ducks; (b) the Rallidae, commonly known as rails, sora, coots, mudhens and gallinules; (c) the Limicolae, commonly known as shorebirds, plover, snipe, woodcock, sandpipers, yellow legs and curlews; (d) the Galli, commonly known as wild turkey, grouse, pheasants, quails and partridges (both native and foreign species); and (e) the Columbidae, commonly known as doves, and the Icteridae, commonly known as blackbirds, redwings and grackle.

"Game fish" include: (a) Brook trout; (b) brown trout; (c) rainbow trout; (d) golden rainbow trout; (e) largemouth bass; (f) smallmouth bass; (g) spotted bass; (h) striped bass; (i) chain pickerel; (j) muskellunge; (k) walleye; (l) northern pike; (m) rock bass; (n) white bass; (o) white crappie; (p) black crappie; (q) all sunfish species; (r) channel catfish; (s) flathead catfish; (t) sauger; and (u) all game fish hybrids.

"Hunt" means to pursue, chase, catch or take any wild birds or wild animals.

"Lands" means land, waters and all other appurtenances connected therewith.

"Migratory birds" means any migratory game or nongame birds included in the terms of conventions
between the United States and Great Britain and between
the United States and United Mexican States, known as
the "Migratory Bird Treaty Act", for the protection of
migratory birds and game mammals concluded,
respectively, the sixteenth day of August, one thousand
nine hundred sixteen, and the seventh day of February,
one thousand nine hundred thirty-six.

"Nonresident" means any person who is a citizen of
the United States and who has not been a domiciled
resident of the state of West Virginia for a period of thirty
consecutive days immediately prior to the date of his or
her application for a license or permit except any full-time
student of any college or university of this state, even
though he or she is paying a nonresident tuition.

"Open season" means the time during which the
various species of wildlife may be legally caught, taken,
killed or chased in a specified manner, and shall include
both the first and the last day of the season or period
designated by the director.

"Person" except as otherwise defined elsewhere in this
chapter, means the plural "persons" and shall include
individuals, partnerships, corporations or other legal
entities.

"Preserve" means all duly licensed private game
farmlands, or private plants, ponds or areas, where hunting
or fishing is permitted under special licenses or seasons
other than the regular public hunting or fishing seasons.

"Protected birds" means all wild birds not included
within the definition of "game birds" and "unprotected
birds".

"Resident" means any person who is a citizen of the
United States and who has been a domiciled resident of
the state of West Virginia for a period of thirty consecutive
days or more immediately prior to the date of his or her
application for license or permit: Provided, That a
member of the armed forces of the United States who is
stationed beyond the territorial limits of this state, but who
was a resident of this state at the time of his or her entry
into such service, and any full-time student of any college or university of this state, even though he or she is paying a nonresident tuition, shall be considered a resident under the provisions of this chapter.

"Roadside menagerie" means any place of business, other than commercial game farm, commercial fish preserve, place or pond, where any wild bird, game bird, unprotected bird, game animal or fur-bearing animal is kept in confinement for the attraction and amusement of the people for commercial purposes.

"Take" means to hunt, shoot, pursue, lure, kill, destroy, catch, capture, keep in captivity, gig, spear, trap, ensnare, wound or injure any wildlife, or attempt to do so.

"Unprotected birds" shall include: (a) The English sparrow, (b) the European starling, (c) the cowbird, and (d) the crow.

"Wild animals" means all mammals native to the state of West Virginia occurring either in a natural state or in captivity, except house mice or rats.

"Wild birds" shall include all birds other than: (a) Domestic poultry — chickens, ducks, geese, guinea fowl, peafowls and turkeys; (b) psittacidae, commonly called parrots and parakeets; and (c) other foreign cage birds such as the common canary, exotic finches and ring dove. All wild birds, either: (a) Those occurring in a natural state in West Virginia; or (b) those imported foreign game birds, such as waterfowl, pheasants, partridges, quail and grouse, regardless of how long raised or held in captivity, shall remain wild birds under the meaning of this chapter.

"Wildlife" means wild birds, wild animals, game and fur-bearing animals, fish (including minnows), reptiles, amphibians, mollusks, crustaceans and all forms of aquatic life used as fish bait, whether dead or alive.

"Wildlife refuge" means any land set aside by action of the director as an inviolate refuge or sanctuary for the protection of designated forms of wildlife.
AN ACT to amend and reenact section four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the possession of wildlife; providing for the lawful possession of wildlife lawfully taken, killed or obtained; permitting the possession of certain wildlife killed by a motor vehicle after certain notification requirements are met; and requiring the director of natural resources to propose administrative policy pursuant to the section provisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-4. Possession of wildlife.

1 Except for wildlife, lawfully taken, killed, or obtained, no person shall have in his or her possession any wildlife, or parts thereof, during closed seasons. It is unlawful to possess any wildlife, or parts thereof, which have been illegally taken, killed or obtained. Any wildlife illegally taken, killed or possessed shall be forfeited to the state and shall be counted toward the daily, seasonal, bag, creel and possession limit of the person in possession of, or responsible for, the illegal taking or killing of any wildlife. Wildlife lawfully taken outside of this state shall be subject to the same laws and rules as that taken within this state.
Migratory wild birds shall be possessed only in accordance with the "Migratory Bird Treaty Act" and regulations thereunder.

The restrictions in this section do not apply to the director or duly authorized agents, who may, in any manner, take or maintain in captivity, at any time, any wildlife for the purpose of carrying out the provisions of this chapter.

Wildlife, except protected birds, spotted fawn, and bear cubs, killed or mortally wounded as a result of being accidentally or inadvertently struck by a motor vehicle may be lawfully possessed: Provided, That the possessor of such wildlife shall provide notice of the claim within twelve hours to a relevant law-enforcement agency, and obtain a nonhunting game tag within twenty-four hours of possession. The director shall propose administrative policy which shall address the means, methods and administrative procedures for implementing the provisions of this section.

CHAPTER 217

(H. B. 4501—By Delegates Proudfoot, Ennis, Anderson, Damron, Kelley, Williams and Evans)

[Passed March 2, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting residents sixty-five years of age or older to hunt, trap or fish without a license; requiring that any such person carry on his or her person a valid driver's license or nondriver picture identification card issued by the division of motor vehicles while hunting, trapping or fishing; and abolishing the card previously issued by the director of the division of natural resources.

Be it enacted by the Legislature of West Virginia:
That section twenty-eight, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-28. When licenses or permits not required.

Persons in the following categories shall not be required to obtain licenses or permits as indicated:

(a) Bona fide resident landowners or their resident children, or resident parents, or bona fide resident tenants of such land, may hunt, trap or fish on their own land during open season in accordance with the laws and regulations applying to such hunting, trapping and fishing without obtaining a license to do so unless such lands have been designated as a wildlife refuge or preserve.

(b) Any bona fide resident of this state who is totally blind may fish in this state without obtaining a fishing license to do so. A written statement or certificate from a duly licensed physician of this state showing the said resident to be totally blind shall serve in lieu of a fishing license and shall be carried on the person of said resident at all times while he or she is fishing in this state.

(c) All residents of West Virginia on active duty in the armed forces of the United States of America, while on leave or furlough, shall have the right and privilege to hunt, trap or fish in season in West Virginia without obtaining a license to do so. Leave or furlough papers shall serve in lieu of any such license and shall be carried on the person at all times while trapping, hunting or fishing.

(d) In accordance with the provisions of section twenty-seven of this article, any resident sixty-five years of age or older is not required to have a license to hunt, trap or fish during the legal seasons in West Virginia, but in lieu of such license any such person shall at all times while hunting, trapping or fishing, carry on his or her person a valid West Virginia driver's license or nondriver identification card issued by the division of motor vehicles.

(e) Residents of the state of Maryland who carry hunting or fishing licenses valid in that state may hunt or
fish from the West Virginia banks of the Potomac River without obtaining licenses to do so, but such hunting or fishing shall be confined to the fish and waterfowl of the river proper and not on its tributaries: *Provided,* That the state of Maryland shall first enter into a reciprocal agreement with the director extending a like privilege of hunting and fishing on the Potomac River from the Maryland banks of said river to licensed residents of West Virginia, without requiring said residents to obtain Maryland hunting and fishing licenses.

(f) Residents of the state of Ohio who carry hunting or fishing licenses valid in that state may hunt or fish on the Ohio River or from the West Virginia banks of said river without obtaining licenses to do so, but such hunting or fishing shall be confined to fish and waterfowl of the river proper and not on its tributaries: *Provided,* That the state of Ohio shall first enter into a reciprocal agreement with the director extending a like privilege of hunting and fishing from the Ohio banks of said river to licensed residents of West Virginia without requiring said residents to obtain Ohio hunting and fishing licenses. In the event the state of Ohio accords this privilege to residents of West Virginia, such Ohio residents will not be required to obtain the license provided for by section forty-two of this article.

(g) Any resident of West Virginia who was honorably discharged from the armed forces of the United States of America, and who receives a veteran's pension based on total permanent service connected disability as certified to by the veterans administration, shall be permitted to hunt, trap or fish in this state without obtaining a license therefor. The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code setting forth the procedure for the certification of the veteran, manner of applying for and receiving the certification and requirements as to identification while said veteran is hunting, trapping or fishing.

(h) Any disabled veteran, who is a resident of West Virginia, and who, as certified to by the commissioner of motor vehicles, is eligible to be exempt from the payment of any fee on account of registration of any motor vehicle
owned by such disabled veteran as provided for in section
eight, article ten, chapter seventeen-a of this code, shall be
permitted to hunt, trap or fish in this state without
obtaining a license therefor. The director shall propose
rules for legislative approval in accordance with the
provisions of article three, chapter twenty-nine-a of this
code setting forth the procedure for the certification of the
disabled veteran, manner of applying for and receiving the
certification, and requirements as to identification while
said disabled veteran is hunting, trapping or fishing.

(i) Any resident or inpatient in any state mental health,
health or benevolent institution or facility may fish in this
state, under proper supervision of the institution involved,
without obtaining a fishing license to do so. A written
statement or certificate signed by the superintendent of the
mental health, health or benevolent institution or facility in
which the resident or inpatient, as the case may be, is
institutionalized shall serve in lieu of a fishing license and
shall be carried on the person of the resident or inpatient
at all times while he or she is fishing in this state.

(j) Any resident who is developmentally disabled, as
certified by a physician and the director of the division of
health, may fish in this state without obtaining a fishing
license to do so. As used in this section, "developmentally
disabled" means a person with a severe, chronic disability
which:

(1) Is attributable to a mental or physical impairment,
or a combination of mental and physical impairments;

(2) Is manifested before the person attains age
twenty-two;

(3) Results in substantial functional limitations in three
or more of the following areas of major life activity: (A)
Self-care; (B) receptive and expressive language; (C)
learning; (D) mobility; (E) self-direction; (F) capacity for
independent living; and (G) economic self-sufficiency;
and

(4) Reflects the person's need for a combination and
sequence of care, treatment or supportive services which
are of lifelong or extended duration and are individually
planned and coordinated.
AN ACT to amend and reenact section fifty-four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to license for privately-owned commercial shooting preserves; permits an additional month of hunting; requires operators to furnish numbered tags; and removes the exemption of nonresidents purchasing required state hunting licenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-54. License for privately-owned commercial shooting preserves.

(1) The director may issue a license for privately-owned commercial shooting preserves to any person who meets the following requirements:

(a) Each commercial shooting preserve shall contain a minimum of three hundred acres in one tract of leased or owned land (including water area, if any) and shall be restricted to no more than three thousand contiguous acres (including water area, if any), except that preserves confined to the releasing of ducks only shall be authorized to operate with a minimum of fifty contiguous acres (including water area); and

(b) The exterior boundaries of each commercial shooting preserve shall be clearly defined and posted with signs erected around the extremity at intervals of one hundred fifty yards or less.
(2) The director shall designate the game which may be hunted under this section on which a more liberal season may be allowed.

(3) The operating licenses or permits issued by the director shall entitle holders thereof, and their guests or customers, to recover not more than eighty percent of the total number of each species of game bird released on the premises each year, except mallard, black duck, ringnecked pheasant, chukar partridge and other nonnative game species upon which a one hundred percent recovery may be allowed.

(4) Except for the required compliance with the restriction on the maximum number of released birds that may be recovered from each preserve each year, as provided in subsections (3) and (8) of this section, shooting preserve operators may establish their own shooting limitations and restrictions on the age, sex and number of birds that may be taken by each person.

(5) In order to give a reasonable opportunity for a fair return on a sizeable investment, a liberal season shall be designated by the director during the nine-month period, beginning the first day of August and ending the thirtieth day of April.

(6) All harvested game shall be tagged with a numbered tag prior to being either consumed on the premises or removed therefrom, such tags to remain affixed until the game actually is delivered to the point of consumption.

(7) Each shooting preserve operator shall maintain a registration book listing all names, addresses and hunting license numbers of all shooters; the date on which they hunted; the amount of game and the species taken; and the tag numbers affixed to each carcass. An accurate record likewise must be maintained of the total number, by species, of game birds and ducks raised and/or purchased, and the date and number of all species released. These records shall be open to inspection by a delegated representative of the director at any reasonable time, and shall be the basis upon which the game recovery limits in subsection (3) of this section shall be determined.
(8) Any wild game found on commercial shooting preserves may be harvested in accordance with applicable game and hunting laws pertaining to open seasons, bag and possession limits, and so forth, as are established regularly by the director and the United States fish and wildlife service.

(9) State hunting licenses shall be required of all persons hunting or shooting on shooting preserves.

(10) The fee for such commercial shooting preserve license shall be fifty dollars per fiscal year for the first three hundred acres of the shooting preserve area, plus twenty-five dollars per fiscal year for each additional three hundred acres or part thereof.

CHAPTER 219

(H. B. 4472—By Mr. Speaker, Mr. Kiss, and Delegates Clements, Varner, Anderson, Leggett, Proudfoot and Border)

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

AN ACT to amend and reenact section two, article two-b, chapter twenty 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 two-a, all relating to the wildlife endowment fund; providing for four additional citizen members to the wildlife endowment fund board; providing that no more than three citizen members may be from the same political party; and creating the Ohio River management fund advisory board to advise the wildlife endowment fund board with respect to the management and expenditures of the Ohio River management fund account within the wildlife endowment fund.

Be it enacted by the Legislature of West Virginia:
That section two, article two-b, chapter twenty 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 two-a, all to read as follows:

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-2. Board created; composition.
§20-2B-2a. Ohio River management fund advisory board created; composition; responsibilities.

§20-2B-2. Board created; composition.

The board of trustees of the wildlife endowment fund of the division of natural resources has full authority over the administration of the wildlife endowment fund. The chairman of the board is the director of the division of natural resources and the members are the executive secretary of the division, the division fiscal officer, the chief of the wildlife resources section, the chief of the law-enforcement section and six citizen members, to be appointed by the governor. To the extent possible, the governor shall appoint the citizen members to ensure an equal geographic representation throughout the state and their terms shall be staggered from the first day of July, one thousand nine hundred ninety-nine. Existing citizen members shall retain their appointed positions for a period of two years from that date. Initial citizen appointments to the board shall be as follows: Two citizen members shall be appointed for a term of three years; two citizen members shall be appointed for a term of four years; and subsequent citizen member appointments to the board shall be for a term of four years. No more than three citizen members may be members of one political party. The actual expenses of the citizen members incurred in the performance of their duties under this section are payable from funds of the division. The state treasurer is the custodian of the wildlife endowment fund and shall invest its assets in accordance with the provisions of article six, chapter twelve of this code.

§20-2B-2a. Ohio River management fund advisory board created; composition; responsibilities.
There is created an advisory board to the board of trustees of the wildlife endowment fund, designated the Ohio river management fund advisory board, which shall be composed of the director of the division of natural resources, the chief of the wildlife resources section of the division and three citizen members to be appointed by the governor. One citizen member shall be a resident of Hancock, Brooke, Ohio or Marshall county; one citizen member shall be a resident of Wetzel, Tyler, Pleasants or Wood county; and one citizen member shall be a resident of Jackson, Mason, Cabell or Wayne county. The actual expenses of the citizen members incurred in the performance of their duties under this section shall be payable from the funds of the division. The advisory board shall advise the wildlife endowment fund board with respect to the management and expenditure of funds from the Ohio River management fund account within the wildlife endowment fund.

CHAPTER 220

(S. B. 59—By Senators Dittmar, Kessler, Love, Sharpe, Bowman, White, Ball and Anderson)

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

AN ACT to amend and reenact section one-c, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding and redesignating ranks; setting corporals salary; updating the minimum base pay scale for conservation officers; requiring across-the-board pay increases be included in minimum base pay scale; and providing for retention of merit increases.

Be it enacted by the Legislature of West Virginia:

That section one-c, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-1c. Conservation officers, ranks, salary schedule, base pay, exceptions.

(a) Notwithstanding any provision of this code to the contrary, the ranks within the law-enforcement section of the division of natural resources are colonel, lieutenant colonel, major, captain, lieutenant, sergeant, corporal, conservation officer first class, senior conservation officer, conservation officer and conservation officer-in-training. Each officer while in uniform shall wear the insignia of rank as provided by the chief conservation officer.

(b) Conservation officers shall be paid the minimum annual salaries based on the following schedule:

<table>
<thead>
<tr>
<th>ANNUAL SALARY SCHEDULE (BASE PAY)</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUPERVISORY AND NONSUPERVISORY RANKS</td>
</tr>
<tr>
<td>Conservation Officer-In-Training (first year)</td>
</tr>
<tr>
<td>Conservation Officer (second year)</td>
</tr>
<tr>
<td>Conservation Officer (third year)</td>
</tr>
<tr>
<td>Senior Conservation Officer (fourth year)</td>
</tr>
<tr>
<td>Conservation Officer First Class (after fifth year)</td>
</tr>
<tr>
<td>Conservation Officer (after tenth year)</td>
</tr>
<tr>
<td>Conservation Officer (after fifteenth year)</td>
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<tr>
<td>Corporal</td>
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<td>Sergeant</td>
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<tr>
<td>Lieutenant</td>
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<td>Captain</td>
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<tr>
<td>Major</td>
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<tr>
<td>Lieutenant Colonel</td>
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<tr>
<td>Colonel</td>
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</tbody>
</table>
Conservation officers in service at the time the amendment to this section becomes effective shall be given credit for prior service and shall be paid salaries as the same length of service will entitle them to receive under the provisions of this section.

(c) This section does not apply to special or emergency conservation officers appointed under the authority of section one of this article.

(d) Nothing in this section prohibits other pay increases as provided for under section two, article five, chapter five of this code: Provided, That an across-the-board pay increase granted by the Legislature or the governor is added to, and reflected in, the minimum salaries set forth in this section; and that merit increases are retained by an officer when he or she advances from one rank to another.

CHAPTER 221

(H. B. 4664—By Delegates Ennis, Cann, Proudfoot, Evans and Martin)

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

AN ACT to amend article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-f, relating to natural resources; law enforcement; special conservation officers; providing for the award of service revolver to certain officers upon retirement; exceptions; and furnishing uniform for burial upon death of current or honorably retired officer.

Be it enacted by the Legislature of West Virginia:
That article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-f, to read as follows:

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-1f. Awarding service revolver to special conservation officers upon retirement; furnishing uniform for burial.

(a) Upon the retirement of any special conservation officer selected and appointed pursuant to section one of this article, the chief of the officer's section shall award to the retiring special conservation officer his or her service revolver, without charge, upon determining:

(1) That the special conservation officer is retiring honorably with at least twenty-five years of recognized special law-enforcement service as determined by the chief conservation officer; or

(2) That such special conservation officer is retiring with less than twenty-five years of service based upon a determination that he or she is totally physically disabled as a result of service with the division.

(b) Notwithstanding the provisions of subsection (a) of this section, the section chief shall not award a service revolver to any special conservation officer who has been declared mentally incompetent by a licensed physician or any court of law, or who, in the opinion of the chief conservation officer constitutes a danger to any person or the community.

(c) Upon the death of any current or honorably retired special conservation officer, the respective chief shall, upon request of the deceased officer's family, furnish a full uniform for burial of the deceased officer.
CHAPTER 222

(H. B. 4574—By Delegates Douglas, Collins, Stalnaker, Heck, Everson, Varner and Davis)

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

AN ACT to amend and reenact sections two, three, four, five, seven, eight, ten, eleven, twelve, fourteen and sixteen, article nine, chapter twenty-two-c 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 four-a, all relating to the oil and gas conservation commission generally; revising definitions; reestablishing, reconstituting and continuing the oil and gas conservation commission; requiring that the appointed commission members may not be employees of the division of environmental protection; requiring at least one commission member possess minimum educational and professional qualifications; providing that the commissioner serve on the commission; providing for termination of commission members under certain circumstances; establishing quorum requirements; authorizing and prohibiting delegation of authority and providing the circumstances therefor; establishing a termination date and requiring submission of annual reports; expanding notice requirements; revising hearing procedures; expanding minimum acreage requirements for drilling units; transferring authority from the oil and gas conservation commissioner to the oil and gas conservation commission; and continuing the effect of existing orders, determinations, and other lawful actions of the commissioner and the commission under prior enactments of this article.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, seven, eight, ten, eleven, twelve, fourteen and sixteen, article nine, chapter twenty-two-c 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 four-a, all to read as follows:

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-2. Definitions.
§22C-9-3. Application of article; exclusions.
§22C-9-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.
§22C-9-4a. Termination of commission; reports.
§22C-9-5. Rules; notice requirements.
§22C-9-7. Drilling units and the pooling of interests in drilling units in connection with deep oil or gas wells.
§22C-9-8. Secondary recovery of oil; unit operations.
§22C-9-12. Injunctive relief.
§22C-9-14. Penalties.
§22C-9-16. Rules, orders and permits remain in effect.

§22C-9-2. Definitions.

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

(1) “Commission” means the oil and gas conservation commission and “commissioner” means the oil and gas conservation commissioner as provided for in section four of this article;

(2) “Director” means the director of the division of environmental protection and “chief” means the chief of the office of oil and gas;

(3) “Person” means any natural person, corporation, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind and includes any government or any political subdivision or any agency thereof;

(4) “Operator” means any owner of the right to develop, operate and produce oil and gas from a pool and
to appropriate the oil and gas produced therefrom, either for such person or for such person and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered as “operator” to the extent of seven eighths of the oil and gas in that portion of the pool underlying the tract owned by such owner, and as “royalty owner” as to one-eighth interest in such oil and gas; and in the event the oil is owned separately from the gas, the owner of the substance being produced or sought to be produced from the pool shall be considered as “operator” as to such pool;

(5) “Royalty owner” means any owner of oil and gas in place, or oil and gas rights, to the extent that such owner is not an operator as defined in subdivision (4) of this section;

(6) “Independent producer” means a producer of crude oil or natural gas whose allowance for depletion is determined under Section 613A of the federal Internal Revenue Code in effect on the first day of July, one thousand nine hundred ninety-seven;

(7) “Oil” means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;

(8) “Gas” means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (7) of this section;

(9) “Pool” means an underground accumulation of petroleum or gas in a single and separate natural reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure system so that production of petroleum or gas from one part of the pool affects the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, and water in the formations, so that it is effectively separated
from any other pools that may be presented in the same
district or on the same geologic structure;

(10) "Well" means any shaft or hole sunk, drilled,
bored or dug into the earth or underground strata for the
extraction of oil or gas;

(11) "Shallow well" means any well drilled and
completed in a formation above the top of the uppermost
member of the "Onondaga Group": Provided, That in
drilling a shallow well the operator may penetrate into the
"Onondaga Group" to a reasonable depth, not in excess
of twenty feet, in order to allow for logging and
completion operations, but in no event may the
"Onondaga Group" formation be otherwise produced,
perforated or stimulated in any manner;

(12) "Deep well" means any well, other than a
shallow well, drilled and completed in a formation at or
below the top of the uppermost member of the
"Onondaga Group";

(13) "Drilling unit" means the acreage on which one
well may be drilled;

(14) "Waste" means and includes:

(A) Physical waste, as that term is generally
understood in the oil and gas industry;

(B) The locating, drilling, equipping, operating or
producing of any oil or gas well in a manner that causes,
or tends to cause, a reduction in the quantity of oil or gas
ultimately recoverable from a pool under prudent and
proper operations, or that causes or tends to cause
unnecessary or excessive surface loss of oil or gas; or

(C) The drilling of more deep wells than are
reasonably required to recover efficiently and
economically the maximum amount of oil and gas from a
pool. Waste does not include gas vented or released from
any mine areas as defined in section two, article one,
chapter twenty-two-a of this code or from adjacent coal
seams which are the subject of a current permit issued
under article two of chapter twenty-two-a of this code:
Provided, That nothing in this exclusion is intended to address ownership of the gas;

(15) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the oil and gas in and under his tract or tracts, or the equivalent thereof; and

(16) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool underlying such person's tract or tracts.

(b) Unless the context clearly indicates otherwise, the use of the word "and" and the word "or" shall be interchangeable, as, for example, "oil and gas" shall mean oil or gas or both.

§22C-9-3. Application of article; exclusions.

(a) Except as provided in subsection (b) of this section, the provisions of this article shall apply to all lands located in this state, however owned, including any lands owned or administered by any government or any agency or subdivision thereof, over which the state has jurisdiction under its police power. The provisions of this article are in addition to and not in derogation of or substitution for the provisions of article six, chapter twenty-two of this code.

(b) This article shall not apply to or affect:

(1) Shallow wells other than those utilized in secondary recovery programs as set forth in section eight of this article;

(2) Any well commenced or completed prior to the ninth day of March, one thousand nine hundred seventy-two, unless such well is, after completion (whether such completion is prior or subsequent to that date):

(A) Deepened subsequent to that date to a formation at or below the top of the uppermost member of the "Onondaga Group"; or
(B) Involved in secondary recovery operations for oil under an order of the commission entered pursuant to section eight of this article;

(3) Gas storage operations or any well employed to inject gas into or withdraw gas from a gas storage reservoir or any well employed for storage observation; or

(4) Free gas rights.

(c) The provisions of this article shall not be construed to grant to the commissioner or the commission authority or power to:

(1) Limit production or output, or prorate production of any oil or gas well, except as provided in subdivision (6), subsection (a), section seven of this article; or

(2) Fix prices of oil or gas.

§22C-9-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

(a) The “oil and gas conservation commission” shall be composed of five members. The director of the division of environmental protection and the chief of the office of oil and gas shall be members of the commission ex officio. The remaining three members of the commission shall be appointed by the governor, by and with the advice and consent of the Senate, and may not be employees of the division of environmental protection. Of the three members appointed by the governor, one shall be an independent producer and at least one shall be a public member not engaged in an activity under the jurisdiction of the public service commission or the federal energy regulatory commission. The third appointee shall possess a degree from an accredited college or university in petroleum engineering or geology and must be a registered professional engineer with particular knowledge and experience in the oil and gas
industry and shall serve as commissioner and as chair of the commission.

(b) The members of the commission appointed by the governor shall be appointed for overlapping terms of six years each, except that the original appointments shall be for terms of two, four and six years, respectively. Each member appointed by the governor shall serve until the member's successor has been appointed and qualified. Members may be appointed by the governor to serve any number of terms. The members of the commission appointed by the governor, before performing any duty hereunder, shall take and subscribe to the oath required by section 5, article IV of the constitution of West Virginia. Vacancies in the membership appointed by the governor shall be filled by appointment by the governor for the unexpired term of the member whose office is vacant and such appointment shall be made by the governor within sixty days of the occurrence of such vacancy. Any member appointed by the governor may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office. A commission member's appointment shall be terminated as a matter of law if that member fails to attend three consecutive meetings. The governor shall appoint a replacement within thirty days of the termination.

(c) The commission shall meet at such times and places as shall be designated by the chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the commission upon the written request of two members or upon the written request of the oil and gas conservation commissioner or the chief of the office of oil and gas. Notification of each meeting shall be given in writing to each member by the chair at least fourteen calendar days in advance of the meeting. Three members of the commission, at least two of whom are appointed members, shall constitute a quorum for the transaction of any business.

(d) The commission shall pay each member the same compensation as is paid to members of the Legislature for their interim duties as recommended by the citizens
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OIL AND GAS

58 legislative compensation commission and authorized by
59 law for each day or portion thereof engaged in the
60 discharge of official duties and shall reimburse each
61 member for actual and necessary expenses incurred in the
62 discharge of official duties.

63 (e) The commission is hereby empowered and it is the
64 commission's duty to execute and carry out, administer
65 and enforce the provisions of this article in the manner
66 provided herein. Subject to the provisions of section three
67 of this article, the commission has jurisdiction and
68 authority over all persons and property necessary therefor.
69 The commission is authorized to make such investigation
70 of records and facilities as the commission deems proper.
71 In the event of a conflict between the duty to prevent waste
72 and the duty to protect correlative rights, the
73 commission's duty to prevent waste shall be paramount.

74 (f) Without limiting the commission’s general
75 authority, the commission shall have specific authority to:

76 (1) Regulate the spacing of deep wells;

77 (2) Make and enforce reasonable rules and orders
78 reasonably necessary to prevent waste, protect correlative
79 rights, govern the practice and procedure before the
80 commission and otherwise administer the provisions of
81 this article;

82 (3) Issue subpoenas for the attendance of witnesses
83 and subpoenas duces tecum for the production of any
84 books, records, maps, charts, diagrams and other pertinent
85 documents, and administer oaths and affirmations to such
86 witnesses, whenever, in the judgment of the commission, it
87 is necessary to do so for the effective discharge of the
88 commission’s duties under the provisions of this article;
89 and

90 (4) Serve as technical advisor regarding oil and gas to
91 the Legislature, its members and committees, to the chief
92 of office of oil and gas, to the division of environmental
93 protection and to any other agency of state government
94 having responsibility related to the oil and gas industry.
(g) The commission may delegate to the commission staff the authority to approve or deny an application for new well permits, to establish drilling units or special field rules if:

(1) The application conforms to the rules of the commission; and

(2) No request for hearing has been received.

(h) The commission may not delegate its authority to:

(1) Propose legislative rules;

(2) Approve or deny an application for new well permits, to establish drilling units or special field rules if the conditions set forth in subsection (g) of this section are not met; or

(3) Approve or deny an application for the pooling of interests within a drilling unit.

(i) Any exception to the field rules or the spacing of wells which does not conform to the rules of the commission, and any application for the pooling of interests within a drilling unit, must be presented to and heard before the commission.

§22C-9-4a. Termination of commission; reports.

(a) The commission is hereby continued until the first day of July, two thousand one.

(b) On or before the thirty-first day of December, one thousand nine hundred ninety-eight, and for the next two consecutive years thereafter, the oil and gas conservation commission shall submit a report annually to the joint committee on government operations of its activities for the year and any recommendations for improving the function of the commission.

§22C-9-5. Rules; notice requirements.

(a) The commission may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement and
make effective the provisions of this article and the powers and authority conferred and the duties imposed upon the commission under the provisions of this article.

(b) Notwithstanding the provisions of section two, article seven, chapter twenty-nine-a of this code, any notice required under the provisions of this article shall be given at the direction of the commission by personal or substituted service or by certified United States mail, addressed, postage prepaid, to the last-known mailing address, if any, of the person being served, with the direction that the same be delivered to addressee only, return receipt requested. In the case of providing notice upon the filing of an application with the commission, the commission shall cause notice to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county or counties wherein any land which may be affected by such order is situate.

In addition, the commission shall mail a copy of such notice to all other persons who have specified to the commission an address to which all such notices may be mailed. The notice shall issue in the name of the state, shall be signed by one of the commission members, shall specify the style and number of the proceeding, the time and place of any hearing and shall briefly state the purpose of the proceeding. Each notice of a hearing must be provided no fewer than twenty days preceding the hearing date. Personal or substituted service and proof thereof may be made by an officer authorized to serve process or by an agent of the commission in the same manner as is now provided by the “West Virginia Rules of Civil Procedure for Trial Courts of Record” for service of process in civil actions in the various courts of this state.

A certified copy of any pooling order entered under the provisions of this article shall be presented by the commission to the clerk of the county commission of each county wherein all or any portion of the pooled tract is located, for recordation in the record book of such county in which oil and gas leases are normally recorded. The
§22C-9-7. Drilling units and the pooling of interests in drilling
units in connection with deep oil or gas wells.

(a) Drilling units.

(1) After one discovery deep well has been drilled
establishing a pool, an application to establish drilling
units may be filed with the commission by the operator of
such discovery deep well or by the operator of any lands
directly and immediately affected by the drilling of such
discovery deep well, or subsequent deep wells in said pool.
Each application shall contain such information as
prescribed by reasonable rules proposed by the
commission in accordance with the provisions of section
five of this article.

(2) Upon the filing of an application to establish
drilling units, the commission shall provide notice to all
interested parties in accordance with this subsection. If the
application does not conform to the existing rules of the
commission, then the commission shall set a hearing and
provide notice to all interested parties. If the application
conforms to the rules of the commission, the commission
shall provide notice of the filing of the application to all
interested parties. Each notice shall describe the area for
which a spacing order is to be entered in recognizable,
narrative terms; contain such other information as is
essential to the giving of proper notice, including the time
and date and place of a hearing, if any; include a
statement that any party has a right to a hearing before the
commission; and include a statement that any request for
hearing must be filed with the commission within fifteen
days of receipt of notice. If no request for hearing has
been received within the fifteen days following receipt of
the notice, the commission may proceed to process the
application. If a request for hearing has been received by
the commission, then the commission shall set a hearing
and provide notice to all interested parties.

(3) The commission shall determine the area to be
included in such spacing order and the acreage to be
contained by each drilling unit, the shape thereof, and the
minimum distance from the outside boundary of the unit
at which a deep well may be drilled thereon. The
commission shall consider:

(A) The surface topography and property lines of the
lands underlaid by the pool to be included in such order;

(B) The plan of deep well spacing then being
employed or proposed in such pool for such lands;

(C) The depth at which production from said pool has
been found;

(D) The nature and character of the producing
formation or formations, and whether the substance
produced or sought to be produced is gas or oil or both;

(E) The maximum area which may be drained
efficiently and economically by one deep well; and

(F) Any other available geological or scientific data
pertaining to said pool which may be of probative value to
the commission in determining the proper deep well
drilling units therefor.

If the commission determines that drilling units
should be established, the commission shall enter an order
establishing drilling units of a specified and
approximately uniform size and shape for each pool
subject to the provisions of this section.

(4) When it is determined that an oil or gas pool
underlies an area for which a spacing order is to be
entered, the commission shall include in such order all
lands determined or believed to be underlaid by such pool
and exclude all other lands.

(5) No drilling unit established by the commission
shall be smaller than the maximum area which can be
drained efficiently and economically by one deep well:
Provided, That if there is not sufficient evidence from
which to determine the area which can be drained
efficiently and economically by one deep well, the
commission may enter an order establishing temporary
drilling units for the orderly development of the pool
pending the obtaining of information necessary to
determine the ultimate spacing for such pool.

(6) An order establishing drilling units shall specify
the minimum distance from the nearest outside boundary
of the drilling unit at which a deep well may be drilled.
The minimum distance provided shall be the same in all
drilling units established under said order with necessary
exceptions for deep wells drilled or being drilled at the
time of the filing of the application. If the commission
finds that a deep well to be drilled at or more than the
specified minimum distance from the boundary of a
drilling unit would not be likely to produce in paying
quantities or will encounter surface conditions which
would substantially add to the burden or hazard of drilling
such deep well, or that a location within the area permitted
by the order is prohibited by the lawful order of any state
agency or court, the commission is authorized after notice
and hearing to make an order permitting the deep well to
be drilled at a location within the minimum distance
prescribed by the spacing order. In granting exceptions
to the spacing order, the commission may restrict the
production from any such deep well so that each person
entitled thereto in such drilling unit shall not produce or
receive more than his just and equitable share of the
production from such pool.

(7) An order establishing drilling units for a pool shall
cover all lands determined or believed to be underlaid by
such pool, and may be modified by the commission from
time to time, to include additional lands determined to be
underlaid by such pool or to exclude lands determined
not to be underlaid by such pool. An order establishing
drilling units may be modified by the commission to
permit the drilling of additional deep wells on a
reasonably uniform pattern at a uniform minimum
distance from the nearest unit boundary as provided
above. Any order modifying a prior order shall be made
only after application by an interested operator and notice
and hearing as prescribed herein for the original order:
Provided, That drilling units established by order shall not exceed one hundred sixty acres for an oil well or six
hundred forty acres for a gas well: Provided, however,
That the commission may exceed the acreage limitation by ten percent if the applicant demonstrates that the area would be drained efficiently and economically by a larger drilling unit.

(8) After the date an application to establish drilling units has been filed with the commission, no additional deep well shall be commenced for production from the pool until the order establishing drilling units has been made, unless the commencement of the deep well is authorized by order of the commission.

(9) The commission shall, within forty-five days after the filing of an application to establish drilling units for a pool subject to the provisions of this section, enter an order establishing such drilling units, dismiss the application, or for good cause, continue the application process.

(10) As part of the order establishing a drilling unit, the commission shall prescribe just and reasonable terms and conditions upon which the royalty interests in the unit shall, in the absence of voluntary agreement, be deemed to be integrated without the necessity of a subsequent order integrating the royalty interests.

(11) If a hearing has been held on an application submitted pursuant to this subsection, the order shall be a final order. If no hearing has been held, the commission shall issue a proposed order and shall provide a copy of the proposed order, together with notice of the right to appeal and request a hearing, to all interested parties. Any party aggrieved by the proposed order may appeal the proposed order to the full commission and request a hearing. Notice of appeal and request for hearing shall be made in accordance with section ten of this article within fifteen days of entry of the order. If no appeal and request for hearing has been received within fifteen days, the proposed order shall become final.

(b) Pooling of interests in drilling units.

(1) When two or more separately owned tracts are embraced within a drilling unit, or when there are
separately owned interests in all or a part of a drilling unit, the interested persons may pool their tracts or interests for the development and operation of the drilling unit. In the absence of voluntary pooling and upon application of any operator having an interest in the drilling unit, the commission shall set a hearing and provide notice to all interested parties. Each notice shall describe the area for which an order is to be entered in recognizable, narrative terms; contain such other information as is essential to the giving of proper notice, including the time and date and place of a hearing. After the hearing, the commission shall enter an order pooling all tracts or interests in the drilling unit for the development and operation thereof and for sharing production therefrom. Each such pooling order shall be upon terms and conditions which are just and reasonable and in no event shall drilling be initiated on the tract of an unleased owner without the owner’s written consent.

(2) All operations, including, but not limited to, the commencement, drilling or operation of a deep well, upon any portion of a drilling unit for which a pooling order has been entered, shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to a separately owned tract included in a drilling unit shall, when produced, be deemed for all purposes to have been actually produced from such tract by a deep well drilled thereon.

(3) Any pooling order under the provisions of this subsection (b) shall authorize the drilling and operation of a deep well for the production of oil or gas from the pooled acreage; shall designate the operator to drill and operate such deep well; shall prescribe the time and manner in which all owners of operating interests in the pooled tracts or portions of tracts may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, completing, equipping, operating, plugging and abandoning such deep well shall be borne, and all production therefrom shared, by all owners of operating interests in proportion to the net oil or gas
193 acreage in the pooled tracts owned or under lease to each
194 owner; and shall make provisions for payment of all
195 reasonable costs thereof, including a reasonable charge for
196 supervision and for interest on past-due accounts, by all
197 those who elect to participate therein.

198 (4) No drilling or operation of a deep well for the
199 production of oil or gas shall be permitted upon or within
200 any tract of land unless the operator shall have first
201 obtained the written consent and easement therefor, duly
202 acknowledged and placed on record in the office of the
203 county clerk, for valuable consideration of all owners of
204 the surface of such tract of land, which consent shall
205 describe with reasonable certainty, the location upon such
206 tract, of the location of such proposed deep well, a
207 certified copy of which consent and easement shall be
208 submitted by the operator to the commission.

209 (5) Upon request, any such pooling order shall
210 provide just and equitable alternatives whereby an owner
211 of an operating interest who does not elect to participate in
212 the risk and cost of the drilling of a deep well may elect:

213 (A) Option 1. To surrender such interest or a portion
214 thereof to the participating owners on a reasonable basis
215 and for a reasonable consideration, which, if not agreed
216 upon, shall be determined by the commission; or

217 (B) Option 2. To participate in the drilling of the deep
218 well on a limited or carried basis on terms and conditions
219 which, if not agreed upon, shall be determined by the
220 commission to be just and reasonable.

221 (6) In the event a nonparticipating owner elects
222 Option 2, and an owner of any operating interest in any
223 portion of the pooled tract shall drill and operate, or pay
224 the costs of drilling, completing, equipping and operating
225 a deep well for the benefit of such nonparticipating owner
226 as provided in the pooling order, then such operating
227 owner shall be entitled to the share of production from the
228 tracts or portions thereof pooled accruing to the interest of
229 such nonparticipating owner, exclusive of any royalty or
230 overriding royalty reserved in any leases, assignments
231 thereof or agreements relating thereto, of such tracts or
portions thereof, or exclusive of one eighth of the production attributable to all unleased tracts or portions thereof, until the market value of such nonparticipating owner's share of the production, exclusive of such royalty, overriding royalty or one eighth of production, equals double the share of such costs payable by or charged to the interest of such nonparticipating owner.

(7) If a dispute shall arise as to the costs of drilling, completing, equipping and operating a deep well, the commission shall determine and apportion the costs, within ninety days from the date of written notification to the commission of the existence of such dispute.

(8) The commission shall, within forty-five days after the filing of an application, enter an order, dismiss the application, or for good cause, continue the application process.

§22C-9-8. Secondary recovery of oil; unit operations.

(a) Upon the application of any operator in a pool productive of oil the commission shall set a hearing and provide notice to all interested parties. Each notice shall describe the area for which an order is to be entered in recognizable, narrative terms; contain such other information as is essential to the giving of proper notice, including the time and date and place of a hearing. After the hearing, the commission may enter an order requiring the unit operation of such pool in connection with a program of secondary recovery of oil, and providing for the unitization of separately owned tracts and interests within such pool, but only after finding that:

(1) The order is reasonably necessary for the prevention of waste and the drilling of unnecessary wells;

(2) The proposed plan of secondary recovery will increase the ultimate recovery of oil from the pool to such an extent that the proposed secondary recovery operation will be economically feasible;

(3) The production of oil from the unitized pool can be allocated in such a manner as to ensure the recovery by
all operators of their just and equitable share of such
production; and

(4) The operators of at least three fourths of the
acreage (calculating partial interests on a pro rata basis for
operator interests on any parcel owned in common) and
the royalty owners of at least three fourths of the acreage
(calculating partial interests on a pro rata basis for royalty
interests on any parcel owned in common) in such pool
have approved the plan and terms of unit operation to be
specified by the commission in its order, such approval to
be evidenced by a written contract setting forth the terms
of the unit operation and executed by said operators and
said royalty owners, and filed with the commission. The
order requiring such unit operation shall designate one
operator in the pool as unit operator and shall also make
provision for the proportionate allocation to all operators
of the costs and expenses of the unit operation, including
reasonable charges for supervision and interest on
past-due accounts, which allocation shall be in the same
proportion that the separately owned tracts share in the
production of oil from the unit. In the absence of an
agreement entered into by the operators and filed with the
commission providing for sharing the costs of capital
investment in wells and physical equipment, and intangible
drilling costs, the commission shall provide by order for
the sharing of such costs in the same proportion as the
costs and expenses of the unit operation: Provided, That
any operator who has not consented to the unitization
shall not be required to contribute to the costs or expenses
of the unit operation, or to the cost of capital investment in
wells and physical equipment, and intangible drilling costs,
except out of the proceeds from the sale of the production
accruing to the interest of such operator: Provided, however,
That no credit to the well costs shall be adjusted
on the basis of less than the average well costs within the
unitized area: Provided further, That no order entered
under the provisions of this section requiring unit
operation shall vary or alter any of the terms of any
contract entered into by operators and royalty owners
under the provisions of this section.
(5) The commission shall, within forty-five days after the filing of an application to establish unit operators for a pool subject to the provisions of this section, enter an order establishing such unit operators, dismiss the application, or for good cause, continue the application process.


(a) Upon receipt of a request for hearing, the commission shall set a time and place for such hearing not less than twenty and not more than forty-five days thereafter. Any scheduled hearing may be continued by the commission upon the commission's own motion or for good cause shown by any party to the hearing. All interested parties shall be entitled to be heard at any hearing conducted under the provisions of this article.

(b) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this subsection.

(c) Any such hearing shall be conducted by the commission. For the purpose of conducting any such hearing, the commission shall have the power and authority to issue subpoenas and subpoenas duces tecum which shall be issued and served as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(d) At any hearing parties may represent themselves or be represented by an attorney-at-law admitted to practice before any circuit court of this state. Upon request by the commission, the commission shall be represented at a hearing by the attorney general or the attorney general's assistants without additional compensation. The commission, with the written approval of the attorney general, may employ special counsel to represent the commission at any hearing.
(e) After any hearing and consideration of all of the testimony, evidence and record in the case, the commission shall render a decision in writing. The written decision of the commission shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon all parties and their attorney of record, if any.

The decision of the commission shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section eleven of this article.


(a) Any party adversely affected by an order of the commission shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code, shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in this section.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code, except that notwithstanding the provisions of said section one the petition seeking such review must be filed with said supreme court of appeals within thirty days from the date of entry of the judgment of the circuit court.

(c) Legal counsel and services for the commission in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or the attorney general’s assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The commission, with the written approval of the attorney general, may employ special counsel to represent the commission at any such appeal proceedings.
§22C-9-12. Injunctive relief.

(a) Whenever it appears to the commission that any person has been or is violating or is about to violate any provision of this article, any reasonable rule promulgated by the commission hereunder or any order or final decision of the commission, the commission may apply in the name of the state to the circuit court of the county in which the violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section fourteen of this article.

(b) Upon application by the commission, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the reasonable rules promulgated by the commission hereunder and all orders and final decisions of the commission. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed. Any other section of this code to the contrary notwithstanding, the state shall not be required to furnish bond or other undertaking as a prerequisite to obtaining mandatory, prohibitory or temporary injunctive relief under the provisions of this article.

(c) The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

(d) The commission shall be represented in all such proceedings by the attorney general or the attorney general's assistants and in such proceedings in the circuit courts by the prosecuting attorneys of the several counties
as well, all without additional compensation. The
commission, with the written approval of the attorney
general, may employ special counsel to represent the
commission in any such proceedings.

(e) If the commission shall refuse or fail to apply for
an injunction to enjoin a violation or threatened violation
of any provision of this article, any reasonable rule
promulgated by the commission hereunder or any order
or final decision of the commission within ten days after
receipt of a written request to do so by any person who is
or will be adversely affected by such violation or
threatened violation, the person making such request may
apply in his own behalf for an injunction to enjoin such
violation or threatened violation in any court in which the
commission might have brought suit. The commission
shall be made a party defendant in such application in
addition to the person or persons violating or threatening
to violate any provision of this article, any reasonable rule
promulgated by the commission hereunder or any order
or final decision of the commission. The application shall
proceed and injunctive relief may be granted without
bond or other undertaking in the same manner as if the
application had been made by the commission.

§22C-9-14. Penalties.

(a) Any person who violates any provision of this
article, any of the reasonable rules promulgated by the
commission hereunder or any order or any final decision
of the commission, other than a violation covered by the
provisions of subsection (b) of this section, shall be guilty
of a misdemeanor and, upon conviction thereof, shall be
fined not more than one thousand dollars, and each day
that a violation continues shall constitute a new and
separate violation.

(b) Any person who, for the purpose of evading any
provision of this article, any of the reasonable rules
promulgated by the commission hereunder or any order
or final decision of the commission, shall make or cause to
be made any false entry or statement in a report required
under the provisions of this article, any of the reasonable
rules promulgated by the commission hereunder or any
order or final decision of the commission, or shall make
or cause to be made any false entry in any record, account
or memorandum required under the provisions of this
article, any of the reasonable rules promulgated by the
commission hereunder or any order or any final decision
of the commission, or who shall omit, or cause to be
omitted, from any such record, account or memorandum,
full, true and correct entries, or shall remove from this
state or destroy, mutilate, alter or falsify any such record,
account or memorandum, shall be guilty of a
misdemeanor and, upon conviction thereof, shall be fined
not more than five thousand dollars, or imprisoned in the
county jail not more than six months, or both fined and
imprisoned.

(c) Any person who knowingly aids or abets any
other person in the violation of any provision of this
article, any of the reasonable rules promulgated by the
commission hereunder or any order of final decision of
the commission, shall be subject to the same penalty as
that prescribed in this article for the violation by such
other person.

§22C-9-16. Rules, orders and permits remain in effect.

(a) All orders, determinations, rules, permits, grants,
contracts, certificates, licenses, waivers, bonds,
authorizations and privileges which have been issued,
made, granted or allowed to become effective pursuant to
any prior enactment of this article and which are in effect
on the effective date of this article shall continue in effect
according to their terms until modified, terminated,
superseded, set aside or revoked pursuant to this article, by
a court of competent jurisdiction, or by operation of law.

(b) Orders and actions of the commission or
commissioner in the exercise of functions amended by
this enactment are subject to judicial review to the same
extent and in the same manner as if such orders and
actions had been by the commission or commissioner
exercising such functions immediately preceding the
enactment of this article.
AN ACT to amend and reenact section thirteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of parole; parole eligibility; and procedures.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

(a) The board of parole, whenever it is of the opinion that the best interests of the state and of the inmate will be subserved thereby, and subject to the limitations hereinafter provided, shall release any such inmate on parole for such terms and upon such conditions as are provided by this article. Any inmate of a state correctional center, to be eligible for parole:

(1) (A) Shall have served the minimum term of his or her indeterminate sentence, or shall have served one fourth of his or her definite term sentence, as the case may be, except that in no case shall any person who committed, or attempted to commit a felony with the use, presentment or brandishing of a firearm, be eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum sentence imposed by the court, whichever is less: Provided, That any person who committed, or attempted to commit, any violation of section twelve, article two, chapter sixty-one of this code, with the use, presentment or brandishing of a firearm, shall not be eligible for parole prior to serving a minimum of five years of his or her sentence or one third of his or her
definite term sentence, whichever shall be the greater. Nothing in this section shall apply to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented or brandished a firearm. No person is ineligible for parole under the provisions of this subdivision because of the commission or attempted commission of a felony with the use, presentment or brandishing of a firearm unless such fact is clearly stated and included in the indictment or presentment by which such person was charged and was either: (i) Found by the court at the time of trial upon a plea of guilty or nolo contendere; or (ii) found by the jury, upon submitting to such jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii) found by the court, if the matter was tried by the court without a jury.

For the purpose of this section, the term "firearm" shall mean any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder or any other similar means.

(B) The amendments to this subsection adopted in the year one thousand nine hundred eighty-one:

(i) Shall apply to all applicable offenses occurring on or after the first day of August of that year;

(ii) Shall apply with respect to the contents of any indictment or presentment returned on or after the first day of August of that year irrespective of when the offense occurred;

(iii) Shall apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to such jury on or after the first day of August of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: Provided, That the state shall give notice in writing of its intent to seek such finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which such finding shall be sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried; and
65 (iv) Shall not apply with respect to cases not affected
66 by such amendment and in such cases the prior provisions
67 of this section shall apply and be construed without
68 reference to such amendment.
69 Insofar as such amendments relate to mandatory
70 sentences restricting the eligibility for parole, all such
71 matters requiring such sentence shall be proved beyond a
72 reasonable doubt in all cases tried by the jury or the court.

73 (2) Shall not be in punitive segregation or
74 administrative segregation as a result of disciplinary
75 action;

76 (3) Shall have maintained a record of good conduct in
77 prison for a period of at least three months immediately
78 preceding the date of his or her release on parole;

79 (4) Shall have submitted to the board a written parole
80 release plan setting forth proposed plans for his or her
81 place of residence, employment and, if appropriate, his or
82 her plans regarding education and postrelease counseling
83 and treatment, said parole release plan having been
84 approved by the commissioner of corrections or his or her
85 authorized representative; and

86 (5) Shall have satisfied the board that if released on
87 parole he or she will not constitute a danger to the
88 community.

89 Except in the case of one serving a life sentence, no
90 person who has been previously twice convicted of a
91 felony may be released on parole until he or she has
92 served the minimum term provided by law for the crime
93 for which he or she was convicted. No person sentenced
94 for life may be paroled until he or she has served ten
95 years, and no person sentenced for life who has been
96 previously twice convicted of a felony may be paroled
97 until he or she has served fifteen years: Provided, That no
98 person convicted of first degree murder for an offense
99 committed on or after the tenth day of June, one thousand
100 nine hundred ninety-four, shall be eligible for parole until
101 he or she has served fifteen years. In the case of a person
102 sentenced to any state correctional center, it shall be the
103 duty of the board, as soon as such person becomes
104 eligible, to consider the advisability of his or her release
105 on parole. If, upon such consideration, parole be denied,
106 the board shall at least once a year reconsider and review
the case of every inmate so eligible, which reconsideration
and review shall be by at least three members of the board:
Provided, however, That the board may reconsider and
review parole eligibility any time within three years
following the denial of parole of a person serving a life
sentence. The board shall, at the time of denial, notify the
person of the month and year they may apply for
reconsideration and review. If parole be denied, the
inmate shall be promptly notified.

(b) Any person serving a sentence on a felony
conviction who becomes eligible for parole consideration
prior to being transferred to a state correctional center
may make written application for parole. The terms and
conditions for parole consideration established by this
article shall be applied to such inmates.

(c) The board shall, with the approval of the governor,
adopt rules governing the procedure in the granting of
parole. No provision of this article and none of the rules
adopted hereunder are intended or shall be construed to
contravene, limit or otherwise interfere with or affect the
authority of the governor to grant pardons and reprieves,
commute sentences, remit fines or otherwise exercise his
or her constitutional powers of executive clemency.

The department of corrections shall be charged with
the duty of supervising all probationers and parolees
whose supervision may have been undertaken by this state
by reason of any interstate compact entered into pursuant
to the uniform act for out-of-state parolee supervision.

(d) When considering an inmate of a state correctional
center for release on parole, the parole board shall have
before it an authentic copy of or report on the inmate’s
current criminal record as provided through the West
Virginia state police, the United States department of
justice or other reliable criminal information sources and
written reports of the warden orsuperintendent of the state
correctional center to which such inmate is sentenced:

(1) On the inmate’s conduct record while in custody,
including a detailed statement showing any and all
infractions of disciplinary rules by the inmate and the
nature and extent of discipline administered therefor;

(2) On improvement or other changes noted in the
inmate’s mental and moral condition while in custody,
including a statement expressive of the inmate’s current
attitude toward society in general, toward the judge who
sentenced him or her, toward the prosecuting attorney who
prosecuted him or her, toward the policeman or other
officer who arrested the inmate and toward the crime for
which he or she is under sentence and his or her previous
criminal record;

(3) On the inmate’s industrial record while in custody
which shall include: The nature of his or her work,
occupation or education, the average number of hours per
day he or she has been employed or in class while in
custody and a recommendation as to the nature and kinds
of employment which he or she is best fitted to perform
and in which the inmate is most likely to succeed when he
or she leaves prison;

(4) On physical, mental and psychiatric examinations
of the inmate conducted, insofar as practicable, within the
two months next preceding parole consideration by the
board.

The board may waive the requirement of any such
report when not available or not applicable as to any
inmate considered for parole but, in every such case, shall
enter in the record thereof its reason for such waiver:
Provided, That in the case of an inmate who is
incarcerated because such inmate has been found guilty
of, or has pleaded guilty to a felony under the provisions
of section twelve, article eight, chapter sixty-one of this
code or under the provisions of article eight-b or eight-c,
chapter sixty-one of this code, the board may not waive
the report required by this subsection and the report shall
include a study and diagnosis which shall include an
on-going treatment plan requiring active participation in
sexual abuse counseling at an approved mental health
facility or through some other approved program:
Provided, however, That nothing disclosed by the person
during such study or diagnosis shall be made available to
any law-enforcement agency, or other party without that
person’s consent, or admissible in any court of this state,
unless such information disclosed shall indicate the
intention or plans of the parolee to do harm to any person,
animal, institution, or to property. Progress reports of
outpatient treatment shall be made at least every six
months to the parole officer supervising such person. In
addition, in such cases, the parole board shall inform the
prosecuting attorney of the county in which the person
was convicted of the parole hearing and shall request that
the prosecuting attorney inform the parole board of the
circumstances surrounding a conviction or plea of guilty,
plea bargaining and other background information that
might be useful in its deliberations.

Before releasing any inmate on parole, the board of
parole shall arrange for the inmate to appear in person
before at least three members of the board and the board
may examine and interrogate him or her on any matters
pertaining to his or her parole, including reports before
the board made pursuant to the provisions hereof. The
board shall reach its own written conclusions as to the
desirability of releasing such inmate on parole and the
majority of the board members considering the release
shall concur in the decision. The warden or
superintendent shall furnish all necessary assistance and
cooperate to the fullest extent with the parole board. All
information, records and reports received by the board
shall be kept on permanent file.

The board and its designated agents shall at all times
have access to inmates imprisoned in any state correctional
center or in any city, county or regional jail in this state,
and shall have the power to obtain any information or aid
necessary to the performance of its duties from other
departments and agencies of the state or from any political
subdivision thereof.

The board shall, if so requested by the governor,
investigate and consider all applications for pardon,
reprieve or commutation and shall make recommendation
thereon to the governor.

Prior to making such recommendation and prior to
releasing any inmate on parole, the board shall notify the
sentencing judge and prosecuting attorney at least ten
days before such recommendation or parole. Any person
released on parole shall participate as a condition of
parole in the litter control program of the county to the
extent directed by the board, unless the board specifically
finds that this alternative service would be inappropriate.
AN ACT to amend and reenact section fifteen, article five-b, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale of prison-made goods; exception to prohibition for waste tire products; prohibition against sales of waste tire products at a loss; and profits to be divided equally between prison industries fund and crime victims fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5B. PRISON-MADE GOODS.

§28-5B-15. Sale of prison-made goods on open market prohibited; penalty; exceptions.

(a) Subject to the provisions of subsections (b) and (c) of this section, it is unlawful to sell or offer for sale on the open market of this state any articles or products manufactured or produced, wholly or in part, in this or any other state, by convicts or prisoners of this state, or any other state, except convicts or prisoners on parole or probation. This provision does not apply to the sale of products made with waste tires: Provided, That any use of waste tires shall comply with applicable laws and rules of the division of environmental protection: Provided, however, That any products made by inmates from waste tires and sold on the open market must be competitively priced with privately produced goods of the same nature and may not be sold at a loss: Provided further, That any profits earned from the sale of products made by inmates from waste tires shall be distributed as follows: First, to the
prison industries fund to reimburse all moneys expended in the collection of waste tires and the production of waste tire products, including a reasonable amount to be set aside for the periodic replacement of outdated, obsolete or inoperable machinery or equipment used in collection or production, and second, any moneys remaining shall be divided equally between the prison industries fund and the crime victims compensation fund established by the provisions of section two, article two-a, chapter fourteen of this code.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than two hundred dollars nor more than five thousand dollars, or by imprisonment in jail not less than three months nor more than one year, or by both fine and imprisonment. Each sale or offer for sale shall constitute a separate offense under this section.

(c) Notwithstanding the provisions of subsection (a) of this section, any articles or products manufactured or produced, wholly or in part, by inmates of West Virginia penal and correctional institutions and facilities which are designed and intended to be used solely by blind and handicapped persons, including, but not limited to, braille books and reading materials, may be sold or offered for sale or distributed on the open market by the department of corrections or other state department or agency.

(d) Notwithstanding the provisions of subsection (a) of this section, arts and crafts produced by inmates may be sold to the general public by the department of corrections or by other agencies or departments of state government as the commissioner of corrections may designate. The arts and crafts shall be sold only on a consignment basis so that inmates whose arts and crafts products are sold shall receive payment for the products. The payments shall be deposited in the accounts or funds and managed in a manner as provided by section six, article five of this chapter: Provided, That where the state department of corrections or any other agency or department of state government provides any materials used in the production of an arts and crafts product, the
fair market value of the materials may be deducted from the account of the individual inmate after the sale of the product.

(e) For purposes of this section, "arts and crafts" means articles produced individually by artistic or craft skill such as, but not limited to, painting, sculpture, pottery and jewelry.

CHAPTER 225

(Com. Sub. for H. B. 4035—By Delegates Fleischauer, Staton, Fragale, Dalton, Varner, Hutchins and Yeager)

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

AN ACT to amend and reenact section three-z, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, five, six, seven and eleven, article thirty-seven, chapter thirty of said code, relating to licensing massage therapists; excepting licensed massage therapists from the authority of county commissions; composition of board; duties of board to propose rules; requirements for licensure; and exemptions.

Be it enacted by the Legislature of West Virginia:

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

Chapter

7. County Commissions and Officers.

30. Professions and Occupations.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.
ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3z. Authority of counties to govern business of massage.

(a) In addition to all other powers and duties now conferred by law upon county commissions, county commissions, may by order duly entered of record, adopt an ordinance which provides for the licensing for the regulation of the business of massage when carried on within the county. The ordinances may be adopted either for the entire county, or for any portion or portions of the county which may constitute an effective area or areas for those purposes, without the necessity of adopting the ordinances for any other portion of the county. Notwithstanding any other provision of this section to the contrary, no ordinance shall apply to or affect any territory within the boundaries of any municipal corporation which has adopted and has in effect an ordinance which provides for the regulation of the business of massage, unless and until the municipal corporation provides for the regulation of the business of massage by ordinance.

(b) The ordinance may condition the issuance of a license to engage in the business of massage upon proof that a massage business meets the reasonable standards set by the ordinance, which may include, but need not be limited to, the following areas:

(1) Requirement that massage personnel be at least eighteen years of age;

(2) Sanitary conditions of the massage establishment;

(3) Hours of operation of the massage business; and

(4) Prohibition of the sale or serving of food or beverage or the conducting of nonmassage business on the premises of the massage business. In the event that the business premises in which the massage business is conducted has separate quarters used for purposes other than the massage business, the prohibition of this subsection applies only to the portion of the premises
exclusively devoted to the conduct of the massage business.

(c) The ordinance may also provide that a license to engage in the business of massage may be denied upon a showing by the licensing authority of any of the following:

(1) Proof that the massage personnel or the owners or operators of a massage business have been convicted of a violation of any of the provisions of article eight, eight-a, eight-b or eight-c, chapter sixty-one of this code or proof that massage personnel or the owners or operators of a massage business have been convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one of the offenses set forth in this subsection;

(2) Proof that the massage personnel, or the owners, or operators of a massage business have been convicted of any felony offense involving the sale of a controlled substance specified in section two hundred four, two hundred six, two hundred eight, two hundred ten or two hundred twelve, article two, chapter sixty-a of this code or proof that the massage personnel or the owners or operators of the massage business have been convicted in any other state of any offense, which if committed or attempted in this state, would have been punishable as one or more of the offenses set forth in this subsection.

(d) The ordinance may require that application to conduct the business of massage be made on a form prescribed by the licensing authority, which may require the following information:

(1) The name of the applicant;

(2) If the applicant is an unincorporated association, the names and addresses of the members of its governing board;

(3) If the applicant is a corporation, the names and addresses of its officers and directors;
(4) The place at which the applicant will conduct its operations and whether that place is owned or leased by the applicant;

(5) The name of the owner of the place at which the applicant will conduct its operation, if not the same as the applicant;

(6) The number of members of the applicant;

(7) The names of all massage personnel, owners, operators or other employees of the massage business;

(8) Any other information as the licensing authority may reasonably require which may include, but need not be limited to, the criminal records, if any, of each member of the applicant's governing board and/or its officers and directors, or any of the massage personnel, owners, operators or other employees of the massage business who have been convicted of any violation of any of the provisions set forth in subsection (c) of this section.

The ordinance may require that the application be verified by the applicant or by each member of the governing board of the applicant if an unincorporated association or, if the applicant is a corporation, by each of its officers and all members of its board of directors. The ordinance may also require that the application be accompanied by a license fee not exceeding the sum of one hundred dollars. Any license issued under the provisions of this section is effective for one year and may be renewed upon the same showing as required for the issuance of the initial license, together with the payment of fees, if any. The ordinance may require license holders to notify the licensing authority of any changes in the information required by the application within a reasonable period after the changes occurred.

(e) This section does not apply to barbers or beauticians licensed to practice, or to persons licensed to practice in any of the health professions, or to persons licensed to practice as massage therapists, under the
provisions of chapter thirty of this code when engaging in
the practice within the scope of his or her license.

(f) Nothing contained in this chapter precludes a
county commission from prohibiting a person of one sex
from engaging in the massage of a person of the other
sex.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 37. MASSAGE THERAPISTS.

§30-37-3. Board established; membership; terms.
(a) The West Virginia massage therapy licensure
board consists of five members who are appointed by the
governor with the advice and consent of the Senate.
Three members of the board shall be massage therapists,
one member of the board shall be an osteopathic
physician or chiropractor who is knowledgeable of
modalities which are included in massage therapy, and one
member of the board shall be a lay person who is not a
massage therapist or other health care professional.

(b) The terms of board members shall be staggered
initially from the first day of July, one thousand nine
hundred ninety-seven. The governor shall appoint
initially three members for a term of one year and two
members for a term of two years. Subsequent
appointments shall be for a term of two years. Each
member shall serve until that member’s successor is
appointed and qualified, unless the board member is no
longer competently performing the duties of office. Any
vacancy on the board shall be filled by the governor for
the balance of the unexpired term. The governor may
remove members of the board from office for cause.
§30-37-5. Massage therapy board fund; fees; expenses; disposition of funds.

(a) There is hereby continued a massage therapy licensure board fund in the state treasurer’s office.

(b) The board may set, by legislative rule, reasonable fees for the issuance or renewal of licenses and its other services. All funds to cover the compensation and expenses of the board members shall be generated by the fees set under this subsection.

(c) The disposition of all funds received by the board shall be governed by the provisions of section ten, article one, chapter thirty of this code.

§30-37-6. Duties of board; authorization to propose rules and fees.

The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as are necessary to implement the provisions of this article, which shall include provisions regarding:

(a) Licensure and continuing education requirements, standards of practice, professional ethics, disciplinary actions, and other issues of concern;

(b) Personal cleanliness of massage therapists and the sanitary conditions of towels, linens, creams, lotions and other materials, facilities, and equipment used in the practice of massage therapy; and

(c) All fees for licensure, renewal of licensure, and all other related matters.

§30-37-7. Requirements for licensure.

(a) The board shall propose rules for legislative approval establishing a procedure for licensing of massage therapists. License requirements shall include the following:
(1) Completion of a program of massage education at a school approved by the West Virginia state college system board or by a state agency in another state, the District of Columbia or a United States territory which approves educational programs and which meets qualifications for the national certification exam administered through the national certification board for therapeutic massage and bodywork. This school shall require a diploma from an accredited high school, or the equivalent, and require completion of at least five hundred hours of supervised academic instruction. The requirements of this subdivision may be waived for those practitioners who were practicing massage therapy prior to the first day of December, one thousand nine hundred ninety-four; or

(2) Successful completion of the national certification for therapeutic massage and bodywork (NCTMB) examination; except that any person who is currently practicing massage therapy as of the thirtieth day of June, one thousand nine hundred ninety-eight, and has completed at least two hundred fifty hours of training in a massage therapy educational program and is currently working toward completion of a program accepted by the national certification board for therapeutic massage and bodywork to be eligible to take the national certification exam, may be granted a two-year provisional license without having successfully completed the national certification for therapeutic massage and bodywork examination. Any provisional license granted under this exception expires in two years if the national certification for therapeutic massage and bodywork examination is not successfully completed within that time; and

(3) Payment of a reasonable fee every two years required by the board which shall compensate and be retained by the board for the costs of administration.

(b) In addition to provisions for licensure, the rules shall include the following:

(1) Requirements for completion of continuing education hours conforming to NCTMB guidelines; and
(2) Requirements for issuance of a reciprocal license to licensees of states with requirements which may include the successful completion of the NCTMB examination.

(c) A massage therapist who is licensed by the board shall be issued a certificate and a license number. The current, valid license certificate shall be publicly displayed and available for inspection by the board and the public at a massage therapist's work site.


Nothing in this article may be construed to prohibit or otherwise limit:

(a) The practice of a profession by persons who are licensed, certified or registered under the laws of this state and who are performing services within their authorized scope of practice. Persons exempted under this subdivision include, but are not limited to, those licensed, certified or registered to practice within the scope of any branch of medicine, nursing, osteopathy, chiropractic and podiatry, as well as licensed, certified or registered barbers, cosmetologists, athletic trainers, physical and occupational therapists; and any student enrolled in a program of massage education at a school approved by the West Virginia state college system board or by a state agency in another state, the District of Columbia or a United States territory which approves educational programs and which meets qualifications for the national certification exam administered through the national certification board for therapeutic massage and bodywork, provided that the student does not hold himself or herself out as a licensed massage therapist; and

(b) The activities of any resort spa that has been operating on a continuing basis since the first day of January, one thousand nine hundred seventy-five, or any employees of the resort spa. The exemption set forth in this subsection does not extend to any person, corporation or association providing escort services, nude dancing, or other sexually oriented services not falling within the scope of massage therapy as defined in this article, irrespective of how long the person, corporation or association has been in operation.
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 three-d, relating to the certification of crane operators; providing definitions; identifying the commencement date; distinguishing who is required to be certified; authorizing the commissioner of the division of labor to propose rules; providing that rules include the certification process, categories and renewal requirements; setting forth additional duties of the commissioner; authorizing the minimum certification requirements; permitting the commissioner to deny, suspend, revoke or reinstate certification in certain instances; requiring certified crane operators to carry proof of certification while operating a crane; allowing application for certification after revocation; requiring due process procedures be followed prior to revocation, suspension or other disciplinary action; providing for fines and criminal penalties upon conviction of operating a crane without certification; providing for fines and criminal penalties upon conviction of knowingly and intentionally operating a crane under the influence of certain substances; providing for fines and criminal penalties upon conviction of employing, permitting or directing certain crane operators; establishing a crane operator certification fund and providing procedures therefor; and, authorizing reciprocity.

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 three-d, to read as follows:

ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.
§21-3D-1. Definitions.

For purposes of this article:

(a) "Commissioner" means the commissioner of the division of labor, or his or her authorized representative.

(b) "Crane" means a power-operated hoisting machine used in construction, demolition or excavation work, which has a power-operated winch and load line and a power-operated boom that moves laterally by the rotation of the machine on a carrier, and which has a manufacturer’s rated lifting capacity of five tons or more. "Crane" does not include a forklift, digger derrick truck, bucket truck or any vehicle or equipment which does not have a power-operated winch and load line.

(c) "Emergency basis" means an occurrence of an event, circumstance or situation that presents an imminent threat to persons or property and constitutes a serious health or safety hazard.

(d) "Employer" means any person, firm, corporation or other entity who hires or permits any individual to work.

(e) "Employee" means any individual employed by an employer and also as defined by the commissioner.

§21-3D-2. Certification required; exemptions.

(a) Commencing with the first day of January, two thousand and notwithstanding the provisions contained in subsection (b) of this section, a person may not operate a crane with a lifting capacity of five tons or more without certification issued under this article.
(b) A person is not required to obtain certification under this article if the person:

(1) Is a member of the armed forces of the United States or an employee of the United States, when such member or employee is engaged in the work of a crane operator exclusively for such governmental unit; or,

(2) Is primarily an operator of farm machinery who is performing the work of a crane operator as part of an agricultural operation; or,

(3) Is operating a crane on an emergency basis; or,

(4) Is operating a crane for personal use and not for profit on the site of real property which the person owns or leases; or,

(5) Is under the direct supervision of a certified crane operator, and,

(A) Who is enrolled in an industry recognized in-house training course based on the American national standards institute standards for crane operators and who is employed by the entity that either taught the training course or contracted to have the training course taught, all of which is approved by the commissioner; or,

(B) Who is enrolled in an apprenticeship program or training program for crane operators approved by the United States department of labor, bureau of apprenticeship and training;

(6) Is an employee of and operating a crane at the direction of any manufacturing plant or other industrial establishment, including any mill, factory, tannery, paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery or well, or is an employee of and operating a crane at the direction of the person, firm or corporation who owns or is operating such plant or establishment;

(7) Is an employee of a public utility operating a crane to perform work in connection with facilities used to provide a public service under the jurisdiction of the

1 The commissioner shall:

2 (a) Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, no later than the first day of July, one thousand nine hundred ninety-eight, which rules at the minimum shall include provisions for:

3 (1) Certification of individuals who operate cranes in the state of West Virginia, which certification process shall include a written examination and a practical demonstration, and shall utilize standards no less restrictive than those prescribed by the American society of mechanical engineers/American national standards institute safety code as of the effective date of this article: Provided, That the rule governing the practical examination shall be a separate rule and shall provide for the implementation of the practical examination on or before the first day of January, two thousand one.

4 (2) Certification categories that shall include lattice boom truck cranes; lattice boom crawler cranes; small telescoping boom cranes, with a lifting capacity of at least five tons but not more than seventeen and one-half tons; and large telescopic boom cranes, with a lifting capacity greater than seventeen and one-half tons;

5 (3) Certification renewal requirements of individuals who operate cranes in the state of West Virginia, that may not be more restrictive than those prescribed for the individual’s initial certification, but shall include a written examination and a current physician’s certificate at least every five years;

6 (b) Prescribe application forms for original and renewal certification.
(c) Set application fees in amounts that are reasonable and necessary to defray the costs of the administration of this article in an amount not to exceed seventy-five dollars per year.

(d) Set examination fees in an amount not to exceed the actual cost of the examination.

(e) Administer or cause to be administered the written examination and practical demonstrations as required for certification.

(f) Determine the standards for acceptable performance on the written examination and practical demonstration: Provided, That the minimum standards shall be consistent with national standards and transferable to other states where possible.

(g) If requested by an individual who fails an examination, provide the person a written analysis of the person's performance on the examination.

(h) Take other action as necessary to enforce this article.

§21-3D-4. Minimum certification requirements.

(a) The commissioner shall certify an applicant who:

(1) Is at least eighteen years of age;

(2) Meets the application requirements as prescribed by rule;

(3) Passes the written examination;

(4) Passes the practical demonstration: Provided, That any person who documents at least two thousand hours of on-the-job experience operating a crane during the preceding four years next prior to filing for application is entitled to certification without a practical demonstration under this article if the person applies for certification no later than the first day of January, two thousand, meets all other requirements and pays applicable application and examination fees;
(5) Presents the original, or a photographic copy, of a physician’s certificate that he or she is physically qualified to drive a commercial motor vehicle as required by 49 C.F.R. §391.41 as of the effective date of this article, or an equivalent physician’s certificate as approved by the commissioner; and,

(6) Pays the application and examination fees.

(b) Certification issued under this article is valid throughout the state and is not assignable or transferable, and is valid for one year from the date on which it was issued.

§21-3D-5. Denial, suspension, revocation, or reinstatement of certification.

(a) The commissioner may deny, suspend, revoke or reinstate certification.

(b) A violation of this article or rule adopted pursuant to this article is grounds for the denial, suspension, revocation or refusal to reinstate certification and permits the imposition of disciplinary action: Provided, That no disciplinary action against a crane operator may be imposed without a proper prior notice as served under section one, article two, chapter fifty-six of this code, and an opportunity for hearing held before the commissioner or his designee wherein the crane operator will be provided the opportunity to present evidence in person, by counsel or both and after which, if the commissioner finds a violation of this article has occurred, the commissioner may impose any disciplinary action permitted in this article: Provided, however, That the provisions of subsection (e) of section seven of this article have not been met.

(c) Operation of a crane in violation of this article or other provision of this code may result in the suspension of certification for not less than twenty-four hours nor more than one year, or revocation of certification until reinstated.
(d) Each certified crane operator shall carry proof of certification on his or her person during operation of a crane.

(e) A person whose certification has been revoked may apply for certification one year after the date of the revocation.


(a) The commissioner may suspend or revoke the certification of a person involved in an accident relating to the operation of a crane by that person: Provided, That no disciplinary action against a crane operator may be imposed without a proper prior notice as served under section one, article two, chapter fifty-six of this code, and hearing held before the commissioner or his or her designee wherein the crane operator will be provided the opportunity to present evidence in person, by counsel or both and after which, the commissioner finds a violation of this article has occurred, the commissioner may impose any disciplinary action permitted in this article: Provided, however, That the provisions of subsection (e) of section seven of this article have not been met.

(b) If the commissioner makes a finding that the accident was caused by the actions or omissions of the certificate holder, the commissioner may require the certificate holder to retake and pass the certification examination and/or demonstration before the certificate holder may apply to have the certification reinstated.

§21-3D-7. Penalties.

(a) A person required to obtain certification under this article, who operates a crane without certification, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars for each violation.

(b) No person may knowingly or intentionally drive or operate a crane while:

(1) Having any measurable alcohol in his or her system; or,
(2) Under the influence of any controlled substance, as defined by subdivision (d), section one hundred one, article one, chapter sixty-a of this code; or

(3) Under the combined influence of alcohol and any controlled substance or any other drug.

A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars. In addition to the fine, the commissioner of labor shall revoke the person’s certification for not less than one year.

(c) An employer who knowingly employs, permits or directs a person to operate a crane without proper certification is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars for each violation.

(d) A person, operating a crane, who fails to produce the certification within twenty-four hours after request of the commissioner or his or her authorized representative, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars.

(e) If a person is convicted for an offense described in this section, and does not act to appeal the conviction within the time periods as hereinafter described, then the person’s certification may be revoked or suspended in accordance with the provisions of this article, and, further:

(1) The clerk of the court in which a person is convicted for an offense described in this section shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within twenty days of the sentencing for such conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward the transcript when the person convicted has not filed a notice of intent to file
a petition for appeal or writ of error within thirty days after the judgment was entered; and, (2) If, upon examination of the transcript of the judgment of conviction, the commissioner shall determine that the person was convicted for any of the offenses described in this section, the commissioner shall make and enter an order revoking or suspending the person’s certificate to operate a crane in this state. The order shall contain the reasons for the revocation or suspension and the revocation or suspension periods provided for by this article or by rule. Further, the order shall give the procedures for requesting a hearing. The person shall be advised in the order that because of the receipt of a transcript of the judgment of conviction by the commissioner a presumption exists that the person named in the transcript of the judgment of conviction is the person named in the commissioner’s order and such constitutes sufficient evidence to support revocation or suspension and that the sole purpose for the hearing held under this section is for the person requesting the hearing to present evidence that he or she is not the person named in the transcript of the judgment of conviction. A copy of the order shall be forwarded to the person by registered or certified mail, return receipt requested. No revocation or suspension shall become effective until ten days after receipt of a copy of the order; and, (3) The provisions of this subsection shall not apply if an order reinstating the crane operator’s certification of the person has been entered by the commissioner prior to the receipt of the transcript of the judgment of conviction, and, (4) For the purposes of this section, a person is convicted when the person enters a plea of guilty or is found guilty by a court or jury.

§21-3D-8. Crane Operator Certification Fund; Fees; disposition of funds.

(a) There is hereby established a crane operator certification fund in the state treasurer’s office.
(b) The commissioner may set reasonable application fees for the issuance or renewal of certificates and other services associated with crane operator certification.

(c)(1) The commissioner shall receive and account for all money that is derived pursuant to the provisions of this article. The commissioner shall pay all money collected into the crane operator certification fund that has been established pursuant to subsection (a), section eight of this article, with the exception of money received as fines. This money shall be used exclusively by the commissioner for purposes of administration and enforcement of his or her duties pursuant to this article.

(2) Expenditures from the crane operator certification fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

§21-3D-9. Reciprocity.

To the extent that other states provide for the certification of crane operators for similar action, the commissioner, in his or her discretion, may grant certification of the same or equivalent classification to persons certified by other states, without examination upon satisfactory proof furnished to the commissioner that the qualifications for the applicants are equal to the qualifications of the holders of similar certification in this state, and upon payment of the required application fee.
AN ACT to amend and reenact section twelve, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public access to licensing boards.

Be it enacted by the Legislature of the West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-12. Record of proceedings; register of applicants; certified copies of records prima facie evidence; report to governor and Legislature; public access.

(a) The secretary of every board shall keep a record of its proceedings and a register of all applicants for license or registration, showing for each the date of his or her application, his or her name, age, educational and other qualifications, place of residence, whether an examination was required, whether the applicant was rejected or a certificate of license or registration granted, the date of this action, the license or registration number, all renewals of the license or registration, if required, and any suspension or revocation thereof. The books and register of the board shall be open to public inspection at all reasonable times, and the books and register, or a copy of any part thereof, certified by the secretary and attested by the seal of the board, shall be prima facie evidence of all matters recorded therein.
(b) On or before the first day of January of each year in which the Legislature meets in regular session, the board shall submit to the governor and to the Legislature a report of its transactions for the preceding two years, an itemized statement of its receipts and disbursements for that period, a full list of the names of all persons licensed or registered by it during that period, statistical reports by county of practice, by specialty if appropriate to the particular profession, and a list of any complaints which were filed against persons licensed by the board, including any action taken by the board regarding those complaints. The report shall be certified by the president and the secretary of the board, and a copy of the report shall be filed with the secretary of state.

(c) To promote public access, the secretary of every board shall ensure that the address and telephone number of the board are included every year in the state government listings of the Charleston area telephone directory. Every board shall regularly evaluate the feasibility of adopting additional methods of providing public access, including, but not limited to, listings in additional telephone directories, toll-free telephone numbers, facsimile and computer-based communications.

CHAPTER 228

(S. B. 395—By Senators Bowman, Bailey and Ball)

[Passed March 4, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to required procedure for regulation of occupations and professions.

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

ARTICLE 1A. PROCEDURE FOR REGULATION OF OCCUPATIONS AND PROFESSIONS.

§30-1A-1. Legislative findings.
§30-1A-2. Required application for regulation of professional or occupational group.
§30-1A-3. Analysis and evaluation of application.
§30-1A-4. Public hearing and committee recommendations.
§30-1A-5. Reappraisal requirements.
§30-1A-6. Article not to be construed as limiting new legislation.

§30-1A-1. Legislative findings.

The Legislature finds that regulation should be imposed on an occupation or profession only when necessary for the protection of public health and safety. The Legislature further finds that establishing a procedure for reviewing the necessity of regulating an occupation or profession prior to enacting laws for such regulation will better enable it to evaluate the need for the regulation and to determine the least restrictive regulatory alternative consistent with public health and safety.

§30-1A-2. Required application for regulation of professional or occupational group.

(a) Any professional or occupational group or organization, any individual or any other interested party which proposes the regulation of any unregulated professional or occupational group shall submit an application for regulation to the joint standing committee on government organization no later than the first day of December of any year. The joint standing committee on government organization may only accept an application for regulation of a professional or occupational group when the party submitting an application files with the committee a statement of support for the proposed regulation which has been signed by at least ten residents or citizens of the state of West Virginia who are members
of the professional or occupational group for which regulation is being sought.

(b) The completed application shall contain:

(1) A description of the occupational or professional group proposed for regulation, including a list of associations, organizations and other groups currently representing the practitioners in this state, and an estimate of the number of practitioners in each group;

(2) A definition of the problem and the reasons why regulation is deemed necessary;

(3) The reasons why certification, registration, licensure or other type of regulation is being requested and why that regulatory alternative was chosen;

(4) A detailed statement of the fee structure conforming with the statutory requirements of financial autonomy as set out in subsection (c), section six, article one, chapter thirty of this code;

(5) A detailed statement of the location and manner in which the group plans to maintain records which are accessible to the public as set out in section twelve, article one, chapter thirty of this code;

(6) The benefit to the public that would result from the proposed regulation; and

(7) The cost of the proposed regulation.

§30-1A-3. Analysis and evaluation of application.

(a) The joint committee on government organization shall refer the completed application of the professional or occupational group to the performance evaluation and research division of the office of the legislative auditor.

(b) The performance evaluation and research division of the office of the legislative auditor shall conduct an analysis and evaluation of the application. The analysis and evaluation shall be based upon the criteria listed in subsection (c) of this section. The performance evaluation and research division of the office of the legislative
auditor shall submit a report, and such supporting materials as may be required, to the joint standing committee on government organization no later than the first day of July following the date the proposal is submitted to the joint standing committee on government organization.

(c) The report shall include evaluation and analysis as to:

(1) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(2) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and

(3) Whether the public can be adequately protected by other means in a more cost-effective manner.

§30-1A-4. Public hearing and committee recommendations.

(a) After receiving the required report, the joint standing committee on government organization may conduct public hearings to receive testimony from the public, the governor or his or her designee, the group, organization or individual who submitted the proposal for regulation, and any other interested party.

(b) The joint standing committee on government organization shall report its findings and recommendations to the next regular session of the Legislature.

(c) The report shall include:

(1) Whether regulation of each occupation or profession is necessary for the public health and safety and, if regulation is necessary, recommendations as to what is the least restrictive type of regulation consistent with the public interest; and
(2) Whether regulation would result in the creation of a new agency or board or could be implemented more efficiently through an existing agency or board.

(d) The report may include a recommendation that the occupation or profession be regulated by any of the following mechanisms, in whole or in part:

(1) By practice standards, which may include restrictions established by statute;

(2) By registration, which may include inspections or other enforcement provisions;

(3) By statutory certification, which may include testing or assessment of the practitioner's credential or competency;

(4) By supervision by a licensed practitioner, which may include practice standards, registration or statutory certification;

(5) By licensure by a new or existing agency or board, which may include restrictions of the scope of practice, minimum competency, education, testing, registration, certification, inspection or enforcement.

§30-1A-5. Reapplication requirements.

If the joint standing committee on government organization approves an application for regulation of a professional or occupational group, but the legislation incorporating its recommendations does not become law in the year in which it is first introduced, the applicants for regulation may introduce legislation during each of the two successive regular sessions without having to make reapplication.

§30-1A-6. Article not to be construed as limiting new legislation.

Nothing in this article shall be construed as limiting or interfering with the right of any member of the Legislature to introduce or of the Legislature to consider any bill that would create a new state governmental department or agency or amend the law with respect to an existing one.
CHAPTER 229

(S. B. 233—By Senators Hunter, Ross, Craigo, Sharpe, Walker, Minear, Helmick, Anderson, Ball, Scott and Kessler)

[Passed February 23, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certain authorized physician assistants being permitted to pronounce death in accordance with rules promulgated by the board of medicine; requiring a proposed job description to be filed with application for licensure; changing requirements for temporary licensure; changing requirements of physician applying to board to supervise physician assistant; and changing the limitations on supervising physicians.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-16. Physician assistants; definitions; board of medicine rules; annual report; licensure; temporary license; relicensure; job description required; revocation or suspension of licensure; responsibilities of supervising physician; legal responsibility for physician assistants; reporting by health care facilities; identification; limitations on employment and duties; fees; continuing education; unlawful representation of physician assistant as a physician; criminal penalties.

(a) As used in this section:

(1) "Physician assistant" means an assistant to a physician who is a graduate of an approved program of instruction in primary health care or surgery, has attained a baccalaureate or master's degree, has passed the national
certification examination and is qualified to perform
direct patient care services under the supervision of a
physician;

(2) "Physician assistant-midwife" means a physician
assistant who meets all qualifications set forth under
subdivision (1) of this subsection and fulfills the
requirements set forth in subsection (d) of this section; is
subject to all provisions of this section; and assists in the
management and care of a woman and her infant during
the prenatal, delivery and postnatal periods;

(3) "Supervising physician" means a doctor or doctors
of medicine or podiatry permanently licensed in this state
who assume legal and supervisory responsibility for the
work or training of any physician assistant under his or
her supervision;

(4) "Approved program" means an educational
program for physician assistants approved and accredited
by the committee on allied health education and
accreditation on behalf of the American medical
association or its successor; and

(5) "Health care facility" means any licensed hospital,
nursing home, extended care facility, state health or
mental institution, clinic or physician's office.

(b) The board shall promulgate rules pursuant to the
provisions of article three, chapter twenty-nine-a of this
code governing the extent to which physician assistants
may function in this state. The rules shall provide that the
physician assistant is limited to the performance of those
services for which he or she is trained and that he or she
performs only under the supervision and control of a
physician permanently licensed in this state, but that
supervision and control does not require the personal
presence of the supervising physician at the place or
places where services are rendered if the physician
assistant's normal place of employment is on the premises
of the supervising physician. The supervising physician
may send the physician assistant off the premises to
perform duties under his or her direction, but a separate
place of work for the physician assistant may not be
established. In promulgating the rules, the board shall allow the physician assistant to perform those procedures and examinations and in the case of certain authorized physician assistants to prescribe at the direction of his or her supervising physician in accordance with subsection (l) of this section those categories of drugs submitted to it in the job description required by this section. Certain authorized physician assistants may pronounce death in accordance with the rules proposed by the board which receive legislative approval. The board shall compile and publish an annual report that includes a list of currently licensed physician assistants and their employers and location in the state.

(c) The board shall license as a physician assistant any person who files an application together with a proposed job description and furnishes satisfactory evidence to it that he or she has met the following standards:

(1) He or she is a graduate of an approved program of instruction in primary health care or surgery;

(2) He or she has passed the certifying examination for a primary care physician assistant administered by the national commission on certification of physician assistants and has maintained certification by that commission so as to be currently certified;

(3) He or she is of good moral character; and

(4) He or she has attained a baccalaureate or master's degree.

(d) The board shall license as a physician assistant-midwife any person who meets the standards set forth under subsection (c) of this section and, in addition thereto, the following standards:

(1) He or she is a graduate of a school of midwifery accredited by the American college of nurse-midwives;

(2) He or she has passed an examination approved by the board;

(3) He or she practices midwifery under the supervision of a board certified obstetrician, gynecologist
or a board certified family practice physician who routinely practices obstetrics.

(e) The board may license as a physician assistant any person who files an application together with a proposed job description and furnishes satisfactory evidence that he or she is of good moral character and meets either of the following standards:

(1) He or she is a graduate of an approved program of instruction in primary health care or surgery prior to the first day of July, one thousand nine hundred ninety-four, and has passed the certifying examination for a physician assistant administered by the national commission on certification of physician assistants and has maintained certification by that commission so as to be currently certified; or

(2) He or she had been certified by the board as a physician assistant then classified as "Type B", prior to the first day of July, one thousand nine hundred eighty-three.

Licensure of an assistant to a physician practicing the specialty of ophthalmology is permitted under this section: Provided, That a physician assistant may not dispense a prescription for a refraction.

(f) When any graduate of an approved program submits an application to the board for a physician assistant license, accompanied by a job description as referenced by this section, the board shall issue to that applicant a temporary license allowing that applicant to function as a physician assistant until the applicant successfully passes the national commission on certification of physician assistants' certifying examination: Provided, That the applicant shall sit for and obtain a passing score on the examination next offered following graduation from the approved program. No applicant shall receive a temporary license who, following graduation from an approved program, has sat for and not obtained a passing score on the examination. A physician assistant who has not been certified by the national board of medical examiners on behalf of the national commission on certification of physician
assistants will be restricted to work under the direct supervision of the supervising physician.

A physician assistant who has been issued a temporary license shall, within thirty days of receipt of written notice from the national commission on certification of physician assistants of his or her performance on the certifying examination, notify the board in writing of his or her results. In the event of failure of that examination, the temporary license shall expire and terminate automatically, and the board shall so notify the physician assistant in writing.

(g) Any physician applying to the board to supervise a physician assistant shall affirm that the range of medical services set forth in the physician assistant’s job description are consistent with the skills and training of the supervising physician and the physician assistant. Before a physician assistant can be employed or otherwise use his or her skills, the supervising physician and the physician assistant must obtain approval of the job description from the board. The board may revoke or suspend any license of an assistant to a physician for cause, after giving that assistant an opportunity to be heard in the manner provided by article five, chapter twenty-nine-a of this code and as set forth in rules duly adopted by the board.

(h) The supervising physician is responsible for observing, directing and evaluating the work, records and practices of each physician assistant performing under his or her supervision. He or she shall notify the board in writing of any termination of his or her supervisory relationship with a physician assistant within ten days of the termination. The legal responsibility for any physician assistant remains with the supervising physician at all times, including occasions when the assistant under his or her direction and supervision, aids in the care and treatment of a patient in a health care facility. In his or her absence, a supervising physician must designate an alternate supervising physician, however, the legal responsibility remains with the supervising physician at all times. A health care facility is not legally responsible for
the actions or omissions of the physician assistant unless
the physician assistant is an employee of the facility.

(i) The acts or omissions of a physician assistant
employed by health care facilities providing inpatient or
outpatient services shall be the legal responsibility of the
facilities. Physician assistants employed by facilities in
staff positions shall be supervised by a permanently
licensed physician.

(j) A health care facility shall report in writing to the
board within sixty days after the completion of the
facility's formal disciplinary procedure, and also after the
commencement, and again after the conclusion, of any
resulting legal action, the name of any physician assistant
practicing in the facility whose privileges at the facility
have been revoked, restricted, reduced or terminated for
any cause including resignation, together with all pertinent
information relating to the action. The health care facility
shall also report any other formal disciplinary action taken
against any physician assistant by the facility relating to
professional ethics, medical incompetence, medical
malpractice, moral turpitude or drug or alcohol abuse.
Temporary suspension for failure to maintain records on a
timely basis or failure to attend staff or section meetings
need not be reported.

(k) When functioning as a physician assistant, the
physician assistant shall wear a name tag that identifies
him or her as a physician assistant. A two and one-half by
three and one-half inch card of identification shall be
furnished by the board upon licensure of the physician
assistant.

(l) A physician assistant may write or sign
prescriptions or transmit prescriptions by word of mouth,
telephone or other means of communication at the
direction of his or her supervising physician. The board
shall promulgate rules pursuant to the provisions of article
three, chapter twenty-nine-a of this code governing the
eligibility and extent to which a physician assistant may
prescribe at the direction of the supervising physician.
The rules shall include, but not be limited to, the
following:
(1) Provisions for approving a state formulary classifying pharmacologic categories of drugs that may be prescribed by a physician assistant:

(A) The following categories of drugs shall be excluded from the formulary: Schedules I and II of the uniform controlled substances act, anticoagulants, antineoplastic, radiopharmaceuticals, general anesthetics and radiographic contrast materials;

(B) Drugs listed under Schedule III shall be limited to a seventy-two hour supply without refill;

(C) Categories of other drugs may be excluded as determined by the board;

(2) All pharmacological categories of drugs to be prescribed by a physician assistant shall be listed in each job description submitted to the board as required in subsection (g) of this section;

(3) The maximum dosage a physician assistant may prescribe;

(4) A requirement that to be eligible for prescription privileges, a physician assistant shall have performed patient care services for a minimum of two years immediately preceding the submission to the board of the job description containing prescription privileges and shall have successfully completed an accredited course of instruction in clinical pharmacology approved by the board; and

(5) A requirement that to maintain prescription privileges, a physician assistant shall continue to maintain national certification as a physician assistant, and in meeting the national certification requirements shall complete a minimum of ten hours of continuing education in rational drug therapy in each certification period. Nothing in this subsection shall be construed to permit a physician assistant to independently prescribe or dispense drugs.

(m) A supervising physician may not supervise at any one time more than three full-time physician assistants or
their equivalent, except that a physician may supervise up
to four hospital-employed physician assistants. No
physician shall supervise more than four physician
assistants at any one time.

A physician assistant may not sign any prescription,
except in the case of an authorized physician assistant at
the direction of his or her supervising physician in
accordance with the provisions of subsection (l) of this
section. A physician assistant may not perform any
service that his or her supervising physician is not
qualified to perform. A physician assistant may not
perform any service that is not included in his or her job
description and approved by the board as provided for in
this section.

The provisions of this section do not authorize any
physician assistant to perform any specific function or
duty delegated by this code to those persons licensed as
chiropractors, dentists, dental hygienists, optometrists or
pharmacists or certified as nurse anesthetists.

(n) Each application for licensure submitted by a
licensed supervising physician under this section is to be
accompanied by a fee of one hundred dollars. A fee of
fifty dollars is to be charged for the biennial renewal of
the license. A fee of twenty-five dollars is to be charged
for any change of supervising physician.

(o) Beginning with the biennial renewal forms
completed by physician assistants and submitted to the
board in the year one thousand nine hundred ninety-three,
as a condition of renewal of physician assistant license,
each physician assistant shall provide written
documentation pursuant to rules promulgated by the
board in accordance with chapter twenty-nine-a of this
code of participation in and successful completion during
the preceding two-year period of a minimum of forty
hours of continuing education designated as Category I
by the American medical association, American academy
of physician assistants or the academy of family
physicians, and sixty hours of continuing education
designated as Category II by the association or either
academy. Notwithstanding any provision of this chapter
277 to the contrary, failure to timely submit the required
278 written documentation shall result in the automatic
279 suspension of any license as a physician assistant until the
280 written documentation is submitted to and approved by
281 the board.
282
283 (p) It is unlawful for any physician assistant to
284 represent to any person that he or she is a physician,
285 surgeon or podiatrist. Any person who violates the
286 provisions of this subsection is guilty of a felony and,
287 upon conviction thereof, shall be imprisoned in the
288 penitentiary for not less than one nor more than two years,
289 or be fined not more than two thousand dollars, or both
290 fined and imprisoned.
291
292 (q) All physician assistants holding valid certificates
293 issued by the board prior to the first day of July, one
294 thousand nine hundred ninety-two, shall be considered to
295 be licensed under this section.

CHAPTER 230

(Com. Sub. for H. B. 4058—By Mr. Speaker, Mr. Kiss, and Delegates Douglas,
Staton, Ashley and Trump)

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

AN ACT to amend chapter thirty of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by
adding thereto a new article, designated article three-a,
relating to limiting disciplinary actions against certain health
professionals prescribing, administering or dispensing
controlled substances in the management of intractable pain.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, be amended by
adding thereto a new article, designated article three-a, all to read
as follows:
ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN.

§30-3A-1. Definitions.
§30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to management of intractable pain.
§30-3A-3. Acts subject to discipline or prosecution.
§30-3A-4. Construction of article.

§30-3A-1. Definitions.

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

(1) An "accepted guideline" is a care or practice guideline for pain management developed by a nationally recognized clinical or professional association, or a specialty society or government-sponsored agency that has developed practice or care guidelines based on original research or on review of existing research and expert opinion. Guidelines established primarily for purposes of coverage, payment or reimbursement do not qualify as accepted practice or care guidelines when offered to limit treatment options otherwise covered by the provisions of this article.

(2) "Board" or "licensing board" means the West Virginia board of medicine, the West Virginia board of osteopathy, the West Virginia board of registered nurses or the West Virginia board of pharmacy.

(3) "Intractable pain" means a state of pain having a cause that cannot be removed. Intractable pain exists if an effective relief or cure of the cause of the pain: (1) Is not possible; or (2) has not been found after reasonable efforts. Intractable pain may be temporary or chronic.

(4) "Nurse" means a registered nurse licensed in the state of West Virginia pursuant to the provisions of article seven of this chapter.

(5) "Pain-relieving controlled substance" includes, but is not limited to, an opioid or other drug classified as a schedule II controlled substance and recognized as effective for pain relief, and excludes any drug that has no
accepted medical use in the United States or lacks
accepted safety for use in treatment under medical
supervision, including, but not limited to, any drug
classified as a schedule I controlled substance.

(6) "Pharmacist" means a registered pharmacist
licensed in the state of West Virginia pursuant to the
provisions of article five of this chapter.

(7) "Physician" means a physician licensed in the
state of West Virginia pursuant to the provisions of article
three or article fourteen of this chapter.

§30-3A-2. Limitation on disciplinary sanctions or criminal
punishment related to management of
intractable pain.

(a) A physician shall not be subject to disciplinary
sanctions by a licensing board or criminal punishment by
the state for prescribing, administering or dispensing pain-
relieving controlled substances for the purpose of
alleviating or controlling intractable pain when:

(1) In a case of intractable pain involving a dying
patient, the physician discharges his or her professional
obligation to relieve the dying patient's intractable pain
and promote the dignity and autonomy of the dying
patient, even though the dosage exceeds the average
dosage of a pain-relieving controlled substance; or

(2) In the case of intractable pain involving a patient
who is not dying, the physician discharges his or her
professional obligation to relieve the patient's intractable
pain, even though the dosage exceeds the average dosage
of a pain-relieving controlled substance, if the physician
can demonstrate by reference to an accepted guideline
that his or her practice substantially complied with that
accepted guideline. Evidence of substantial compliance
with an accepted guideline may be rebutted only by the
testimony of a clinical expert. Evidence of
noncompliance with an accepted guideline is not sufficient
alone to support disciplinary or criminal action.

(b) A registered nurse shall not be subject to
disciplinary sanctions by a licensing board or criminal
punishment by the state for administering pain-relieving
controlled substances to alleviate or control intractable
pain, if administered in accordance with the orders of a licensed physician.

(c) A registered pharmacist shall not be subject to disciplinary sanctions by a licensing board or criminal punishment by the state for dispensing a prescription for a pain-relieving controlled substance to alleviate or control intractable pain, if dispensed in accordance with the orders of a licensed physician.

(d) For purposes of this section, the term "disciplinary sanctions" includes both remedial and punitive sanctions imposed on a licensee by a licensing board, arising from either formal or informal proceedings.

(e) The provisions of this section shall apply to the treatment of all patients for intractable pain, regardless of the patient's prior or current chemical dependency or addiction. The board may develop and issue policies or guidelines establishing standards and procedures for the application of this article to the care and treatment of persons who are chemically dependent or addicted.

§30-3A-3. Acts subject to discipline or prosecution.

(a) Nothing in this article shall prohibit disciplinary action or criminal prosecution of a physician for:

(1) Failing to maintain complete, accurate, and current records documenting the physical examination and medical history of the patient, the basis for the clinical diagnosis of the patient, and the treatment plan for the patient;

(2) Writing a false or fictitious prescription for a controlled substance scheduled in article two, chapter sixty-a of this code; or

(3) Prescribing, administering, or dispensing a controlled substance in violation of the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§801, et seq. or chapter sixty-a of this code; or

(4) Diverting controlled substances prescribed for a patient to the physician's own personal use.

(b) Nothing in this article shall prohibit disciplinary action or criminal prosecution of a nurse or pharmacist for:
21 (1) Administering or dispensing a controlled sub-
22 stance in violation of the provisions of the federal
23 Comprehensive Drug Abuse Prevention and Control Act
24 of 1970, 21 U.S.C. §§801, et seq. or chapter sixty-a of this
25 code; or
26 (2) Diverting controlled substances prescribed for a
27 patient to the nurse’s or pharmacist’s own personal use.

§30-3A-4. Construction of article.

1 This article may not be construed to legalize, condone,
2 authorize or approve mercy killing or assisted suicide.

CHAPTER 231

(Com. Sub. for S. B. 468—By Senators Bowman,
McKenzie, Kessler and Ball)

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

AN ACT to amend and reenact sections two, four, six and eleven,
article nine, chapter thirty 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 fourteen and fifteen, all relating
to accountants; adding and revising definitions; revising and
clarifying requirements for licensure; authorizing part
ownership of accounting corporations and other entities by
persons other than accountants; requiring supervision of
persons other than accountants by persons appropriately
licensed; requiring certificates of authorizations; requiring
notification of change in identities of partners, officers,
shareholders, members, managers, supervisory personnel or
changes in number or location of offices; requiring equity
ownership in accounting corporations and other entities by
licensed persons other than accountants who perform
services or sell products requiring licensure other than under
this article; allowing commissions, referral fees and
contingency fees; requiring fee arrangements to be in
writing; requiring rules; and providing for a termination date.

Be it enacted by the Legislature of West Virginia:

That sections two, four, six and eleven, article nine, chapter thirty 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 fourteen and fifteen, all to read as follows:

ARTICLE 9. ACCOUNTANTS.

§30-9-2. Definitions.
§30-9-4. Certification; applicability of article to previous holders of certificates.
§30-9-6. Practice of public accounting restricted to licensees; prohibited acts.
§30-9-11. Accounting corporations.
§30-9-14. Commissions, referral fees and contingent fees.
§30-9-15. Termination date.

§30-9-2. Definitions.

As used in this article, unless the context clearly indicates otherwise:

(a) "Assurance" means any act or action, whether written or oral, expressing an opinion or conclusion about the reliability of a financial statement or about its conformity with any financial accounting principles or standards.

(b) "Board" means the state board of accountancy, known as the "West Virginia board of accountancy", continued by the provisions of this article and established under prior law.

(c) "Certificate" means a certificate as a certified public accountant issued by the board pursuant to this article or corresponding provisions of prior law or a corresponding certificate as a certified public accountant issued after examination under the laws of any other state.
(d) "Commission" means compensation, except a referral fee, for recommending or referring any product or service to be supplied by another person.

(e) "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. A fee fixed by a court, taxing authority or other public authority is not a contingent fee.

(f) "Financial statement" means a writing or other presentation, including accompanying notes, which presents, in whole or in part, historical or prospective financial position, results of operations or changes in financial position of any person, corporation, partnership or other entity.

(g) "License" means a license to practice public accounting issued annually under the provisions of this article.

(h) "Licensee" means a person holding a license to practice public accounting issued under the provisions of this article, including those persons who were duly registered to practice public accounting under prior law, and "nonlicensee" means all other persons.

(i) "Practice of public accountancy" or "public accounting" means: (1) The giving of an assurance, in a report or otherwise, whether expressly or implicitly; or (2) in the case of a person holding himself out as a certificate holder, the performance of or offering to perform any service involving the use of accounting or auditing skills, including, but not limited to, management advisory or consulting services, the preparation of tax returns, the rendering of tax services, the keeping of books of account and related accounting records and the preparation of financial statements without the expression of an assurance: Provided, That an employee giving assurances
§30-9-4. Certification; applicability of article to previous holders of certificates.

(a) The board shall grant a certificate to any applicant who, at the time of making application:

(1) Is over the age of eighteen years;

(2) Is of good moral character;

(3) Is, at the time of taking the examination provided for in subdivision (5) of this subsection, a resident of this state or employed in this state on a full-time basis: Provided, That the board may provide by rule for exceptions to this requirement;

(4) Has satisfied the following educational requirements, which must be met before an applicant is
eligible to apply for the examination provided for in subdivision (5) of this subsection:

(A) For applicants making their initial application for the examination prior to the fifteenth day of February, two thousand, a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board, with an accounting concentration or equivalent as the board may determine by rule to be appropriate; or

(B) For applicants making their initial application for the examination on or after the fifteenth day of February, two thousand, at least one hundred fifty semester hours of college education including a baccalaureate or higher degree conferred by an accredited college or university acceptable to the board, the total educational program to include an accounting concentration or equivalent as the board may determine by rule to be appropriate;

(5) Has completed satisfactorily an examination to be given by the board at least twice each year in accounting theory, accounting practice, auditing, commercial law or such other appropriate subjects as determined by the board by rule. The board shall prescribe by rule for the retention of credit for the satisfactory completion of a portion of such examination in future examinations.

(b) The board may, in its discretion, in lieu of the examination provided for in this section, issue a certificate to any person who possesses the other qualifications stated in this section, and who is the holder of a certificate issued under the laws of any state which extends similar privileges to certified public accountants of this state provided the requirements for such certificates in the state which has granted the certificate to such person are, in the opinion of the board, equivalent to those herein required; or who is the holder of a certificate, or the equivalent thereof, granted under the authority of a foreign nation, if the requirements for such certificates in the foreign nation, are, in the opinion of the board, equivalent to those herein required.
(c) Persons who, on the effective date of this article, hold certificates theretofore issued by the board are not required to obtain additional certificates under this article, but are otherwise subject to all provisions of this article; and such certificates theretofore issued shall, for all purposes, be considered certificates issued under this article and subject to the provisions hereof.

§30-9-6. Practice of public accounting restricted to licensees; prohibited acts.

(a) A person who does not hold a valid license issued by the board may not claim to hold one; nor may he or she practice or offer to practice public accountancy or public accounting; nor may he or she make any other claim of licensure or approval related to the preparation of financial statements or expression of assurances thereon which is false or misleading.

(b) Except as set forth in this subsection, a person who does not hold a valid certificate issued by the board may not claim to hold one or describe himself as or assume any of the following titles or designations: Certified public accountant, CPA, public accountant, PA, certified accountant, CA, chartered accountant, licensed accountant, LA, registered accountant, RA, independent auditor, auditor, or similar designation: Provided, That registrants under prior law may use the titles public accountant or PA.

Partnerships practicing accountancy in this state may use the aforesaid designations, or practice as such, only if all the members thereof who practice in this state are so licensed: Provided, That nothing in this section may be construed to prevent a person not licensed under this article from owning an equity interest in an accounting partnership, or rendering a compatible professional service that the person is otherwise legally authorized to render, so long as the nonlicensee owner does not practice public accounting in this state or exercise voting rights with respect to any question related to the practice of accounting: Provided, however, That ownership of the
accounting partnership is held at least sixty percent by individuals duly licensed under this article.

(c) A person who does not hold a valid license issued by the board may not claim to have used "generally accepted accounting principles", "generally accepted accounting standards", "public accountancy standards", "public accountancy principles", "generally accepted auditing principles" or "generally accepted auditing standards", in connection with his or her preparation of any financial statement; nor may he or she use any of these terms in describing any complete or partial variation from such standards or principles or to imply complete or partial conformity with such standards or principles.

(d) A person who does not hold a valid license issued by the board may not use the words "audit", "audit report", "independent audit", "attest", "attestation", "examine", "examination", "opinion" or "review" in a report on a financial statement.

(e) A person who does not hold a valid license issued by the board may neither state nor imply that he or she is tested, competent, qualified or proficient in financial standards established by: (1) The American institute of certified public accountants or any agency thereof; (2) the governmental accounting standards board or any agency thereof; (3) the securities and exchange commission or any agency thereof; (4) the financial accounting standards board; or (5) any successor entity to an entity named in this subsection.

(f) No person who holds a valid license issued by the board may engage in the practice of public accounting under a professional or firm name or designation that contains a name or term other than past or present partners, officers or shareholders of the firm or of a predecessor firm, engaged in the practice of accounting; nor may any such person engage in the practice of public accounting under a professional or firm name which is deceptive or misleading.

30-9-11. Accounting corporations.
(a) One or more individuals licensed within this state pursuant to this article may organize and become a shareholder or shareholders of an accounting corporation domiciled within this state, and may organize for this purpose together with individuals duly licensed or otherwise legally authorized to provide compatible professional services. The practice of or offer to practice public accounting through a corporation domiciled in this state is permitted: Provided, that the person or persons in direct control or having personal supervision of the practice and all personnel who act in behalf of the corporation in the practice of public accounting are individually licensed under this article; that ownership of the corporation is held at least sixty percent by individuals duly licensed under this article; that all nonlicensee owners are active participants in the accounting corporation; and that the corporation has been issued a certificate of authorization by the board. As used in this section, "ownership" includes both the financial interests and voting rights of all partners, officers, shareholders, members or managers of the corporation.

(b) The board shall, on or before the first day of July, one thousand nine hundred ninety-eight, propose rules for legislative approval in accordance with chapter twenty-nine-a of this code, establishing a procedure to assure the issuance of certificates of authorization only upon a determination that a corporation meets the requirements of this section.

(c) An accounting corporation may render public accounting services only through officers, employees and agents who are themselves duly licensed within this state. The term "employee" or "agent", as used in this section, does not include secretaries, clerks, typists or other individuals who are not usually and ordinarily considered by custom and practice to be rendering accounting services for which a license is required.

(d) This section does not modify the law as it relates to the relationship between a person furnishing accounting services and his or her client, nor does it modify the law as it relates to liability arising out of such a professional
service relationship. Except for permitting an accounting
corporation, this section is not intended to modify any
legal requirement or court rule relating to ethical
standards of conduct required of persons providing public
accounting services.

(e) When not inconsistent with this section, the
organization and procedures of accounting corporations
shall conform to the requirements of article one, chapter
thirty-one of this code.

(f) Upon determination that a corporation meets the
requirements of this section, the board shall notify the
secretary of state that a certificate of authorization has
been issued to the person or persons making the
application. When the secretary of state receives this
notification from the board, he or she shall attach the
authorization to the corporation application and, upon
compliance with the applicable provisions of chapter
thirty-one of this code, the secretary of state may issue to
the incorporators a certificate of incorporation for the
accounting corporation, which then may engage in the
practice of public accounting through persons duly
licensed under this article.

(g) The corporate name of an accounting corporation
shall contain the last name or names of one or more of its
shareholders who are licensees under the provisions of this
article: Provided. That if the rules of the board so permit,
the corporate name may contain or include the name or
names of former shareholders or of persons who were
associated with a predecessor partnership or other
organization. The corporate name shall also contain the
words "accounting corporation", or the abbreviation "A.C."
The use of the word "company", "corporation" or
"incorporated", or any other words or abbreviations in the
name of an accounting corporation organized under this
article which indicate that the corporation is a corporation,
other than the words "accounting corporation" or the
abbreviation "A.C.", is specifically prohibited.

(h) Nothing in this section shall be construed to
prohibit the employment of a person duly licensed under
this article to practice public accounting as an employee
of a corporation other than an accounting corporation, or
to have an ownership interest of a corporation other than
an accounting corporation. A corporation other than an
accounting corporation may use a nondeceptive trade
name including words such as, by way of illustration,
"computer services", "financial services" or "general
business services", but may not use the designation
"accounting corporation" or the abbreviation "A.C.", may
not represent that the corporation is engaged in the
practice of public accounting, and may not engage in or
offer to engage in any act prohibited under section six of
this article: Provided, That a corporation other than an
accounting corporation may represent that named
individuals duly licensed under this article are employees
or members of the corporation.

(i) Any corporation holding a certificate under this
article shall notify the board, in writing, within thirty days
after its occurrence, of any change in the identities of
partners, officers, shareholders, members, managers whose
principal place of business is in this state, or licensed
person or persons in control or having supervision of the
practice of public accounting; or any change in the
number or location of offices within this state.

(j) The provisions of this section are not applicable to
article thirteen, chapter thirty-one-b of this code related to
professional limited liability companies and rules of the
board promulgated thereunder.

(k) A license issued under the provisions of this article
may not be construed to permit a licensee to perform a
service or sell a product which is not a traditional
accounting service when the activity requires a separate
license under federal law or other provision of this code
and the licensee does not hold the separate license. The
provisions of this article may not be construed to permit a
person, by reason of licensure under the provisions of this
article or by employment by or ownership in an
accounting firm, to practice law, to appraise real estate, to
act as a real estate broker or salesperson, or to act as a
stockbroker or insurance agent, broker or solicitor, when
the person is not separately licensed to engage in that activity.

(I) Notwithstanding the provisions of subsection (j) of this section, an accounting corporation may perform a service or sell a product which is not a traditional accounting service and which requires a separate license under federal law or other provision of this code, when an owner of an equity interest in the corporation holds a valid license as required for the activity, and supervises and is responsible for the licensed activity, to the extent permitted by applicable law relating to licensure of the separate activity.

§30-9-14. Commissions, referral fees and contingent fees.

(a) (1) A licensee may not, for a commission or referral fee, recommend or refer to a client any product or service or refer any product or service to be supplied by a client, or perform for a contingent fee any professional services for or receive referral fees, commissions or contingent fees from a client for whom the licensee or any firm with which the licensee works or associates or any firm in which the licensee owns an interest performs for that client:

(A) An audit or review of a financial statement;

(B) A compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

(C) An examination of prospective financial information.

(2) The prohibition in subdivision (1) of this subsection applies only during the period in which the licensee is engaged to perform any of the services listed therein and the period covered by any historical financial statements involved in any such listed services.

(b) A licensee may not for a contingent fee:
(1) Prepare an original or amended tax return or claim for a tax refund; or

(2) Serve as an expert witness.

(c) To the extent permitted by reasonable rules of the board proposed to the Legislature pursuant to the provisions of article three, chapter twenty-nine-a of this code, a licensee may for a contingent fee represent a client before a taxing authority within the scope of practice of public accounting: Provided, That this provision may not be construed either to limit or to expand the scope of practice of public accounting, and may not be construed to permit the unauthorized practice of law.

(d) All agreements or arrangements in which a licensee is to be paid a commission, referral fee or contingent fee shall be in writing, shall state the method by which the fee is to be determined, shall be signed by both the licensee and the client, and shall be delivered to the client before the performance of any services or the delivery of any product to which the commission, referral fee or contingent fee relates. A contingent fee agreement shall state the method of calculation of the fee, including the percentage or percentages which shall accrue to the licensee in the event of all foreseeable outcomes, the expenses to be deducted from any recovery, collection or other amount on which the fee may be based, and whether the expenses are to be deducted before or after the contingent fee is calculated.

(e) The board shall, on or before the first day of July, one thousand nine hundred ninety-eight, propose rules for legislative approval in accordance with chapter twenty-nine-a of this code, establishing a procedure to assure that all fees charged by and paid to licensees are reasonable.

§30-9-15. Termination date.

The West Virginia board of accountancy shall terminate on the first day of July, two thousand one, pursuant to the provisions of article ten, chapter four of this code.
AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-a, relating to creation of the position of certified animal euthanasia technician; under the control of the state board of veterinary medicine; provision for controlled substance permits issued by the state board of pharmacy and drug enforcement administration identification numbers all of which issued to humane societies or animal shelters incorporated and organized under the laws of this state; institutional recognition by the federal internal revenue service as a tax exempt or governmental organization; the certified animal euthanasia technician education program, requiring passage of written and practical examinations; areas in which applicants are tested; background checks; board to approve registration; annual renewal required; limitations of authority; responsibility; loss of certification; disciplinary authority; and board to propose legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. ANIMAL EUTHANASIA TECHNICIANS.

§30-10A-1. Definitions.
§30-10A-2. Certification required and requirements for certification.
§30-10A-3. Certified animal euthanasia technicians program; application for certification; and written and practical skills examinations.
§30-10A-4. Scope of practice.
§30-10A-5. Annual renewal of certification required.
§30-10A-6. Recordkeeping.
§30-10A-7. Limitations of authority; responsibility; loss of certification; and board’s disciplinary authority.


§30-10A-9. Responsibilities of individual boards, coordination between boards, rule-making authority.

§30-10A-1. Definitions.

(a) “Board” means the West Virginia board of veterinary medicine established under article ten of this chapter.

(b) “Animal euthanasia technician” means a person who is certified by the board to euthanize animals assigned to the care of a legally operated humane society, animal shelter or animal control facility within this state.

§30-10A-2. Certification required and requirements for certification.

(a) No person may perform the duties of an animal euthanasia technician at a humane society, animal shelter or animal control facility unless he or she is certified by the board. A person who has completed the certified animal euthanasia technicians program sponsored by the board shall complete and submit an application for certification to the board at least thirty days prior to the date the next written examination is scheduled. The application shall be accompanied by the required application fee and examination fee set by the board by legislative rule.

(b) Prior to being certified, an applicant shall complete the certified animal euthanasia technicians program sponsored by the board and pass the written and practical skills examinations required under this section. The board shall certify a person as an animal euthanasia technician who has completed the program, passed the examinations and met other requirements established by the board by legislative rule.

§30-10A-3. Certified animal euthanasia technicians program; application for certification; and written and practical skills examinations.
(a) The board shall sponsor a certified animal euthanasia technicians program. The board shall design this program to teach applicants for certification recordkeeping and the legal, safety and practical information needed to become a certified animal euthanasia technician.

(b) (1) The board shall administer a written examination to an applicant for certification. The written examination shall test the applicant’s knowledge of the following:

   (A) Animal restraint;
   (B) Drug enforcement agency regulations;
   (C) Record-keeping requirements for controlled substances;
   (D) Handling, inventory and secure and proper storage of euthanasia drugs and solutions;
   (E) The certification process;
   (F) Legal requirements;
   (G) Stress management;
   (H) Sodium pentobarbital usage; and
   (I) Other subject areas specified by the board in a legislative rule.

   (2) The applicant shall pass the written examination with a minimum correct score as determined by the board by legislative rule in order to be eligible to take the practical skills examination provided for in subsection (d) of this section.

(c) In addition to the written examination provided for under subsection (b) of this section, the board shall administer a practical skills examination to an applicant who has successfully passed the written examination. The board shall conduct the examination in a manner that tests an applicant’s ability to properly restrain an animal, measure a correct dosage of euthanasia solution, locate an injection site and perform an injection. In order to pass
the practical skills examination, an applicant shall exhibit
to the board that he or she can locate an injection site and
perform an injection and also perform euthanasia
correctly and humanely.

(d) An applicant who successfully passes the written
examination and the practical skills examination required
by this section shall sign a form authorizing the board to
make inquiries through the United States department of
justice, or any other legal jurisdiction or entity, for the
purposes of determining the character and reputation of
the applicant and other matters relating to the certification
of the applicant.

§30-10A-4. Scope of practice.

(a) A certified animal euthanasia technician may
euthanize animals assigned to the care of a legally
operated humane society, animal shelter or animal control
facility within this state. A certified animal euthanasia
technician shall practice euthanasia under the authority of
a licensed veterinarian as defined in article ten of this
chapter or a county humane officer as defined in article
ten, chapter seven of this code within the limitations
imposed by this article and rules promulgated by the
board under this article.

(b) For the purposes of this article, controlled
substance permits issued by the state board of pharmacy
and the federal drug enforcement administration shall be
issued to a municipal or county run animal control
facility, or a humane society or animal shelter
incorporated and organized under the laws of the state,
with one or more duly appointed agents. The humane
society or animal shelter shall possess a tax exempt
charitable or tax exempt governmental determination
under the Internal Revenue Code of 1986, as amended.

(c) A certified animal euthanasia technician may not
practice or offer to practice his or her profession outside
the direct authority of the humane society, animal shelter
or animal control facility which employs him or her or
otherwise contracts for his or her services. A certified
animal euthanasia technician is not qualified and may not
indicate that he or she is qualified to act in any capacity relative to animals beyond his or her specified and regulated authority to euthanize animals at the instruction of the humane society, animal shelter or animal control facility by which he or she is employed and under the supervision of a humane officer or licensed veterinarian.

§30-10A-5. Annual renewal of certification required.

(a) A certified animal euthanasia technician shall renew his or her certification annually. The board shall mail certification renewal applications to all certified animal euthanasia technicians at their last known business address on or about the first day of December of each year. The certified animal euthanasia technician shall complete and return the renewal application to the board no later than the thirty-first day of December, with the required fee. The certified animal euthanasia technician shall sign the renewal application and list the physical location of the primary facility where he or she provides euthanasia services.

(b) The annual renewal fee is twenty-five dollars if received by the board by the thirty-first day of December for the next calendar year, and thirty-five dollars if received by the board after the thirty-first day of December.

(c) The board may revoke the certification of an animal euthanasia technician who fails to submit his or her renewal application as required under subsection (a) of this section.

(d) A certified animal euthanasia technician who no longer provides euthanasia services under the provisions of this article shall notify the board that he or she is no longer providing services.

§30-10A-6. Recordkeeping.

A humane society, animal shelter or animal control facility which was issued a controlled substances permit by the board of pharmacy and an identification number by the federal drug enforcement administration is responsible for insuring that certified animal euthanasia technicians in
its employ maintain proper records regarding the inventory, storage and administration of controlled substances. The proper completion and retention of these records is the joint responsibility of the humane society, animal shelter or animal control facility and the certified animal euthanasia technician. The humane society, animal shelter or animal control facility and the certified animal euthanasia technicians are subject to inspection and audit by the board, the West Virginia board of pharmacy and any other appropriate state or federal agency with authority regarding the recordkeeping, inventory, storage and administration of controlled substances used under authority of this article.

§30-10A-7. Limitations of authority; responsibility; loss of certification; and board’s disciplinary authority.

(a) A certified euthanasia technician may not practice euthanasia at any humane society, animal shelter or animal control facility which does not possess a current state controlled substance permit issued by the board of pharmacy and a current drug enforcement administration identification number issued by the drug enforcement administration.

(b) A certified animal euthanasia technician shall comply with the provisions of this article and any rules promulgated by the board under the authority of this article.

(c) The board shall immediately revoke the certification of an animal euthanasia technician if he or she:

(1) Is convicted of a felony;

(2) Is guilty of cruelty to animals; or

(3) Is guilty of any other act or omission which the board prescribes by legislative rule in accordance with article three, chapter twenty-nine-a of this code.

(d) The board of veterinary medicine may take disciplinary action against a certified animal euthanasia technician who is guilty of misconduct. The board may
take disciplinary actions which may include, but are not limited to, the levying of fines or the suspension or revocation of the animal euthanasia technician's certification. Any disciplinary action by the board may not infringe upon the authority of any law-enforcement department or agency.

(e) If the board suspends or revokes the certification of an animal euthanasia technician under the provisions of this section, it is the sole responsibility of the humane society, animal shelter or animal control facility to replace him or her with a certified animal euthanasia technician.


(a) In the event that sodium pentobarbital is no longer approved as the euthanasia "drug of choice" for animals by either state or federal mandate, the board shall determine the replacement "drug of choice" for sodium pentobarbital for use by certified animal euthanasia technicians by legislative rule. The replacement "drug of choice" shall be administered, controlled, stored and secured by a humane society, animal shelter or animal control facility which meets the qualifications in section one of this article in accordance with legislative rules promulgated by the board.

(b) The board may replace sodium pentobarbital as the "drug of choice" at any time by legislative rule promulgated pursuant to article three, chapter twenty-nine-a of this code. The determined "drug of choice" for animal euthanasia as specified by the board shall be used by animal euthanasia technicians certified under the provisions of this article.

§30-10A-9. Responsibilities of individual boards, coordination between boards, rule-making authority.

The board is responsible for the implementation and enforcement of this article. After consultation with the board of pharmacy, the board shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article.
AN ACT to amend and reenact sections four, six, seven, nine-a, nine-b, ten and twelve, article fourteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to board of osteopathy; permitting license, registration, examination and other such fees to be set by board rules; and penalty increase for misdemeanor violation.

Be it enacted by the Legislature of West Virginia:

That sections four, six, seven, nine-a, nine-b, ten and twelve, article fourteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-4. Application for examination.

§30-14-6. Issuance of license without examination; fee.

§30-14-7. Reciprocal endorsement fee.

§30-14-9a. Osteopathic medical corporations — Application for registration; fee; notice to secretary of state of issuance of certificate; action by secretary of state.

§30-14-9b. Same — Rights and limitations generally; biennial registration; fee; when practice to cease; admissibility and effect of certificate signed by board; penalty.

§30-14-10. Annual renewal of license; fee; refresher training a prerequisite; effect of failure to renew; reinstatement.

§30-14-12. Offenses; penalties.

§30-14-4. Application for examination.

1 Each applicant for examination by the board, with the exception of assistants to osteopathic physicians and
surgeons, as hereinafter provided, shall submit an
application therefor on forms prepared and furnished by
the board, accompanied by evidence verified by oath and
satisfactory to the board, establishing that the applicant has
satisfied the following requirements: (a) That the
applicant is eighteen years of age or over; (b) that the
applicant is of good moral character; (c) that the applicant
has graduated from an approved osteopathic college; (d)
that the applicant has submitted a letter of verification
from an AOA approved hospital stating that he has been
approved for an AOA approved internship or that the
applicant is currently in an AOA approved internship, if
internship has not already been completed; and (e) that
the applicant has paid to the board a reasonable fee, the
amount of such reasonable fee to be set by the board
rules.

§30-14-6. Issuance of license without examination; fee.

The board may at its discretion issue a license without
eexamination to an applicant who has been licensed by the
national board of examiners for osteopathic physicians
and surgeons, and to an applicant who has been licensed
by examination in any country, state, territory, province or
the District of Columbia, provided the requirements for
licensure in the country, state, territory, province or the
District of Columbia in which the applicant is licensed, are
deemed by the board to have been equivalent to
requirements for licensure in this state at the date such
license was issued. The board may also at its discretion
issue a license without examination to an osteopathic
physician and surgeon who is a graduate of an approved
osteopathic college and who has passed the examination
for admission into the medical corps of any of the armed
services of the United States or the United States public
health service. But no license shall be issued under the
provisions of this section until the person applying
therefor shall have paid to the board a reasonable fee, the
amount of such reasonable fee to be set by the board
rules, and any other fees applicable to investigation.
§30-14-7. Reciprocal endorsement fee.

For the issuance of any reciprocal endorsement, the board shall collect a reasonable fee, the amount of such reasonable fee to be set by the board rules.

§30-14-9a. Osteopathic medical corporations — Application for registration; fee; notice to secretary of state of issuance of certificate; action by secretary of state.

When one or more osteopathic physicians or surgeons duly licensed to practice osteopathic medicine in the state of West Virginia wish to form an osteopathic medical corporation, such osteopathic physician or surgeon, or osteopathic physicians or surgeons, shall file a written application with the board on a form prescribed by the board, and shall furnish proof satisfactory to the board that the signer or all of the signers of such application is or are a duly licensed osteopathic physician or surgeon or osteopathic physicians or surgeons. A reasonable fee, the amount of such reasonable fee to be set by the board rules, shall accompany each such application, no part of which shall be returnable.

If the board finds that the signer or all of the signers of such application are duly licensed, the board shall notify the secretary of state that a certificate of authorization has been issued to the individual or individuals signing such application.

When the secretary of state receives notification from the board that a certain individual or individuals has or have been issued a certificate of authorization, he or she shall attach such authorization to the corporation application and upon compliance by the corporation with chapter thirty-one of this code shall notify the incorporators that such corporation, through a duly licensed osteopathic physician or surgeon or duly licensed osteopathic physicians and surgeons, may engage in the practice of osteopathic medicine and surgery.
§30-14-9b. Same — Rights and limitations generally; biennial registration; fee; when practice to cease; admissibility and effect of certificate signed by board; penalty.

(a) An osteopathic medical corporation may practice osteopathic medicine and surgery only through individual osteopathic physicians and surgeons duly licensed to practice osteopathic medicine or surgery in the state of West Virginia, but such osteopathic physicians and surgeons may be employees rather than shareholders of such corporation, and nothing herein contained shall be construed to require a license for or other legal authorization of any individual employed by such corporation to perform services for which no license or other legal authorization is otherwise required. Nothing contained in sections five and nine-a and this section of this article is meant or intended to change in any way the rights, duties, privileges, responsibilities and liabilities incident to the osteopathic physician-patient relationship nor is it meant or intended to change in any way the personal character of the osteopathic physician-patient relationship. A corporation holding such certificate of authorization shall register biennially, on or before the thirtieth day of June, on a form prescribed by the board, and shall pay an annual reasonable registration fee, the amount of such reasonable fee to be set by the board rules.

(b) An osteopathic medical corporation holding a certificate of authorization shall cease to engage in the practice of osteopathic medicine and surgery upon being notified by the board that any of its shareholders is no longer a duly licensed osteopathic physician or surgeon, or when any shares of such corporation have been sold or disposed of to a person who is not a duly licensed osteopathic physician or surgeon: Provided, That the personal representative of a deceased shareholder shall have a period, not to exceed twelve months from the date of such shareholder's death, to dispose of such shares; but nothing contained herein shall be construed as affecting
the existence of such corporation or its right to continue
to operate for all lawful purposes other than the practice
of osteopathic medicine and surgery.

(c) No corporation shall practice osteopathic medicine
or surgery, or any of its branches, or hold itself out as
being capable of doing so, without a certificate from the
board; nor shall any corporation practice osteopathic
medicine or surgery or any of its branches, or hold itself
out as being capable of doing so, after its certificate has
been revoked, or if suspended, during the term of such
suspension. A certificate signed by the secretary of the
board to which is affixed the official seal of the board to
the effect that it appears from the records of the board that
no such certificate to practice osteopathic medicine or
surgery or any of its branches in the state has been issued
to any such corporation specified therein or that such
certificate has been revoked or suspended shall be
admissible in evidence in all courts of this state and shall
be prima facie evidence of the facts stated therein.

(d) Any officer, shareholder or employee of such
corporation who participates in a violation of any
 provision of this section shall be guilty of a misdemeanor
and, upon conviction, shall be fined not exceeding one
thousand dollars.

§30-14-10. Annual renewal of license; fee; refresher training
a prerequisite; effect of failure to renew;
reinstatement.

All holders of certificates of license to practice as
osteopathic physicians and surgeons in this state shall
renew them biennially on or before the first day of July,
by the payment of a reasonable renewal fee, the amount of
such reasonable fee to be set by the board rules to the
secretary of the board. The secretary of the board shall
notify each certificate holder by mail of the necessity of
renewing his or her certificate at least thirty days prior to
the first day of July of each year.

As a prerequisite to renewal of a certificate of license
issued by the board, each holder of such a certificate shall
furnish biennially to the secretary of the board satisfactory
evidence of having completed thirty-two hours of educational refresher course training, of which the total amount of hours must be AOA approved, and fifty percent of the required thirty-two hours shall be category (1).

The failure to renew a certificate of license shall operate as an automatic suspension of the rights and privileges granted by its issuance.

A certificate of license suspended by a failure to make a biennial renewal thereof may be reinstated by the board upon compliance of the certificate holder with the following requirements: (a) Presentation to the board of satisfactory evidence of educational refresher training of quantity and standard approved by the board for the previous two years; (b) payment of all fees for the previous two years that would have been paid had the certificate holder maintained his or her certificate in good standing; and (c) payment to the board of a reasonable reinstatement fee, the amount of such reasonable fee to be set by the board rules.

§30-14-12. Offenses; penalties.

Each of the following acts shall constitute a misdemeanor, punishable upon conviction by a fine of not less than one thousand nor more than ten thousand dollars:

(a) The practice or attempting to practice as an osteopathic physician and surgeon without a license or permit;

(b) The obtaining of or an attempt to obtain a license or permit to practice in the profession for money or any other thing of value, by fraudulent misrepresentation;

(c) The making of any willfully false oath or affirmation whenever an oath or affirmation is required by this article;

(d) Advertising, practicing or attempting to practice under a name other than one's own.
AN ACT to amend and reenact article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to revising the law regulating the practice of chiropractic; legislative purpose and policy; licensure and exceptions to licensure; revising definitions; composition of and appointment to board; removal from board; training program for new board members; compensation; powers and duties of board; legislative rules; licensure requirements and application; examination and certificates of license; disqualification from practice; licensing of foreign graduates; licensure by endorsement; temporary and restricted licensure; licensing chiropractors from other states; fees; disciplinary actions; confidentiality of disciplinary proceedings; providing for civil and criminal penalties; determination and treatment of impairment; qualified immunity; enforcement of article; renewal and reinstatement; continuing education; reporting of felony convictions to board; minimum educational requirements for spinal manipulation; use of procedures and instruments; chiropractic assistants; expert testimony; use of physiotherapeutic and electrodiagnostic devices; specialty practice; setting forth certain illegal acts and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. CHIROPRACTORS.

§30-16-1. Purpose and legislative intent.
§30-16-2. License required; exceptions.
§30-16-3. Definitions.
§30-16-4. West Virginia board of chiropractic; establishment and composition.

§30-16-5. Powers and duties of the board.

§30-16-6. Application for license; requirements for licensure.

§30-16-7. Examination; certificates of license.

§30-16-8. Licensing of foreign graduates.

§30-16-9. Licensure by endorsement; temporary licensure; restricted licensure.

§30-16-10. Licensing chiropractors from other states; fee.

§30-16-11. Disciplinary actions.

§30-16-12. Impaired chiropractors.

§30-16-13. Protected action, immunity and communication.

§30-16-14. Enforcement.

§30-16-15. Annual renewal; failure to renew; reinstatement.

§30-16-16. Initiation of suspension or revocation proceedings allowed and required; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties.

§30-16-17. Who may practice chiropractic; title of chiropractor; minimum education required for spinal manipulation.

§30-16-18. Scope of practice; chiropractic assistants; expert testimony.

§30-16-19. Duty of chiropractor to observe health rules; reports of health officer and local registrar of vital statistics.

§30-16-20. Use of physiotherapeutic devices; electrodiagnostic devices; specialty practice.


§30-16-22. Offenses; penalties.

§30-16-1. Purpose and legislative intent.

1 It is declared to be a policy of this state that the practice of chiropractic is a privilege granted to qualified persons and that, in order to safeguard the public health, safety and welfare, protect the public from the unprofessional, improper, incompetent and unlawful practice of chiropractic, it is necessary to provide regulatory authority over persons practicing chiropractic.

2 The primary responsibility and obligation of the West Virginia board of chiropractic is to protect the public.

§30-16-2. License required; exceptions.

1 (a) No person may practice or offer to practice, in this state, chiropractic without a license issued by the West Virginia board of chiropractic. A certificate or license issued under the laws of this state, authorizing its holder to
practice chiropractic, before the effective date of this article is not affected by the enactment of this article, except that the holder of a certificate of license issued prior to the effective date of this article is subject to all the provisions of this article respecting the requirements and obligations prescribed for the continuance in force of the certificate of license.

(b) This article does not prohibit:

(1) Students from engaging in training in a chiropractic school accredited by the counsel on chiropractic education or its successor;

(2) Licensed chiropractors from providing service in cases of emergency where no fee or other consideration is contemplated, charged or received;

(3) Commissioned chiropractic officers of the armed forces of the United States and chiropractic officers of the United States public health service or the veterans' administration of the United States from discharging their official duties, except:

(A) Those officers who hold chiropractic licenses in the state are subject to the provisions of this article; and

(B) Those officers shall be fully licensed to practice chiropractic in one or more jurisdictions of the United States;

(4) Individuals from practicing the tenets of a religion or administering to the sick or suffering by mental or spiritual means in accord with the tenets. This provision does not exempt these individuals from the public health laws of the state or federal government; or

(5) A person from administering a lawful domestic or family remedy to a member of his or her own family.

§30-16-3. Definitions.

The following words, unless the context clearly indicates otherwise, have the meaning ascribed to them in this section:
(1) "Board" means the West Virginia board of chiropractic;

(2) "Chiropractor" means a practitioner of chiropractic;

(3) "Chiropractic services" means those health care services provided within the scope of chiropractic practice as defined by this article and by chiropractors licensed by the board;

(4) "Chiropractic" is the science and art which utilizes the inherent recuperative powers of the body and the relationship between the neuromusculoskeletal structures and functions of the body, particularly of the spinal column and the nervous system, in the restoration and maintenance of health. The use of the designation doctor of chiropractic, chiropractor, chiropractic physician or D.C., is the practice of chiropractic.

The practice of chiropractic also includes the examination and assessment of members of the public that are not patients of the examining chiropractor. Further, the practice of chiropractic includes the review of information relating to the duration and necessity of chiropractic care that affects the course of care, the treatment plan or payment and reimbursement concerning chiropractic patients residing within the state of West Virginia.

The practices and procedures which may be employed by doctors of chiropractic are based on the academic and clinical training received in and through chiropractic colleges accredited by the council of chiropractic education or its successors and as determined by the board. These include the use of diagnostic, analytical and therapeutic procedures specifically including the adjustment and manipulation of the articulations and adjacent tissues of the human body, particularly of the spinal column, including the treatment of intersegmental disorders. Patient care and management is conducted with due regard for environmental and nutritional factors, as well as first aid, hygiene, sanitation, rehabilitation and physiological therapeutic procedures designed to assist in
the restoration and maintenance of neurological integrity
and homeostatic balance;

(5) "Spinal manipulation" and "spinal adjustment" are
interchangeable terms that identify a method of skillful
and beneficial treatment where a person uses direct thrust
or leverage to move a joint of the patient's spine beyond
its normal range of motion, but without exceeding the
limits of anatomical integrity.

§30-16-4. West Virginia board of chiropractic; establishment
and composition.

(a) The board known as the "West Virginia board of
chiropractic" is continued. It is composed of the director
of health, ex officio, three licensed chiropractors and one
person to represent the interest of the public. All shall be
appointed by the governor, by and with the advice and
consent of the Senate from a list of three names
recommended by the West Virginia chiropractic society,
incorporated. Each chiropractic member of the board
shall have been a resident of and engaged in the active
practice of chiropractic in the state for a period of at least
five years preceding his or her appointment.

(b) On the first day of July, one thousand nine
hundred ninety-eight, there shall be appointed, as
provided in this section, one chiropractic member for a
three-year term. As existing chiropractic board members'
terms expire, newly appointed chiropractic board
members shall be appointed for a term of office of three
years. No member may serve more than two full
consecutive three-year terms. When a vacancy in the
membership of the board occurs for any cause other than
the expiration of a term, the governor shall appoint from a
list of three names recommended by West Virginia
chiropractic society, incorporated, a successor as a
member of the board to fill the unexpired portion of the
term of office of the member whose office has been
vacated.

(c) The governor may remove any member of the
board in case of incompetency, neglect of duty, gross
immorality or malfeasance in office.
(d) The board shall conduct a training program to be held annually to familiarize new board members with their duties.

(e) Each member of the board shall receive an amount not to exceed the same compensation as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or substantial portion thereof that he or she is engaged in the work of the board or of its committees, and shall be reimbursed for all actual and necessary expenses incurred in carrying out his or her duties.

§30-16-5. Powers and duties of the board.

(a) The board shall:

1. Administer, coordinate and enforce the provisions of this article, evaluate the qualifications of applicants, supervise the examination of applicants, issue or deny original or endorsement licenses;

2. Investigate allegations of violations of this article and impose penalties if violations of this article have occurred;

3. Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, which shall after adoption govern and control the professional conduct of every person who holds a license to practice chiropractic in this state, and which shall include, but not be limited to, rules that:

   A. Delineate qualifications for licensure, including qualifications for practice in specialties;

   B. Specify requirements for the renewal of licensure;

   C. Set forth procedures for licensure of chiropractors;

   D. Establish a fee schedule for the amount and payment of all fees and charges;
23 (E) Establish standards of professional conduct;
24 (F) Establish procedures for disciplinary actions and
25 complaint resolutions; and
26 (G) Provide for duties of board members;
27 (4) Evaluate the professional education and training of
28 applicants for licensure and licensure renewal;
29 (5) Evaluate the previous professional performance of
30 applicants for licensure and licensure renewal;
31 (6) Accept or deny applications for license renewal;
32 (7) Establish appropriate fees and charges to support
33 the active and effective pursuit of its legal responsibilities;
34 (8) Employ personnel as determined by its needs and
35 budget;
36 (9) Request legal advice and assistance, as needed,
37 from the attorney general;
38 (10) Enter into contracts necessary to carry out its
39 responsibilities under this article, including contracts for
40 professional services that may include investigation,
41 financing or legal services;
42 (11) Develop and adopt a budget; and
43 (12) Communicate disciplinary actions to relevant
44 state and federal authorities and to other state chiropractic
45 licensing authorities.

§30-16-6. Application for license; requirements for licensure.

1 (a) Any person wanting to practice chiropractic in this
2 state shall apply to the board for license to practice and
3 shall provide the board and attest to the following
4 information and documentation in a manner required by
5 the board:
6 (1) His or her full name, and any other name ever
7 used, current address, social security number and date and
8 place of birth;
(2) A recent signed photograph and sample of handwriting;

(3) Originals of all documents and credentials required by the board or notarized photocopies of other verification acceptable to the board;

(4) A list of all jurisdictions, United States or foreign, in which the applicant is licensed or has applied for licensure to practice chiropractic or is authorized or has applied for authorization to practice chiropractic;

(5) A list of all jurisdictions, United States or foreign, in which the applicant has been denied licensure or authorization to practice chiropractic or has voluntarily surrendered a license or an authorization to practice chiropractic;

(6) A list of all sanctions, judgments, awards, settlements or convictions against the applicant in any jurisdiction, United States or foreign, that would constitute grounds for disciplinary action under this article or the board's rules;

(7) A detailed educational history, including places, institutions, dates and program descriptions, of all his or her education beginning with secondary schooling including all college, preprofessional, professional and professional graduate education; and

(8) Any other information or documentation the board may later determine necessary and as adopted by reasonable rules in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(b) Each applicant shall establish to the board that the applicant:

(1) Is eighteen years of age or older;

(2) Is of good moral character;

(3) Is a graduate of an accredited high school giving a four-year course or has an education equivalent to the same;
Has attended for at least two academic years, consisting of no less than sixty semester hours, an accredited academic college or university and that after the first day of July, two thousand five, the applicant has obtained a bachelor's degree consisting of no less than one hundred twenty-eight semester hours from an accredited academic college or university, with a minimum of sixty hours in basic sciences mandated by the council on chiropractic education;

(5) Is a holder of the degree of doctor of chiropractic from and a graduate of a chiropractic college or school located in the United States, its territories or possessions which was approved by the council on chiropractic education or its successor at the time the degree was conferred or that the applicant is the holder of a degree of doctor of chiropractic from college of a foreign country that the board determines is acceptable as set forth in section eight;

(6) Has passed the national board of chiropractic licensing examination Parts I, II, III and IV, satisfactory to the board and any other examination, test or procedure determined necessary by the board;

(7) Has demonstrated familiarity with the statutes and rules of the jurisdiction relating to the practice of chiropractic and acknowledges in writing that he or she has read and understands this article and the current rules relating to the practice of chiropractic in West Virginia;

(8) Is physically, mentally and professionally capable of practicing chiropractic in a manner acceptable to the board and submits to a physical, mental or professional competency examination or a drug dependency evaluation considered necessary by the board; and

(9) Has paid all fees and completed and attested to the accuracy of all application and information forms required by the board.

(c) The applicant is responsible for verifying to the satisfaction of the board, the validity of all credentials required for his or her chiropractic licensure. The board
shall review and verify chiropractic credentials and screen applicant records through recognized national chiropractic physician information services and data banks.

§30-16-7. Examination; certificates of license.

(a) No person may receive a license to practice chiropractic unless he or she successfully completes the national board of chiropractic examination Parts I, II, III and IV and an oral examination administered by the board covering jurisprudence. Examinations shall be conducted at least two times throughout the calendar year and the board shall issue certificates of license to all applicants who successfully pass the examinations. No license may be issued under this section until the person applying has paid to the board the prescribed fee.

(b) All applicants are required to attain a minimum passing score in each national board Parts I, II, III and IV examinations. All applicants are required to secure an average grade of seventy percent on the oral examination. If an applicant does not successfully complete the oral examination, he or she may retake the oral examination. If a satisfactory score is not achieved on the second attempt, the applicant shall take and successfully complete a national special purposes examination for chiropractic examination before sitting for another oral examination.

(c) Any individual found by the board to have engaged in conduct that subverts or attempts to subvert the chiropractic licensing examination process is, at the discretion of the board, subject to having the scores on the licensing examination withheld or declared invalid, being disqualified from the practice of chiropractic or subjected to other appropriate sanctions. The federation of chiropractic licensing boards shall be informed of all such actions. The board shall provide notification to all applicants of the prohibitions on conduct that subverts or attempts to subvert the licensing examination process and of the sanctions imposed for the conduct. A copy of the notification attesting that he or she has read and understood the notification shall be signed by the applicant and filed with his or her application.
§30-16-8. Licensing of foreign graduates.

(a) Any person wanting to practice chiropractic in this state who is a graduate of a chiropractic school located outside the United States, its territories or possessions, shall establish to the board that the applicant:

(1) Possesses a degree of doctor of chiropractic or a board approved equivalent based upon satisfactory completion of educational programs acceptable to the board;

(2) Is eligible by virtue of his or her chiropractic education and training for unrestricted licensure or authorization to practice chiropractic in the country in which he or she received that education and training;

(3) Has successfully completed all required parts of the examination conducted by the national board of chiropractic;

(4) Has a demonstrated command of the English language; and

(5) Has satisfied all applicable requirements of the United States immigration and naturalization service.

(b) All credentials, diplomas and other required documentation in a foreign language submitted to the board by or on behalf of an applicant, shall be accompanied by notarized English translations acceptable to the board.

§30-16-9. Licensure by endorsement; temporary licensure; restricted licensure.

(a) The board is authorized, in its discretion, to issue a license by endorsement to an applicant who:

(1) Has complied with all current chiropractic licensing requirements except for the oral examination;

(2) Has passed a chiropractic licensing examination given in English in another state, the District of Columbia or a territory or possession of the United States, that the
board determines is equivalent to its own current examination requirements;

(3) Has a valid current chiropractic license in another state, the District of Columbia or a territory or possession of the United States without any past or current disciplinary action taken upon that license; and

(4) Successfully completes an oral examination administered by the board covering jurisprudence and clinical competency.

(b) No license may be issued under the provisions of this section until the person applying has paid to the board the prescribed fee.

(c) The board is authorized, in its discretion, to issue a temporary license to visiting chiropractic physicians and visiting professors for the treatment of individuals involved with special events to applicants demonstrably qualified for a full and unrestricted chiropractic license under the requirements of this article and that hold a current valid license in another state, territory or possession of the United States or the District of Columbia without any past or current disciplinary actions against that license. A temporary license may not be issued under the provisions of this section until the person applying has paid to the board the prescribed fee.

(d) The board is authorized to issue conditional, restricted or otherwise circumscribed licenses for a limited and specific period of time as it determines necessary.

§30-16-10. Licensing chiropractors from other states; fee.

Persons licensed to practice chiropractic under the laws of any other state, territory or the District of Columbia having requirements equivalent to those of this article, and extending like privileges to practitioners of this state, may in the discretion of the board be licensed to practice in this state without examination. No license may be issued under the provisions of this section until the person applying has completed satisfactorily an oral examination and has paid the fee required by the board.
§30-16-11. Disciplinary actions.

(a) The board may take disciplinary action against any licensee or certificate holder holding a license or certificate issued under this article after giving reasonable notice and an opportunity to be heard pursuant to the provisions of section one, article five, chapter twenty-nine-a of this code, when it finds that any person has engaged in conduct in violation of the rules adopted by the board, including, but not limited to, the following:

(1) Fraud or misrepresentation in applying for or procuring a chiropractic license or in connection with applying for or procuring periodic renewal of a chiropractic license;

(2) Cheating on or attempting to subvert the chiropractic licensing examination or examinations;

(3) Being found guilty of a crime in any jurisdiction, which offense is a felony, involves moral turpitude or directly relates to the practice of chiropractic. Any plea of nolo contendere is a conviction for the purposes of this subdivision;

(4) Conduct likely to deceive, defraud or harm the public;

(5) Making a false or misleading statement regarding his or her skill or the efficiency or value of the chiropractic treatment;

(6) Representing to a patient that an incurable condition, sickness, disease or injury can be cured;

(7) Willfully or negligently violating the confidentiality between chiropractic physician and patient except as required by law;

(8) Negligence in the practice of chiropractic as determined by the board;

(9) Being found mentally incompetent or insane by any court of competent jurisdiction;
(10) Being physically or mentally unable to engage safely in the practice of chiropractic;

(11) Practice or other behavior that demonstrates an incapacity or incompetence to practice chiropractic;

(12) Use of any false, fraudulent or deceptive statement in any document connected with the practice of chiropractic;

(13) Practicing chiropractic under a false or assumed name;

(14) Aiding or abetting the practice of chiropractic by an unlicensed, incompetent or impaired person;

(15) Allowing another person or organization to use his or her license to practice chiropractic;

(16) Commission of any act of sexual abuse, sexual misconduct or sexual exploitation related to the licensee's practice of chiropractic;

(17) Being addicted or habituated to a drug or intoxicant;

(18) Obtaining any fee by fraud, deceit or misrepresentation;

(19) Employing abusive billing practices;

(20) Directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually rendered: Provided, That this prohibition does not preclude the legal functioning of lawful professional partnerships, corporations or associations;

(21) Disciplinary action of another state or jurisdiction against a license or other authorization to practice chiropractic based upon acts or conduct by the licensee similar to acts or conduct that constitute grounds for action as defined in this section, a certified copy of the record of the action taken by the other state or jurisdiction being conclusive evidence thereof;
(22) Failure to report to the board within thirty days of any adverse action, disciplinary action, sanctions or punishment taken against him or her by another state licensing board or licensing jurisdiction, United States or foreign, by a peer review body, health care institution, professional or chiropractic society or association, governmental agency, law-enforcement agency or court for acts or conduct similar to acts or conduct that constitute grounds for action as defined in this section;

(23) Failure to report to the board within thirty days of the surrender of a license or other authorization to practice chiropractic in another state or jurisdiction or surrender of membership on any chiropractic staff or in any chiropractic or professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that constitute grounds for action as defined in this section;

(24) Any adverse judgment, award or settlement against the licensee resulting from a chiropractic liability claim related to acts or conduct similar to acts or conduct that constitute grounds for action as defined in this section;

(25) Failure to report to the board within thirty days any adverse judgment, settlement or award arising from a chiropractic liability claim related to acts or conduct similar to acts or conduct that constitute grounds for action as defined in this section;

(26) Failure to transfer or release pertinent and necessary chiropractic records to another physician in a timely fashion when legally requested to do so by the subject patient or by a legally designated representative of the subject patient;

(27) Improper management of chiropractic patient records;

(28) Failure to furnish the board, its investigators or representatives, information legally requested by the board;
(29) Failure to cooperate with a lawful investigation conducted by the board; or

(30) Violation of any provision of this article or the rules of the board or of an action, stipulation or agreement with the board.

(b) Upon a finding of a violation by a chiropractor of one or more of the grounds for discipline contained in subsection (a) of this section, the board may impose one or more of the following penalties:

(1) Revocation of the chiropractic license;

(2) Suspension of the chiropractic license;

(3) Probation;

(4) Stipulations, limitations, restrictions and conditions relating to practice;

(5) Reprimand;

(6) Monetary redress to another party;

(7) A period of free public or charity service;

(8) Satisfactory completion of an educational, training or treatment program, or a combination of programs;

(9) Imposition of an administrative penalty, not to exceed one thousand dollars per day per violation; or

(10) Payment of administrative costs for the disciplinary action, including, but not limited to, attorney fees, investigation expenses, hearing examiner fees, witness fees and cost of monitoring compliance with the board's orders.

(c) The board may issue a confidential letter of concern to a licensee when, though evidence does not warrant formal proceedings, the board has noted indications of possible misconduct of a licensee that could lead to serious consequences and formal action. In the letter of concern, the board is also authorized at its discretion to request clarifying information from the licensee.
(d) The board may require professional competency, physical, mental or chemical dependency examinations of any applicant or licensee including withdrawal and laboratory examination of bodily fluids.

(e) In every disciplinary case considered by the board pursuant to this article, whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination whether probable cause exists to substantiate charges due to any reasons set forth in this section. If probable cause is not found in the complaint, all proceedings relating to the complaint and the response of the licensee or his or her representative shall be held confidential and may not be made available to the public or to any other state or federal agency or court. If probable cause is found to exist, all proceedings on the charges shall be open to the public, who are entitled to all reports, records and nondeliberative materials introduced at the hearing, including the record of any final action taken: Provided, That any medical records pertaining to the person who has not waived his or her right to the confidentiality of the records are not open to the public. For purposes of the hearing, the board has the power to subpoena witnesses, documents or any other tangible evidence. The board may, in its discretion, meet in an informal conference with the accused licensee who seeks or agrees to the conference. Disciplinary action taken against a licensee as a result of the informal conference and agreed to in writing by the board and the accused licensee is binding and a matter of public record. The holding of an informal conference does not preclude an open formal hearing if the board determines it is necessary.

(f) If the board determines that the evidence in its possession indicates that a chiropractor's continuation in practice or unrestricted practice constitutes an immediate threat to the public health and safety or when a licensee is convicted of a felony, whether or not related to the practice of chiropractic, the board may seek an injunction in the circuit court of proper jurisdiction for immediate
(g) All disciplinary actions taken by the board shall be reported to the federation of licensing boards, appropriate federal agencies and any other state boards with which the disciplined licensee may also be registered or licensed and all the actions, including related findings of fact and conclusions of law, are matters of public record. Voluntary surrender of and voluntary limitations on a chiropractic license of any person are also matters of public record and shall also be reported to the appropriate agencies.

§30-16-12. Impaired chiropractors.

(a) As contained in this section the term impairment is defined as the inability of a licensee to practice chiropractic with reasonable skill and safety by reason of:

(1) Mental illness;

(2) Physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor or perceptive skills; or

(3) Habitual or excessive use or abuse of drugs defined in law as controlled substances, of alcohol or other substances that impair ability.

(b) The board may after a probable cause determination and hearing require a licensee or applicant to submit to a mental or physical examination or a chemical dependency evaluation by physicians designated by the board. The results of the examination or evaluation are admissible at any hearing before the board despite any claim of privilege under contrary rule or statute. Every person who receives a license to practice chiropractic or files an application for a license to practice chiropractic thereby consents to submit to a mental or physical examination or a chemical dependency evaluation and has waived all objections to the admissibility of the results in any hearing before the board. If a licensee or applicant fails to submit to an examination or evaluation when properly directed to do so
by the board, the board may enter a final order upon
proper notice, hearing and proof of their refusal.

(c) Upon the determination by the board after
examination and hearing that a licensee is impaired the
board shall take one or more of the following actions:

1. Direct the licensee to submit to care, counseling or
treatment acceptable to the board;

2. Suspend, limit or restrict the chiropractic license
for the duration of the impairment; or

3. Revoke the chiropractic license.

(d) Any licensee or applicant prohibited from
practicing chiropractic under this section, shall at
reasonable intervals be afforded an opportunity to
demonstrate to the satisfaction of the board that he or she
can assume or begin the practice of chiropractic with
reasonable skill and safety.

§30-16-13. Protected action, immunity and communication.

(a) There is no monetary liability on the part of, and
no cause of action for damages arising against, any
current or former member, officer, administrator, peer
review committee member, staff member, committee
member, examiner, representative, agent, employee,
consultant, witness or any other person serving or having
served the board, either as a part of the board's operation
or as an individual, as a result of any act, omission,
proceeding, conduct or decision related to his or her
duties undertaken or performed in good faith and within
the scope of the function of the board.

(b) A current or former member, officer,
administrator, staff member, committee member,
examiner, representative, agent, employee, consultant or
any other person serving or having served the board may
request the state to defend him or her against any claim or
action arising out of any act, omission, proceeding,
conduct or decision related to his or her duties undertaken
or performed in good faith and within the scope of the
function of the board.
(c) Every communication made by or on behalf of
any person, institution, agency or organization to the
board or to any person designated by the board relating to
an investigation or the initiation of an investigation,
whether by way of report, complaint or statement, is
privileged. No action or proceeding, civil or criminal, is
permitted against the person, institution, agency or
organization by whom or on whose behalf the
communication was made in good faith.

§30-16-14. Enforcement.

(a) The board shall enforce the provisions of this
article and the rules adopted under this article. If any
person refuses to obey any decision or order of the board,
the board or, upon the request of the board, the attorney
general or the appropriate prosecuting attorney, may file
an action for the enforcement of the decision or order,
including injunctive relief, in the circuit court of the
county of residence of the person. After due hearing, the
court shall order the enforcement of the decision or order,
or any part thereof, if legally and properly made by the
board and where appropriate, injunctive relief. The board
is authorized to issue a cease and desist order to restrain
any person or any corporation or association and its
officers and directors from violating the provisions of this
article.

(b) Each of the following acts is a misdemeanor,
punishable upon conviction by a fine of not less than five
hundred dollars nor more than maximum allowed by
state law, or by confinement in a county or regional jail
for not less than thirty days nor more than one year, or
both, in the discretion of the court:

(1) The obtaining of or attempt to obtain a license by
the use of fraud, deceit or willful misrepresentation;

(2) The practice or attempting to practice as a
chiropractor without a license granted under the
provisions of this article, or practicing or attempting to
practice while the license is suspended or after the license
has been revoked;
 §30-16-15. Annual renewal; failure to renew; reinstatement.

(a) All holders of certificates of license to practice chiropractic in this state shall renew them annually on or before the first day of July of each year by:

(1) Paying the board an annual renewal fee in an amount determined by the board;

(2) Returning the renewal application form with all required information complete and accurate; and

(3) Presenting to the board evidence of completion of at least eighteen hours of continuing education each year of which up to six hours may be mandated in special subjects by the board.

(b) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, establishing all additional continuing education requirements and all criteria for fulfillment of the continuing education requirements.

(c) The board shall notify each certificate holder by mail, at least thirty days prior to the first day of July of each year, of the necessity of renewing his or her certificate. Failure to renew a certificate of license to practice chiropractic operates as an automatic suspension of the rights and privileges granted by its issuance.
24 (d) A certificate or license suspended by a failure to
25 make the required annual renewal may be reinstated by
26 the board, except as provided in subsection (e) of this
27 section, upon:

28 (1) Presentation of evidence of completion of the
29 required hours of continuing education for each year the
30 license has been suspended; and

31 (2) Payment of all fees that would have been paid if
32 the certificate holder had maintained the certificate in
33 good standing and the payment to the board of a
34 reinstatement fee in an amount to be determined by the
35 board.

36 (e) No certificate may be reinstated after a lapse of two
37 years. After a lapse of two years, a license may be issued
38 only after the former certificate holder, subsequent to the
39 lapse, has fulfilled all other requirements of licensure as
40 set forth in section six of this article and has passed the
41 national special purposes examination for chiropractic
42 examination.

§30-16-16. Initiation of suspension or revocation proceedings
allowed and required; reporting of information
section. The board shall initiate investigations as
reporting of information pertaining to professional malpractice
and professional incompetence required; penalties.
1 (a) The board may independently initiate suspension
2 or revocation proceedings as well as initiate suspension or
3 revocation proceedings based on information received
4 from any person. The board shall initiate investigations as
5 to professional incompetence or other reasons for which a
6 licensed chiropractor may be adjudged unqualified if the
7 board receives notice that five or more judgments or
8 settlements arising from professional liability have been
9 rendered or made against the chiropractor.

10 (b) Upon request of the board, any peer review
11 committee in this state shall report any information that
12 may relate to the practice or performance of any
13 chiropractor known to that peer review committee. Copies
14 of the requests for information from a peer review
committee may be provided to the subject chiropractor if, in the discretion of the board, the provision of the copies does not jeopardize the board's investigation. In the event that copies are provided, the subject chiropractor is allowed fifteen days to comment on the requested information and the comments shall be considered by the board.

(c) After the completion of a hospital's formal disciplinary procedure and after any resulting legal action, the chief executive officer of the hospital shall report in writing to the board within sixty days the name of any chiropractor who is a member of the staff or any other chiropractor practicing in the hospital whose hospital privileges have been revoked, restricted, reduced or terminated for any cause, including resignation, together with all pertinent information relating to the action. The chief executive officer shall also report any other formal disciplinary action taken against any chiropractor by the hospital upon the recommendation of its professional staff relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

(d) Any professional society in this state comprised primarily of chiropractors which takes any form of disciplinary action against a member relating to professional ethics, professional incompetence, professional malpractice, moral turpitude or drug or alcohol abuse, shall report in writing to the board within sixty days of a final decision the name of the member, together with all pertinent information relating to the action.

(e) Every person, partnership, corporation, association, insurance company, professional society or other organization providing professional liability insurance to a chiropractor in this state shall submit to the board the following information within thirty days from any judgment, dismissal or settlement of a civil action or of any claim involving the insured:
(1) The date of any judgment, dismissal or settlement;

(2) Whether any appeal has been taken on the judgment, and if so, by which party;

(3) The amount of any settlement or judgment against the insured; and

(4) Other information the board requires.

(f) Within thirty days after a person known to be a chiropractor licensed or otherwise lawfully practicing chiropractic in this state or applying to be so licensed is convicted of a felony under the laws of this state involving alcohol or drugs in any way, including any controlled substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the board a certified true and correct abstract of the record of the convicting court. The abstract shall include the name and address of the chiropractor or applicant, the nature of the offense committed and the final judgment and sentence of the court.

(g) Upon a determination of the board that there is probable cause to believe that any person, partnership, corporation, association, insurance company, professional society or other organization has failed or refused to make a report required by this subsection, the board shall provide written notice to the alleged violator stating the nature of the alleged violation and the time and place at which the alleged violator shall appear to show good cause why a civil penalty should not be imposed. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. After reviewing the record of the hearing, if the board determines that a violation of this subsection has occurred, the board shall assess a civil penalty of not less than one thousand dollars nor more than ten thousand dollars against the violator. Anyone so assessed shall be notified of the assessment in writing and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount of the assessment to the board within thirty days, the attorney general may institute a civil action in the circuit court of Kanawha County to recover the amount of
the assessment. In any such civil action, the court's review of the board's action shall be conducted in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

(h) Any person may report to the board relevant facts about the conduct of any chiropractor in this state which in the opinion of the person amounts to professional malpractice or professional incompetence.

(i) The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms including verbal report shall be accepted by the board.

(j) The filing of a report with the board pursuant to any provision of this article, any investigation by the board or any disposition of a case by the board does not preclude any action by a hospital, other health care facility or professional society comprised primarily of chiropractors to suspend, restrict or revoke the privileges or membership of the chiropractor.

§30-16-17. Who may practice chiropractic; title of chiropractor; minimum education required for spinal manipulation.

(a) No person licensed under chapter thirty of this code may perform or authorize a spinal manipulation or spinal adjustment without having first received a minimum of four hundred hours of classroom instruction in spinal manipulation or spinal adjustment and a minimum of eight hundred hours of supervised clinical training at a facility where spinal manipulation or spinal adjustment is a primary method of treatment. Violation of this section is an unlawful practice of chiropractic and is grounds for the offending health care provider's licensing board to suspend, revoke or refuse to renew provider's license or take any other disciplinary action allowed by law.

(b) Every chiropractor who has complied with the provisions of this article is entitled to practice chiropractic in this state. The title of chiropractor shall be doctor of chiropractic and is designated by the letters "D.C."
§30-16-18. Scope of practice; chiropractic assistants; expert testimony.

(a) Any chiropractor who has complied with the provisions of this article may use any instrument or procedure, for the purpose of diagnosis and analysis of disease or abnormalities: Provided, That the person is trained to perform the procedures and use the instruments through a chiropractic college approved by the counsel on chiropractic education or its successor. Any chiropractor properly qualified under this article may engage in the use of physiotherapeutic devices, physiotherapeutic modalities, physical therapy and physical therapy techniques. Licensed chiropractors may also employ properly trained chiropractic assistants to perform duties under supervision that are generally conducted by chiropractic assistants which are not otherwise prohibited by the board. The board shall propose and promulgate rules in accordance with the provisions governing legislative rules, contained in article three, chapter twenty-nine-a of this code governing chiropractic assistants, including, but not limited to, minimum qualification, scope of practice, and supervision requirements. A licensed chiropractor may not engage in conduct outside this scope and beyond his or her training and knowledge.

(b) A doctor of chiropractic duly licensed under this article is presumed to be competent to testify before the circuit courts of this state or in any other state administrative proceeding as an expert witness.

§30-16-19. Duty of chiropractor to observe health rules; reports of health officer and local registrar of vital statistics.

Doctors of chiropractic shall observe and are subject to all state and municipal rules in regard to the control of infectious diseases, and to any and all other matters pertaining to public health. They shall report to the public health officer in the manner required by law. It is
the duty of each doctor of chiropractic in this state to report to the registrar of vital statistics of his or her magisterial district, within ten days of its occurrence, any death which may come under his or her supervision, with a certificate of the cause of death and correlative facts as may be at that time required by the division of health.

§30-16-20. Use of physiotherapeutic devices; electrodiagnostic devices; specialty practice.

(a) No chiropractor may use any physiotherapeutic devices or electrodiagnostic devices in practice until he or she has certified to the board that he or she has completed at least the minimum classroom hours required for certification in the use of these procedures in classes sponsored by or conducted by a chiropractic college approved by the council of chiropractic education or its successor.

(b) Electrodiagnostic devices include, but are not limited to, the following: Videofluoroscopy and diagnostic ultrasound, including needle and surface electromyography, nerve conduction velocity studies, somatosensory testing and neuromuscular junction testing. The board may designate other devices as electrodiagnostic devices covered by this section by rule.

(c) As contained in this section, the term "specialty" includes, but is not limited to, orthopedics, neurology, chiropractic sports physician, radiology, pediatrics, nutrition, rehabilitation, acupuncture, chiropractic internist, behavioral health, diagnostic imagining and physiotherapeutics. No chiropractor is permitted to practice in a specialty in the chiropractic field or hold himself or herself out as being a specialist in the chiropractic field until the licensee has successfully completed a certified program in that specialty at a chiropractic college approved by the council on chiropractic education or its successor and approved by the board. The program shall consist of a minimum number of hours to be determined by the board.
Successful completion of the final certification exam is required.


(a) One or more individuals, each of whom is licensed to practice chiropractic within this state may organize and become a shareholder or shareholders of a chiropractic corporation. Individuals who may be practicing chiropractic as an organization created otherwise than pursuant to the provisions of this section may incorporate under and pursuant to this section. This section is not intended to amend the statutory or common law as it relates to associations or partnerships, except to allow partnerships of chiropractors to organize as a chiropractic corporation.

(b) A chiropractic corporation may render professional service only through officers, employees and agents who are themselves duly licensed to render chiropractic service within this state. The term "employee" or "agent" as used in this section, does not include secretaries, clerks, typists, paraprofessional personnel or other individuals who are not usually and ordinarily considered by custom and practice to be rendering chiropractic services for which a license is required.

(c) This section does not modify the law as it relates to the relationship between a person furnishing chiropractic services and his or her client, nor does it modify the law as it relates to liability arising out of the professional service relationship. Except for permitting chiropractic corporations this section is not intended to modify any legal requirement or court rule relating to ethical standards of conduct required of persons providing chiropractic services.

(d) A chiropractic corporation may issue its capital stock only to persons who are duly licensed by the board.

(e) When not inconsistent with this section, the organization and procedures of chiropractic corporations
§30-16-22. Offenses; penalties.

(a) Each of the following acts shall constitute a misdemeanor, punishable upon conviction by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or both, in the discretion of the court, and each day any person shall so violate any provisions of this article shall constitute a separate and distinct offense:

1. The obtaining of or attempt to obtain a license by the use of fraud, deceit or willful misrepresentation;

2. The practice, or attempting to practice, as a chiropractor without a license granted under the provisions of this article, or practicing or attempting to practice while said license is suspended, or after said license has been revoked;

3. The use of any title to induce belief that the user of said title is engaged in the practice of chiropractic, if the user of said title has not fully complied with the provisions of this article;

4. The buying, selling or fraudulent procurement of any diploma of, or license to practice, chiropractic;

5. The violation of any provision of this article regulating the practice of chiropractors.

(b) A person shall not engage in the practice of chiropractic or hold himself or herself out as qualified to practice chiropractic or use any title, word or abbreviation to indicate to or induce others to believe that he or she is licensed to chiropractic in this state unless he or she is actually licensed under the provisions of this article. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail not more than three months, or both fined and imprisoned.
CHAPTER 235

(Com. Sub. for S. B. 382—By Senator Schoonover)

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

AN ACT to amend and reenact section two, article eighteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing an applicant to count experience and service as a magistrate towards eligibility for a private investigator's license; and prohibiting one serving as a magistrate from being employed as a private investigator.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. PRIVATE INVESTIGATIVE AND SECURITY SERVICES.

§30-18-2. Eligibility requirements for license to conduct the private investigation business.

(a) In order to be eligible for any license to conduct the private investigation business, an applicant shall:

(1) Be at least eighteen years of age;

(2) Be a citizen of the United States or an alien who is legally residing within the United States;

(3) Not have had any previous license to conduct a private investigation business or to conduct a security guard business revoked or any application for any such licenses or registrations denied by the appropriate governmental authority in this or any other state or territory;
(4) Not have been declared incompetent by reason of mental defect or disease by any court of competent jurisdiction unless a court has subsequently determined that the applicant's competency has been restored;

(5) Not suffer from habitual drunkenness or from narcotics addiction or dependence;

(6) Be of good moral character;

(7) Have a minimum of two years of experience, education or training in any one of the following areas, or some combination thereof:

(A) Course work that is relevant to the private investigation business at an accredited college or university;

(B) Employment as a member of any United States government investigative agency, employment as a member of a state or local law-enforcement agency or service as a sheriff;

(C) Employment by a licensed private investigative or detective agency for the purpose of conducting the private investigation business;

(D) Service as a magistrate in this state; or

(E) Any other substantially equivalent training or experience;

(8) Not have been convicted of a felony in this state or any other state or territory;

(9) Not have been convicted of any of the following:

(A) Illegally using, carrying or possessing a pistol or other dangerous weapon;

(B) Making or possessing burglar's instruments;

(C) Buying or receiving stolen property;

(D) Entering a building unlawfully;

(E) Aiding an inmate's escape from prison;
(F) Possessing or distributing illicit drugs;

(G) Any misdemeanor involving moral turpitude or for which dishonesty of character is a necessary element; and

(10) Not have violated any provision of section eight of this article.

The provisions of this section shall not prevent the issuance of a license to any person who, subsequent to his or her conviction, shall have received an executive pardon therefor, removing this disability.

(b) Any person who qualifies for a private investigator's license shall also be qualified to conduct security guard business upon notifying the secretary of state in writing that the person will be conducting such business.

(c) No person may be employed as a licensed private investigator while serving as magistrate.

CHAPTER 236

(S. B. 727—By Senators Anderson, Schoonover, Helmick, Ross and Oliverio)

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

AN ACT to amend and reenact section fourteen, article twenty-seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to abolishing transfer of funds from barbers and cosmetologists fund to the general revenue fund; and clarifying that the fund is subject to legislative appropriation.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article twenty-seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-14. Collections and expenditures; disposition of funds.

All money collected under the provisions of this article shall be deposited in the state treasury as provided by law, and shall be credited to the board of barbers and beauticians in a special fund that has been known as the "barbers and beauticians special fund" and is hereby continued and shall be designated the "barbers and cosmetologists fund". All money in such fund shall be expended only for the administration and enforcement of the provisions of this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

CHAPTER 237

(H. B. 4618—By Mr. Speaker, Mr. Kiss, and Delegates Leach, Miller, Compton, Michael, Douglas and Pettit)

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

AN ACT to amend and reenact sections five, seven and eight, article thirty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the board of examiners in counseling; authorizing the board to establish a schedule of fees by legislative rule.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

§30-31-5. Powers and duties of board; disposition of board funds.
§30-31-7. Qualifications of applicants for license; application fee.
§30-31-8. Issuance of license; renewal of license; renewal fee; information required in application for renewal.

§30-31-5. Powers and duties of board; disposition of board funds.

(a) In addition to the duties set forth elsewhere in this article, the board shall:

(1) Issue, renew, deny, suspend or revoke licenses to engage in the practice of counseling and place a licensed counselor on probation in accordance with the provisions of this article and, in accordance with the administrative procedures hereinafter provided, may review, affirm, reverse, vacate or modify its order with respect to any such denial, suspension or revocation;

(2) Promulgate reasonable rules pursuant to article three, chapter twenty-nine-a of this code, implementing the provisions of this article and the powers and duties conferred upon the board hereby including, but not limited to, rules setting forth:

(A) Any and all specific master's and doctoral degree programs considered to be equivalent to a master's or doctoral degree program in counseling for purposes of licensure under subdivision (4), subsection (a), section seven of this article;

(B) The nature of supervised professional experience approved by the board for the purposes of licensure under subdivision (4), subsection (a), section seven of this article;

(C) A code of ethics for licensed counselors patterned after the codes of ethics of related professional groups;
(D) Forms for license applications and license renewal applications; and

(E) A reasonable and appropriate schedule of fees;

(3) Keep accurate and complete records of its proceedings, certify the same as may be appropriate and submit an annual report to the governor and the Legislature in such form as the governor may require;

(4) Adopt an official seal to be affixed to all licenses issued by the board;

(5) Appoint an examiner to determine the eligibility of applicants for a license to engage in the practice of counseling;

(6) Employ, direct, discharge and define the duties of any and all professional, clerical or other personnel necessary to effectuate the provisions of this article;

(7) Take any other actions as may be reasonably necessary to effectuate the provisions of this article; and

(8) Accept gifts, grants and donations from any source for the purposes of or incidental to this article.

(b) All moneys paid to the board shall be accepted by a person designated by the board and deposited by him or her with the treasurer of the state and credited to an account to be known as the "Board of Examiners in Counseling Fund." The compensation and expenses of members of the board and all other costs and expenses incurred by the board in the administration of this article shall be paid from the fund, and no part of the state's general revenue fund may be expended for such purpose.

§30-31-7. Qualifications of applicants for license; application fee.

(a) To be eligible for a license to engage in the practice of counseling, an applicant must:

(1) Be a legal resident of the state of West Virginia;

(2) Satisfy the board that he or she is of good moral character and merits the public trust, as evidenced:
(A) If the applicant has never been convicted of a felony or a crime involving moral turpitude, by submitting letters of recommendation from three persons not related to the applicant and a sworn statement from the applicant stating that he or she has never been convicted of a felony or a crime involving moral turpitude; or

(B) If the applicant has been convicted of a felony or a crime involving moral turpitude, it is a rebuttable presumption that the applicant is unfit for licensure unless he or she submits competent evidence of sufficient rehabilitation and present fitness to perform the duties of a licensed professional counselor as may be established by the production of: (i) Documentary evidence including a copy of the relevant release or discharge order, evidence showing compliance with all conditions of probation or parole, evidence showing that at least one year has elapsed since release or discharge without subsequent conviction, and letters of reference from three persons who have been in contact with the applicant since his or her release or discharge; and (ii) Any collateral evidence and testimony as may be requested by the board which shows the nature and seriousness of the crime, the circumstances relative to the crime or crimes committed and any mitigating circumstances or social conditions surrounding the crime or crimes and any other evidence necessary for the board to judge present fitness for licensure or whether licensure will enhance the likelihood that the applicant will commit the same or similar offenses;

(3) Not be an alcohol or drug abuser as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code;

(4) Have earned a master's degree in an accredited counseling program or in a field closely related to an accredited counseling program as determined by the board, or have received training equivalent to such degree as may be determined by the board, and have at least two years of supervised professional experience in counseling of such a nature as shall be designated by the board,
including at least one year's experience after earning an 
aforementioned master's degree or equivalent; or have 
ed earned a doctorate degree in an accredited counseling 
program or in a field closely related to an accredited 
counseling program as determined by the board, or have 
received training equivalent to such degree as may be 
determined by the board, and have at least one year of 
supervised professional experience in counseling of such a 
nature as shall be designated by the board after earning an 
aforementioned doctorate degree or equivalent; and

(5) Have passed a standardized national certification 
examination in counseling approved by the board.

(b) The following persons are eligible for a license to 
engage in the practice of counseling without having 
passed a standardized national certification examination in 
counseling:

(1) Any person who meets the qualifications set forth 
in subdivisions (1) through (4), subsection (a) of this 
section, and who makes an application to the board for a 
license before the first day of July, one thousand nine 
hundred eighty-seven;

(2) Any person who:

(A) Is a resident of or employed in this state on the 
effective date of this article;

(B) Makes an application for a license within twelve 
months after the date all initial appointees to the board 
commence serving their terms;

(C) Meets the qualifications set forth in subdivisions 
(1) through (3), subsection (a) of this section; and

(D) Was in the practice of counseling for two years of 
the five calendar years next preceding the effective date of 
this article; or

(3) Any person who holds a license or certificate to 
engage in the practice of counseling issued by any other 
state, the qualifications for which license or certificate are
determined by the board to be at least as great as those provided in this article.

(c) Every applicant must submit an application for a license to practice counseling to the secretary of the board in such manner, on such forms and containing such information as the board may prescribe and pay to the board a nonrefundable application fee as established by the board.

§30-31-8. Issuance of license; renewal of license; renewal fee; information required in application for renewal.

(a) Whenever the board finds that an applicant meets all of the qualifications of this article for a license to engage in the practice of counseling, it shall forthwith issue a license to the applicant. The board shall deny a license to any applicant who does not meet all of the qualifications.

(b) Every license to engage in the practice of counseling must be renewed biennially during the month of July. To renew a license, a licensed professional counselor must submit an application for renewal to the secretary of the board on such forms as the board may prescribe and pay to the board a renewal fee as established by the board. Any license which is not so renewed shall automatically lapse. Any license which has lapsed may be renewed within two years of its expiration date by payment to the board of the appropriate renewal fee for each period or part thereof during which the license was not renewed.

(c) Each application to renew a license shall contain or be accompanied by evidence of continued professional development in the practice of counseling as determined by the board by rule promulgated in accordance with the provisions of chapter twenty-nine-a of this code and any such other reasonable information as the board may consider appropriate.
AN ACT to amend and reenact sections fourteen and eighteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to providing members of the public employees retirement system a period of time to purchase prior credited service which was forfeited due to the employee having left covered service; requiring repayment of any amounts withdrawn with interest thereon; establishing the manner of repayment and setting forth a time period during which repayment may be made; providing that a legislative employee may receive three months service credit for each thirty-day session worked prior to one thousand nine hundred seventy-one; extending the date for a legislative employee to purchase retroactive service credit; clarifying that a legislative employee is entitled to the service credit provided regardless when the service occurred; clarifying that regular session legislative employment for seven consecutive years may be served in either or both houses of the Legislature; clarifying that service credit awarded for legislative employment pursuant to this section shall be used not only for the purpose of calculating that member's retirement annuity but also for determining eligibility as it relates to credited service; providing that any legislative employee may request a recalculation of credited service to comply with the provisions of this section; and providing that the service credit requirements of this section shall be applied retroactively to all periods of legislative employment prior to the passage of this section, including any periods of legislative employment occurring before the seven consecutive calendar year employment referenced in this section.

Be it enacted by the Legislature of West Virginia:
That sections fourteen and eighteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-14. Service credit; retroactive provisions.

§5-10-18. Termination of membership; reentry.

§5-10-14. Service credit; retroactive provisions.

(a) The board of trustees shall credit each member with the prior service and contributing service to which he or she is entitled based upon such rules as the board of trustees shall from time to time adopt and based upon the following:

(1) Ten or more days of service rendered by a member in any calendar month shall be credited as a month of service: Provided, That for employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, service credit of one month shall be awarded for each ten days employed in the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit;

(2) Ten or more months of service credit earned in any calendar year shall be credited as a year of service;

(3) No more than one year of service may be credited to any member for all service rendered by him or her in any calendar year; and

(4) Service may be credited to a member who was employed by a political subdivision if his or her employment occurred within a period of thirty years
immediately preceding the date the political subdivision became a participating public employer.

(b) The board of trustees shall grant service credit to employees of boards of health, the clerk of the House of Delegates and the clerk of the state Senate, or to any former and present member of the state teachers retirement system who have been contributing members for more than three years, for service previously credited by the state teachers retirement system and shall require the transfer of the member's contributions to the system and shall also require a deposit, with interest, of any withdrawals of contributions any time prior to the member's retirement. Repayment of withdrawals shall be as directed by the board of trustees.

(c) Court reporters who are acting in an official capacity, although paid by funds other than the county commission or state auditor, may receive prior service credit for time served in that capacity.

(d) Employees of the state Legislature whose terms of employment are otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions shall receive service credit for the time served in that capacity in accordance with the following. Employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, as certified by the clerk of the houses in which the employee served, shall receive service credit of six months for all regular sessions served as certified by the clerk of the houses in which the employee served, or shall receive service credit of three months for each regular thirty-day session served prior to one thousand nine hundred seventy-one, as certified by the clerk of the houses in which the employee served, and shall receive service credit of one month for each ten days served during the interim
between regular sessions, which interim days shall be
.cumulatively calculated so that any ten days, regardless of
calendar month or year, shall be calculated toward any
award of one month of service credit. Service credit
awarded for legislative employment pursuant to this
section shall be used for the purpose of calculating that
member's retirement annuity, pursuant to section twenty-
two of this article, and determining eligibility as it relates
to credited service, notwithstanding any other provision of
this section. Certification of employment for a complete
legislative session and for days of interim sessions shall be
determined by the clerk of the houses in which the
employee served, based upon employment records.
Service of fifty-five days of a regular session constitutes a
 presumption of service for a complete legislative session,
and service of twenty-seven days of a thirty-day regular
session occurring prior to one thousand nine hundred
seventy-one constitutes a presumption of service for a
complete legislative session. Once a legislative employee
has been employed during regular sessions for seven
consecutive years or has become a full-time employee of
the Legislature, that employee shall receive the service
credit provided in this section for all regular and interim
sessions worked by that employee, as certified by the clerk
of the houses in which the employee served, regardless of
when the session or interim legislative employment
occurred: Provided, That regular session legislative
employment for seven consecutive years may be served in
either or both houses of the Legislature.

Any employee may purchase retroactive service credit
for periods of employment in which contributions were
not deducted from the employee's pay. In the purchase of
service credit for employment prior to the year one
thousand nine hundred eighty-nine in any department,
including the Legislature, which operated from the general
revenue fund and which was not expressly excluded from
budget appropriations in which blanket appropriations
were made for the state's share of public employees'
retirement coverage in the years prior to the year one
thousand nine hundred eighty-nine, the employee shall
pay the employee's share. Other employees shall pay the
state's share and the employee's share to purchase retroactive service credit. Where an employee purchases service credit for employment which occurred after the year one thousand nine hundred eighty-eight, that employee shall pay for the employee's share and the employer shall pay its share for the purchase of retroactive service credit: Provided, That no legislative employee may be required to pay any interest or penalty upon the purchase of retroactive service credit in accordance with the provisions of this section where the employee was not eligible to become a member during the years he or she is purchasing retroactive service credit for or had the employee attempted to contribute to the system during the years he or she is purchasing retroactive service credit for and such contributions would have been refused by the board: Provided, however, That a legislative employee purchasing retroactive credit under this section does so within twenty-four months of becoming a member of the system or no later than the last day of December, two thousand two, whichever occurs last: Provided further, That once a legislative employee becomes a member of the retirement system, he or she may purchase retroactive service credit for any time he or she was employed by the Legislature and did not receive service credit. Any service credit purchased shall be credited as six months for each sixty-day session worked and three months for each thirty-day session worked, and credit for interim sessions as provided in this subsection: And provided further, That this legislative service credit shall also be used for months of service in order to meet the sixty-month requirement for the payments of a member's retirement annuity: And provided further, That no legislative employee may be required to pay for any service credit beyond the actual time he or she worked regardless of the service credit which is credited to him or her pursuant to this section: And provided further, That any legislative employee may request a recalculation of his or her credited service to comply with the provisions of this section at any time.

(e) Notwithstanding any provision to the contrary, the seven consecutive calendar years requirement and the service credit requirements set forth in this section shall be
applied retroactively to all periods of legislative employment prior to the passage of this section, including any periods of legislative employment occurring before the seven consecutive calendar years referenced in this section.

§5-10-18. Termination of membership; reentry.

(a) When a member of the retirement system retires or dies, he or she ceases to be a member. When a member leaves the employ of a participating public employer for any other reason, he or she ceases to be a member and forfeits service credited to him or her at that time. If he or she becomes reemployed by a participating public employer he or she shall be reinstated as a member of the retirement system and his or her credited service last forfeited by him or her shall be restored to his or her credit: Provided, That he or she must be reemployed for a period of one year or longer to have the service restored: Provided, however, That he or she returns to the members' deposit fund the amount, if any, he or she withdrew from the fund, together with regular interest on the withdrawn amount from the date of withdrawal to the date of repayment, and that the repayment begins within two years of the return to employment and that the full amount is repaid within five years of the return to employment.

(b) Effective on the first day of July, one thousand nine hundred ninety-seven, and continuing through the first day of July, one thousand nine hundred ninety-eight, any employee of the Prestera center for mental health services, valley comprehensive mental health center, Westbrook health services and eastern panhandle mental health center who is a member of the retirement system may elect to withdraw from membership without forfeiting service credited to him or her.

(c) The Prestera center for mental health services, valley comprehensive mental health center, Westbrook health services and eastern panhandle mental health center, and their successors in interest, shall provide for their employees a pension plan in lieu of the public employees retirement system on or before the first day of July, one thousand nine hundred ninety-seven, and continuing
thereafter during the existence of the named mental health centers and their successors in interest.

(d) The administrative bodies of the Prestera center for mental health services, valley comprehensive mental health center, Westbrook health services and eastern panhandle mental health center shall, on or before the first day of May, one thousand nine hundred ninety-seven, give written notice to each employee who is a member of the public employees retirement system of the option to withdraw from or remain in the system. The notice shall include a copy of this section and a statement explaining the member’s options regarding membership. The notice shall include a statement in plain language giving a full explanation and actuarial projection figures in support of the explanation regarding the individual member’s current account balance, vested and nonvested, and his or her projected return upon remaining in the public employees retirement system until retirement, disability or death, in comparison with the projected return upon withdrawing from the public employees retirement system and joining a private pension plan provided by the community mental health center and remaining therein until retirement, disability or death. The administrative bodies shall keep in their respective records a permanent record of each employee’s signature confirming receipt of the notice.

(e) Effective the first day of March, one thousand nine hundred ninety-eight, and ending the thirty-first day of December, two thousand two, any member may purchase credited service previously forfeited by him or her and such credited service shall be restored to his or her credit: Provided, That he or she returns to the members’ deposit fund the amount, if any, he or she withdrew from the fund, together with interest on the withdrawn amount from the date of withdrawal to the date of repayment at a rate to be determined by the board. The repayment under this section may be made by lump sum or repaid over a period of time not to exceed sixty months. Where the member elects to repay the required amount other than by lump sum, the member is required to pay interest at the rate determined by the board until all sums are fully repaid.
AN ACT to amend and reenact section forty-one, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three and five, article ten-b of said chapter; to further amend said article by adding thereto a new section, designated section ten; and to amend article ten-d of said chapter by adding thereto a new section, designated section seven, all relating to the West Virginia Public Employees Retirement Act; providing that the interest rate calculation be performed on a calendar year basis; incorporating federal tax law limitations on the maximum compensation that can be taken into account for the purpose of determining retirement benefits and contributions to retirement plans; and incorporating federal requirements that all assets of government deferred pension plans be held in trust for the benefit of members and their beneficiaries.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-41. Allowance of regular interest on balances in funds.
The board of trustees shall, at the end of each calendar year, allow and credit regular interest on the balance at the beginning of the said fiscal year in each member's individual account in the members deposit fund, and on the mean balances in the employers accumulation fund and the retirement reserve fund. The interest so allowed and credited shall be charged to the income fund.

ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.

§5-10B-2. Definitions.

§5-10B-3. Contracts for deferred compensation plans — Approval of plans — Approval of companies providing investments.

§5-10B-5. Investment of funds.

§5-10B-10. Deferred compensation plan funds held in trust.

§5-10B-2. Definitions.

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

(a) "Board" means the consolidated public retirement board provided for in article ten of this chapter.

(b) "Deferred compensation plan" means a trust whereby the state of West Virginia, as the public employer, or a public employer agrees with an employee for the voluntary reduction in employee compensation for the payment of benefits by the state employer or the public employer to the employee at a later date pursuant to this article and the federal laws and regulations relating to eligible state deferred compensation plans as described in Section 457 of the Internal Revenue Code.

(c) "Employee" means any person, whether appointed, elected, or under contract, providing services for the state employer or public employer, for which compensation is paid.

(d) "Public employer" means counties, municipalities or political subdivisions of such governmental bodies which meet the definition of "state" as described in Internal Revenue Code Section 457 (d) (1), but which do not meet the definition of "state employer" as used in this article.

(e) "State employer" means the state of West Virginia and any state agency or instrumentality of the state.
§5-10B-3. Contracts for deferred compensation plans — Approval of plans — Approval of companies providing investments.

The state employer or any public employer may, by contract, agree with any of its employees to defer and hold in trust any portion of that employee's compensation and may subsequently purchase or acquire from any company licensed to do business in the state of West Virginia fixed or variable annuities, insurance, endowment, or savings account for the purpose of carrying out the objectives of the deferred compensation plan as described in this article.

§5-10B-5. Investment of funds.

Notwithstanding any other provision of law to the contrary, the board as well as the appropriate local officer, board or committee, designated as responsible for implementing a deferred compensation plan, is hereby authorized to invest compensation held pursuant to any such deferred compensation plan in fixed and variable annuities, mutual funds, insurance, endowment or savings accounts from any company duly authorized to contract such business in the state.

§5-10B-10. Deferred compensation plan funds held in trust.

Notwithstanding anything herein to the contrary, as of the first day of January, one thousand nine hundred ninety-eight, all assets and income of all deferred compensation plans created or administered pursuant to this article shall be held in trust for the exclusive benefit of participants and their beneficiaries.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-7. Compensation limitations; effective dates.

Effective for plan years beginning after the thirty-first day of December, one thousand nine hundred ninety-five, the annual compensation of a participant taken into account in determining benefits or contributions under any of the public retirement plans administered by the board and which are qualified plans under section 401(a) of the Internal Revenue Code may not exceed one hundred fifty thousand dollars. This provision shall apply notwithstanding any other provision to the contrary in this code and not withstanding any provisions of any legislative rule.
AN ACT to amend and reenact section one, article ten-d, chapter five of the code of West Virginia, one thousand nine hundred thirty-one; to amend chapter seven of said code by adding thereto two new articles, designated article fourteen-d and fourteen-e; and to amend and reenact section seventeen, article three, chapter seventeen-a, all relating to retirement, death and disability benefits for deputy sheriffs; providing that the consolidated retirement board administer the new retirement system; providing definitions for the article; creating the deputy sheriff's retirement system; stating that the article is to be liberally construed; allowing the board to promulgate rules for the administration of the fund; establishing membership qualifications; creating a trust fund for investment of contributions; establishing member and employer contribution amount; providing for transfer of assets; providing credited service through member's use, as an option, of accrued annual or sick leave days; establishing value of assets for transfer; requiring a test case; providing safeguards to the public employees retirement system; establishing for the commencement of benefits; establishing benefits for normal, early and late retirement; establishing annuity options; providing for refunds to members upon certain conditions; providing for disability retirements; allowing deputies with a prior disability to become member of plan; benefits for surviving spouses; benefits for dependents; establishing death benefits; prohibiting double benefits; authorizing loans to members; authorizing sheriffs to become member of plan; establishing fraudulent practices and criminal penalties therefor; and providing military service credits; providing effective date and benefit beginning dates; providing limitation on county liability; setting forth legislative findings and purposes; establishing statewide uniform fees for certain reports generated by
sheriff’s offices and dedicating those fees; requiring sheriffs to issue motor vehicle registration renewals; and providing that one-half of the fee charged by sheriffs for issuing motor vehicle registration renewals be dedicated to the deputy sheriff retirement fund.

Be it enacted by the Legislature of West Virginia:

That section one, article ten-d, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that chapter seven of said code be amended by adding thereto two new articles, designated article fourteen-d and fourteen-e; and that section seventeen, article three, chapter seventeen-a 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.

7. County Commissions and Officers.

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

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 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-1. Consolidated public retirement board created; transition; members; vacancies.

(a) There is hereby continued a consolidated public retirement board to administer all public retirement plans in this state. It shall administer the public employees retirement system established in article ten of this chapter; the teachers retirement system established in article seven-a, chapter eighteen of this code; the teachers’ defined contribution retirement system created by article seven-b, chapter eighteen of this code; the death, disability and retirement fund of the department of public safety created
10 by article two, chapter fifteen of this code; the death,  
11 disability and retirement fund for deputy sheriffs created  
12 by article fourteen-d, chapter seven of this code; and the  
13 judges' retirement system created under article nine,  
14 chapter fifty-one of this code.

15 (b) The consolidated public retirement board shall  
16 begin administration of the death, disability and retirement  
17 fund for deputy sheriffs established in article fourteen-d,  
18 chapter seven of this code on the first day of July, one  
19 thousand nine hundred ninety-eight.

20 (c) The membership of the consolidated public  
21 retirement board consists of:

22 (1) The governor or his or her designee;

23 (2) The state treasurer or his or her designee;

24 (3) The state auditor or his or her designee;

25 (4) The secretary of the department of administration  
26 or his or her designee;

27 (5) Four residents of the state, who are not members,  
28 retirants or beneficiaries of any of the public retirement  
29 systems, to be appointed by the governor, with the advice  
30 and consent of the Senate; and

31 (6) A member, annuitant or retirant of the public  
32 employees retirement system who is or was a state  
33 employee; a member, annuitant or retirant of the public  
34 employees retirement system who is not or was not a state  
35 employee; a member, annuitant or retirant of the teachers  
36 retirement system; a member, annuitant or retirant of the  
37 department of public safety death, disability and  
38 retirement fund; a member, annuitant or retirant of the  
39 deputy sheriff's death, disability and retirement fund; and  
40 a member, annuitant or retirant of the teachers' defined  
41 contribution retirement system, all to be appointed by the  
42 governor, with the advice and consent of the Senate.

43 (d) The appointed members of the board shall serve  
44 five-year terms. The governor shall appoint the member  
45 representing the deputy sheriff's death, disability and  
46 retirement fund by the first day of July, one thousand nine
hundred ninety-eight to a five-year term. A member
appointed pursuant to subdivision (5), subsection (c) of
this section ceases to be a member of the board if he or
she ceases to be a member of the represented system. If a
vacancy occurs in the appointed membership, the
governor, within sixty days, shall fill the vacancy by
appointment for the unexpired term. No more than five
appointees shall be of the same political party.

(e) The consolidated public retirement board has all
the powers, duties, responsibilities and liabilities of the
public employees retirement system established pursuant
to article ten, of this chapter; the teachers retirement
system established pursuant to article seven-a, chapter
eighteen of this code; the teachers' defined contribution
system established pursuant to article seven-b, chapter
eighteen of this code; the death, disability and retirement
fund of the department of public safety created pursuant
to article two, chapter fifteen of this code; the death,
disability and retirement fund for deputy sheriffs created
pursuant to article fourteen-d, chapter seven of this code;
and the judges' retirement system created pursuant to
article nine, chapter fifty-one of this code and their
appropriate governing boards. The consolidated public
retirement board may propose for promulgation all rules
necessary to effectuate its powers, duties and
responsibilities pursuant to article three, chapter twenty-
nine-a of this code: Provided, That the board may adopt
any or all of the rules, previously promulgated, of a
retirement system which it administers.

(f) Effective on the first day of July, one thousand
nine hundred ninety-six, the consolidated public
retirement board shall, within two business days of receipt,
transfer all funds received by the consolidated public
retirement board for the benefit of the retirement systems
within the consolidated pension plan as defined in section
three-c, article six-b, chapter forty-four of this code,
including, but not limited to, all employer and employee
contributions, to the West Virginia investment
management board: Provided, That the employer and
employee contributions of the teachers' defined
contribution system, established in section three, article
seven-b, chapter eighteen of this code, and voluntary deferred compensation funds invested by the West Virginia consolidated public retirement board pursuant to section five, article ten-b of this chapter, may not be transferred to the West Virginia investment management board.

(g) The consolidated public retirement board shall be a trustee for all public retirement plans, except with regard to the investment of funds: Provided, That the consolidated public retirement board shall be a trustee with regard to the investments of the teachers' defined contribution system, and voluntary deferred compensation funds invested pursuant to section five, article ten-b of this chapter.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

Article
14D. Deputy Sheriff Retirement Act.
14E. Establishment of Certain Fees; Dedication of Fee to Deputy Sheriff Retirement System.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT ACT.

§7-14D-1. Short title.
§7-14D-2. Definitions.
§7-14D-3. Creation and administration of West Virginia deputy sheriff's retirement system.
§7-14D-4. Article to be liberally construed; supplements federal social security.
§7-14D-5. Members.
§7-14D-6. Creation of fund; investments.
§7-14D-7. Members' contributions; employer contributions.
§7-14D-8. Transfer from public employees retirement system.
§7-14D-8a. Notice requirements; test case.
§7-14D-9. Retirement; commencement of benefits.
§7-14D-10. Retirement credited service through member's use, as option, of accrued annual or sick leave days.
§7-14D-12. Annuity options.
§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement.
§7-14D-15. Same — Due to other causes.
§7-14D-16. Same — Physical examinations; termination of disability.
§7-14D-17. Prior disability.
§7-14D-18. Awards and benefits to surviving spouse — When member dies in performance of duty, etc.
§7-14D-19. Same — When member dies from nonservice-connected causes.
§7-14D-20. Additional death benefits and scholarships — Dependent children.
§7-14D-22. Double death benefits prohibited.
§7-14D-23. Loans to members.
§7-14D-24. Service as sheriff.
§7-14D-25. Exemption from taxation, garnishment and other process.
§7-14D-26. Fraud; penalties; and repayment.
§7-14D-27. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict.
§7-14D-29. Effective date; report to joint committee on government and finance; special starting date for benefits.
§7-14D-30. Limitation of county liability.

§7-14D-1. Short title.
1 This article is known and may be cited as the "West Virginia Deputy Sheriff Retirement System Act".

§7-14D-2. Definitions.
1 As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:
2 (a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the member's final average salary multiplied by the member's years of credited service. A member's accrued benefit may not exceed the limits of section 415 of the Internal Revenue Code.
3 (b) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member, or paid on his or her behalf pursuant to article ten-c, chapter five of this code, either pursuant to section seven of this article or section twenty-nine, article ten, chapter five of this code as a result of covered
employment together with regular interest on the deducted amounts.

(c) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the national guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board on other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as the consolidated public retirement board may adopt from time to time.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of section 3401(a) of the Internal Revenue Code but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed one hundred fifty thousand dollars as adjusted for cost of living in accordance with section 401(a)(17)(B) of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the first period for which an amount is received as an annuity by reason of retirement.

(h) "Base salary" means a member's cash compensation exclusive of overtime from covered employment during the last twelve months of employment. Until a member has worked twelve months, annualized base salary is used as base salary.
(i) "Board" means the consolidated public retirement board created pursuant to article ten-d, chapter five of this code.

(j) "County commission" has the meaning ascribed to it in section one, article one, chapter seven of this code.

(k) "Covered employment" means either: (1) Employment as a deputy sheriff and the active performance of the duties required of a deputy sheriff; or (2) the period of time which active duties are not performed but disability benefits are received under section thirteen or fourteen of this article.

(l) "Credited service" means the sum of a member's years of service, military service, disability service and annual leave service.

(m) "Deputy sheriff" means an individual employed as a county law-enforcement deputy sheriff in this state and as defined by section two, article fourteen, chapter seven of this code.

(n) "Dependent child" means:

(1) An unmarried person under age eighteen who is either:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death.

(2) Any unmarried child under age twenty-three: (A) Who is enrolled as a full-time student in an accredited college or university; (B) who was claimed as a dependent by the member for federal income tax purposes at the time of member's death; and (C) whose relationship with the member is described in subparagraph (A), (B) or (C), paragraph (1) of this subdivision.
(o) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(p) "Disability service" means service received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under section thirteen or fourteen of this article.

(q) "Early retirement age" means age forty or over and completion of twenty years of service.

(r) "Effective date" means the first day of July, one thousand nine hundred ninety-eight.

(s) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last ten years of service. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under section thirteen or fourteen of this article then "final average salary" means the average of the monthly salary determined paid to the member during that period as determined under section seventeen of this article multiplied by twelve.

(t) "Fund" means the West Virginia deputy sheriff retirement fund created pursuant to section six of this article.

(u) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year
but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof, and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia department of labor regulations. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under section fourteen or fifteen of this article; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission, irrespective of mitigation of damages. The same hours of service shall not be credited both under paragraph (1) or (2) of this subdivision, and under this paragraph. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(v) "Member" means a person first hired as a deputy sheriff after the effective date of this article, as defined in subsection (r) of this section, or a deputy sheriff first hired prior to the effective date and who elects to become a member pursuant to section five or section seventeen of this article. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(w) "Monthly salary" means the portion of a member’s annual compensation which is paid to him or her per month.

(x) "Normal form" means a monthly annuity which is one twelfth of the amount of the member’s accrued benefit which is payable for the member’s life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.
(y) "Normal retirement age" means the first to occur of the following:

(1) Attainment of age fifty years and the completion of twenty or more years of service;

(2) While still in covered employment, attainment of at least age fifty years, and when the sum of current age plus years of service equals or exceeds seventy years;

(3) While still in covered employment, attainment of at least age sixty years, and completion of five years of service; or

(4) Attainment of age sixty-two years and completion of five or more years of service.

(z) "Partially disabled" means a member’s inability to engage in the duties of deputy sheriff by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the annual compensation earned by all active members of this plan during the plan year ending as of the most recent thirtieth day of June, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(aa) "Public employees retirement system" means the West Virginia public employee's retirement system created by article ten, chapter five of this code.

(bb) "Plan" means the West Virginia deputy sheriff death, disability and retirement plan established by this article.

(cc) "Plan year" means the twelve month period commencing on the first day of July and ending the following thirtieth day of June of any designated year.
(dd) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board shall from time to time adopt.

(ee) "Retirement income payments" means the annual retirement income payments payable under the plan.

(ff) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(gg) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(hh) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months.

For purposes of this subdivision:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as a deputy sheriff but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological, or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.

A member's receipt of social security disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial
gainful employment rebuts the presumption of total
disability.

(ii) "Year of service". A member shall, except in his
or her first and last years of covered employment, be
credited with year of service credit based upon the hours
of service performed as covered employment and credited
to the member during the plan year based upon the
following schedule:

<table>
<thead>
<tr>
<th>Hours of Service</th>
<th>Year of Service Credited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 500</td>
<td>0</td>
</tr>
<tr>
<td>500 to 999</td>
<td>1/3</td>
</tr>
<tr>
<td>1,000 to 1,499</td>
<td>2/3</td>
</tr>
<tr>
<td>1,500 or more</td>
<td>1</td>
</tr>
</tbody>
</table>

During a member's first and last years of covered
employment, the member shall be credited with one
twelfth of a year of service for each month during the plan
year in which the member is credited with an hour of
service. A member is not entitled to credit for years of
service for any time period during which he or she
received disability payments under section fourteen or
fifteen of this article. Except as specifically excluded,
years of service include covered employment prior to the
effective date.

Years of service which are credited to a member prior
to his or her receipt of accumulated contributions upon
termination of employment pursuant to section thirteen of
this article or section thirty, article ten, chapter five of this
code, shall be disregarded for all purposes under this plan
unless the member repays the accumulated contributions
with interest pursuant to section twelve of this article or
had prior to the effective date made the repayment
pursuant to section eighteen, article ten, chapter five of this
code.


Any term used in this article shall have the same
of the United States, unless a different meaning is clearly
required. Any reference in this article to the Internal
Revenue Code includes all amendments made to the laws
of the United States after the thirty-first day of December,
one thousand nine hundred ninety-five, but prior to the
first day of January, one thousand nine hundred ninety-
eight, but no amendment to the laws of the United States
made on or after the first day of January, one thousand
nine hundred ninety-eight, shall be given any effect.

§7-14D-3. Creation and administration of West Virginia
deputy sheriff’s retirement system.

There is hereby created the West Virginia deputy
sheriff’s retirement system. The purpose of this system is
to provide for the orderly retirement of deputy sheriffs
who become superannuated because of age or permanent
disability and to provide certain survivor death benefits.
The retirement system constitutes a body corporate. All
business of the system shall be transacted in the name of
the West Virginia deputy sheriff’s retirement system.

§7-14D-4. Article to be liberally construed; supplements
federal social security.

(a) The provisions of this article shall be liberally
construed so as to provide a general retirement system for
deputy sheriffs eligible to retire under the provisions of
this plan. Nothing in this article may be construed to
permit a county to substitute this plan for federal social
security now in force in West Virginia.

(b) The board shall administer the plan in accordance
with its terms and may construe the terms and determine
all questions arising in connection with the administration,
interpretation and application of the plan. The board may
sue and be sued, contract and be contracted with and
conduct all the business of the system in the name of the
plan. The board may employ those persons it considers
necessary or desirable to administer the plan. The board
shall administer the plan for the exclusive benefit of the
members and their beneficiaries subject to the specific
provisions of the plan. This plan and the moneys held in
trust under the plan constitute a qualified trust under
PUBLIC EMPLOYEES RETIREMENT

§7-14D-5. Members.

(a) Any deputy sheriff first employed by a county in covered employment after the effective date of this article shall be a member of this retirement system and plan and may not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment.

(b) Any deputy sheriff employed in covered employment on the effective date of this article shall within six months of that effective date notify in writing both the county commission in the county in which he or she is employed and the board of his or her desire to become a member of the plan. Any deputy sheriff who elects to become a member of the plan ceases to be a member or have any credit for employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the deputy sheriff remains employed in covered employment. Any deputy sheriff who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is from time to time offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

(c) Any deputy sheriff who was employed as a deputy sheriff prior to the effective date, but was not employed on the effective date of this article, shall become a member upon rehire as a deputy sheriff. For purposes of this section, the member’s years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless: (1) The deputy sheriff has not received the return of his or her accumulated contributions in the public employees retirement fund system pursuant to section thirty, article ten, chapter five of this code; or (2) the accumulated contributions returned to the member from the public employees retirement system have been repaid pursuant to section
If the conditions of subdivision (1) or (2) of this subsection are met, all years of the deputy sheriff's covered employment shall be counted as years of service for the purposes. In connection with each deputy sheriff receiving credit for prior employment provided in this subsection, a transfer from public employees retirement system to this plan shall be made pursuant to the procedures described in section eight of this article.

(d) Once made, the election made under this section is irrevocable. All deputy sheriffs first employed after the effective date and deputy sheriffs electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by section seven of this article.

§7-14D-6. Creation of fund; investments.

(a) There is hereby created the "West Virginia deputy sheriff retirement fund" for the benefit of the members of the retirement system created pursuant to this article and the dependents of any deceased or retired member of the system.

(b) All moneys paid into and accumulated in the fund, except such amounts as are designated by the board for payment of benefits as provided in this article, shall be held in trust and invested in the consolidated pensions fund as administered by the state investment management board as provided by law.

§7-14D-7. Members' contributions; employer contributions.

There shall be deducted from the monthly salary of each member and paid into the fund an amount equal to eight and one-half percent of his or her monthly salary. An additional nine and one-half percent of the monthly salary of each member shall be paid to the fund by the county commission of the county in which the member is employed in covered employment. If the board finds that the benefits provided by this article can be actually funded with a lesser contribution, then the board shall reduce the required member and employer contributions proportionally.
§7-14D-8. Transfer from public employees retirement system.

(a) The consolidated retirement board shall, within ninety days of the effective date of the transfer of a deputy from the public employees retirement system to the plan, transfer assets from the public employees retirement system trust fund into the West Virginia deputy sheriff trust fund. The amount to be transferred from the public employees retirement system includes all contributions made by each transferring deputy plus the employers matching contribution for the retiring deputy and an amount representing the normal amount of interest the transferring deputy earned on all his or her contributions and the contributions his or her employer made on behalf of the transferring deputy.

(b) The amount of assets to be transferred for each transferring deputy shall be computed as of the first day of July, one thousand nine hundred ninety-eight, using the actuarial valuation assumptions in effect for the first day of July, one thousand nine hundred ninety-eight, actuarial valuation of public employees retirement system, and updated with seven and one-half percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring deputy in the public employees retirement system shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred the board shall:

1. Compute the market value of the public employees retirement system assets;

2. Compute the accrued liability for all public employees retirement system retirees, beneficiaries, disabled retirees and terminated inactive members;

3. Reduce the market value of public employees retirement system assets by the accrued liability determined in subdivision (2) of this subsection;

4. Compute the entry age method accrued liability for all active public employees retirement system members;
(5) Compute the share of accrued liability as
determined pursuant to subdivision (4) of this subsection,
that is attributable to those deputy sheriffs in public
employees retirement system who have elected to transfer
to the plan;

(6) Compute the percentage of active’s accrued
liability computed to the deputy sheriffs by dividing
subdivision (5) by subdivision (4) of this subsection;

(7) Determine the asset share to be transferred from
public employees retirement system to the plan by
multiplying subdivision (3) times subdivision (6) of this
subsection.

(c) Once a deputy sheriff has elected to transfer from
the public employees retirement system, transfer by the
public employees retirement system of that deputy’s
contributions, including all amounts contributed by the
deputy’s employer for that deputy with interest upon both
the deputy’s and the employer’s contributions shall
operate as a complete bar to any further liability to the
transferring from the public employees retirement system,
and constitutes an agreement whereby the transferring
deputy forever indemnifies and holds harmless the public
employees retirement system from providing him or her
any form of retirement benefit whatsoever until such time
as that deputy obtains other employment which would
make him or her eligible to re-enter the public employees
retirement system with no credit whatsoever for the
amounts transferred to the deputy sheriffs retirement
system.

(d) The board shall cause a judicial determination to
be made regarding the transfer of assets from the public
employees retirement system to the deputy sheriffs
retirement system by causing a suit to be filed in the
supreme court of this state seeking a writ of mandamus on
or before the thirty-first day of July, one thousand nine
hundred ninety-eight.

§7-14D-8a. Notice requirements; test case.
(a) Each county shall prepare a written notice to be delivered to each deputy sheriff employed prior to the first day of July, one thousand nine hundred ninety-eight. This notice shall clearly and accurately explain the benefits, financial implications and consequences to a deputy sheriff of electing to participate in the retirement plan created in this article, including the consequences and financial implications in regard to the benefits under the public employees insurance plan as set forth in article sixteen, chapter five of this code for those deputy sheriffs employed by a county which participates in that insurance plan. This notice shall be distributed to each deputy sheriff and the county shall obtain a signed receipt from each deputy sheriff acknowledging that the deputy sheriff was provided a copy of the notice required in this subsection. If a deputy sheriff makes the election provided for in section eight of this article, he or she shall be considered to have made a voluntary, informed decision in regard to the election to participate in the retirement system created in this article.

(b) The consolidated retirement board shall cause to be included in the judicial determination required in section eight of this article the issue regarding the possible loss of any rights in regard to benefits accorded the electing deputy under the West Virginia public employees insurance act, article sixteen, chapter five of this code, and whether a deputy sheriff, by electing to participate in the retirement plan created in this article, is being unlawfully discriminated against, or is being unlawfully deprived of a right or benefit to which he or she would otherwise be entitled.

(c) Nothing in this section may be construed to alter, affect or change any of the rights and benefits of any deputy sheriff who has insurance coverage under article sixteen, chapter five of this code as a result of being a spouse or dependant of a participant who is the primary insured under article sixteen, chapter five of this code.

(d) Nothing contained in this section may be construed to affect or pertain to any life insurance coverage under article sixteen, chapter five of this code.
§7-14D-9. Retirement; commencement of benefits.

A member may retire and commence to receive retirement income payments upon attaining early or normal retirement age by filing with the board his or her voluntary petition in writing for retirement: Provided, That retirement income payments shall commence no later than the first day of April following the member's seventy and one-half year birthday or the cessation of covered employment, whichever later occurs. Upon receipt of the petition, the board shall promptly provide the member with an explanation of his or her optional forms of retirement benefits and upon receipt of properly executed forms from the member, the board shall process member's request for and commence payments as soon as administratively feasible.

§7-14D-10. Retirement credited service through member’s use, as option, of accrued annual or sick leave days.

Any member accruing annual leave or sick leave days may, after the effective date of this section, elect to use the days at the time of retirement to acquire additional credited service in this retirement system: Provided, That the accrued annual or sick leave may not be used to purchase health insurance under the public employees insurance agency until the member reaches the age of fifty-five. The days shall be applied on the basis of two workdays' credit granted for each one day of accrued annual or sick leave days, with each month of retirement service credit to equal twenty workdays and with any remainder of ten workdays or more to constitute a full month of additional credit and any remainder of less than ten workdays to be dropped and not used, notwithstanding any provisions of the code to the contrary. The credited service shall be allowed and not considered to controvert the requirement of no more than twelve months' credited service in any year's period.


(a) Normal retirement. — A member who ceases covered employment, has attained normal retirement age,
and whose annuity starting date is within forty-five days of
the later of the two, shall receive retirement income
payments equal to his or her accrued benefit in the normal
form or retirement income payments in an optional form
as provided under section twelve of this article which is the
actuarial equivalent of his or her accrued benefit in the
normal form.

(b) Early retirement. — A member who ceases covered
employment and has attained early retirement age while in
covered employment may elect to receive retirement
income payments commencing at age fifty or older which
is the actuarial equivalent of the member's accrued benefit
which would have been payable at the member’s normal
retirement age based upon his or her final average salary
and years of credited service determined at the cessation
of his or her covered employment. Payments will be in
the normal form or in an optional form as allowed in
section twelve of this article which is the actuarial
equivalent of the normal form as reduced for early
commencement of benefits.

(c) Late retirement. — A member whose annuity
starting date is more than forty-five days after the later of
his or her attainment of normal retirement age or the
cessation of his or her covered employment shall receive
retirement income payments equal to the accrued benefit
in the normal form which is the actuarial equivalent of the
benefit to which he or she would be entitled had the
retirement income payments commenced within forty-five
days of the later of his or her attainment of normal
retirement age or cessation of covered employment.

(d) Retirement benefits shall be paid monthly in an
amount equal to one twelfth of the retirement income
payments elected and at those times established by the
board. Notwithstanding any other provision of the plan, a
member who is married on the annuity starting date will
receive his or her retirement income payments in the form
of a sixty-six and two-thirds percent joint and survivor
annuity with his or her spouse unless prior to the annuity
starting date the spouse waives the form of benefit.

§7-14D-12. Annuity options.
Prior to the effective date of retirement, but not thereafter, a member may elect to receive retirement income payments in the normal form, or the actuarial equivalent of the normal form from the following options:

(a) Option A - Joint and Survivor Annuity. A life annuity payable during the joint lifetime of the member and his or her beneficiary who is a natural person with an insurable interest in the member's life. Upon the death of either the member of his or her beneficiary, the benefit shall continue as a life annuity to the survivor in an amount equal to fifty percent, sixty-six and two-thirds percent, seventy-five percent or one hundred percent of the amount paid while both were living as selected by the member. If the retiring member is married, the spouse shall sign a waiver of benefit rights if the beneficiary is to be other than the spouse.

(b) Option B - Contingent Joint and Survivor Annuity. A life annuity payable during the joint lifetime of the member and his or her beneficiary who must be a natural person with an insurable interest in the member's life. Upon the death of the member, the benefit shall continue as a life annuity to the beneficiary in an amount equal to fifty percent, sixty-six and two-thirds percent, seventy-five percent or one hundred percent of the amount paid while both were living as selected by the member. If the beneficiary dies first, the monthly amount of benefits shall be reduced. If the retiring member is married, the spouse shall sign a waiver of benefit rights if the beneficiary is to be other than the spouse.

(c) Option C - Ten Years Certain and Life Annuity. A life annuity payable during the member's lifetime but in any event for a minimum of ten years. If the member dies before the expiration of ten years, the remaining payments shall be made to a designated beneficiary, if any, or otherwise to the member's estate.

(d) Option D - Level Income Annuity. A life annuity payable monthly in an increased amount “A” from the time of retirement until the member is social security retirement age, and then a lesser amount “B” payable for the member’s lifetime thereafter, with these amounts
computed actuarially to satisfy the following two conditions:

(1) Actuarial equivalence. The actuarial present value at the date of retirement of the member's annuity if taken in the normal form must equal the actuarial present value of the term life annuity in amount “A” plus the actual present value of the deferred life annuity in amount “B”.

(2) Level income. The amount “A” equals the amount “B” plus the amount of the member’s estimated monthly social security primary insurance amount that would commence at the date amount “B” becomes payable. For this calculation, the primary insurance amount is estimated when the member applies for retirement, using social security law then in effect, using assumptions established by the board.

(e) Option E - Level Income Joint and Survivor Annuity. An annuity structured under the same methodology as in subdivision (d) of this section, with the term annuity amount “A” payable until the member's social security retirement age and the amount “B” payable as a fifty percent, sixty-six and two-thirds percent, seventy-five percent or one hundred percent joint and survivor annuity upon the member’s attaining social security retirement age with the members selecting the applicable percentage rate, if the retiring member is married, the spouse shall sign a waiver of benefit rights if the beneficiary is to be other than the spouse.

(f) Option F - Increasing Annuity. A life annuity payable in any of the forms described in this section, and subject to the corresponding conditions, with the amount of monthly payment increasing at one and one-half percent, two percent or two and one-half percent compounded annually throughout the life of the annuity. Annuities taken in this form shall be adjusted the first day of April of each year following the member's annuity starting date with a prorated increase given on the first day of April to retirees who have not yet been retired a full year on that date.
In the case of a member who has elected the options set forth in subdivisions (b) and (e) of this section, respectively, and whose beneficiary dies prior to the member’s death, the member may name an alternative beneficiary. If an alternative beneficiary is named within eighteen months following the death of the prior beneficiary, the benefit shall be adjusted to be the actuarial equivalent of the member’s normal form of benefit. If the election is not made until eighteen months after the death of the prior beneficiary, the amount shall be reduced so that it is only ninety percent of the actuarial equivalent of the member’s normal form of benefit.

§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement.

(a) Any member who terminates covered employment and is not eligible to receive disability benefits under this article is, by written request filed with the board, entitled to receive from the fund the member’s accumulated contributions. Except as provided in subsection (b) of this section, upon withdrawal the member shall forfeit his or her accrued benefit and cease to be a member.

(b) Any member who withdraws accumulated contributions from either this plan or the public employees retirement system and thereafter becomes reemployed in covered employment shall not receive any credited service for the prior employment unless following his or her return to covered employment, the member redeposits in the fund the amount of the accumulated contributions, together with interest on the accumulate contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same credit on account of his or her former service as if no refund had been made. The repayment shall be made in a lump sum within sixty months of the deputy sheriff’s reemployment sum or if later, within sixty months of the effective date of this article.

(c) Every member who completes sixty months of covered employment is eligible, upon cessation of covered employment, to either withdraw his or her accumulated
contributions in accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated contribution and to receive retirement income payments upon attaining early or normal retirement age.


Any member who after the effective date of this article and during covered employment: (A) Has been or becomes either totally or partially disabled by injury, illness or disease; and (B) the disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or (C) the disability was incurred while performing law-enforcement functions during either scheduled work hours or at any other time; and (D) in the opinion of the board, the member is by reason of the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of the member, or if sooner until the member attains normal retirement age or until the disability sooner terminates, the compensation under either subdivision (a) or (b) of this section.

(a) If the member is totally disabled, the member shall receive ninety percent of his or her average monthly compensation for the twelve-month period preceding the member’s disability, or the shorter period if the member has not worked twelve months.

(b) If the member is partially disabled, the member shall receive forty-five percent of his or her average monthly compensation for the twelve-month period preceding the member’s disability, or the shorter period if the member has not worked twelve months.

If the member remains totally disabled until attaining sixty-five years of age, the member shall then receive the retirement benefit provided for in sections eleven and twelve of this article.

If the member remains partially disabled until attaining sixty years of age the member shall then receive
§7-14D-15. Same — Due to other causes.

(a) Any member who after the effective date of this article and during covered employment: (1) Has been or becomes totally or partially disabled from any cause other than those set forth in section fourteen of this article and not due to vicious habits, intemperance or willful misconduct on his or her part; and (2) in the opinion of the board, he or she is by reason of the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of the member, or if sooner until the member attains normal retirement age or until the disability sooner terminates the compensation set forth in, either subsection (b) or (c) of this section.

(b) If the member is totally disabled, he or she shall receive sixty-six and two-thirds percent of his or her average monthly compensation for the twelve-month period preceding the disability, or the shorter period, if the member has not worked twelve months.

(c) If the member is partially disabled, he or she shall receive thirty-three and one-third percent of his or her average monthly compensation for the twelve-month period preceding the disability, or the shorter period, if the member has not worked twelve months.

(d) If the member remains disabled until attaining sixty years of age, then the member shall receive the retirement benefit provided for in sections eleven and twelve of this article.

(e) The board shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code concerning member disability payments so as to ensure that the payments do not exceed one hundred percent of the average current salary in any given county for the position last held by the member.
§7-14D-16. Same — Physical examinations; termination of disability.

The board may require any member who has applied for or is receiving disability benefits under this article to submit to a physical examination, mental examination or both, by a physician or physicians selected or approved by the board and may cause all costs incident to the examination and approved by the board to be paid from the fund. The costs may include hospital, laboratory, X-ray, medical and physicians’ fees. A report of the findings of any physician shall be submitted in writing to the board for its consideration. If, from the report, independent information, or from the report and any hearing on the report, the board is of the opinion and finds that: (1) The member has become reemployed as a law-enforcement officer; (2) two physicians who have examined the member have found that considering the opportunities for law enforcement in West Virginia, the member could be so employed as a deputy sheriff; or (3) other facts exist to demonstrate that the member is no longer totally disabled or partially disabled as the case may be, then the disability benefits shall cease. If the member was totally disabled and is found to have recovered, the board shall determine whether the member continues to be partially disabled. If the board finds that the member is no longer totally disabled but is partially disabled, then the member shall continue to receive partial disability benefits in accordance with this article. Benefits shall cease once the member has been found to be no longer either totally or partially disabled: Provided, That the board shall require recertification for each partial or total disability at regular intervals as specified by the guidelines adopted by the public employees retirement system.

§7-14D-17. Prior disability.

Any deputy sheriff who became totally disabled as a result of illness or injury incurred in the line of duty prior to the effective date of this article may be a member of the plan at his or her election and is entitled to disability, death and retirement benefits under this article in lieu of
any other disability, death or retirement benefits provided by the state or his or her county of employment: Provided, That the deputy would have been eligible for disability under section fourteen of this article had that section been in effect at the time of the disability. The amounts of the benefits shall be determined as if the disability first commenced after the effective date of this article with monthly compensation equal to that average monthly compensation which the member was receiving in the plan year prior to the initial disability.

§7-14D-18. Awards and benefits to surviving spouse — When member dies in performance of duty, etc.

(a) The surviving spouse of any member who, after the effective date of this article while in covered employment, has died or dies, by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members, while the member was or is engaged in the performance of his or her duties as a deputy sheriff, or the survivor spouse of a member who dies from any cause while receiving benefits pursuant to section fourteen of this article, is entitled to receive and shall be paid from the fund benefits as determined in subsection (b) of this section: To the surviving spouse annually, in equal monthly installments during his or her lifetime an amount equal to the greater of: (i) Two thirds of the base salary received in the preceding twelve-month period by the deceased member; or (ii) if the member dies after his or her early or normal retirement age, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a one hundred percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(b) Benefits for a surviving spouse received under this section, section twenty and section twenty-one of this article are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based upon the member’s covered employment.
§7-14D-19. Same — When member dies from nonservice-connected causes.

(a) In any case where a member who has been a member for at least ten years, while in covered employment after the effective date of this article, has died or dies from any cause other than those specified in section eighteen of this article and not due to vicious habits, intemperance or willful misconduct on his or her part, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime, a sum equal to the greater of: (i) One half of the base salary received in the preceding twelve-month employment period by the deceased member; or (ii) if the member dies after his or her early or normal retirement age, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a one hundred percent joint and survivor annuity with the spouse as the joint annuitant, and then died. Where the member is receiving disability benefits under section fourteen of this article at the time of his or her death, the most recent monthly compensation determined under section seventeen of this article shall be substituted for the base salary in (i) of this section.

(b) Benefits for a surviving spouse received under this section, section twenty and section twenty-one of this article are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based upon the member’s covered employment.

§7-14D-20. Additional death benefits and scholarships — Dependent children.

(a) In addition to the spouse death benefits in sections eighteen and nineteen of this article, the surviving spouse is entitled to receive and there shall be paid to the spouse one hundred dollars monthly for each dependent child.

(b) If the surviving spouse dies or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to one fourth of the surviving spouse’s entitlement under either section
nineteen or twenty of this article. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive.

(c) Any person qualifying as a dependent child under this, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding six thousand dollars per year, shall be paid from the fund to any university or college in this state or to any trade or vocational school or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under such rules as the board may provide, and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.


Any member who dies as a result of any service related illness or injury after the effective date is entitled to a lump sum burial benefit of five thousand dollars. If the member is married, the burial benefit will be paid to the member's spouse. If the member is not married, the burial benefit will be paid to the member's estate for the purposes of paying burial expenses, settling the member's final affairs, or both. Any unspent balance shall be
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9 distributed as a part of the member's estate. If the  
10 member is not entitled to a death benefit under sections  
11 nineteen and twenty of this article, then if greater, the  
12 amount payable to the member's estate shall be his or her  
13 accumulated contributions.  

§7-14D-22. Double death benefits prohibited.  

1 A surviving spouse is not entitled to receive  
2 simultaneous death benefits under this article as a result of  
3 the death of two or more members to whom the spouse  
4 was married. Any spouse who becomes eligible for a  
5 subsequent death benefit under this article while receiving  
6 a death benefit under this article shall receive the higher  
7 benefit, but not both.  

§7-14D-23. Loans to members.  

1 (a) A member who is not yet receiving disability or  
2 retirement income benefits from the plan may borrow  
3 from the plan an amount up to one half of his or her  
4 accumulated contributions, but not less than five hundred  
5 dollars nor more than eight thousand dollars. No loan  
6 may be made from the plan if the board determines that  
7 the loans constitute more than fifteen percent of the  
8 amortized cost value of the assets of the plan as of the last  
9 day of the preceding plan year. The board may  
10 discontinue the loans any time it determines that cash flow  
11 problems might develop as a result of the loans. Each  
12 loan shall be repaid through monthly installments over  
13 periods of six through sixty months and carry interest on  
14 the unpaid balance and an annual effective interest rate  
15 that is two hundred basis points higher than the most  
16 recent rate of interest used by the board for determining  
17 actuarial contributions levels. Monthly loan payments  
18 shall be calculated to be as nearly equal as possible with all  
19 but the final payment being an equal amount. An eligible  
20 member may make additional loan payments or pay off  
21 the entire loan balance at any time without incurring any  
22 interest penalty. At the member's option, the monthly  
23 loan payment may include a level premium sufficient to  
24 provide declining term insurance with the plan as  
25 beneficiary to repay the loan in full upon the member's  
26 death. If a member declines the insurance and dies before
§7-14D-24. Service as sheriff.

Any member who after the effective date of this article is elected sheriff of a county in West Virginia may elect to continue as a member in this plan by paying the amounts required by section seven of this article. Upon the election, service as a sheriff shall be treated as covered employment and the sheriff is not entitled to any credit for that service under any other retirement system of the state.

§7-14D-25. Exemption from taxation, garnishment and other process.

The moneys in the fund and the right of a member, spouse or other beneficiary to benefits under this article, to the return of contributions, or to any retirement, death or disability payments under the provisions of this article, are exempt from any state or municipal tax; are not subject to execution, garnishment, attachment or any other process whatsoever with the exception that the benefits are subject to a qualified domestic relations order as that term is defined in section 414 (p) of the Internal Revenue Code; and are unassignable except as is provided in this article.

§7-14D-26. Fraud; penalties; and repayment.

Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement system in any attempt to defraud that system is guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed one thousand dollars, by
confinement in the county or regional jail not to exceed one year, or by both a fine and confinement. Any increased benefit received by any person as a result of the falsification or fraud shall be returned to the fund upon demand by the board.

§7-14D-27. Credit toward retirement for member’s prior military service; credit toward retirement when member has joined armed forces in time of armed conflict.

(a) Any member who has previously served on active military duty is entitled to receive additional years of service for the purpose of determining his or her years of credited service for a period equal to the active military duty not to exceed five years, subject to the following:

(1) That he or she has been honorably discharged from the armed forces;

(2) That he or she substantiates by appropriate documentation or evidence his or her period of active military duty; and

(3) That he or she is receiving no benefits from any other retirement system for his or her active military duty.

(b) In addition, any member who while in covered employment was commissioned, enlisted or inducted into the armed forces of the United States or, being a member of the reserve officers’ corps, was called to active duty in the armed forces between the first day of September, one thousand nine hundred forty, and the close of hostilities in World War II, or between the twenty-seventh day of June, one thousand nine hundred fifty, and the close of the armed conflict in Korea on the twenty-seventh day of July, one thousand nine hundred fifty-three, between the first day of August, one thousand nine hundred sixty-four, and the close of the armed conflict in Vietnam, or during any other period of armed conflict by the United States whether sanctioned by a declaration of war by the Congress or by executive or other order of the president, is entitled to and shall receive credited service, for a period equal to the full time that he or she has or, pursuant to that
commission, enlistment, induction or call, shall have served
with the armed forces subject to the following:

(1) That he or she has been honorably discharged
from the armed forces;

(2) That within ninety days after honorable discharge
from the armed forces, he or she presented himself or
herself to the county commission and offered to resume
service as a deputy sheriff; and

(3) That he or she has made no voluntary act, whether
by reenlistment, waiver of discharge, acceptance of
commission or otherwise, to extend or participate in
extension of the period of service with the armed forces
beyond the period of service for which he or she was
originally commissioned, enlisted, inducted or called.

(c) The total amount of service allowable under
subsections (a) and (b) of this section may not exceed five
years.

(d) Any service credit allowed under this section may
be credited one time only for each deputy sheriff,
regardless of any changes in job title or responsibilities.


Any provision in this article to the contrary
notwithstanding, if at the end of any fiscal year the total of
the annuities paid from the retirement fund during the
said fiscal year is more than ten percent of the sum of the
balances in the fund at the end of the said fiscal year, the
said annuities payable in the next ensuing fiscal year shall
be reduced, pro rata, so that the sum of the annuities so
reduced shall not exceed ten percent of the sum of the
said balances in the fund. The said pro rata reduction
shall be applied to all annuities payable in the said ensuing
fiscal year.

§7-14D-29. Effective date; report to joint committee on
government and finance; special starting date
for benefits.
(a) The provisions of this article become effective the first day of July, one thousand nine hundred ninety-eight: Provided, That no payout of any benefits may be made to any person prior to the first day of January, two thousand: Provided, however, That members who retired due to a disability may begin receiving the benefits at the rate and in the amount specified in either section fourteen or section fifteen of this article, as the case may be, from this fund after the thirtieth day of June, one thousand nine hundred ninety-nine: Provided further, That until the thirtieth day of June, one thousand nine hundred ninety-nine, those members who retired due to a disability may draw benefits from this fund at the rate and in the amount set forth in section twenty-five, article ten, chapter five of this code.

(b) During the eighteen-month period before the payout of benefits begins, the joint committee on government and finance shall cause an interim study or studies to be conducted on potential effects of the implementation of this retirement system, including, but not limited to, potential funding mechanisms to provide health insurance coverage for retirees in the fifty to fifty-five age group.

§7-14D-30. Limitation of county liability.

No county which has timely met all of its obligations under this article is liable for any payments or contributions to the deputy sheriff retirement plan which are owed to the plan by another county or counties. No county commission may deposit funds into the deputy sheriff retirement fund in excess of the amount specified in section seven of this article, the fees set forth in article fourteen-e of this chapter and the fees set forth in section seventeen, article three, chapter seventeen-a of this code.

ARTICLE 14E. ESTABLISHMENT OF CERTAIN FEES; DEDICATION OF FEE TO DEPUTY SHERIFF’S RETIREMENT SYSTEM.

§7-14E-1. Legislative findings and purpose.
§7-14E-1. Legislative findings and purpose.

(a) The Legislature hereby finds and declares that the preservation of peace is a necessary and important function and a requirement for an orderly society. This important function is carried on throughout the state of West Virginia at both the state and local level. Very important components of law enforcement in this state are the county sheriffs and their deputies.

(b) The Legislature, cognizant that it has enacted retirement legislation for municipal police officers and for the state police, declares that deputy sheriffs are now in need of a retirement system. The Legislature further declares that the deputy sheriffs of this state are professional law-enforcement officers who keep the peace, help and protect the citizens of this state. The Legislature finds that, when it comes to retirement, the deputy sheriffs are treated differently than other law-enforcement officers in this state.

(c) For the foregoing reasons, and for other important reasons, the Legislature created the deputy sheriff’s retirement system under article fourteen-d of this chapter. The fees established in this article are to help ensure the actuarial soundness of the deputy sheriff’s retirement system.

§7-14E-2. Statewide uniform fees for reports generated by sheriff’s offices; dedication of fees.

(a) Effective the first day of July, one thousand nine hundred ninety-eight, the county commission of each county in this state shall set a fee for obtaining certain reports. This fee shall be set at a minimum of ten dollars for each report, with a maximum of twenty dollars for each report. Ten dollars of the charge for each report shall be deposited into the deputy sheriff’s retirement fund created in section six, article fourteen-d, chapter
seven of this code. The reports for which a charge may be made are traffic accident reports, criminal investigation reports, incident reports and property reports.

(b) Effective the first day of July, one thousand nine hundred ninety-eight, all sheriff's offices in this state shall collect a fee of five dollars for performing the following services: adult private employment fingerprinting; fingerprinting for federal firearm permits; motor vehicle number identification; adult identification card and photo-identification card. Upon collection, these fees shall be deposited into the deputy sheriff's retirement fund created in section six, article fourteen-d of this chapter.

(c) Effective the first day of July, one thousand nine hundred ninety-eight, all sheriff's offices in this state shall collect a fee of five dollars for each nongovernmental background investigation report. Upon collection, these fees shall be deposited into the deputy sheriff's retirement fund created in section six, article fourteen-d, chapter seven of this code.

(d) No charge may be made under this section for any report or reports made to governmental agencies.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

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

§17A-3-17. Application for and renewal of registration; sheriffs authorized to issue renewals of registration for certain vehicles.

(a) Application for renewal of a vehicle registration shall be made by the vehicle owner by proper application and payment of taxes and registration fees provided by law.

(b) The division may receive applications for renewal of any vehicle registration and each sheriff shall receive
applications from residents in his or her county for
renewal of any Class A or G vehicle registration. The
division and each sheriff shall issue the renewals of
registration each receives, respectively, in accordance with
all of the provisions in this article pertaining to renewal of
vehicle registration including, but not limited to, the
payment of the taxes and fees required thereunder.

(c) Each sheriff shall charge a service fee of one dollar
for each renewal of a Class A or G vehicle registration he
or she issues. Effective the first day of July, one thousand
nine hundred ninety-eight, the sheriff shall pay one half
of this fee into the county general fund. The sheriff shall
pay the remaining one half of this fee into the deputy
sheriff retirement fund created in section six, article
fourteen-d, chapter seven of this code.

(d) On the first day of each month, each sheriff shall
pay over to the commissioner all fees he or she collected
during the preceding month for renewal of Class A and G
vehicle registrations, except his or her service fees. The
payment shall be accompanied by a report showing the
name of the county, the name and address of the person
who obtained the registration and paid the registration fee
therefor, the vehicle registered, the registration number,
the date the registration was issued, the signature of the
sheriff and any other information the commissioner may
reasonably require in order to maintain the functions and
records of the department. The commissioner shall
deposit all fees he or she receives from the sheriffs for
renewal of Class A and G vehicle registrations in the state
treasury to the credit of the state road fund as provided in
section twenty-one, article two of this chapter.

(e) The commissioner shall provide each sheriff with
the necessary forms, supplies, registration plates,
registration decals and instructions necessary to enable
him or her to perform the duties and functions specified
in this section.

(f) No person may display upon a vehicle a new
registration plate or registration decal prior to the first day
of the month preceding the new registration period.
AN ACT to amend article ten-d, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to authorizing the deduction from the monthly benefits of retirees for the payment of dues to retiree associations and providing a procedure for authorizing and revoking authority for such dues deductions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-6. Voluntary deductions by the consolidated public retirement board from monthly benefits to retirees to pay association dues.

Any recipient of monthly retirement benefits from any public retirement plan in this state may authorize that a deduction from his or her monthly benefits be made for the payment of membership dues or fees to a retiree association. The deductions shall be authorized on a form provided by the consolidated public retirement board and shall include: (a) The identity and social security number of the retiree; (b) the amount and frequency of the deduction; (c) the identity and address of the association to which the dues or fees shall be paid; and (d) the signature of the retiree. Upon execution of the authorization and its receipt by the consolidated public retirement board, the deduction shall be made in the manner specified on the form and remitted to the
designated association on the tenth day of each month:
Provided, That the deduction may not be made more
frequently than monthly. Deduction authorizations may
be revoked at any time at least thirty days prior to the date
on which the deduction is regularly made and on a form
to be provided by the consolidated public retirement
board.

CHAPTER 242

(S. B. 750—By Senators Prezioso, Bailey, Dittmar and Buckalew)

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

AN ACT to amend and reenact section eighty-seven, article one-
e, chapter fifteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to creating a
state offense of absence without leave; and penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1E. CODE OF MILITARY JUSTICE.

PART X. PUNITIVE SECTIONS.

§15-1E-87. Absence without leave.

(a) Any person subject to this article who, without
authority:

(1) Fails to go to his or her appointed place of duty at
the time prescribed;

(2) Goes from that place; or

(3) Absents himself or herself or remains absent from
his or her unit, organization or place of duty at which he
or she is required to be at the time prescribed; shall be
punished as a court-martial may direct.
(b) In addition, the offense committed under subsection (a) of this section, constitutes a misdemeanor triable in the criminal courts of this state. Any person convicted hereunder shall be sentenced to confinement in the county or regional jail as follows: (1) One day for each unit training assembly from which the person was absent without leave; or (2) one day for each day of annual training or other duty from which the person was absent without leave.

These sentences are mandatory and shall not be subject to suspension, probation, reduction or home confinement.

CHAPTER 243

(S. B. 745—By Senators Wooton, Ball, Bowman, Dittmar, Hunter, Kessler, Oliverio, Ross, Schoonover, Snyder, White, Buckalew and Kimble)

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

AN ACT to amend and reenact section two, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of the public service commission to regulate public utilities; and authorizing the commission to require public utilities to charge emergency shelter providers the lowest rates available.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-2. General power of commission to regulate public utilities.
(a) The commission is hereby given power to investigate all rates, methods and practices of public utilities subject to the provisions of this chapter; to require them to conform to the laws of this state and to all rules, regulations and orders of the commission not contrary to law; and to require copies of all reports, rates, classifications, schedules and timetables in effect and used by the public utility or other person, to be filed with the commission, and all other information desired by the commission relating to the investigation and requirements, including inventories of all property in such form and detail as the commission may prescribe. The commission may compel obedience to its lawful orders by mandamus or injunction or other proper proceedings in the name of the state in any circuit court having jurisdiction of the parties or of the subject matter, or the supreme court of appeals direct, and the proceedings shall have priority over all pending cases. The commission may change any intrastate rate, charge or toll which is unjust or unreasonable or any interstate charge with respect to matters of a purely local nature which have not been regulated by or pursuant to an act of Congress and may prescribe a rate, charge or toll that is just and reasonable, and change or prohibit any practice, device or method of service in order to prevent undue discrimination or favoritism between persons and between localities and between commodities for a like and contemporaneous service. But in no case shall the rate, toll or charge be more than the service is reasonably worth, considering the cost of the service. Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, or until revoked or modified by the commission, unless the order is suspended, modified or revoked by order or decree of a court of competent jurisdiction: Provided, That in the case of utilities used by emergency shelter providers, the commission shall prescribe such rates, charges or tolls that are the lowest available. "Emergency shelter provider" means any nonprofit entity which provides temporary emergency housing and services to the homeless or to victims of domestic violence or other abuse.
(b) Notwithstanding any other provision of this code to the contrary, rates are not discriminatory if, when considering the debt costs associated with a future water or sewer project which would not benefit existing customers, the commission establishes rates which ensure that the future customers to be served by the new project are solely responsible for the debt costs associated with the project.

CHAPTER 244

(Com. Sub. for H. B. 4277—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

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

AN ACT to amend article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen, relating to deregulation of electric service; setting forth legislative findings; providing jurisdiction to the public service commission to determine whether permitting retail customers in West Virginia to obtain direct access to competitive markets for their power supply is in the public interest; authorizing commission to develop a deregulation plan if such a determination is made; providing for involvement of interested parties; requiring that deregulation plan be submitted to the Legislature for approval or rejection; requiring issuance of reports on findings and on the potential state and local tax consequences of any plan submitted by the commission; permitting persons participating in plan development to issue reports; and providing continuing jurisdiction to the commission to modify or rescind any plan implemented by the commission.

Be it enacted by the Legislature of West Virginia:

That article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eighteen, to read as follows:
ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-18. Legislative findings on electric service; jurisdiction of the commission to determine public interest in permitting retail access to competitive power supply markets; participation of interested parties; development of deregulation plan; legislative approval or rejection of plan; certain reports required or permitted; continuing jurisdiction.

(a) The Legislature hereby finds that:

(1) Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and the cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in West Virginia. Therefore, reliable electric service should continue to be available to all customers at reasonable rates and on reasonable terms and conditions;

(2) Many state governments have been studying policies that would create a competitive market for the supply of electricity;

(3) The public service commission is the appropriate agency to determine whether West Virginia should adopt a plan whereby users of electricity in the state would have open access across existing and new utility delivery systems to a competitive market for power supply. An affirmative determination of this question is hereafter designated in this section as a “finding of public interest.” If the commission makes a finding of public interest, the commission is also the appropriate agency to develop such a plan for submission to the Legislature for approval, hereafter designated in this section as a “deregulation plan.”

(4) Notwithstanding the commission’s substantial expertise in the supervision and regulation of the electricity generation industry, the significant public policy issues involved in determining whether to make a finding of public interest and, if necessary, in developing a deregulation plan, require that the commission seek and
secure the involvement of a wide spectrum of interests in
the state, including but not limited to the following
interests, hereafter collectively designated in this section as
"all interested parties": groups representing senior
citizens and other persons on fixed incomes, including the
American association of retired persons; groups
representing low income persons and the working poor,
including the West Virginia community action directors
association; labor unions, including the West Virginia
AFL-CIO, the communications workers of America, the
united mine workers of America, the West Virginia state
building and construction trades council, the international
brotherhood of electrical workers, the independent steel
workers, and the united steel workers of America; groups
representing residential consumers; groups representing
industrial consumers; groups representing commercial
consumers; groups representing the electric utility
industry and electricity generation concerns; groups
representing natural resources industries and associated
industries, including the West Virginia coal association and
the West Virginia oil and natural gas association; groups
representing heating, ventilating and air conditioning
contractors, including the West Virginia heating,
ventilating, air conditioning and electrical contractors
association; groups representing environmental concerns;
the electric industry research group of West Virginia
university; the West Virginia municipal league; and any
other person or group which has an interest in these issues.

(5) In order to provide meaningful involvement and
participation to all interested parties in determining
whether to make a finding of public interest and, if
necessary, in developing a deregulation plan, the
commission is directed (A) to provide notice to all
interested parties of each public meeting to be held by the
commission in studying whether to make a finding of
public interest and, if necessary, in developing a
deregulation plan, including providing written notice by
first class mail at least five days prior to the date of each
public meeting to each of the groups specifically
identified in subdivision (4) of this subsection; (B) to
consult with all interested parties attending such public
meetings; and (C) to report periodically to the joint
committee on government and finance of the Legislature
or any interim study committee appointed by the joint
committee on government and finance on the
commission’s progress on these issues.

(6) The commission may not submit a deregulation
plan to the Legislature for approval unless it submits
findings and explains the basis for its findings, after
providing adequate notice to all interested parties and
other persons and holding a hearing or hearings, that the
deregulation plan fairly balances the interests of the
electric utilities, their customers, and the state's economy,
and that the deregulation plan:

(A) Is in the best interest of West Virginia electric
energy consumers;

(B) Results in potential benefits available for all
customers, considering that while some customers may be
immediately benefited by reductions in electricity costs,
depending on their individual needs and choices, no
customer should be worse off;

(C) Preserves universal electric service at reasonable
rates;

(D) Maintains reasonable standards of safety,
availability and reliability of electric service for all
customers at all times, including at times of peak load
usage of electric service;

(E) Does not result in a substantial negative impact on
employment in the state or the state's economy;

(F) Does not impact compliance with environmental
rules;

(G) Considers and maintains the public benefits of
energy efficiency, renewable resource technology and
research and development;

(H) Encourages the continued and expanded use of
West Virginia coal, oil, natural gas and other energy
resources;

(I) Assures that customers have meaningful choices
among electricity providers and that customers are
protected from anticompetitive behavior, poor service, and
unfair billing, collection and disconnection procedures;
(J) Is conditioned upon workable competition with a level playing field for all buyers and sellers, and provides for a code of conduct for electric service providers to be established by commission rule;

(K) Assures that existing commitments of utilities arising from past decisions made pursuant to historical regulatory and legal principles are addressed in a fair and reasonable manner, considering the financial integrity of the utilities;

(L) Addresses and maintains adequate protections for low-income consumers and gives meaningful consideration to the development of funding mechanisms to protect senior citizens and other persons on fixed incomes, low income persons and the working poor; and

(M) Ensures that regulated industries do not subsidize nonregulated industries and businesses.

(7) Restructuring of the electric utility industry should reasonably preserve tax revenues for state and local governments and should neither result in a shift of the tax burden to any customer or customer group nor result in a tax system which places any competitor in the market place at a disadvantage.

(b) In addition to its other powers and duties, the commission is authorized to determine, in consultation with all interested parties, whether to make a finding of public interest, and if a finding of public interest is made:

(1) To develop, in consultation with all interested parties, a deregulation plan to allow deregulation of existing utility generation assets and direct access by retail customers to competitive electric power supply markets and which is consistent with the legislative findings set forth in subsection (a) of this section;

(2) To prescribe, by order or rules, procedures and standards for the marketing of power supply in the state; and

(3) To resolve all issues necessary to provide for an orderly transition from the current regulated structure to a system of direct retail access in a fully workable
competitive power supply market in a manner that is fair
to customers, electric utilities and other affected parties.

(c) If the commission develops a deregulation plan
pursuant to subsection (b) of this section, the commission
shall submit the deregulation plan to each house of the
Legislature during the next succeeding regular session of
the Legislature or during any special session of the
Legislature occurring after such regular session if
legislative approval of the deregulation plan is included in
the call therefor. Upon such submission, the Legislature
shall, by concurrent resolution, approve or reject the
deregulation plan. If the deregulation plan is so rejected,
the concurrent resolution shall set forth the reasons for
such rejection, and the commission may subsequently
modify the deregulation plan to meet the objections of the
Legislature and may resubmit it as modified to the
Legislature pursuant to this subsection. No initial or
modified deregulation plan may be adopted or
implemented by the commission until the Legislature has
approved it pursuant to this subsection.

(d) Upon the development of a deregulation plan and
prior to or concurrently with the submission of the
deregulation plan to the Legislature pursuant to subsection
(c) of this section, the commission shall issue a report to
the governor, the president of the Senate and the speaker
of the House of Delegates on the potential state or local
tax consequences which might be created by
implementation of the deregulation plan, along with
recommendations for statutory changes, if any are
necessary, to satisfy the legislative findings specified in
subdivisions (6) and (7), subsection (a) of this section.

(e) Upon the development of a deregulation plan and
prior to or concurrently with the submission of the
deregulation plan to the Legislature pursuant to subsection
(c) of this section, any interested party who actively
consulted with the commission during the development of
the deregulation plan may issue a report to the governor,
the president of the Senate and the speaker of the House
of Delegates setting forth the instances in which such
interested party believes the deregulation plan does not
satisfy one or more of the legislative findings specified in
subdivisions (6) and (7), subsection (a) of this section.
192 (f) After the adoption and implementation of a
deregulation plan approved by the Legislature pursuant to
subsection (c) of this section, the commission shall retain
authority and jurisdiction to modify or rescind the
deregulation plan if, upon application to the commission
or upon the commission's own motion, and after notice to
all interested parties and a hearing, the commission finds
that it is in the public interest to do so, after making a
finding that a substantial change in state or federal law or
a court decision necessitates the rescission or modification
of the deregulation plan to continue to meet the legislative
findings in this section or that for any other reason the
deregulation plan is not meeting such legislative findings.
The implementation of a deregulation plan through an
order of the commission pursuant to this section does not
amend existing provisions of this code, except as
specifically herein modified.

CHAPTER 245

(H. B. 4548—By Delegates Martin, Varner and Michael)

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

AN ACT to amend and reenact sections ten-c and ten-d, article
three, chapter twelve 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 ten-e, all relating to the state purchasing
card program; exempting the Legislature from any fees
associated with the use or nonuse of the state purchasing
card; providing that the purchasing card fund shall be
administered by the state auditor; and creating a purchasing
card advisory committee.

Be it enacted by the Legislature of West Virginia:

That sections ten-c and ten-d, article three, chapter twelve 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 ten-e, all to read as follows:

ARTICLE 3. Appropriations, Expenditures and Deductions.

§12-3-10c. Transaction fees; disposition of fees.
§12-3-10d. Purchasing card fund created; expenditures.
§12-3-10e. Purchasing card advisory committee created; purpose; membership; expenses.

§12-3-10c. Transaction fees; disposition of fees.

(a) In order to promote and enhance the use of the state purchasing card program established by the provisions of section ten-a of this article and in order to maintain and develop the fiscal operations and accounting systems of the state, the auditor and the treasurer may assess joint transaction fees for all financial documents that will be processed on the central accounting system. Such transaction fees shall be prescribed by legislative rule proposed in accordance with article three, chapter twenty-nine-a of this code and may include the following:

(1) A penalty fee to be assessed against spending units of state government who submit claims for payment of goods and services when those claims are authorized to be paid by use of a state purchasing card and the spending unit has failed to utilize the state purchasing card; and

(2) A transaction fee to be assessed against spending units of state government for every transaction received, electronically or otherwise, by the auditor from the centralized accounting system.

(b) All fees collected under this section shall be deposited into the “Technology Support and Acquisition Fund” which is hereby created in the state treasury to be administered by the auditor. The auditor and treasurer shall use moneys deposited in the fund to maintain and develop the state purchasing card program, support the fiscal operations of the state, including the state centralized accounting system, and to acquire and improve the technology required to support these functions: Provided,
That expenditures from the fund are authorized from collections and are to be made only in accordance with an appropriation by the Legislature and in accordance with the provision of article three of this chapter and upon fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, however, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, expenditures from the fund may be made from collections: Provided further, That the Legislature is exempt from any fees imposed under this section.

§12-3-10d. Purchasing card fund created; expenditures.

All money received by the state pursuant to any agreement with vendors providing purchasing charge cards shall be deposited in a special revenue revolving fund designated the “Purchasing Card Administration Fund”, in the state treasury to be administered by the auditor. All expenses by the auditor in the implementation and operation of the purchasing card program shall be paid from the fund. Expenditures from the fund shall be made in accordance with appropriations by the Legislature pursuant to the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-a of this code.

§12-3-10e. Purchasing card advisory committee created; purpose; membership; expenses.

There is created a purchasing card advisory committee to enhance the development and implementation of the purchasing card program. The committee shall solicit input from state agencies and make recommendations to improve the performance of the purchasing card program. The committee consists of eleven members to be appointed as follows:

(1) The auditor shall serve as chairperson of the committee and shall appoint three members from the state college system of West Virginia and the university system of West Virginia, one member from the department of health and human resources, and one member from the division of highways;
(2) The secretary of the department of administration shall appoint one member from the information services and communications division, one member from the financial accounting and reporting section, and one member from the purchasing division;

(3) The secretary of the department of tax and revenue shall appoint one member from the department of tax and revenue; and

(4) The state treasurer shall appoint one member from that office.

Committee members shall be appointed for a term of one year, commencing on the first day of July, one thousand nine hundred ninety-eight. Committee members shall receive reimbursement for expenses actually incurred in the performance of their duties on the committee.

CHAPTER 246

(H. B. 4632—By Delegate Pettit)

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

AN ACT to amend and reenact sections three, eight, nine and twelve, article twenty-two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to racetrack video lottery; creation of an additional permitted job classification of video lottery floor attendant; providing for an annual license or permit fee; defining the term "eprom"; and increasing the number of terminals which may be located in a nonconforming location.

Be it enacted by the Legislature of West Virginia:

That sections three, eight, nine and twelve, 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, all to read as follows:
ARTICLE 22A. RACETRACK VIDEO LOTTERY ACT.


§29-22A-8. Form of application; local option elections; issuance of license; notice of incomplete application; notice of license or permit denial, suspension or revocation; procedure for review of license or permit denial, suspension or revocation; fees, renewal fees and renewal dates; bonding; renewal of licenses and permits; notice of change affecting license or permit; license or permit not transferrable or assignable.

§29-22A-9. General duties of all video lottery license and permit holders; duties of permitted manufacturers; duties of permitted service technicians; duties of permitted validation managers; duties of floor attendants; duties of licensed racetracks.

§29-22A-12. Number and location of video lottery terminals; security.


1 As used in this article:

2 (a) "Applicant" means any person applying for any video lottery license or permit.

3 (b) "Associated equipment" means any hardware located on a licensed racetrack's premises which is connected to the video lottery system for the purpose of performing communication, validation or other functions, but not including the video lottery terminals or the communication facilities of a regulated public utility.

4 (c) "Background investigation" means a security, criminal and credit investigation of a person, as defined in this section, who has applied for a video lottery license or permit, or who has been granted a video lottery license or permit.

5 (d) "Central computer," "central control computer" or "central site system" means any central site computer provided to and controlled by the commission to which video lottery terminals communicate for purposes of information retrieval and terminal activation and to disable programs.

6 (e) "Commission" or "state lottery commission" means the West Virginia lottery commission created by article twenty-two of this chapter.
"Control" means the authority to direct the management and policies of an applicant or a license or permit holder.

"Costs" means the expenses incurred by the commission in the testing and examination of video lottery terminals and the performance of background investigations and other related activities which are charged to and collected from applicants or license or permit holders.

"Director" means the individual appointed by the governor to provide management and administration necessary to direct the state lottery office.

"Disable" or "terminal disable" means the process of executing a shutdown command from the central control computer which causes video lottery terminals to cease functioning.

"Display" means the visual presentation of video lottery game features on the video display monitor or screen of a video lottery terminal.

"EPROM" and "erasable programmable read-only memory chips" means the electronic storage medium on which the operation software for all games playable on a video lottery terminal resides and which can also be in the form of CD-ROM, flash RAM or other new technology medium that the commission may from time to time approve for use in video lottery terminals. All electronic storage media are considered to be the property of the state of West Virginia.

"Floor attendant" means a person, employed by a licensed racetrack, who holds a permit issued by the commission and who corrects paper jams and bill jams in video lottery terminals and also provides courtesy services for video lottery players.

"Gross terminal income" means the total amount of cash inserted into the video lottery terminals operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminals in exchange for winning redemption tickets.
(n) "License" or "video lottery license" means authorization granted by the commission to a racetrack which is licensed by the West Virginia racing commission to conduct thoroughbred or greyhound racing meetings pursuant to article twenty-three, chapter nineteen of this code permitting the racetrack to operate video lottery terminals authorized by the commission.

(o) "Lottery" means the public gaming systems or games established and operated by the state lottery commission.

(p) "Manufacturer" means any person holding a permit granted by the commission to engage in the business of designing, building, constructing, assembling or manufacturing video lottery terminals, the electronic computer components of the video lottery terminals, the random number generator of the video lottery terminals, or the cabinet in which it is housed, and whose product is intended for sale, lease or other assignment to a licensed racetrack in West Virginia, and who contracts directly with the licensee for the sale, lease or other assignment to a licensed racetrack in West Virginia.

(q) "Net terminal income" means gross terminal income minus an amount deducted by the commission to reimburse the commission for its actual costs of administering racetrack video lottery at the licensed racetrack. No deduction for any or all costs and expenses of a licensee related to the operation of video lottery games shall be deducted from gross terminal income.

(r) "Own" means any beneficial or proprietary interest in any property or business of an applicant or licensed racetrack.

(s) "Pari-mutuel racing facility", "licensed racetrack", "racetrack" or "track" means a facility where horse or dog race meetings are held and the pari-mutuel system of wagering is authorized pursuant to the provisions of article twenty-three, chapter nineteen of this code: Provided, that, for the purposes of this article, "pari-mutuel racing facility", "licensed racetrack", "racetrack" or "track" includes only a facility which was licensed prior to the first
day of January, one thousand nine hundred ninety-four, to hold horse or dog race meetings, and which conducts not less than two hundred twenty live racing dates for each horse or dog race meeting or such other number of live racing dates as may be approved by the racing commission in accordance with the provisions of section twelve-b, article twenty-three, chapter nineteen of this code.

(t) "Permit" means authorization granted by the commission to a person to function as either a video lottery manufacturer, service technician or validation manager.

(u) "Person" means any natural person, corporation, association, partnership, limited partnership, or other entity, regardless of its form, structure or nature.

(v) "Player" means a person who plays a video lottery game on a video lottery terminal at a racetrack licensed by the commission to conduct video lottery games.

(w) "Service technician" means a person, employed by a licensed racetrack, who holds a permit issued by the commission and who performs service, maintenance and repair on licensed video lottery terminals in this state.

(x) "Video lottery game" means a commission approved, owned and controlled electronically simulated game of chance which is displayed on the screen or video monitor of a video lottery terminal and which:

(1) Is connected to the commission's central control computer by an on-line or dial-up communication system;

(2) Is initiated by a player's insertion of coins or currency into a video lottery terminal, which causes game play credits to be displayed on the video lottery terminal and, with respect to which, each game play credit entities a player to choose one or more symbols or numbers or to cause the video lottery terminal to randomly select symbols or numbers;

(3) Allows the player to win additional game play credits based upon game rules which establish the random
138 selection of winning combinations of symbols or numbers
139 or both and the number of free play credits to be awarded
140 for each winning combination of symbols or numbers or
141 both;
142 (4) Is based upon computer-generated random
143 selection of winning combinations based totally or
144 predominantly on chance;
145 (5) In the case of a video lottery game which allows
146 the player an option to select replacement symbols or
147 numbers or additional symbols or numbers after the game
148 is initiated and in the course of play, either: (A) Signals
149 the player, prior to any optional selection by the player of
150 randomly generated replacement symbols or numbers, as
151 to which symbols or numbers should be retained by the
152 player to present the best chance, based upon probabilities,
153 that the player may select a winning combination; (B) signals
154 the player, prior to any optional selection by the
155 player of randomly generated additional symbols or
156 numbers, as to whether the additional selection presents
157 the best chance, based upon probabilities, that the player
158 may select a winning combination; or (C) randomly
159 generates additional or replacement symbols and numbers
160 for the player after automatically selecting the symbols
161 and numbers which should be retained to present the best
162 chance, based upon probabilities, for a winning
163 combination, so that in any event, the player is not
164 permitted to benefit from any personal skill, based upon a
165 knowledge of probabilities, before deciding which
166 optional numbers or symbols to choose in the course of
167 video lottery game play;
168 (6) Allows a player at any time to simultaneously clear
169 all game play credits and print a redemption ticket
170 entitling the player to receive the cash value of the free
171 plays cleared from the video lottery terminal; and
172 (7) Does not use the following game themes
173 commonly associated with casino gambling: Roulette,
174 dice, or baccarat card games: Provided, That games
175 having a video display depicting symbols which appear to
roll on drums to simulate a classic casino slot machine, game themes of other card games and keno may be used.

(y) "Validation manager" means a person who holds a permit issued by the commission and who performs video lottery ticket redemption services.

(z) "Video lottery" means a lottery which allows a game to be played utilizing an electronic computer and an interactive computer terminal device, equipped with a video screen and keys, a keyboard or other equipment allowing input by an individual player, into which the player inserts coins or currency as consideration in order for play to be available, and through which terminal device the player may receive free games or credit that can be redeemed for cash, or nothing, as may be determined wholly or predominantly by chance. "Video lottery" does not include a lottery game which merely utilizes an electronic computer and a video screen to operate a lottery game and communicate the results of the game, such as the game "Travel", and which does not utilize an interactive electronic terminal device allowing input by an individual player.

(aa) "Video lottery terminal" means a commission-approved interactive electronic terminal device which is connected with the commission's central computer system, and which is used for the purpose of playing video lottery games authorized by the commission. A video lottery terminal may simulate the play of one or more video lottery games.

(bb) "Wager" means a sum of money or thing of value risked on an uncertain occurrence.

§29-22A-8. Form of application; local option elections; issuance of license; notice of incomplete application; notice of license or permit denial, suspension or revocation; procedure for review of license or permit denial, suspension or revocation; fees, renewal fees and renewal dates; bonding; renewal of licenses and permits; notice of change affecting license or
permit; license or permit not transferrable or assignable.

(a) The commission shall determine the form of applications to be used and shall not consider incomplete applications. The commission may consider an application when the applicant has completed and executed all forms and documents required by the commission and all application fees and costs have been paid.

(b) The question of whether video lottery games shall be permitted at pari-mutuel racetracks shall be determined by local option election in each county in which a pari-mutuel racetrack is located. The local option election on this question may be placed on the ballot in each county at any general election. The county commission of the county in which the racetrack is located shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.

On the local option election ballot shall be printed the following:

Shall West Virginia lottery commission video lottery games be permitted within an area at the [name of racetrack] in which pari-mutuel betting is authorized by law?

[ ] Yes [ ] No

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

The ballots shall be counted, returns made and canvassed as in general elections, and the results certified by the commissioners of election to the county commission. The county commission shall, without delay, certify the result of the election to the commission.
(c) Upon receipt of the results of the election from the county commission, and if a majority has voted "yes", the commission shall issue the requested license if the applicant is otherwise qualified for the license. If a majority has voted "no", the commission shall notify the applicant of the results, the application shall be denied, and another election on the issue shall not be held for a period of two years: Provided, That for purposes of this section, the term "two years" means the interval between a general election and the next general election, and in no event shall it mean or encompass a period of time in excess of one hundred four weeks. If a majority has voted "yes", another local option election on the issue shall not be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which the horse or dog racetrack is located. The petition may be in any number of counterparts.

The petition shall be in the following form:

Petition For Local Option Election

We, the undersigned legally qualified voters, resident within the county of _____________, do hereby petition that a special election be held within the county of _____________ upon the following question: Shall West Virginia lottery commission video lottery games be permitted within an area at the [name of racetrack] in which pari-mutuel betting is authorized by law?

Name Address Date

(Post office or street address)

(d) The commission may not issue any license or permit until background investigations are concluded. The commission shall make an affirmative determination that the applicant is qualified and the applicable license or permit fees have been paid prior to issuing any license or permit.
(e) The commission shall notify the applicant if an application is incomplete and the notification shall state the deficiencies in the application.

(f) The commission shall notify applicants in writing of the denial, suspension or revocation of a permit or license and the reasons for the denial, suspension or revocation in accordance with the provisions of section fifteen of this article.

(g) An applicant may request a hearing to review a license or permit denial, suspension or revocation in accordance with section fifteen of this article.

(h) The following license or permit fees shall be paid annually by each licensed racetrack, or permitted manufacturer, service technician, floor attendant or validation manager:

1. Racetrack: ..................... $1,000
2. Manufacturer: ................... $10,000
3. Service technician: ................. $100
4. Validation manager: ................ $50
5. Floor attendant: .................... $50

The fees shall be paid to the commission at the time of license or permit application and on or before the first day of July of each year thereafter, at which time the license or permit may be renewed.

(i) An applicant for a video lottery license shall, prior to the issuance of the license, post a bond or irrevocable letter of credit in a manner and in an amount established by the commission. The bond shall be issued by a surety company authorized to transact business in West Virginia and the company shall be approved by the insurance commissioner of this state as to solvency and responsibility.

(j) The commission shall renew video lottery licenses and permits annually as of the first day of July of each year, if each person seeking license or permit renewal
(k) License and permit holders shall notify the commission of any proposed change of ownership or control of the license or permit holder and of all other transactions or occurrences relevant to license or permit qualification. In order for a license or permit to remain in effect, commission approval is required prior to completion of any proposed change of ownership or control of a license or permit holder.

(l) A license or permit is a privilege personal to the license or permit holder and is not a legal right. A license or permit granted or renewed pursuant to this article may not be transferred or assigned to another person, nor may a license or a permit be pledged as collateral. The purchaser or successor of any license or permit holder shall independently qualify for a license or permit. The sale of more than five percent of a license or permit holder's voting stock, or more than five percent of the voting stock of a corporation which controls the license or permit holder or the sale of a license or permit holder's assets, other than those bought and sold in the ordinary course of business, or any interest therein, to any person not already determined to have met the qualifications of section seven of this article voids the license unless the sale has been approved in advance by the commission.
(2) Conduct all video lottery activities and functions in a manner which does not pose a threat to the public health, safety or welfare of the citizens of this state, and which does not adversely affect the security or integrity of the lottery;

(3) Hold the commission and this state harmless from and defend and pay for the defense of any and all claims which may be asserted against a license or permit holder, the commission, the state or the employees thereof, arising from the license or permit holder's participation in the video lottery system authorized by this article;

(4) Assist the commission in maximizing video lottery revenues;

(5) Maintain all records required by the commission;

(6) Upon request by the commission, provide the commission access to all records and the physical premises of the business or businesses where the license or permit holder's video lottery activities occur, for the purpose of monitoring or inspecting the license or permit holder's activities and the video lottery games, video lottery terminals and associated equipment; and

(7) Keep current in all payments and obligations to the commission.

(b) Manufacturers shall:

(1) Manufacture terminals and associated equipment for placement in this state in accordance with the specifications and procedures specified in sections five and six of this article;

(2) Manufacture terminals and associated equipment to ensure timely delivery to licensed racetracks;

(3) Maintain and provide an inventory of spare parts to assure the timely repair and continuous operation of licensed video lottery terminals intended for placement in this state;
(4) Provide to licensed racetracks and permitted service technicians technical assistance and training in the service and repair of video lottery terminals and associated equipment so as to assure the continuous authorized operation and play of the video lottery terminals; and

(5) Obtain certification of compliance under the provisions of part fifteen of the federal communication commission rules for all video lottery terminals placed in this state.

(c) Service technicians shall:

(1) Maintain all skills necessary for the timely repair and service of licensed video lottery terminals and associated equipment so as to ensure the continued, approved operation of those terminals;

(2) Attend all commission mandated meetings, seminars and training sessions concerning the repair and maintenance of licensed video lottery terminals and associated equipment; and

(3) Promptly notify the commission of any electronic or mechanical video lottery terminal malfunctions.

(d) Validation managers shall:

(1) Attend all commission mandated meetings, seminars and training sessions concerning the validation and redemption of video lottery winning tickets and the operation of all ticket validation terminals and equipment;

(2) Maintain all skills necessary for the accurate validation of video lottery tickets; and

(3) Supervise video lottery ticket validation procedures at the applicable licensed racetrack.

(e) Floor attendants shall:

(1) Provide change and assistance to persons playing video lottery games in a licensed racetrack video lottery gaming area;
(2) Open video lottery terminal access doors to clear ticket paper jams and to insert new paper ticket tapes into the video lottery terminals; and

(3) Open video lottery terminal access doors to clear bill jams from the bill acceptors in video lottery terminals.

(f) The specific duties required of all licensed racetracks are as follows:

(1) Acquire video lottery terminals by purchase, lease or other assignment and provide a secure location for the placement, operation and play of the video lottery terminals;

(2) Pay for the installation and operation of commission approved telephone lines to provide direct dial-up or on-line communication between each video lottery terminal and the commission's central control computer;

(3) Permit no person to tamper with or interfere with the operation of any video lottery terminal;

(4) Ensure that telephone lines from the commission's central control computer to the video lottery terminals located at the licensed racetrack are at all times connected and prevent any person from tampering or interfering with the operation of the telephone lines;

(5) Ensure that video lottery terminals are within the sight and control of designated employees of the licensed racetrack;

(6) Ensure that video lottery terminals are placed and remain placed in the specific locations within the licensed racetrack which have been approved by the commission. No video lottery terminal or terminals at a racetrack shall be relocated without the prior approval of the commission;

(7) Monitor video lottery terminals to prevent access to or play by persons who are under the age of eighteen years or who are visibly intoxicated;
(8) Maintain at all times sufficient change and cash in
the denominations accepted by the video lottery terminals;

(9) Provide no access by a player to an automated
teller machine (ATM) in the area of the racetrack where
video lottery games are played, accept no credit card or
debit card from a player for the exchange or purchase of
video lottery game credits or for an advance of coins or
currency to be utilized by a player to play video lottery
games, and extend no credit, in any manner, to a player so
as to enable the player to play a video lottery game;

(10) Pay for all credits won upon presentment of a
valid winning video lottery ticket;

(11) Report promptly to the manufacturer and the
commission all video lottery terminal malfunctions and
notify the commission of the failure of a manufacturer or
service technician to provide prompt service and repair of
such terminals and associated equipment;

(12) Conduct no video lottery advertising and
promotional activities without the prior written approval of
the director;

(13) Install, post and display prominently at locations
within or about the licensed racetrack, signs, redemption
information and other promotional material as required
by the commission;

(14) Permit video lottery to be played only during
those hours established and approved by the commission;

(15) Maintain general liability insurance coverage for
all video lottery terminals in an amount of at least two
million dollars per claim;

(16) Promptly notify the commission in writing of any
breaks or tears to any logic unit seals;

(17) Assume liability for lost or stolen money from
any video lottery terminal; and
(18) Submit an audited financial statement, which has been approved by the commission, to the commission when applying for a license or permit and annually thereafter prior to the time a license or permit may be renewed.

§29-22A-12. Number and location of video lottery terminals; security.

(a) A racetrack which has been licensed to conduct video lottery games has the right to install and operate up to four hundred video lottery terminals at a licensed racetrack. A licensed racetrack may apply to the commission for authorization to install and operate more than four hundred video lottery terminals. If the commission determines that the installation of additional machines is in the best interest of the licensed racetrack, the lottery commission and the citizens of this state, the commission may grant permission to install and operate additional machines.

(b) All video lottery terminals in licensed racetracks shall be physically located as follows:

(1) The video lottery location shall be continuously monitored through the use of a closed circuit television system capable of recording activity for a continuous twenty-four hour period. All video tapes shall be retained for a period of at least thirty days;

(2) Access to video lottery terminal locations shall be restricted to persons legally entitled by age to play video lottery games;

(3) The licensed racetrack shall submit for commission approval a floor plan of the area or areas where video lottery terminals are to be operated showing terminal locations and security camera mount locations;

(4) No video lottery terminal may be relocated without prior approval from the commission; and
(5) Operational video lottery terminals may only be located in the building or structure in which the grandstand area of the racetrack is located and in the area of the building or structure where pari-mutuel wagering is permitted under the provisions of article twenty-three, chapter nineteen of this code: Provided, That if the commission, before the first day of November, one thousand nine hundred ninety-three, has authorized any racetrack to operate video lottery terminals and offer video lottery games in a location which would not conform to the requirements of this subdivision, the racetrack may continue to use video lottery terminals registered with and approved by the commission at that nonconforming location and to offer the games and any variations or composites of the games as may be approved by the commission: Provided, however, That on the effective date of this section, for each two video lottery terminals located in a nonconforming location, the racetrack shall locate and operate one video lottery terminal in the building or structure in which the grandstand area of the racetrack is located and in the area of the building or structure where pari-mutuel wagering is permitted.

(c) A licensee shall allow video lottery games to be played only on days when live racing is being conducted at the racetrack and/or on televised racing days: Provided, That this restriction shall not apply to any racetrack authorized by the commissioner prior to the first day of November, one thousand nine hundred ninety-three, to operate video lottery terminals and conduct video lottery games.

(d) Security personnel shall be present during all hours of operation at each video lottery terminal location. Each license holder shall employ the number of security personnel the commission determines is necessary to provide for safe and approved operation of the video lottery facilities and the safety and well-being of the players.
AN ACT to amend and reenact sections two, eleven and sixteen, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to real estate brokers and salespersons; excluding from the definition of "real estate broker" noncommissioned clerical employees of real estate brokers who perform certain administrative functions; setting forth grounds for refusing, suspending or revoking licenses, including the payment of a commission or other consideration to another broker or salesperson in certain instances; and setting forth criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections two, eleven and sixteen, article twelve, chapter forty-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. REAL ESTATE COMMISSION, BROKERS AND SALESPERSONS.

§47-12-2. Definitions and exceptions.
§47-12-11. Procedure and grounds for refusal, suspension or revocation of license.
§47-12-16. Penalties for violations.

§47-12-2. Definitions and exceptions.

1 (a) The term "real estate broker" within the meaning of this article includes all persons, partnerships, associations and corporations, foreign and domestic, who for a fee, commission or other valuable consideration or who with the intention or expectation of receiving or collecting the same, lists, sells, purchases, exchanges, rents, manages, leases or auctions any real estate or the improvements thereon, including options, or who negotiates or attempts
to negotiate any such activity; or who advertises or holds himself, herself, itself or themselves out as engaged in such activities; or who directs or assists in the procuring of a purchaser or prospect calculated or intended to result in a real estate transaction. The term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots, or other parcels of real estate, at a stated salary or upon a fee, commission or otherwise to sell the real estate, or any parts thereof, in lots or other parcels, and who shall sell, manage, exchange, lease, offer, attempt or agree to negotiate the sale, exchange or lease of any lot or parcel of real estate.

(b) The term "real estate" as used in this article includes leaseholds as well as any and every interest or estate in land, whether corporeal or incorporeal, freehold or nonfreehold, and whether the property is situated in this state or elsewhere.

(c) The term "associate broker" means any person who for compensation or other valuable consideration is employed by a broker to perform all the functions authorized by a broker's license only for and on behalf of the employing broker including, but not limited to, authority to supervise other salespersons employed by a broker and manage an office on behalf of a broker.

(d) The term "real estate salesperson" means and includes any person employed or engaged by or on behalf of a licensed real estate broker to do or deal in any activity as included in this section, for compensation or otherwise.

(e) One act in consideration of or with the expectation or intention of or upon the promise of receiving compensation by fee, commission or otherwise, in the performance of any act or activity contained in this section, constitutes such persons, partnerships, association or corporation, a real estate broker and make him or her, them or it subject to the provisions and requirements of this article.

(f) The term "real estate broker" or "real estate salesperson" does not include any person, partnership,
association or corporation who, as a bona fide owner or
lessor, performs any aforesaid act:

1. With reference to property owned or leased by him
or her to the regular employees thereof, where such acts
are performed in the regular course of or as an incident to
the management of, the property and the investment
therein;

2. Nor shall this article be construed to include
attorneys-at-law, except that attorneys-at-law shall be
required to submit to the written examination required
under section seven of this article in order to qualify for a
broker's license: Provided, That an attorney-at-law who is
licensed as a real estate broker prior to the effective date
of this section is exempt from the written examination
required under section seven of this article;

3. Nor any person holding in good faith a duly
executed power of attorney from the owner authorizing
the final consummation and execution for the sale,
purchase, lease or exchange of real estate;

4. Nor to the acts of any person while acting as a
receiver, trustee, administrator, executor, guardian or
under the order of any court or while acting under
authority of a deed of trust or will;

5. Nor shall this article apply to public officers while
performing their duties as such;

6. Nor shall this article apply to the acquisition or
disposition of coal, oil or gas leasehold or coal, oil or gas
interests;

7. Nor to persons properly licensed pursuant to the
provisions of article two-c, chapter nineteen of this code
when conducting an auction, any portion of which
contains any leasehold or estate in land, when the person is
retained to conduct an auction by a receiver or trustee in
bankruptcy, a fiduciary acting under the authority of a
deed of trust or will, or a fiduciary of a decedent's estate;

8. Nor does this article apply to any person
employed by a real estate broker in a noncommissioned
clerical capacity who may in the course of employment be
required to:
(A) Disseminate brokerage preprinted and predetermined real estate sales and rental information;

(B) Accept and process rental reservations or bookings for a period not to exceed thirty consecutive days in a manner and procedure predetermined by the broker;

(C) Collect predetermined rental fees for the rentals which are to be promptly tendered to the broker; or

(D) Any combination thereof.

§47-12-11. Procedure and grounds for refusal, suspension or revocation of license.

(a) The commission may upon its own motion and shall, upon the verified complaint in writing of any person setting forth a cause of action under this section, ascertain the facts and if warranted hold a hearing for the suspension or revocation of a license. The commission shall have full power to refuse a license for reasonable cause or to revoke or suspend a license if the licensee:

(1) Obtains, renews or attempts to obtain or renew a license through the submission of any application or other writing that contains false or fraudulent information;

(2) Makes any substantial misrepresentation;

(3) Makes any false promises or representations of character likely to influence, persuade or induce a person involved in a real estate transaction;

(4) Pursues a continued or flagrant course of misrepresentation or makes false promises or representations through agents or salespersons or any medium of advertising or otherwise;

(5) Uses misleading or false advertising or uses any trade name or insignia of membership in any real estate organization, in which the licensee is not a member;

(6) Acts for more than one party in a transaction without the knowledge of all parties for whom he or she acts;

(7) Fails, within a reasonable time, to account for or to remit any moneys coming into his or her possession
belonging to others, or commingles moneys belonging to others with his or her own funds;

(8) Displays a "for sale" or "for rent" sign on any property without an agency therefor or without the owner's consent;

(9) Fails to disclose in writing to all parties to a real estate transaction, on the form promulgated by the commission, whether the licensee is representing the seller, the buyer or both;

(10) Fails to voluntarily furnish copies of a notice of agency disclosure, and all listing agreements, sales contracts, and lease agreements to all parties executing the same;

(11) Pays or receives any rebate, profit, compensation or commission as a result of a real estate transaction from any person other than his or her principal;

(12) Induces any party to a contract, sale or lease to enter into another contract, in lieu thereof, for the personal gain of the licensee;

(13) Accepts a commission or other valuable consideration as a real estate salesperson for the performance of any of the acts specified in this article, from any person, other than his or her employer, who must be a licensed real estate broker;

(14) Pays a commission or other valuable consideration to any person for acts or services performed either in violation of this article or the real estate licensure laws of any other state;

(15) Pays a commission or other valuable consideration to another real estate broker or salesperson, knowing that the other real estate broker or salesperson will pay a portion or all of that which is received in a manner that would constitute a violation of this article if it were paid directly by a licensee of this state;

(16) Engages in the unlawful or unauthorized practice of law as defined by the supreme court of appeals of West Virginia;
(17) Procures an attorney for any customer or solicits legal business for any attorney at law;

(18) Engages in any act or conduct which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing;

(19) Has been convicted in a court of competent jurisdiction in this or in any other state of forgery, embezzlement, obtaining money under false pretense, extortion, conspiracy to defraud or of any other like offense; or

(20) Has been convicted in a court of competent jurisdiction in this or any other state of a felony.

(b) As used in this section:

(1) The words "convicted in a court of competent jurisdiction" mean a plea of guilty or nolo contendere entered by a person or a verdict of guilt returned against a person at the conclusion of a trial;

(2) A certified copy of a conviction order entered in such court is sufficient evidence to demonstrate a person has been convicted in a court of competent jurisdiction.

§47-12-16. Penalties for violations.

Any person violating a provision of this article is guilty of a misdemeanor and, upon conviction of a first violation thereof, if an individual, shall be fined not less than one thousand dollars nor more than two thousand dollars, or confined in the county or regional jail not more than ninety days, or both fined and confined; and if a corporation, shall be fined not less than two thousand dollars nor more than five thousand dollars. Upon conviction of a second or subsequent violation, any person so convicted, if an individual, shall be fined not less than two thousand dollars nor more than five thousand dollars, or confined in the county or regional jail for a term not to exceed one year, or both fined and confined; and if a corporation, shall be fined not less than five thousand dollars nor more than ten thousand dollars. Any officer or agent of a corporation, or any member or agent of a partnership or association, shall be subject to the penalties herein prescribed for individuals.
AN ACT to amend and reenact section five, article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limitation of actions and suits enforcing liens reserved by any conveyance of real estate or created by any trust deed or mortgage on real estate; permitting extensions of certain liens by the lienholder; providing that obligations payable on demand express no maturity date; and addressing the retroactive and prospective application of changes made.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-5. Enforcement of liens reserved by conveyance or created by deed of trust or mortgage on real estate.

(a) Any lien reserved by any conveyance of real estate or created by any deed of trust or mortgage on real estate expires after the following periods of time, unless suit to enforce the lien is instituted prior to expiration of the time period or unless the lien is extended as specified in subsection (b) or (e) of this section:

(1) If the final maturity date of the obligation is ascertainable from the lien instrument, the lien expires five years after that date.

(2) If the final maturity date of the obligation is not ascertainable from the lien instrument, the lien expires thirty-five years after the date of the lien instrument. However, if the lienholder rerecords the lien instrument prior to thirty-five years from the date of the lien
instrument and includes a copy of the obligation secured by the lien so that the final maturity is ascertainable, the lien expires five years after the date of maturity.

(b) If an affidavit or extension notice executed by the secured party or beneficiary of the lien instrument or an amendment to the lien instrument executed by the grantor or mortgagor and the secured party or beneficiary is recorded prior to expiration of the original period of limitation, as specified in subsection (a) of this section, the period of limitation is extended as follows:

(1) If the final maturity date of the obligation, as extended, secured by the lien instrument is ascertainable from the affidavit, extension notice or amendment, the lien expires five years after the date of final maturity of the obligation, as extended.

(2) If the final maturity date of the obligation, as extended, secured by the lien instrument is not ascertainable from the affidavit, extension notice or amendment, the lien expires thirty-five years after the date of the lien instrument. However, if the lienholder rerecords the lien instrument prior to thirty-five years from the date of the lien instrument and includes a copy of the obligation secured by the lien so that the final maturity is ascertainable, the lien expires five years after the date of maturity.

(c) Any affidavit, extension notice or amendment filed pursuant to subsection (b) of this section after the effective date of this section, shall include, but is not limited to, the following:

(1) The unpaid balance of the debt and interest secured by the lien instrument;

(2) The final maturity date of the obligation as extended; and

(3) The book and page of recordation of the original lien instrument.

The clerk of the county commission shall record and index any affidavit, extension notice or amendment in the same manner as the original lien instrument and shall note that filing on the margin of the page where the original lien instrument is recorded.
(d) If the lien instrument shows that it secures an obligation payable in installments and the maturity date of the final installment of the obligation is ascertainable from the lien instrument, the time runs from the maturity date of the final installment.

(e) For purposes of this section only, a lien instrument securing an obligation which is payable on demand expresses no maturity date.

(f) Nothing in this section extinguishes any lien which was reserved or created and in effect prior to the first day of July, one thousand nine hundred ninety-eight. With respect to any lien reserved or created and in effect prior to the first day of July, one thousand nine hundred ninety-eight, the lien is valid for twenty years after its stated maturity, or if no maturity date is stated in the lien instrument, for thirty-five years after the date of the lien instrument.

(g) The periods of limitation created by this section may be extended only as provided in this section and may not be extended by any other method or by operation of law.

CHAPTER 249

(Com. Sub. for H. B. 4068—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

[By Request of the Executive]

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

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-k, relating to creating the West Virginia traumatic brain and spinal cord injury rehabilitation fund; defining terms; creating traumatic brain and spinal cord injury rehabilitation fund board; designating certain public officials and authorizing governor to appoint certain citizens to serve on
the board; establishing terms of office, attendance requirements and officers of the board; authorizing board to promulgate legislative rules; providing for the reimbursement of expenses of board members; creating a special revenue account; providing for the administration of such fund; setting forth criteria for the use of such fund; defining duties of the board; and establishing certain restrictions on the use of such fund.

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-k, to read as follows:

ARTICLE 10K. WEST VIRGINIA TRAUMATIC BRAIN AND SPINAL CORD INJURY REHABILITATION FUND ACT.

§ 18-10K-1. Terms defined.
§ 18-10K-2. Board created, membership, terms, officers and staff.
§ 18-10K-4. Expenses of board.
§ 18-10K-5. Fund created; administration of fund; administrative fees; fund use.
§ 18-10K-6. Criteria and priorities for use of fund.

§18-10K-1. Terms defined.

1 As used in this article, the term:
2 (1) "Board" means the West Virginia traumatic brain and spinal cord injury rehabilitation fund board.

4 (2) "Fund" means the West Virginia traumatic brain and spinal cord injury rehabilitation fund.

6 (3) "Traumatic brain injury" means an acquired injury to the brain, including brain injuries caused by anoxia due to near drowning. "Traumatic brain injury" does not include brain dysfunction caused by congenital or degenerative disorders, nor birth trauma.
(4) "Spinal cord injury" means a traumatic injury to the spinal cord that results in a permanent loss of sensation and voluntary movement below the level of the lesion.

§18-10K-2. Board created, membership, terms, officers and staff.

(a) There is established the West Virginia traumatic brain and spinal cord injury rehabilitation fund board.

(b) The board shall consist of twenty-three members. The members shall include:

(1) The secretary of the department of education and the arts, ex officio, or his or her designee;

(2) The secretary of health and human resources, ex officio, or his or her designee;

(3) The state superintendent of schools, ex officio, or his or her designee;

(4) The secretary of the department of military affairs and public safety, ex officio, or his or her designee;

(5) The director of the bureau of behavioral health within the department of health and human resources, ex officio, or his or her designee;

(6) The director of the division of rehabilitation services, ex officio, or his or her designee;

(7) The director of the bureau of medical services, ex officio, or his or her designee;

(8) The director of the office of emergency services, ex officio, or his or her designee;

(9) The commissioner of the bureau of employment programs, ex officio, or his or her designee;

(10) Seven members appointed by the governor to represent public and private health organizations or other disability coalitions or advisory groups; and

(11) Seven members appointed by the governor who are either survivors of traumatic brain or spinal cord
injury or family members of persons with traumatic brain
or spinal cord injury.

(c) The citizen members shall be appointed by the
governor for terms of three years, except that of the
members first appointed, two of the representatives of
public and nonprofit private health organizations,
disability coalitions or advisory groups and two of the
representatives of survivors or family members of persons
with traumatic brain or spinal cord injuries shall serve for
terms of one year, two of the representatives of each of
those respective groups shall serve for terms of two years,
and the remaining three representatives of each of those
respective groups shall serve for terms of three years. All
subsequent appointments shall be for three years.
Members shall serve until the expiration of the term for
which they have been appointed or until their successors
have been appointed and qualified. In the event of a
vacancy the governor shall appoint a qualified person to
serve for the unexpired term. No member may serve
more than two consecutive three-year terms. State officers
or employees may be appointed to the board unless
otherwise prohibited by law.

(d) In the event a board member fails to attend more
than twenty-five percent of the scheduled meetings in a
twelve-month period, the board may, after written
notification to that member and the secretary of education
and the arts, request in writing that the governor remove
the member and appoint a new member to serve his or her
unexpired term.

(e) The board shall elect from its membership a
chairperson, treasurer and secretary as well as any other
officer as appropriate. The term of the chairperson is for
two years in duration and he or she cannot serve more
than two consecutive terms.


The board may propose legislative rules for
promulgation, in accordance with the provisions of article
three, chapter twenty-nine-a of this code, necessary for the
transaction of its business or to carry out the purposes of this article.

§18-10K-4. Expenses of board.

Members of the board shall receive reimbursement for reasonable and necessary expenses actually incurred in the performance of their duties as members of the board in accordance with state travel regulations. Members with disabilities may receive additional reimbursement for costs associated with personal assistance, interpreters and disability-related accommodations when those costs are incurred in the course of conducting the business of the board. All reimbursement authorized in this section shall be paid from moneys in the fund.

§18-10K-5. Fund created; administration of fund; administrative fees; fund use.

(a) There is created in the state treasury a special revenue account to be known as the “West Virginia traumatic brain and spinal cord injury rehabilitation fund” which is under the jurisdiction of the division of rehabilitation services. The West Virginia traumatic brain and spinal cord injury rehabilitation fund is subject to the annual appropriation of funds by the Legislature. The West Virginia traumatic brain and spinal cord injury rehabilitation fund may receive any gifts, grants, contributions or other money from any source which is specifically designated for deposit in the fund.

(b) All moneys collected, received and deposited into the state treasury and credited to the West Virginia traumatic brain and spinal cord injury rehabilitation fund shall be expended by the board exclusively in accordance with the uses and criteria set forth in this article. Expenditures from this fund for any other purposes are void.

(c) The fund shall be administered by the division of rehabilitation services under the department of education and the arts. The division of rehabilitation services may retain an amount not to exceed ten percent per annum of
the balance of the fund to cover any costs of
administration of the fund.

(d) Nothing in this article may be construed to
mandate funding for the West Virginia traumatic brain
and spinal cord injury rehabilitation fund or to require
any appropriation by the Legislature.

(e) Moneys in the fund shall be used to pay for
services that will increase opportunities for and enhance
the achievement of functional independence, and a return
to a productive lifestyle for individuals who have suffered
a traumatic brain injury or a spinal cord injury.

(f) Services that are eligible for payment by the fund
shall include, but not be limited to:

(1) Case management;
(2) Rehabilitative therapies and services;
(3) Attendant care;
(4) Home accessibility modifications;
(5) Equipment necessary for activities; and
(6) Family support services.

(g) Funds shall be expended according to the
priorities and criteria for disbursement established by the
board under section six of this article.

§18-10K-6. Criteria and priorities for use of fund.

(a) The board shall establish priorities and criteria for
the disbursement of moneys in the fund. When the board
determines that additional services should be eligible for
payments from the fund, the chairman shall provide
written notice to the division of rehabilitation services in
the department of education and the arts directing that
those services be eligible for payment by the fund.

(b) The board shall investigate the needs of citizens
with traumatic brain injuries and spinal cord injuries,
identify the gaps in services to these citizens, and issue an
annual report to the Legislature each year with
recommendations for meeting the identified needs,
improving coordination of services and summarizing its
actions during the preceding year.
(c) Moneys expended for services described under section five of this article shall be as a payer of last resort and only for citizens of this state. An individual shall use comparable benefits and services that are available prior to the expenditure of moneys available to that individual through the fund.

CHAPTER 250

(H. B. 4003—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

[By Request of the Executive]

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

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-c, relating to establishing an orphan road and bridge acquisition and maintenance program in all counties; authorizing the use of able-bodied and willing welfare recipients and citizens’ conservation corps workers to perform labor on repair and maintenance; requiring the department of health and human resources to furnish the division of highways lists of names of available welfare recipients; establishing criteria for including a road or bridge in the program; upgrading of certain roads and bridges; providing for the division of highways commissioner and personnel to identify and maintain orphan roads and bridges; and providing for termination of the program.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen 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-c, to read as follows:

ARTICLE 2C. ORPHAN ROAD AND BRIDGE ACQUISITION PROGRAM.
§17-2C-1. Establishment of an orphan road and bridge acquisition and maintenance program in all counties; criteria for designation as an orphan road or bridge.

Authority is hereby granted to the West Virginia division of highways to establish a program to acquire and maintain roads and bridges which meet the following three criteria: (1) Are in existence as of the first day of January, one thousand nine hundred ninety-eight; (2) are roads or bridges which the public has a right to use; and (3) are roads or bridges not maintained by any governmental agency. These roads and bridges are herein designated as orphan roads and bridges.

The Legislature hereby finds and declares it to be important for the economic and social development of the state that a program for the identification, acquisition and maintenance of orphan roads and bridges be undertaken by the state. In particular, the Legislature finds and declares that basic maintenance should be performed on orphan roads and bridges to promote the well-being of the public.


The West Virginia division of highways shall develop an orphan roads and bridges identification, acquisition and maintenance program which shall include all counties.

At the discretion of the commissioner of the division of
highways, existing and temporary employees of the division shall be assigned to locate and designate each
orphan road and bridge in each county. These employees shall give to the commissioner of highways, in a
form proscribed by him or her, a detailed report on acquisition, status of rights-of-way, and needed maintenance for orphan roads and bridges in each county or highway district. Specific contents of each report shall be designated by the commissioner.

In order for a road or bridge to qualify for inclusion into the state system, all necessary rights-of-way shall be either dedicated or donated to the division of highways.

In the event that all property owners do not agree to dedicate or donate the necessary rights-of-way, then any individual, group, business or governmental entity can donate to the state road fund a sum sufficient to cover the expense of acquiring the right-of-way that has not been dedicated or donated. The commissioner may also use any moneys donated to the state road fund specifically for the purposes of acquiring a right-of-way which has not been dedicated or donated.

§17-2C-3. Duties of commissioner with respect to orphan roads and bridges; criteria for inclusion.

After reviewing the reports made to section two of this article, the commissioner will determine whether a specific road or bridge should be added to the state maintenance system. The commissioner shall consider the following criteria in reaching his or her determination: (1) The availability of resources for maintaining the road or bridge; (2) the number of persons served by the road or bridge; (3) the current and anticipated use of the road or bridge; (4) the condition of the road or bridge; (5) the availability and suitability of alternate routes; (6) the suitability for maintenance equipment to access and maintain the road or bridge; (7) the existing design and layout of the road or bridge; and (8) the number of roads and bridges accepted into the maintenance system.

§17-2C-4. Workforce of welfare recipients and citizens' conservation corps participants; division of
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Highways required to furnish maintenance materials.

The West Virginia department of health and human resources shall make available to the division of highways a list of able-bodied welfare recipients who have given permission for their names to be listed as recipients available for work with the division of highways, and who are available and able to work a minimum of twenty hours a week at a manual labor job maintaining orphan roads and bridges under the supervision of the district or county highway offices. The commissioner of the division of highways may, by contract, employ persons participating in the citizens' conservation corps to maintain orphan roads and bridges. The employment of welfare recipients or workers provided through the citizens' conservation corps to maintain orphan roads and bridges may not be used to displace any division of highways employee in the classified civil service, or to reduce classified civil service positions within the division.

The division of highways is required to furnish trucks or other proper motor vehicles and gravel or other required materials to be used by the workforce created by this section in the maintenance of the orphan roads and bridges in each district and county.

§17-2C-5. Upgrading of roads and bridges in maintenance system.

Roads and bridges accepted into the maintenance system under the provisions of this article are admitted only for the purposes of maintenance. No upgrading of said roads and bridges is to be undertaken unless otherwise determined by the commissioner of highways.

§17-2C-6. Termination of orphan roads and bridges program; report to the Legislature.

The orphan roads and bridges acquisition and maintenance program established pursuant to this article will terminate on the thirty-first day of December, two thousand one.
On or before the thirtieth day of January, one thousand nine hundred ninety-nine, and annually thereafter, the commissioner of the division of highways shall submit a report to the Legislature which recounts the activities of the program and the roads and bridges which have been accepted into the state maintenance system. The report shall include a breakdown by county of those roads and bridges being maintained, the estimated costs associated with maintenance and any other information the commissioner deems necessary. Before the thirtieth day of January, two thousand two, the commissioner shall also submit proposed legislation formulating a policy for the designation and acceptance into the state system of orphan roads and bridges in the future.

CHAPTER 251

(H. B. 4688—By Delegates Kuhn, Claypole, Stalnaker, Thompson, Capito, Everson and H. White)

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

AN ACT to amend article two, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three; and to amend and reenact section ten, article eight, chapter five-a of said code, all relating to the retention and destruction of the records of the secretary of state and to the authorization of digital imaging as a means of creating a preservation duplicate of a state record.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

5A. Department of Administration.
CHAPTER 5. GENERAL POWERS AND AUTHORITY OF 
THE GOVERNOR, SECRETARY OF STATE AND 
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; 
MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, 
PROGRAMS, ETC.

ARTICLE 2. SECRETARY OF STATE.

§5-2-3. Retention and preservation of records of the secretary 
of state; destruction of records.

(a) The secretary of state shall provide for the storage 
and retention of those essential records, as defined in 
section four, article eight, chapter five-a of this code, filed 
in the office of the secretary of state for the period 
specified by law or legislative rule. The secretary of state 
shall propose rules for legislative approval in accordance 
with the provisions of article three, chapter twenty-nine-a 
of this code identifying the essential records and 
providing for the minimum retention period.

(b) Where a preservation duplicate, as defined in 
section three, article eight, chapter five-a of this code, is 
made of a record filed with the secretary of state by 
photography, microphotography, digital imaging or other 
electronic means which accurately reproduces and 
preserves the record on microfilm, microfiche, optical 
disks or other unalterable electronic storage medium 
which complies with national standards or nationally 
accepted practice for permanent archival storage, the 
secretary of state may provide for the destruction of the 
original paper copy when the following conditions are 
met:

(1) The preservation duplicate has been created, 
reviewed for quality, indexed in a reasonable manner as 
provided by the secretary of state and determined to be 
accessible by means of the index;

(2) An additional archive copy of the preservation 
duplicate has been created and stored in a fireproof, 
secure storage location; and

(3) The original paper copy has been preserved for at 
least three months following the creation of the 
preservation duplicate.

(c) The original copies of the papers of the governor, 
including executive orders, proclamations, appointments, 
pardons and other documents signed by the governor,
shall be retained permanently, regardless of whether a 
preservation duplicate has been created.

(d) The secretary of state shall have authority to 
determine the retention period for nonessential records.

(e) The secretary of state may, upon mutual agreement 
with the director of the division of archives and history, 
transfer to the division of archives and history those 
records of the secretary of state as may be identified as 
having primarily historic value in order to make those 
records more available for purposes of research.

(f) Following the expiration of the required retention 
period, the destruction of confidential original records 
shall be conducted in a manner designed to protect the 
secrecy of those records.

(g) Nothing in this section shall be deemed to require 
the secretary of state to destroy original records 
immediately upon the expiration of the retention period.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESER­
VATION ACT.

§5A-8-10. Essential state records — Preservation duplicates.

(a) The administrator may make or cause to be made 
preservation duplicates or may designate as preservation 
duplicates existing copies of essential state records. A 
preservation duplicate shall be durable, accurate, complete 
and clear, and a preservation duplicate made by means of 
photography, microphotography, photocopying, film, 
microfilm or digital image stored on unalterable media 
shall be made in conformity with the standards prescribed 
therefor by the administrator.

(b) A preservation duplicate made by a photographic, 
photostatic, microfilm, microcard, miniature photographic, 
digital image or other process which accurately 
reproduces or forms a durable and unalterable medium 
for so reproducing the original, shall have the same force 
and effect for all purposes as the original record whether 
the original record is in existence or not. A transcript, 
exemplification or certified copy of such preservation 
duplicate shall be deemed for all purposes to be a 
transcript, exemplification or certified copy of the original 
record.
AN ACT to amend and reenact section five-a, article eleven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the collection and disbursement of recycling and solid waste assessment fees; establishing recycling assessment fee; providing for collection of the fee, providing recordkeeping; providing for recycling fee in rate approved by the public service commission for regulated motor carriers; defining terms; providing for exemptions; establishing procedures and administration of the funds; providing for criminal penalties; providing for the dedication of the proceeds; and establishing eligibility requirements for receipt of grants.

Be it enacted by the Legislature of West Virginia:

That section five-a, article eleven, 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 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-5a. Recycling assessment fee; regulated motor carriers; dedication of proceeds; criminal penalties.

(a) Imposition. — Effective the first day of January, one thousand nine hundred ninety-two, a recycling assessment fee is hereby levied and imposed upon the disposal of solid waste at all solid waste disposal facilities in this state, to be collected at the rate of two dollars per ton or part thereof of solid waste. The fee imposed by this section is in addition to all other fees levied by law.

(b) Collection, return, payment and records. — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether

*Clerk's Note: This section was also amended by SB 602 (Chapter 253), which passed subsequent to this act.
or not such person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the tax commissioner.

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

(2) The operator shall remit the fee imposed by this section to the tax commissioner on or before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator shall be required to file returns on forms and in the manner as prescribed by the tax commissioner.

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the tax commissioner.

(4) If any operator fails to collect the fee imposed by this section, he or she is personally liable for such amount as he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by article ten, chapter eleven of this code.

(5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns with the fee as required in this section, the tax commissioner may serve written notice requiring such operator to collect the fees which become collectible after service of such notice, to deposit such fees in a bank approved by the tax commissioner, in a separate account, in trust for and payable to the tax commissioner, and to keep the amount of such fees in such account until remitted to the tax commissioner. Such notice remains in effect until a notice of cancellation is served on the operator or owner by the tax commissioner.

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section.
(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers thereof are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them and against the association or corporation which they represent.

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in such form as the tax commissioner may require in accordance with the rules of the tax commissioner.

(c) Regulated motor carriers. — The fee imposed by this section is a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the public service commission under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the public service commission shall, within fourteen days, reflect the cost of said fee in said motor carrier's rates for solid waste removal service. In calculating the amount of said fee to said motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States environmental protection agency.

(d) Definitions. — For purposes of this section:

"Solid waste disposal facility" means any approved solid waste facility or open dump in this state and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste facility within this state that collects the fee imposed by this section.

Nothing herein authorizes in any way the creation or operation of or contribution to an open dump.

(e) Exemptions. — The following transactions are exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste facility by the person who owns, operates or leases the solid waste disposal facility if it is used exclusively to dispose of waste
originally produced by such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste; and

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the division of environmental protection by rule as exempt from the fee imposed pursuant to section eleven, article fifteen, chapter twenty-two of this code.

(f) Procedure and administration. — Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten, chapter eleven of this code applies to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.

(g) Criminal penalties. — Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code apply to the fee imposed by this section with like effect as if said sections were the only fee imposed by this section and were set forth in extenso herein.

(h) Dedication of proceeds. — The proceeds of the fee collected pursuant to this section shall be deposited by the tax commissioner, at least monthly, in a special revenue account designated as the "Recycling Assistance Fund" which is hereby created. The director of the division of natural resources shall allocate the proceeds of the said fund as follows:

(1) Fifty percent of the total proceeds shall be provided in grants to assist municipalities, counties and other interested parties in the planning and implementation of recycling programs, public education programs, and recycling market procurement efforts, established pursuant to this article. The director of the division of natural resources shall promulgate rules, in accordance with chapter twenty-nine-a of this code, containing application procedures, guidelines for eligibility, reporting requirements and other matters deemed appropriate: Provided, That persons responsible for collecting, hauling or disposing of solid waste who do
not participate in the collection and payment of the solid waste assessment fee imposed by this section in addition to all other fees and taxes levied by law for solid waste generated in this state which is destined for disposal, shall not be eligible to receive grants under the provisions of this article.

(2) Twelve and one-half percent of the total proceeds shall be expended for personal services and benefit expenses of full-time salaried conservation officers;

(3) Twelve and one-half percent of the total proceeds shall be transferred to the West Virginia development office, to be used in assisting counties and municipalities in the design and construction of wastewater treatment facilities;

(4) Twelve and one-half percent of the total proceeds shall be transferred to the solid waste reclamation and environmental response fund, established pursuant to section eleven, article fifteen, chapter twenty-two of this code, to be expended by the division of environmental protection to assist in the funding of the pollution prevention and open dumps program (PPOD) which encourages recycling, reuse, waste reduction and clean-up activities; and

(5) Twelve and one-half percent of the total proceeds shall be deposited in the hazardous waste emergency response fund established in article nineteen, chapter twenty-two of this code.

(i) Severability. — If any provision of this section or the application thereof is for any reason adjudged by any court of competent jurisdiction to be invalid, such judgment does not affect, impair or invalidate the remainder of this section, but is confined in its operation to the provision thereof directly involved in the controversy in which such judgment is rendered, and the applicability of such provision to other persons or circumstances is not affected thereby.

(j) Effective date. — This section is effective on the first day of January, one thousand nine hundred ninety-two.
AN ACT to amend and reenact section five-a, article eleven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article sixteen, chapter twenty-two of said code, all relating generally to the collection and disbursement of recycling and solid waste assessment fees; ineligibility of certain persons to receive assistance from recycling assistance fund; authorizing the use of a portion of recycling assessment fee for certain purposes; reallocating a portion of recycling assessment fee; and authorizing transfer of a portion of solid waste assessment fee deposited into closure cost assistance fund.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

*§20-11-5a. Recycling assessment fee; regulated motor carriers; dedication of proceeds; criminal penalties.

1 (a) Imposition. — A recycling assessment fee is hereby levied and imposed upon the disposal of solid waste at all solid waste disposal facilities in this state, to be

*Clerk's Note: This section was also amended by SB 601 (Chapter 252), which passed prior to this act.
collected at the rate of two dollars per ton or part of a ton of solid waste. The fee imposed by this section is in addition to all other fees levied by law.

(b) Collection, return, payment and records. — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not that person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the tax commissioner:

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility;

(2) The operator shall remit the fee imposed by this section to the tax commissioner on or before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator shall file returns on forms and in the manner as prescribed by the tax commissioner;

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the tax commissioner;

(4) If any operator fails to collect the fee imposed by this section, he or she is personally liable for the amount that he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by article ten, chapter eleven of this code;

(5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns with the fee as required in this section, the tax commissioner may serve written notice requiring the operator to collect the fees which become collectible after service of the notice, to deposit the fees in a bank approved by the tax commissioner, in a separate account, in trust for and payable to the tax commissioner, and to keep the amount of the fees in the account until remitted to the tax commissioner. The notice remains in effect until a notice
of cancellation is served on the operator or owner by the
42 tax commissioner;

(6) Whenever the owner of a solid waste disposal
44 facility leases the solid waste facility to an operator, the
45 operator is primarily liable for collection and remittance
46 of the fee imposed by this section and the owner is
47 secondarily liable for remittance of the fee imposed by
48 this section. However, if the operator fails, in whole or in
49 part, to discharge his or her obligations under this section,
50 the owner and the operator of the solid waste facility are
51 jointly and severally responsible and liable for compliance
52 with the provisions of this section;

(7) If the operator or owner responsible for collecting
54 the fee imposed by this section is an association or
55 corporation, the officers of the association or corporation
56 are liable, jointly and severally, for any default on the part
57 of the association or corporation, and payment of the fee
58 and any additions to tax, penalties and interest imposed by
59 article ten, chapter eleven of this code may be enforced
60 against them and against the association or corporation
61 which they represent; and

(8) Each person disposing of solid waste at a solid
63 waste disposal facility and each person required to collect
64 the fee imposed by this section shall keep complete and
65 accurate records in the form required by the tax
66 commissioner in accordance with the rules of the tax
67 commissioner.

(c) Regulated motor carriers. — The fee imposed by
69 this section is a necessary and reasonable cost for motor
70 carriers of solid waste subject to the jurisdiction of the
71 public service commission under chapter twenty-four-a of
72 this code. Notwithstanding any provision of law to the
73 contrary, upon the filing of a petition by an affected
74 motor carrier, the public service commission shall, within
75 fourteen days, reflect the cost of the fee in the motor
76 carrier's rates for solid waste removal service. In
77 calculating the amount of the fee to the motor carrier, the
78 commission shall use the national average of pounds of
waste generated per person per day as determined by the United States environmental protection agency.

(d) Definitions. — For purposes of this section:

"Solid waste disposal facility" means any approved solid waste facility or open dump in this state and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste facility within this state that collects the fee imposed by this section.

Nothing in this section authorizes in any way the creation or operation of or contribution to an open dump.

(e) Exemptions. — The following transactions are exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste facility by the person who owns, operates or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally produced by that person in his or her regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste; and

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on the days and times designated by the director of the division of environmental protection by rule as exempt from the fee imposed pursuant to section eleven, article fifteen, chapter twenty-two of this code.

(f) Procedure and administration. — Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten, chapter eleven of this code applies to the fee imposed by this section with like effect as if the act were applicable only to the fee imposed by this section and were set forth in extenso in this section.

(g) Criminal penalties. — Notwithstanding section two, article nine, chapter eleven of this code, sections three
through seventeen, article nine, chapter eleven of this code apply to the fee imposed by this section with like effect as if the sections were the only fee imposed by this section and were set forth in extenso in this section.

(h) *Dedication of proceeds.* — The proceeds of the fee collected pursuant to this section shall be deposited by the tax commissioner, at least monthly, in a special revenue account designated as the "recycling assistance fund" which is hereby continued. The director of the division of natural resources shall allocate the proceeds of the fund as follows:

(1) Fifty percent of the total proceeds shall be provided in grants to assist municipalities, counties and other interested parties in the planning and implementation of recycling programs, public education programs and recycling market procurement efforts, established pursuant to this article. The director of the division of natural resources shall promulgate rules, in accordance with chapter twenty-nine-a of this code, containing application procedures, guidelines for eligibility, reporting requirements and other matters considered appropriate: *Provided,* That persons responsible for collecting, hauling or disposing of solid waste who do not participate in the collection and payment of the solid waste assessment fee imposed by this section in addition to all other fees and taxes levied by law for solid waste generated in this state which is destined for disposal, shall not be eligible to receive grants under the provisions of this article;

(2) Twelve and one-half percent of the total proceeds shall be expended for personal services and benefit expenses of full-time salaried conservation officers;

(3) Twelve and one-half percent of the total proceeds shall be transferred to the West Virginia development office, through the thirtieth day of June, one thousand nine hundred ninety-eight, to be used in assisting counties and municipalities in the design and construction of wastewater treatment facilities and other solid waste management projects designed to protect the waters of the
state. Beginning the first day of July, one thousand nine
hundred ninety-eight, these total proceeds shall be directly
allocated to the solid waste planning fund;

(4) Twelve and one-half percent of the total proceeds
shall be transferred to the solid waste reclamation and
environmental response fund, established pursuant to
section eleven, article fifteen, chapter twenty-two of this
code, to be expended by the division of environmental
protection to assist in the funding of the pollution
prevention and open dumps program (PPOD) which
encourages recycling, reuse, waste reduction and clean-up
activities; and

(5) Twelve and one-half percent of the total proceeds
shall be deposited in the hazardous waste emergency
response fund established in article nineteen, chapter
twenty-two of this code.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSIS-
TANCE PROGRAM.

§22-16-4. Solid waste assessment fee; penalties.

(a) Imposition. — A solid waste assessment fee is levied
and imposed upon the disposal of solid waste at any solid
waste disposal facility in this state in the amount of three
dollars and fifty cents per ton or like ratio on any part of a
ton of solid waste, except as provided in subsection (e) of
this section: Provided, That any solid waste disposal
facility may deduct from this assessment fee an amount,
not to exceed the fee, equal to the amount that the facility
is required by the public service commission to set aside
for the purpose of closure of that portion of the facility
required to close by article fifteen of this chapter. The fee
imposed by this section is in addition to all other fees and
taxes levied by law and shall be added to and constitute
part of any other fee charged by the operator or owner of
the solid waste disposal facility.

(b) Collection, return, payment and records. — The
person disposing of solid waste at the solid waste disposal
facility shall pay the fee imposed by this section, whether or not that person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the tax commissioner:

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility;

(2) The operator shall remit the fee imposed by this section to the tax commissioner on or before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator shall file returns on forms and in the manner prescribed by the tax commissioner;

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the tax commissioner;

(4) If any operator fails to collect the fee imposed by this section, he or she is personally liable for the amount he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by article ten, chapter eleven of this code;

(5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns with the fee as required in this section, the tax commissioner may serve written notice requiring the operator to collect the fees which become collectible after service of the notice, to deposit the fees in a bank approved by the tax commissioner, in a separate account, in trust for and payable to the tax commissioner, and to keep the amount of the fees in the account until remitted to the tax commissioner. The notice shall remain in effect until a notice of cancellation is served on the operator or owner by the tax commissioner;

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of the fee imposed by this section and the owner is
secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section;

(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers of the association or corporation are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them as against the association or corporation which they represent; and

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in the form required by the tax commissioner in accordance with the rules of the tax commissioner.

(c) Regulated motor carriers. — The fee imposed by this section is a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the public service commission under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the public service commission shall, within fourteen days, reflect the cost of the fee in the motor carrier's rates for solid waste removal service. In calculating the amount of the fee to the motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States environmental protection agency.

(d) Definitions. — For purposes of this section, the term "solid waste disposal facility" means any approved solid waste facility or open dump in this state, and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste
facility within this state that collects the fee imposed by this section. Nothing in this section authorizes in any way the creation or operation of or contribution to an open dump.

(e) Exemptions. — The following transactions are exempt from the fee imposed by this section:

1. Disposal of solid waste at a solid waste disposal facility by the person who owns, operates or leases the solid waste disposal facility if the facility is used exclusively to dispose of waste originally produced by that person in the person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

2. Reuse or recycling of any solid waste;

3. Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on the days and times designated by the director as exempt from the solid waste assessment fee; and

4. Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of thirty percent or less of the total waste it processes for recycling. In order to qualify for this exemption each commercial recycler shall keep accurate records of incoming and outgoing waste by weight. The records shall be made available to the appropriate inspectors from the division, upon request.

(f) Procedure and administration. — Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten, chapter eleven of this code applies to the fee imposed by this section with like effect as if the act were applicable only to the fee imposed by this section and were set forth in extenso in this section.

(g) Criminal penalties. — Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code apply to the fee imposed by this section with like effect as if the sections were applicable only to the fee imposed by this section and were set forth in extenso in this section.
(h) Dedication of proceeds. — (1) The proceeds of the fee collected pursuant to this section shall be deposited in the closure cost assistance fund established pursuant to section twelve of this article: Provided, That the director may transfer up to fifty cents for each ton of solid waste disposed of in this state upon which the fee imposed by this section is collected on or after the first day of July, one thousand nine hundred ninety-eight, to the solid waste enforcement fund established pursuant to section eleven, article fifteen of this chapter.

(2) Fifty percent of the proceeds of the fee collected pursuant to this article in excess of thirty thousand tons per month from any landfill which is permitted to accept in excess of thirty thousand tons per month pursuant to section nine, article fifteen of this chapter shall be remitted, at least monthly, to the county commission in the county in which the landfill is located. The remainder of the proceeds of the fee collected pursuant to this section shall be deposited in the closure cost assistance fund established pursuant to section twelve of this article.

CHAPTER 254

(S. B. 178—By Senators Oliverio, Bowman, Hunter, Ross, Snyder, Deem, Scott, Kessler, White, Dittmar, Anderson, McKenzie, Ball, Prezioso and Sharpe)

[Passed February 17, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, five, seven, eight, nine, ten, twelve, fifteen and twenty, article fifteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, eight, twenty-four, twenty-five, twenty-six, twenty-seven and twenty-eight, article four, chapter twenty-two of said code; to further amend said chapter by adding thereto a new article, designated article four-a; and to amend and reenact section one-c, article two, chapter twenty-four of said code, all relating generally to
solid waste management; stating purpose and legislative findings; providing definitions; establishing powers and duties of the director; providing for rulemaking; modifying provisions relating to free day; limiting the size of solid waste facilities; removing discriminatory language; requiring the director to consider certain things in determining facility size; prohibiting discrimination by a commercial solid waste facility based on origin of waste; providing for performance bonds; establishing bond requirements; establishing period of bond liability; providing for sewage sludge management; requiring tipping fees for sewage sludge disposed of in a landfill cell; prohibiting use of sewage sludge as daily cover; establishing maximum limits for receipt of sewage sludge at new and existing commercial solid waste facilities and sewage sludge processing facilities; prohibiting transportation of sludge in violation of this act; requiring balanced output of sludge to intake of sludge; requiring recordkeeping; requiring odor monitoring and testing; providing for orders, inspections and enforcement; providing civil and criminal penalties; providing for minor modifications of permits; providing legislative findings and purposes relating to county and regional solid waste authorities; providing definitions; authorizing development and continuation of litter and solid waste control plans; providing for approval by solid waste management board; developing of plan by director; providing for advisory rules; providing for commercial solid waste facility siting plan; providing for facilities subject to plan; establishing site approval criteria; providing for approval by solid waste management board; providing for public hearings; providing for rules; providing for approval of new Class A facilities, conversion from Class B to Class A and increasing maximum allowable monthly tonnage of Class A facilities by solid waste authorities; explaining legislative findings and purpose for local participation; providing for local participation by referendum; mandating referendum for new Class A facilities; allowing petition for referendum for conversion of Class B facility to a Class A facility; requiring the receipt of a certificate of need prior to referendum; allowing petition for referendum when seeking to increase the maximum allowable monthly tonnage of Class A facilities; requiring permits; establishing powers and duties of public service
commission; requiring certificate of need for solid waste facilities; and requiring public service commission to promulgate rules.

Be it enacted by the Legislature of West Virginia:

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

Chapter

   22. Environmental Resources.

22C. Environmental Resources; Boards, Authorities, Commissions and Compacts.


CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-1. Purpose and legislative findings.
§22-15-7. Special provision for residential solid waste disposal.

§22-15-1. Purpose and legislative findings.

1 (a) The purpose of this article is to establish a comprehensive program of controlling all phases of solid waste management.
(b) The Legislature finds that solid waste disposal is a universal problem for all of the United States and that West Virginia is committed to participating in the waste stream market and not interfering with the free flow of solid waste into or out of this state. However, the Legislature also recognizes that solid waste disposal has inherent long-term environmental, health and infrastructure impacts on local communities where the solid waste facilities are located. It is the Legislature's intent to establish reasonable uniform requirements on all waste disposed of in this state regardless of origin. Because of the importance and impact associated with the location and operation of solid waste facilities, this article establishes a thorough and balanced application and regulatory process which provides an efficient and reasonable permitting process while affording the state and its citizens full and fair participation in decisions associated with the location, operation and oversight of the solid waste collection and disposal process.

(c) The Legislature further finds that solid waste disposal has inherent risks and negative impact on local communities and specifically finds the following: (1) Uncontrolled, inadequately controlled and improper collection, transportation, processing and disposal of solid waste is a public nuisance and a clear and present danger to people; (2) provides harborages and breeding places for disease-carrying, injurious insects, rodents and other pests harmful to the public health, safety and welfare; (3) constitutes a danger to livestock and domestic animals; (4) decreases the value of private and public property, causes pollution, blight and deterioration of the natural beauty and resources of the state and has adverse economic and social effects on the state and its citizens; (5) results in the squandering of valuable nonrenewable and nonreplenishable resources contained in solid waste; (6) that resource recovery and recycling reduces the need for landfills and extends their life; and that (7) proper disposal, resource recovery or recycling of solid waste is for the general welfare of the citizens of this state.

(d) The Legislature further finds that Class A landfills often create special environmental problems that require
statewide coordination of the management of such
landfills.

(e) The Legislature further finds based upon
engineering, environmental concerns, land-use planning,
transportation system networks, public health, safety and
welfare, that the amount of solid waste disposed of by
solid waste facilities must be limited in order to protect this
state’s environment and the public in general against
adverse impact.

(f) The Legislature further finds that incineration
technologies present potentially significant health and
environmental problems.

(g) The Legislature further finds that there is a need
for efforts to continue to evaluate the viability of future
incineration technologies that are both environmentally
sound and economically feasible.

(h) The Legislature further finds that composting
large quantities of sewage sludge at a single location can
seriously impact the local community where the facility is
located. The potential adverse impact of noxious odors
and environmental and health hazards requires assurances
that local communities are not adversely impacted by the
location of sewage sludge composting facilities. Further,
the newness of the technology and processes for
managing sewage sludge processing require careful and
evolving regulatory oversight mechanisms, assuring that
sewage sludge processing and composting are properly
conducted. Therefore, limitations and qualifications for
location and management of sewage sludge processing
facilities are a necessary and integral part of the
management of solid waste in West Virginia.


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

2 (1) "Agronomic rate" means the whole sewage sludge
application rate, by dry weight, designed:
(A) To provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop or vegetation on the land; and

(B) To minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

(2) "Applicant" means the person applying for a commercial solid waste facility permit or similar renewal permit and any person related to such person by virtue of common ownership, common management or family relationships as the director may specify, including the following: Spouses, parents and children and siblings.

(3) "Approved solid waste facility" means a solid waste facility or practice which has a valid permit under this article.

(4) "Back hauling" means the practice of using the same container to transport solid waste and to transport any substance or material used as food by humans, animals raised for human consumption or reusable item which may be refilled with any substance or material used as food by humans.

(5) "Bulking agent" means any material mixed and composted with sewage sludge.

(6) "Class A facility" means a commercial solid waste facility which handles an aggregate of between ten thousand and thirty thousand tons of solid waste per month. Class A facility includes two or more Class B solid waste landfills owned or operated by the same person in the same county, if the aggregate tons of solid waste handled per month by such landfills exceeds nine thousand nine hundred ninety-nine tons of solid waste per month.

(7) "Commercial recycler" means any person, corporation or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent by weight of the materials coming into the commercial recycling facility.
(8) "Commercial solid waste facility" means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and does not include an approved solid waste facility owned and operated by a person for the sole purpose of the disposal, processing or composting of solid wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis and does not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation and similar applications.

(9) "Compost" means a humus-like material resulting from aerobic, microbial, thermophilic decomposition of organic materials.

(10) "Composting" means the aerobic, microbial, thermophilic decomposition of natural constituents of solid waste to produce a stable, humus-like material.

(11) "Commercial composting facility" means any solid waste facility processing solid waste by composting, including sludge composting, organic waste or yard waste composting, but does not include a composting facility owned and operated by a person for the sole purpose of composting waste created by that person or such person and other persons on a cost-sharing or nonprofit basis and shall not include land upon which finished or matured compost is applied for use as a soil amendment or conditioner.

(12) "Cured compost" or "finished compost" means compost which has a very low microbial or decomposition rate which will not reheat or cause odors when put into storage and that has been put through a separate aerated curing cycle stage of thirty to sixty days after an initial composting cycle or compost which meets all regulatory requirements after the initial composting cycle.

(13) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to article one of this chapter.
(14) "Division" means the division of environmental protection.

(15) "Energy recovery incinerator" means any solid waste facility at which solid wastes are incinerated with the intention of using the resulting energy for the generation of steam, electricity or any other use not specified herein.

(16) "Incineration technologies" means any technology that uses controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials, regardless of whether the purpose is processing, disposal, electric or steam generation or any other method by which solid waste is incinerated.

(17) "Incinerator" means an enclosed device using controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials.

(18) "Landfill" means any solid waste facility for the disposal of solid waste on or in the land for the purpose of permanent disposal. Such facility is situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

(19) "Materials recovery facility" means any solid waste facility at which source-separated materials or materials recovered through a mixed waste processing facility are manually or mechanically shredded or separated for purposes of reuse and recycling, but does not include a composting facility.

(20) "Mature compost" means compost which has been produced in an aerobic, microbial, thermophilic manner and does not exhibit phytotoxic effects.

(21) "Mixed solid waste" means solid waste from which materials sought to be reused or recycled have not been source-separated from general solid waste.

(22) "Mixed waste processing facility" means any solid waste facility at which materials are recovered from mixed solid waste through manual or mechanical means for purposes of reuse, recycling or composting.
(23) "Municipal solid waste incineration" means the burning of any solid waste collected by any municipal or residential solid waste disposal company.

(24) "Open dump" means any solid waste disposal which does not have a permit under this article, or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

(25) "Person" or "persons" means any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

(26) "Publicly owned treatment works" means any treatment works owned by the state or any political subdivision thereof, any municipality or any other public entity which processes raw domestic, industrial or municipal sewage by any artificial or natural processes in order to remove or so alter constituents as to render the waste less offensive or dangerous to the public health, comfort or property of any of the inhabitants of this state, before the discharge of the plant effluent into any of the waters of this state, and which produces sewage sludge.

(27) "Recycling facility" means any solid waste facility for the purpose of recycling at which neither land disposal nor biological, chemical or thermal transformation of solid waste occurs: Provided, That mixed waste recovery facilities, sludge processing facilities and composting facilities are not considered recycling facilities nor considered to be reusing or recycling solid waste within the meaning of this article, article four, chapter twenty-two-c and article eleven, chapter twenty of this code.

(28) "Sewage sludge" means solid, semisolid or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not
limited to, domestic septage, scum or solids removed in primary, secondary or advanced wastewater treatment processes and a material derived from sewage sludge. "Sewage sludge" does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator.

(29) "Sewage sludge processing facility" is a solid waste facility that processes sewage sludge for: (A) Land application; (B) incineration; or (C) disposal at an approved landfill. Such processes include, but are not limited to, composting, lime stabilization, thermophilic, microbial and anaerobic digestion.

(30) "Sludge" means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin.

(31) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration; sludge from a waste treatment plant; water supply treatment plant or air pollution control facility; and other discarded materials, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five-a of this chapter, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article five-e of this chapter or refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources placed or disposed of at a facility which is regulated under chapter twenty-two, twenty-two-a or twenty-two-b of this code, so long as such placement or disposal is in
conformance with a permit issued pursuant to such
chapters.

(32) "Solid waste disposal" means the practice of
disposing of solid waste including placing, depositing,
dumping or throwing or causing any solid waste to be
placed, deposited, dumped or thrown.

(33) "Solid waste disposal shed" means the
geographical area which the solid waste management
board designates and files in the state register pursuant to
section eight, article twenty-six, chapter sixteen of this
code.

(34) "Solid waste facility" means any system, facility,
land, contiguous land, improvements on the land,
structures or other appurtenances or methods used for
processing, recycling or disposing of solid waste,
including landfills, transfer stations, materials recovery
facilities, mixed waste processing facilities, sewage sludge
processing facilities, commercial composting facilities and
other such facilities not herein specified, but not including
land upon which sewage sludge is applied in accordance
with section twenty of this article. Such facility shall be
deemed to be situated, for purposes of this article, in the
county where the majority of the spatial area of such
facility is located: Provided, That a salvage yard, licensed
and regulated pursuant to the terms of article twenty-three,
chapter seventeen of this code, is not a solid waste facility.

(35) "Solid waste facility operator" means any person
or persons possessing or exercising operational,
managerial or financial control over a commercial solid
waste facility, whether or not such person holds a
certificate of convenience and necessity or a permit for
such facility.

(36) "Source-separated materials" means materials
separated from general solid waste at the point of origin
for the purpose of reuse and recycling but does not mean
sewage sludge.


1 In addition to all other powers, duties, responsibilities
2 and authority granted and assigned to the director in this
The director shall promulgate rules in compliance with the West Virginia administrative procedures act to carry out the provisions of this article including modifying any existing rules and establishing permit application fees up to an amount sufficient to defray the costs of permit review. In promulgating rules the director shall consider and establish requirements based on the quantity of solid waste to be handled, including different requirements for solid waste facilities or approved solid waste facilities which handle more than one hundred tons of solid waste per day, the environmental impact of solid waste disposal, the nature, source or characteristics of the solid waste, potential for contamination of ground, surface and potable waters, requirements for public roadway standards and design for access to the facilities with approval by the commissioner of the division of highways, the financial capability of the applicant, soil and geological considerations, environmental and other natural resource considerations.

The director, after public notice and opportunity for public hearing near the affected community, may issue a permit with reasonable terms and conditions for installation, establishment, modification, operation or closure of a solid waste facility: Provided, That the director may deny the issuance of a permit on the basis of information in the application or from other sources including public comment, if the solid waste facility is likely to cause adverse impacts on the environment. The director may also prohibit the installation or establishment of specific types and sizes of solid waste facilities in a specified geographical area of the state based on the above-cited factor and may delete such geographical area from consideration for that type and size solid waste facility.

The director may refuse to grant any permit if he or she has reasonable cause to believe, as indicated by documented evidence, that the applicant, or any officer, director or manager, thereof, or person owning a five
percent or more interest, beneficial or otherwise, or other
person conducting or managing the affairs of the
applicant or of the proposed licensed premises, in whole
or in part:

(1) Has demonstrated, either by his or her police
record or by his or her record as a permittee under articles
eleven through nineteen of this chapter or chapter twenty
of this code, a lack of respect for law and order, generally,
or for the laws and rules governing the disposal of solid
wastes;

(2) Has misrepresented a material fact in applying to
the director for a permit;

(3) Has been convicted of a felony or other crime
involving moral turpitude;

(4) Has exhibited a pattern of violating environmental
laws in any state or the United States or combination
thereof; or

(5) Has had any permit revoked under the
environmental laws of any state or the United States.

(d) The director or any authorized representative,
employee or agent of the division may, at reasonable
times, enter onto any approved solid waste facility, open
dump or property where solid waste is present for the
purpose of making an inspection or investigation of solid
waste disposal.

(e) The director or any authorized representative,
employee or agent of the division may, at reasonable
times, enter any approved solid waste facility, open dump
or property where solid waste is present and take samples
of the waste, soils, air or water or may, upon issuance of an
order, require any person to take and analyze samples of
such waste, soil, air or water.

(f) The director may also perform or require a person,
by order, to perform any and all acts necessary to carry
out the provisions of this article or the rules promulgated
thereunder.

(g) The director or his or her authorized
representative, employee or agent shall make periodic
inspections at every approved solid waste facility to effectively implement and enforce the requirements of this article or its rules and may, in coordination with the commissioner of the division of highways, conduct at weigh stations or any other adequate site or facility inspections of solid waste in transit.

(h) The director shall require and set the amount of performance bonds for persons engaged in the practice of solid waste disposal in this state, pursuant to section twelve of this article.

(i) The director shall require: (1) That persons disposing of solid waste at commercial solid waste facilities within the state file with the operator of the commercial solid waste facility records concerning the type, amount and origin of solid waste disposed of by them; and (2) that operators of commercial solid waste facilities within the state maintain records and file them with the director concerning the type, amount and origin of solid waste accepted by them.

(j) Identification of interests. — The director shall require an applicant for a solid waste facility permit to provide the following information:

(1) The names, addresses and telephone numbers of:

(A) The permit applicant;

(B) Any other person conducting or managing the affairs of the applicant or of the proposed permitted premises, including any contractor for gas or energy recovery from the proposed operation, if the contractor is a person other than the applicant; and

(C) Parties related to the applicant by blood, marriage or business association, including the relationship to the applicant;

(2) The names and addresses of the owners of record of surface and subsurface areas within, and contiguous to, the proposed permit area;

(3) The names and addresses of the holders of record to a leasehold interest in surface or subsurface areas within, and contiguous to, the proposed permit area;
(4) A statement of whether the applicant is an individual, corporation, partnership, limited partnership, government agency, proprietorship, municipality, syndicate, joint venture or other entity. For applicants other than sole proprietorships, the application shall contain the following information, if applicable:

(A) Names and addresses of every officer, general and limited partner, director and other persons performing a function similar to a director of the applicant;

(B) For corporations, the principal shareholders;

(C) For corporations, the names, principal places of businesses and internal revenue service tax identification numbers of United States parent corporations of the applicant, including ultimate parent corporations and United States subsidiary corporations of the applicant and the applicant's parent corporations; and

(D) Names and addresses of other persons or entities having or exercising control over any aspect of the proposed facility that is regulated by the division, including, but not limited to, associates and agents;

(5) If the applicant or an officer, principal shareholder, general or limited partner or other related party to the applicant, has a beneficial interest in, or otherwise manages or controls another person or municipality engaged in the business of solid waste collection, transportation, storage, processing, treatment or disposal, the application shall contain the following information:

(A) The name, address and tax identification number or employer identification number of the corporation or other person or municipality; and

(B) The nature of the relationship or participation with the corporation or other person or municipality;

(6) An application shall list permits or licenses, issued by the division or other environmental regulatory agency to each person or municipality identified in paragraph (1) of this subdivision and to other related parties to the applicant, that are currently in effect or have been in effect
in at least part of the previous ten years. This list shall include the type of permit or license, number, location, issuance date and, when applicable, the expiration date;

(7) An application shall identify the solid waste facilities in the state which the applicant or a person or municipality identified in paragraph (1) of this subdivision and other related parties to the applicant currently owns or operates, or owned or operated in the previous ten years. For each facility, the applicant shall identify the location, type of operation and state or federal permits under which they operate or have operated. Facilities which are no longer permitted or which were never under permit shall also be listed.

(k) Compliance information. — An application shall contain the following information for the ten-year period prior to the date on which the application is filed:

(1) A description of notices of violation, including the date, location, nature and disposition of the violation, that were sent by the division to the applicant or a related party, concerning any environmental law, rule, or order of the division, or a condition of a permit or license. In lieu of a description, the applicant may provide a copy of notices of violation;

(2) A description of administrative orders, civil penalty assessments and bond forfeiture actions by the division, and civil penalty actions adjudicated by the state, against the applicant or a related party concerning any environmental law, rule, or order of the division, or a condition of a permit or license. The description shall include the date, location, nature and disposition of the actions. In lieu of a description, the applicant may provide a copy of the orders, assessments and actions;

(3) A description of a summary, misdemeanor or felony conviction, a plea of guilty or plea of no contest that has been obtained in this state against the applicant or a related party under any environmental law or rule concerning the storage, collection, treatment, transportation, processing or disposal of solid waste. The description shall include the date, location, nature and disposition of the actions;
(4) A description of a court proceeding concerning any environmental law or rule that was not described under paragraph (3) of this subdivision in which the applicant or a related party has been party. The description shall include the date, location, nature and disposition of the proceedings;

(5) A description of a consent order, consent adjudication, consent decree or settlement agreement involving the applicant or a related party concerning any environmental law or rule in which the division, other governmental agencies, the United States environmental protection agency, or a county health department was a party. The description shall include the date, location, nature and disposition of the action. In lieu of a description, the applicant may provide a copy of the order, adjudication, a decree or agreement;

(6) For facilities and activities identified under paragraph (1) of this subdivision, a statement of whether the facility or activity was the subject of an administrative order, consent agreement, consent adjudication, consent order, settlement agreement, court order, civil penalty, bond forfeiture proceeding, criminal conviction, guilty or no contest plea to a criminal charge or permit or license suspension or revocation under the act or the environmental protection acts. If the facilities or activities were subject to these actions, the applicant shall state the date, location, nature and disposition of the violation. In lieu of a description, the applicant may provide a copy of the appropriate document. The application shall also state whether the division has denied a permit application filed by the applicant or a related party, based on compliance status;

(7) When the applicant is a corporation, a list of the principal shareholders that have also been principal shareholders of other corporations which have committed violations of any environmental law or rule. The list shall include the date, location, nature and disposition of the violation, and shall explain the relationship between the principal shareholder and both the applicant and the other corporation;
(8) A description of a misdemeanor or felony conviction, a plea of guilty and a plea of no contest, by the applicant or a related party for violations outside of this state of any environmental protection laws or regulations. The description shall include the date of the convictions or pleas, and the date, location and nature of the offense;

(9) A description of final administrative orders, court orders, court decrees, consent decrees or adjudications, consent orders, final civil penalty adjudications, final bond forfeiture actions or settlement agreements involving the applicant or a related party for violations outside of this state of any environmental protection laws or regulations. The description shall include the date of the action and the location and nature of the underlying violation. In lieu of a description, the applicant may provide a copy of the appropriate document.

(I) All of the information provided by the applicant pursuant to this section is not confidential and may be disclosed pursuant to the provisions of chapter twenty-nine-b of this code.

§22-15-7. Special provision for residential solid waste disposal.

All commercial and public landfills shall establish and publish a yearly schedule providing for one day per month on which a person not in the business of hauling or disposing of solid waste may dispose of, in a landfill, an amount of residential solid waste, up to one pick-up truckload or its equivalent, free of all charges and fees: Provided, That the provisions of this section shall not take effect until the first day of July, one thousand nine hundred ninety-eight. Any person who is not a resident of West Virginia may only participate in the monthly free disposal day upon proof that his or her state of residence would likewise allow West Virginia residents to dispose of residential solid waste in the same or substantially similar manner.

(a) On and after the first day of October, one thousand nine hundred ninety-one, it is unlawful to operate any commercial solid waste facility that handles between ten thousand and thirty thousand tons of solid waste per month, except as provided in section nine of this article and sections twenty-six, twenty-seven and twenty-eight, articles four and four-a, chapter twenty-two-c of this code.

(b) Except as provided in section nine of this article, the maximum quantity of solid waste which may lawfully be received or disposed of at any commercial solid waste facility is thirty thousand tons per month.

(c) The director shall, within the limits contained in this article, place a limit on the amount of solid waste received or disposed of per month in commercial solid waste facilities. The director shall consider at a minimum the following criteria in determining a commercial solid waste facility's monthly tonnage limit:

1. The proximity and potential impact of the solid waste facility upon groundwater, surface water and potable water;

2. The projected life and design capacity of the solid waste facility;

3. The available air space, lined acreage, equipment type and size, adequate personnel and wastewater treatment capabilities; and

4. Other factors related to the environmentally safe and efficient disposal of solid waste.

(d) Within the limits established in this article, the director shall determine the amount of sewage sludge which may be safely treated, stored, processed, composted, dumped or placed in a solid waste facility.

(e) The director shall promulgate emergency rules, and propose for legislative promulgation, legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, to effectuate the requirements of this section. When developing the rules, the director shall consider at a minimum the potential impact of the
treatment, storage, processing, composting, dumping or placing sewage sludge at a solid waste facility:

(1) On the groundwater, surface waters and potable waters in the area;

(2) On the air quality in the area;

(3) On the projected life and design capacity of the solid waste facility;

(4) On the available air space, lined acreage, equipment type and size, personnel and wastewater treatment capabilities;

(5) The facility's ability to adequately develop markets and market the product which results from the proper treatment of sewage sludge; and

(6) Other factors related to the environmentally safe and efficient treatment, storage, processing, composting, dumping or placing of sewage sludge at a solid waste facility.

(f) Sewage sludge disposed of at a landfill must contain at least twenty percent solid by weight. This requirement may be met by adding or blending sand, sawdust, lime, leaves, soil or other materials that have been approved by the director prior to disposal. Alternative sewage sludge disposal methods can be utilized upon obtaining written approval from the director. No facility may accept for land filling in any month sewage sludge in excess of twenty-five percent of the total tons of solid waste accepted at the facility for land filling in the preceding month.


(a) Notwithstanding any provision in this article, article four, chapter twenty-two-c, article two, chapter twenty-four of this code, any other section of this code, or any prior enactment of the code to the contrary, and notwithstanding any defects in or challenges to any
actions which were or are required to be performed in
satisfaction of the following criteria, any person who on
the first day of October, one thousand nine hundred
ninety-one, has:

(1) Obtained site approval for a commercial solid
waste facility from a county or regional solid waste
authority or county commission pursuant to a prior
enactment of this code, or has otherwise satisfied the
requirements of subsection (a), section twenty-five, article
four, chapter twenty-two-c of this code;

(2) Entered into a contract with a county commission
regarding the construction and operation of a solid waste
facility, which contract contains rates for the disposal of
solid waste anticipated to be disposed of at the facility;

(3) Obtained, pursuant to section one-f, article two,
chapter twenty-four of this code, following a public
hearing, an order from the public service commission
approving the rates established in the contract with the
county commission; and

(4) An application for a permit for a commercial solid
waste facility pending with the division of environmental
protection, or is operating under a permit or compliance
order, is permitted to handle in excess of the limitation
established in section eight of this article up to fifty
thousand tons of solid waste per month at a commercial
solid waste facility so long as the person complies with the
provisions of this section.

(b) Any person desiring to operate a commercial solid
waste facility which handles an amount of solid waste per
month in excess of the limitation established in section
eight of this article, but not exceeding the tonnage
limitation described in subsection (a) of this section may
file a notice with the county commission of the county in
which the facility is or is to be located requesting a
countywide referendum. Upon receipt of such notice, the
county commission shall order a referendum be placed
upon the ballot, not less than fifty-six days before the next
primary or general election:
(1) Such referendum will be to determine whether it is the will of the voters of the county that a commercial solid waste facility be permitted to handle more than the limitation established in section eight of this article not to exceed fifty thousand tons per month. Any such election shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable;

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall a commercial solid waste facility, permitted to handle up to, but no more than fifty thousand tons of solid waste per month be located within ________ County, West Virginia?

☐ For the facility

☐ Against the facility

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

If a majority of the legal votes cast upon the question is against the facility handling an amount of solid waste of up to fifty thousand tons per month then the division shall not proceed any further with the application. If a majority of the legal votes cast upon the question is in favor of permitting the facility within the county, then the application process as set forth in this article may proceed: Provided, That such vote is not binding on or require the division to issue a permit.

(c) If a person submits to a referendum in accordance with this section, all approvals, certificates and permits granted and all actions undertaken by a regional or county solid waste authority or county commission with regard to the person's commercial solid waste facility within the county under this article or article four, chapter twenty-two-c of this code, or previously enacted sections of articles five-f and nine, chapter twenty of this code are
valid, complete and in full compliance with all the requirements of law and any defects contained in such approvals, certificates, permits or actions are cured and such defects may not be invoked to invalidate any such approval, certificate, permit or action.

(d) Notwithstanding any provision of this code to the contrary, any person described in subsection (a) of this section who complies with the referendum requirement of this section and complies with the permitting requirements of the division provided in section ten of this article, shall not be required to comply with the requirements of sections twenty-five, twenty-six, twenty-seven and twenty-eight, article four, chapter twenty-two-c of this code: Provided, That such person is entitled to receive a certificate of need pursuant to the provisions of subsection (a), section one-c, article two, chapter twenty-four of this code to handle the tonnage level authorized pursuant to subsection (a) of this section.

(e) The purpose of this section is to allow any person who satisfies the four criteria contained in subsection (a) of this section, notwithstanding any defects in or challenges to any actions which were or are required to be performed in satisfaction of such criteria, to submit the question of siting a facility that accepts up to fifty thousand tons within the county to a referendum in order to obtain a decision at the county or regional level regarding the siting of the facility and that submission of this question at the county level is the only approval, permit or action required at the county or regional level to establish and site the proposed facility.


(a) Open dumps are prohibited and it is unlawful for any person to create, contribute to or operate an open dump or for any landowner to allow an open dump to exist on the landowner's property unless that open dump is under a compliance schedule approved by the director. Such compliance schedule shall contain an enforceable sequence of actions leading to compliance and shall not exceed two years. Open dumps operated prior to the first day of April, one thousand nine hundred eighty-eight, by
a landowner or tenant for the disposal of solid waste
generated by the landowner or tenant at his or her
residence or farm are not a violation of this section if such
open dump did not constitute a violation of law on the
first day of January, one thousand nine hundred
eighty-eight, and unauthorized dumps which were created
by unknown persons do not constitute a violation of this
section: Provided, That no person may contribute
additional solid waste to any such dump after the first day
of April, one thousand nine hundred eighty-eight, except
that the owners of the land on which unauthorized dumps
have been or are being made are not liable for such
unauthorized dumping unless such landowners refuse to
cooperate with the division in stopping such unauthorized
dumping.

(b) It is unlawful for any person, unless the person
holds a valid permit from the division to install, establish,
construct, modify, operate or abandon any solid waste
facility. All approved solid waste facilities shall be
installed, established, constructed, modified, operated or
abandoned in accordance with this article, plans,
specifications, orders, instructions and rules in effect.

(c) Any permit issued under this article shall be issued
in compliance with the requirements of this article, its rules
and article eleven of this chapter and the rules
promulgated thereunder, so that only a single permit is
required of a solid waste facility under these two articles.
Each permit issued under this article shall have a fixed
term not to exceed five years: Provided, That the director
may administratively extend a permit beyond its five-year
term if the approved solid waste facility is in compliance
with this article, its rules and article eleven of this chapter
and the rules promulgated thereunder: Provided,
however, That such administrative extension may not be
for more than one year. Upon expiration of a permit,
renewal permits may be issued in compliance with rules
promulgated by the director.

(d) For existing solid waste facilities which formerly
held division of health permits which expired by law and
for which complete permit applications for new permits
pursuant to this article were submitted as required by law, the division may enter an administrative order to govern solid waste activities at such facilities, which may include a compliance schedule, consistent with the requirements of the division’s solid waste management rules, to be effective until final action is taken to issue or deny a permit for such facility pursuant to this article, or until further order of the division.

(e) No person may dispose in the state of any solid waste in a manner which endangers the environment or the public health, safety or welfare as determined by the director: Provided, That the carcasses of dead animals may be disposed of in any solid waste facility or in any other manner as provided for in this code. Upon request by the director, the commissioner of the bureau of public health shall provide technical advice concerning the disposal of solid waste or carcasses of dead animals within the state.

(f) A commercial solid waste facility shall not discriminate in favor of or against the receipt of any waste otherwise eligible for disposal at the facility based on its geographic origin.

(g) In addition to all the requirements of this article and the rules promulgated hereunder, a permit to construct a new commercial solid waste facility or to expand the spatial area of an existing facility, may not be issued unless the public service commission has granted a certificate of need, as provided in section one-c, article two, chapter twenty-four of this code. If the director approves a permit or permit modification, the certificate of need shall become a part of the permit and all conditions contained in the certificate of need shall be conditions of the permit and may be enforced by the division in accordance with the provisions of this article. If the director approves a permit or permit modification, the certificate of need shall become a part of the permit and all conditions contained in the certificate of need shall be conditions of the permit and may be enforced by the division in accordance with the provisions of this article.
(h) The director shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code which reflect the purposes as set forth in this section.


(a) After a solid waste permit application has been approved pursuant to this article, or once operations have commenced pursuant to a compliance order, but before a permit has been issued, each operator of a commercial solid waste facility shall furnish bond, on a form to be prescribed and furnished by the director, payable to the state of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article, rules promulgated hereunder and the permit. The amount of the bond required shall be determined by the director based upon the total estimated cost to the state of completing final closure according to the permit granted to such facility and such measures as are necessary to prevent adverse effects upon the environment; such measures include, but are not limited to, satisfactory monitoring, post-closure care, leachate treatment and remedial measures: Provided, That the amount of the bond shall be sufficient to conform to and be consistent with the financial assurance requirements set forth under Subtitle D of the federal Resource Conservation and Recovery Act, 42 U. S. C. §§6901 et seq. and the regulations promulgated thereunder. All bonds required to be posted shall be consistent, whether the facility is publicly or privately owned or operated. All permits shall be bonded for at least ten thousand dollars. The bond shall cover either: (1) The entire area to be used for the disposal of solid waste; or (2) that increment of land within the permit area upon which the operator will initiate and conduct commercial solid waste facility operations within the initial term of the permit pursuant to legislative rules promulgated by the director pursuant to chapter twenty-nine-a of this code. If the operator chooses to use incremental bonding, as succeeding increments of commercial solid waste facility operations are to be initiated and conducted within the permit area, the
operator shall file with the director an additional bond or
bonds to cover such increments in accordance with this
section: Provided, however, That once the operator has
chosen to proceed with bonding either the entire area to
be used for the disposal of solid waste or with incremental
bonding, the operator shall continue bonding in that
manner for the term of the permit.

(b) The period of liability for performance bond
coverage shall commence with issuance of a permit and
continue for the full term of the permit and for a period
of up to thirty full years after final closure of the permit
site: Provided, That any further time period necessary to
achieve compliance with the requirements in the closure
plan of the permit is considered an additional liability
period.

(c) The form of the performance bond shall be
approved by the director and may include, at the option of
the director, surety bonding, collateral bonding (including
cash and securities), establishment of an escrow account,
letters of credit, performance bonding fund participation
(as established by the director), self-bonding or a
combination of these methods.

If collateral bonding is used, the operator may elect to
deposit cash, or collateral securities or certificates as
follows: Bonds of the United States or its possessions, of
the federal land bank, or of the homeowners' loan
corporation; full faith and credit general obligation bonds
of the state of West Virginia, or other states, and of any
county, district or municipality of the state of West
Virginia or other states; or certificates of deposit in a bank
in this state, which certificates shall be in favor of the
division. The cash deposit or market value of such
securities or certificates shall be equal to or greater than
the sum of the bond. The director shall, upon receipt of
any such deposit of cash, securities or certificates,
promptly place the same with the treasurer of the state of
West Virginia whose duty it is to receive and hold the same
in the name of the state in trust for the purpose for which
the deposit is made when the permit is issued. The
operator making the deposit is entitled from time to time
to receive from the state treasurer, upon the written
approval of the director, the whole or any portion of any
cash, securities or certificates so deposited, upon
depositing with the treasurer in lieu thereof, cash or other
securities or certificates of the classes herein specified
having value equal to or greater than the sum of the bond.

(d) Within twelve months prior to the expiration of the
thirty-year period following final closure, the division will
conduct a final inspection of the facility. The purpose of
the inspection is to determine compliance with this article,
the division's rules, the terms and conditions of the permit,
orders of the division and the terms and conditions of the
bond. Based upon this determination, the division will
either forfeit the bond prior to the expiration of the
thirty-year period following final closure, or release the
bond at the expiration of the thirty-year period following
final closure. Bond release requirements shall be provided
in rules promulgated by the director.

(e) If the operator of a commercial solid waste facility
abandons the operation of a solid waste disposal facility
for which a permit is required by this article or if the
permittee fails or refuses to comply with the requirements
of this article in any respect for which liability has been
charged on the bond, the director shall declare the bond
forfeited and shall certify the same to the attorney general
who shall proceed to enforce and collect the amount of
liability forfeited thereon, and where the operation has
deposited cash or securities as collateral in lieu of
corporate surety, the director shall declare said collateral
forfeited and shall direct the state treasurer to pay said
funds into a waste management fund to be used by the
director to effect proper closure and to defray the cost of
administering this article. Should any corporate surety
fail to promptly pay, in full, forfeited bond, it is
disqualified from writing any further surety bonds under
this article.

§22-15-15. Orders, inspections and enforcement; civil and
criminal penalties.

(a) If the director, upon inspection or investigation by
duly authorized representatives or through other means
observes, discovers or learns of a violation of this article, its rules, article eleven of this chapter or its rules, or any permit or order issued under this article, he or she shall:

(1) Issue an order stating with reasonable specificity the nature of the alleged violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders suspending, revoking or modifying permits, orders requiring a person to take remedial action or cease and desist orders;

(2) Seek an injunction in accordance with subsection (e) of this section;

(3) Institute a civil action in accordance with subsection (e) of this section; or

(4) Request the attorney general, or the prosecuting attorney of the county wherein the alleged violation occurred, to bring an appropriate action, either civil or criminal in accordance with subsection (b) of this section.

(b) Any person who willfully or negligently violates the provisions of this article, any permit or any rule or order issued pursuant to this article is subject to the same criminal penalties as set forth in section twenty-four, article eleven of this chapter.

(c) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the director, of not more than five thousand dollars for each day of such violation, not to exceed a maximum of twenty thousand dollars:

(1) In assessing any such penalty, the director shall take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements as well as any other appropriate factors as may be established by the director by rules promulgated pursuant to this article and article three, chapter twenty-nine-a of this code. No assessment shall be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the
statute, rule, order or statement of permit conditions that
was allegedly violated, a concise statement of the facts
alleged to constitute the violation, a statement of the
amount of the administrative penalty to be imposed and a
statement of the alleged violator's right to an informal
hearing. The alleged violator has twenty calendar days
from receipt of the notice within which to deliver to the
director a written request for an informal hearing. If no
hearing is requested, the notice becomes a final order after
the expiration of the twenty-day period. If a hearing is
requested, the director shall inform the alleged violator of
the time and place of the hearing. The director may
appoint an assessment officer to conduct the informal
hearing and then make a written recommendation to the
director concerning the assessment of a civil administrative
penalty. Within thirty days following the informal
hearing, the director shall issue and furnish to the alleged
violator a written decision, and the reasons therefor,
concerning the assessment of a civil administrative
penalty. Within thirty days after notification of the
director's decision, the alleged violator may request a
formal hearing before the environmental quality board in
accordance with the provisions of section sixteen of this
article. The authority to levy a civil administrative penalty
is in addition to all other enforcement provisions of this
article and the payment of any assessment does not affect
the availability of any other enforcement provision in
connection with the violation for which the assessment is
levied: Provided, That no combination of assessments
against a violator under this section shall exceed twenty-
five thousand dollars for each day of such violation:
Provided, however, That any violation for which the
violator has paid a civil administrative penalty assessed
under this section shall not be the subject of a separate
civil penalty action under this article to the extent of the
amount of the civil administrative penalty paid. All
administrative penalties shall be levied in accordance with
rules issued pursuant to subsection (a), section five of this
article. The net proceeds of assessments collected
pursuant to this subsection shall be deposited in the solid
waste reclamation and environmental response fund
established in subdivision (3), subsection (h), section eleven of this article;

(2) No assessment levied pursuant to subdivision (1), subsection (c) above becomes due and payable until the procedures for review of such assessment as set out in said subsection have been completed.

(d) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil penalty not to exceed twenty-five thousand dollars for each day of such violation, which penalty shall be recovered in a civil action either in the circuit court wherein the violation occurs or in the circuit court of Kanawha County.

(e) The director may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit, rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the director to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

(f) Upon request of the director, the attorney general or the prosecuting attorney of the county in which the violation occurs shall assist the director in any civil action under this section.

(g) In any civil action brought pursuant to the provisions of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees.

(h) In addition to all other grounds for revocation, the director shall revoke a permit for any of the following reasons:

(1) Fraud, deceit or misrepresentation in securing the permit, or in the conduct of the permitted activity;
(2) Offering, conferring or agreeing to confer any benefit to induce any other person to violate the provisions of this chapter, or of any other law relating to the collection, transportation, treatment, storage or disposal of solid waste, or of any rule adopted pursuant thereto;

(3) Coercing a customer by violence or economic reprisal or the threat thereof to utilize the services of any permittee; or

(4) Preventing, without authorization of the division, any permittee from disposing of solid waste at a licensed treatment, storage or disposal facility.

(i) Within thirty days of the effective date of this subsection, the director shall issue minor permit modifications for all permits or permit modifications issued on or after the twenty-eighth day of September, one thousand nine hundred ninety-five, to reflect the tonnage authorization set forth in the certificate of need for that solid waste facility. All such facilities may continue to receive such tonnage until the modification is received.


(a) Within the limits imposed by section eight, article fifteen of this chapter, the division shall develop and implement a comprehensive program for the regulation and management of sewage sludge. The division is authorized to require permits for all facilities and activities which generate, process or dispose of sewage sludge by whatever means, including, but not limited to, land application, composting, mixed waste composting, incineration or any other method of handling sewage sludge within the state.

(b) The director shall promulgate emergency rules and propose legislative rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary for the efficient and orderly regulation of sewage sludge no later than ninety days after the effective date of this article. All rules, whether emergency or not, promulgated pursuant to this section shall assure, at a minimum, the following:
(1) That entities which generate, process, dispose or otherwise manage sewage sludge in the state are required to report to the division the following:

(i) The specific source of the sewage sludge;

(ii) The amount of sewage sludge actually generated, treated, stored, processed, composted, disposed or placed;

(iii) The content of heavy metals, pathogens, toxins or vectors present in the sewage sludge; and

(iv) Each location that the sewage sludge is stored, land applied or otherwise disposed of; the amount so stored, land applied or otherwise disposed of; and the capacity of that location to accept sewage sludge;

(2) That the division engage in reasonable and periodic monitoring of all sewage sludge-related activities and to monitor data supplied by sewage sludge producers, processors or transporters to ensure compliance with state and federal regulations;

(3) That representatives of the division have the ability to enter onto any land application site for the purposes of inspecting and analyzing the effects of sewage sludge application on that site;

(4) That no permit for the processing or disposal of sewage sludge will be issued until there is an accurate finding that it has been adequately tested and shown not to contain heavy metals, pathogens, toxins or vectors in excess of regulatory standards;

(5) That the director may require a surety bond, deposit or similar instrument in an amount sufficient to cover the costs of future environmental remediation from producers and importers of sewage sludge;

(6) That no person or entity be allowed to apply sewage sludge to land in a manner that will result in exceeding the maximum soil concentration for all pollutants, including, but not limited to, arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium and zinc;
(7) That no person be allowed to land apply so much sewage sludge as to exceed the agronomic rate for that land or a rate of fifteen dry tons per acre per year, whichever is less: Provided, That up to twenty-five dry tons per acre per year may be applied in the reclamation of surface mine land;

(8) That information relating to the disposal, treatment, storage, processing, composting, dumping, placing or land applying of sewage sludge is available to affected communities and other persons who may request the information in conformity with article one, chapter twenty-nine-b of this code;

(9) That all sewage sludge processing facilities contain sufficient design specifications to protect ground, surface and potable waters, air quality, existing and potential land-use planning and public health and safety;

(10) That regulation of composting facilities varies according to types and quantities of materials handled;

(11) That only living or dead plant tissues are used as bulking agents in sewage sludge processing facilities; and

(12) That a fee, to be paid by the producer, processor or transporter be levied and imposed on the land application of sewage sludge, to be collected at a per ton rate, sufficient to cover the costs of the sewage sludge management program. Fees collected pursuant to the terms of this subsection shall be deposited in the special revenue fund designated the "water quality management fund" established under the provisions of section ten, article eleven of this chapter. The fee schedule shall vary according to the volume of materials handled and the contaminant level of the sewage sludge and shall be subject to the provisions of article three, chapter twenty-nine-a of this code.

(c) For those publicly owned treatment works (POTW) which produce sewage sludge and are regulated by the division pursuant to a water pollution control permit, including a West Virginia national pollutant discharge elimination system (WV/NPDES) permit required under article eleven of this chapter, a sewage sludge processing
permit shall be a part of the permit and shall include a sewage sludge management plan approved by the director. Upon approval by the director, POTWs may accept sewage sludge from other POTWs on a cost-sharing or nonprofit basis under its NPDES permit without being considered a commercial solid waste facility.

(d) On and after the tenth day of April, one thousand nine hundred ninety-three, any facility seeking to land apply, compost, incinerate or recycle sewage sludge shall first apply for and obtain a permit from the division. No such permit may be issued until the rule provided for in subsection (b) of this section is effective.

(e) All sewage sludge placed in, or used in a landfill disposal cell by a solid waste facility shall be subject to the same tipping and other fees levied by this chapter on the disposal of solid waste and shall be included in said facility's total tonnage, subject to the limitations established in this article and the provisions of article four, chapter twenty-two-c of this code: Provided, That no land within a solid waste facility but outside a landfill disposal cell, shall accept the permanent application of so much sewage sludge as to exceed the agronomic rate or a rate of fifteen dry tons per acre per year, whichever is less.

(f) Sewage sludge shall not be used as daily cover by a landfill.

(g) Any solid waste facility currently operating under a permit from the director as a Class A solid waste facility and sewage sludge processing facility may receive, for the purpose of composting, up to a maximum of twelve thousand five hundred tons of sewage sludge per month, as weighed at the time of receipt at the facility. No Class A facility operating a sewage sludge processing facility under this chapter shall, on an annual basis, temporarily or permanently store, retain or stockpile more than one hundred twenty-five thousand cubic yards of sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge.

(h) Any solid waste facility currently operating under a permit from the director as a Class B solid waste facility and sewage sludge processing facility may receive, for the
purpose of composting, up to a maximum of five thousand tons of sewage sludge per month, as weighed at the time of receipt at the facility. No Class B facility operating a sewage sludge processing facility under this chapter shall, on an annual basis, temporarily or permanently store, retain or stockpile more than fifty thousand cubic yards of sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge.

(i) Any POTW currently operating or holding a WV/NPDES permit to operate a sewage sludge processing facility for the purpose of composting sewage sludge may receive, for the purpose of composting, up to a maximum of five thousand tons of sewage sludge per month, as weighed at the time of receipt at the facility. No POTW operating a sewage sludge processing facility under this chapter shall, on an annual basis, temporarily or permanently store, retain or stockpile more than fifty thousand cubic yards of sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge.

(j) No person seeking to operate a sewage sludge processing facility, commercial composting facility or noncommercial composting facility may receive, for the purpose of composting, up to a maximum of two thousand tons of sewage sludge per month, as weighed at the time of receipt at the facility. No person operating a sewage processing facility under this chapter shall, on an annual basis, temporarily or permanently store, retain or stockpile more than twenty thousand cubic yards of sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge.

(k) No sewage sludge processing facility may be located within a forty mile radius of another sewage sludge processing facility.

(l) Any facility under a consent agreement with the director or chief of the office of water resources as of the effective date of this article, regarding sewage sludge stored, retained or stockpiled at that facility, shall dispose of all accumulated sewage sludge in accordance with the
consent agreement. Such sewage sludge is not subject to the limitations on storage, retention and stockpiling set forth above unless the facility violates the terms and conditions of its consent agreement.

(m) No person shall knowingly transport or deliver sewage sludge, or any intermediate or final material or product derived wholly or partially from sewage sludge in violation of this section.

(n) Any solid waste facility which comports sewage sludge shall have an annual output of finished or mature compost removed from the facility balanced to the annual input of sewage sludge relative to the nature of the sewage sludge taken in.

(o) A person or facility that temporarily or permanently, stores, retains or stockpiles sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge, shall maintain accurate operational records on site that are sufficiently detailed to clearly and convincingly demonstrate to the director that sewage sludge is being stored consistent with the provisions of this section. The records shall be made available to the director upon request.

(p) The director shall presume that a person or facility which temporarily or permanently, stores, treats, handles, processes, retains or stockpiles sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge, contrary to the provisions of this section is subject to all penalties available to the director under this chapter.

(q) All persons operating a sewage sludge processing facility shall provide off-site odor monitoring or testing mechanisms approved by the director. The director shall promulgate emergency rules and propose legislative rules for legislative promulgation, rules specifying the nature and type of odor monitoring or testing which will be approved or how to obtain approval for proposed odor monitoring or testing; the areas where the monitoring or testing should occur; the frequency of monitoring or testing which shall be no less than semiannually or as otherwise ordered by the director and any other
The Legislature finds that the improper and uncontrolled collection, transportation, processing and disposal of domestic and commercial garbage, refuse and other solid wastes in the state of West Virginia results in:

1. A public nuisance and a clear and present danger to the citizens of West Virginia;
2. The degradation of the state's environmental quality including both surface and ground waters which provide essential and irreplaceable sources of domestic and industrial water supplies;
3. Provides harborages and breeding places for disease-carrying, injurious insects, rodents and other pests injurious to the public health, safety and welfare;
4. Decreases public and private property values and results in the blight and deterioration of the natural beauty of the state;
5. Has adverse social and economic effects on the state and its citizens; and
6. Results in the waste and squandering of valuable nonrenewable resources contained in such solid wastes which can be recovered...
through proper recycling and resource-recovery techniques with great social and economic benefits for the state.

The Legislature further finds that the proper collection, transportation, processing, recycling and disposal of solid waste is for the general welfare of the citizens of the state and that the lack of proper and effective solid waste collection services and disposal facilities demands that the state of West Virginia and its political subdivisions act promptly to secure such services and facilities in both the public and private sectors.

The Legislature further finds that the process of developing rational and sound solid waste plans at the county or regional level is impeded by the proliferation of siting proposals for new solid waste facilities.

Therefore, it is the purpose of the Legislature to protect the public health and welfare by providing for a comprehensive program of solid waste collection, processing, recycling and disposal to be implemented by state and local government in cooperation with the private sector. The Legislature intends to accomplish this goal by establishing county and regional solid waste authorities throughout the state to develop and implement litter and solid waste control plans.

It is further the purpose of the Legislature to reduce our solid waste management problems and to meet the purposes of this article by requiring county and regional solid waste authorities to establish programs and plans based on an integrated waste management hierarchy. In order of preference, the hierarchy is as follows:

(1) Source reduction. — This involves minimizing waste production and generation through product design, reduction of toxic constituents of solid waste and similar activities.

(2) Recycling, reuse and materials recovery. — This involves separating and recovering valuable materials from the waste stream, composting food and yard waste and marketing of recyclables.
(3) Landfilling. — To the maximum extent possible, this option should be reserved for nonrecyclables and other materials that cannot practically be managed in any other way. This is the lowest priority in the hierarchy and involves the waste management option of last resort.

The Legislature further finds that the potential impacts of proposed commercial solid waste facilities may have a deleterious and debilitating impact upon the transportation network, property values, economic growth, environmental quality, other land uses and the public health and welfare in affected communities. The Legislature also finds that the siting of such facilities is not being adequately addressed to protect these compelling interests of counties and local communities.

The Legislature further finds that affected citizens and local governments often look to state environmental regulatory agencies to resolve local land-use conflicts engendered by these proposed facilities. The Legislature also finds that such local land-use conflicts are most effectively resolved in a local governmental forum where citizens can most easily participate in the decisionmaking process and the land-use planning values of local communities most effectively identified and incorporated into a comprehensive policy which reflects the values and goals of those communities.

Therefore, it is the purpose of the Legislature to enable local citizens to resolve the land-use conflicts which may be created by proposed commercial solid waste facilities through the existing forum of county or regional solid waste authorities.

§22C-4-2. Definitions.

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

(a) "Approved solid waste facility" means a commercial solid waste facility or practice which has a valid permit or compliance order under article fifteen, chapter twenty-two of this code.

(b) "Commercial solid waste facility" means any solid waste facility which accepts solid waste generated by
sources other than the owner or operator of the facility and does not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid wastes created by that person or that person and another person on a cost-sharing or nonprofit basis and does not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation and similar applications.

(c) "Commercial recycler" means any person, corporation or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent by weight of the materials coming into the commercial recycling facility.

(d) "Class A facility" means a commercial solid waste facility which handles an aggregate of between ten and thirty thousand tons of solid waste per month. Class A facility includes two or more Class B solid waste landfills owned or operated by the same person in the same county, if the aggregate tons of solid waste handled per month by such landfills exceeds nine thousand nine hundred ninety-nine tons of solid waste per month.

(e) "Class B facility" means a commercial solid waste facility which receives or is expected to receive an average daily quantity of mixed solid waste equal to or exceeding one hundred tons each working day, or serves or is expected to serve a population equal to or exceeding forty thousand persons, but which does not receive solid waste exceeding an aggregate of ten thousand tons per month. Class B facilities do not include construction/demolition facilities: Provided, That the definition of Class B facility may include such reasonable subdivisions or subclassifications as the director may establish by legislative rule proposed in accordance with the provisions of chapter twenty-nine-a of this code.

(f) "Compliance order" means an administrative order issued pursuant to section ten, article fifteen, chapter twenty-two of this code authorizing a solid waste facility to operate without a solid waste permit.
(g) "Open dump" means any solid waste disposal which does not have a permit under this article, or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

(h) "Person" means any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

(i) "Sludge" means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin.

(j) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article eleven, chapter twenty-two of this code, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article eighteen, chapter twenty-two of this code, or refuse, slurry, overburden or other waste or material resulting from coal-fired electric power or steam generation, the exploration,
development, production, storage and recovery of coal, oil
and gas, and other mineral resources placed or disposed of
at a facility which is regulated under article two, three,
four, six, seven, eight, nine or ten, chapter twenty-two or
chapter twenty-two-a of this code, so long as such
placement or disposal is in conformance with a permit
issued pursuant to said chapters. "Solid waste" does not
include materials which are recycled by being used or
reused in an industrial process to make a product, as
effective substitutes for commercial products, or are
returned to the original process as a substitute for raw
material feedstock.

(k) "Solid waste disposal" means the practice of
disposing of solid waste including placing, depositing,
dumping or throwing or causing to be placed, deposited,
dumped or thrown any solid waste.

(l) "Solid waste disposal shed" means the geographical
area which the solid waste management board designates
and files in the state register pursuant to section nine,
article three of this chapter.

(m) "Solid waste facility" means any system, facility,
land, contiguous land, improvements on the land,
structures or other appurtenances or methods used for
processing, recycling or disposing of solid waste,
including landfills, transfer stations, resource-recovery
facilities and other such facilities not herein specified.
Such facility is situated, for purposes of this article, in the
county where the majority of the spatial area of such
facility is located.

(n) "Energy recovery incinerator" means any solid
waste facility at which solid wastes are incinerated with the
intention of using the resulting energy for the generation
of steam, electricity or any other use not specified herein.

(o) "Incineration technologies" means any technology
that uses controlled flame combustion to thermally break
down solid waste, including refuse-derived fuel, to an ash
residue that contains little or no combustible materials,
regardless of whether the purpose is processing, disposal,
electric or steam generation or any other method by which
solid waste is incinerated.
"Incinerator" means an enclosed device using controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials.

"Materials recovery facility" means any solid waste facility at which solid wastes are manually or mechanically shredded or separated so that materials are recovered from the general waste stream for purposes of reuse and recycling.

§22C-4-8. Authority to develop litter and solid waste control plan; approval by solid waste management board; development of plan by director; advisory rules.

(a) Each county and regional solid waste authority is required to develop a comprehensive litter and solid waste control plan for its geographic area and to submit said plan to the solid waste management board on or before the first day of July, one thousand nine hundred ninety-one. Each authority shall submit a draft litter and solid waste control plan to the solid waste management board by the thirty-first day of March, one thousand nine hundred ninety-one. The comments received by the county or regional solid waste authority at public hearings, two of which are required, shall be considered in developing the final plan.

(b) Each litter and solid waste control plan shall include provisions for:

(1) An assessment of litter and solid waste problems in the county;

(2) The establishment of solid waste collection and disposal services for all county residents at their residences, where practicable, or the use of refuse collection stations at disposal access points in areas where residential collection is not practicable. In developing such collection services, primacy shall be given to private collection services currently operating with a certificate of convenience and necessity from the motor carrier division of the public service commission;
(3) The evaluation of the feasibility of requiring or encouraging the separation of residential or commercial solid waste at its source prior to collection for the purpose of facilitating the efficient and effective recycling of such wastes and the reduction of those wastes which must be disposed of in landfills or by other nonrecycling means;

(4) The establishment of an appropriate mandatory garbage disposal program which shall include methods whereby residents must prove either: (i) Payment of garbage collection fee; or (ii) proper disposal at an approved solid waste facility or in an otherwise lawful manner;

(5) A recommendation for the siting of one or more properly permitted public or private solid waste facilities, whether existing or proposed, to serve the solid waste needs of the county or the region, as the case may be, consistent with the comprehensive county plan prepared by the county planning commission and the anticipated volumes of solid waste originating within or without the county or region which are likely to be disposed of within the county or region;

(6) A timetable for the implementation of said plan;

(7) A program for the cleanup, reclamation and stabilization of any open and unpermitted dumps;

(8) The coordination of the plan with the related solid waste collection and disposal services of municipalities and, if applicable, other counties;

(9) A program to enlist the voluntary assistance of private industry and civic groups in volunteer cleanup efforts to the maximum practicable extent;

(10) Innovative incentives to promote recycling efforts;

(11) A program to identify the anticipated quantities of solid wastes which are disposed of, but are not generated by sources situated, within the boundaries of the county or the region established pursuant to this section;

(12) Coordination with the division of highways and other local, state and federal agencies in the control and
removal of litter and the cleanup of open and unpermitted dumps;

(13) Establishment of a program to encourage and utilize those individuals incarcerated in the regional jail and those adults and juveniles sentenced to probation for the purposes of litter pickup; and

(14) Provision for the safe and sanitary disposal of all refuse from commercial and industrial sources within the county or region, as the case may be, including refuse from commercial and industrial sources, but excluding refuse from sources owned or operated by the state or federal governments.

(c) The solid waste management board shall establish advisory rules to guide and assist the counties in the development of the plans required by this section.

(d) Each plan prepared under this section is subject to approval by the solid waste management board. Any plan rejected by the solid waste management board shall be returned to the regional or county solid waste authority with a statement of the insufficiencies in such plan. The authority shall revise the plan to eliminate the insufficiencies and submit it to the director within ninety days.

(e) The solid waste management board shall develop a litter and solid waste control plan for any county or regional solid waste authority which fails to submit such a plan on or before the first day of July, one thousand nine hundred ninety-two: Provided, That in preparing such plans the director may determine whether to prepare a regional or county based plan for those counties which fail to complete such a plan.

§22C-4-24. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by solid waste management board; effect on facility siting; public hearings; rules.

(a) On or before the first day of July, one thousand nine hundred ninety-one, each county or regional solid waste authority shall prepare and complete a commercial solid waste facilities siting plan for the county or counties
within its jurisdiction: **Provided,** That the solid waste management board may authorize any reasonable extension of up to one year for the completion of the said siting plan by any county or regional solid waste authority. The siting plan shall identify zones within each county where siting of the following facilities is authorized or prohibited:

1. Commercial solid waste facilities which may accept an aggregate of more than ten thousand tons of solid waste per month.

2. Commercial solid waste facilities which shall accept only less than an aggregate of ten thousand tons of solid waste per month.

3. Commercial solid waste transfer stations or commercial facilities for the processing or recycling of solid waste.

The siting plan shall include an explanation of the rationale for the zones established therein based on the criteria established in subsection (b) of this section.

(b) The county or regional solid waste authority shall develop the siting plan authorized by this section based upon the consideration of one or more of the following criteria: The efficient disposal of solid waste, including, but not limited to, all solid waste which is disposed of within the county or region regardless of its origin, economic development, transportation infrastructure, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic and cultural resources, the present or potential land uses for residential, commercial, recreational, environmental conservation or industrial purposes and the public health, welfare and convenience. The initial plan shall be developed based upon information readily available. Due to the limited funds and time available, the initial plan need not be an exhaustive and technically detailed analysis of the criteria set forth above. Unless the information readily available clearly establishes that an area is suitable for the location of a commercial solid waste facility or not suitable for such a facility, the area shall be designated as an area in
which the location of a commercial solid waste facility is
tentatively prohibited. Any person making an application
for the redesignation of a tentatively prohibited area shall
make whatever examination is necessary and submit
specific detailed information in order to meet the
 provision established in subsection (g) of this section.

(c) Prior to completion of the siting plan, the county
or regional solid waste authority shall complete a draft
siting plan and hold at least one public hearing in each
county encompassed in said draft siting plan for the
purpose of receiving public comment thereon. The
authority shall provide notice of such public hearings and
encourage and solicit other public participation in the
preparation of the siting plan as required by the rules
promulgated by the solid waste management board for
this purpose. Upon completion of the siting plan, the
county or regional solid waste authority shall file said plan
with the solid waste management board.

(d) The siting plan takes effect upon approval by the
solid waste management board pursuant to the rules
promulgated for this purpose. Upon approval of said
plan, the solid waste management board shall transmit a
copy thereof to the director of the division of
environmental protection and to the clerk of the county
commission of the county encompassed by said plan
which county clerk shall file the plan in an appropriate
manner and shall make the plan available for inspection
by the public.

(e) Effective upon approval of the siting plan by the
solid waste management board, it is unlawful for any
person to establish, construct, install or operate a
commercial solid waste facility at a site not authorized by
the siting plan: Provided, That an existing commercial
solid waste facility which, on the eighth day of April, one
thousand nine hundred eighty-nine, held a valid solid
waste permit or compliance order issued by the division of
natural resources pursuant to the former provisions of
article five-f, chapter twenty of this code may continue to
operate but may not expand the spatial land area of the
said facility beyond that authorized by said solid waste
permit or compliance order, and may not increase the aggregate monthly solid waste capacity in excess of ten thousand tons monthly unless such a facility is authorized by the siting plan.

(f) The county or regional solid waste authority may, from time to time, amend the siting plan in a manner consistent with the requirements of this section for completing the initial siting plan and the rules promulgated by the solid waste management board for the purpose of such amendments.

(g) Notwithstanding any provision of this code to the contrary, upon application from a person who has filed a pre-siting notice pursuant to section thirteen, article fifteen, chapter twenty-two of this code, the county or regional solid waste authority or county commission, as appropriate, may amend the siting plan by redesignating a zone that has been designated as an area where a commercial solid waste facility is tentatively prohibited to an area where one is authorized. In such case, the person seeking the change has the burden to affirmatively and clearly demonstrate, based on the criteria set forth in subsection (b) of this section, that a solid waste facility could be appropriately operated in the public interest at such location. The solid waste management board shall provide, within available resources, technical support to a county or regional solid waste authority, or county commission as appropriate, when requested by such authority or commission to assist it in reviewing an application for any such amendment.

(h) The solid waste management board shall prepare and adopt a siting plan for any county or regional solid waste authority which does not complete and file with the said state authority such a siting plan in compliance with the provisions of this section and the rules promulgated thereunder. Any siting plan adopted by the solid waste management board pursuant to this subsection shall comply with the provisions of this section, and the rules promulgated thereunder, and has the same effect as a siting plan prepared by a county or regional solid waste
authority and approved by the solid waste management board.

(i) The siting plan adopted pursuant to this section shall incorporate the provisions of the litter and solid waste control plan, as approved by the solid waste management board pursuant to section eight of this article, regarding collection and disposal of solid waste and the requirements, if any, for additional commercial solid waste facility capacity.

(j) The solid waste management board is authorized and directed to promulgate rules specifying the public participation process, content, format, amendment, review and approval of siting plans for the purposes of this section.

(k) To the extent that current solid waste plans approved by the board are approved as provided for in this section, and in place on the effective date of this article, provisions which limit approval for new or expanded solid waste facilities based solely on local solid waste disposal needs without consideration for national waste disposal needs are disallowed as being in conflict with the public policy of this article: *Provided, That all other portions of the solid waste management plans as established in the litter and solid waste control plan as provided for in this section and the comprehensive recycling plan as provided for in section four, article eleven, chapter twenty of the code, are continued in full force and effect to the extent that those provisions do not conflict with the provisions of this article."

§22C-4-25. Siting approval for solid waste facilities; effect on facilities with prior approval.

(a) It is the intent of the Legislature that all commercial solid waste facilities operating in this state must receive site approval at the local level, except for recycling facilities, as defined in section two, article fifteen, chapter twenty-two of this code, that are specifically exempted by section twelve, article eleven, chapter twenty of this code. Notwithstanding said intent, facilities which obtained such approval from either a county or regional solid waste authority, or from a county commission, under
any prior enactment of this code, and facilities which were
otherwise exempted from local site approval under any
prior enactment of this code, shall be deemed to have
satisfied such requirement. All other facilities, including
facilities which received such local approval but which
seek to expand spatial area or to convert from a Class B
facility to a Class A facility, shall obtain such approval
only in the manner specified in sections twenty-six,
twenty-seven and twenty-eight of this article.

(b) In considering whether to issue or deny the
certificate of site approval as specified in sections
twenty-six, twenty-seven and twenty-eight of this article,
the county or regional solid waste authority shall base its
determination upon the following criteria: The efficient
disposal of solid waste anticipated to be received or
processed at the facility, including solid waste generated
within the county or region, economic development,
transportation infrastructure, property values, groundwater
and surface waters, geological and hydrological
conditions, aesthetic and environmental quality, historic or
cultural resources, the present or potential land uses for
residential, commercial, recreational, industrial or
environmental conservation purposes and the public
health, welfare and convenience.

(c) The county or regional solid waste authority shall
complete findings of fact and conclusions relating to the
criteria authorized in subsection (b) hereof which support
its decision to issue or deny a certificate of site approval.

(d) The siting approval requirements for composting
facilities, materials recovery facilities and mixed waste
processing facilities shall be the same as those for other
solid waste facilities.

§22C-4-26. Approval of new Class A facilities by solid waste
authorities.

Except as provided below with respect to Class B
facilities, from and after the tenth day of March, one
thousand nine hundred ninety, in order to obtain approval
to operate a new Class A facility, an applicant shall:
(1) File an application for a certificate of need with, and obtain approval from, the public service commission in the manner specified in section one-c, article two, chapter twenty-four of this code and in section thirteen, article fifteen, chapter twenty-two of this code;

(2) File an application for a certificate of site approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is proposed. Such application shall be submitted on forms prescribed by the solid waste management board. The county or regional solid waste authority shall act on such application and either grant or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a completed manner.

§22C-4-27. Approval of conversion from Class B facility to Class A facility.

From and after the eighteenth day of October, one thousand nine hundred ninety-one, in order to obtain approval to operate as a Class A facility at a site previously permitted to operate as a Class B facility, an applicant shall:

(1) File an application for a certificate of need with, and obtain approval from, the public service commission in the manner specified in section one-c, article two, chapter twenty-four of this code, and in section thirteen, article fifteen, chapter twenty-two of this code; and

(2) File an application for a certificate of site approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is located or proposed. Such application shall be submitted on forms prescribed by the solid waste management board. The county or regional solid waste authority shall act on such application and either grant or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a completed manner.

§22C-4-28. Approval of increase in maximum allowable monthly tonnage of Class A facilities.
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From and after the eighteenth day of October, one thousand nine hundred ninety-one, in order to increase the maximum allowable monthly tonnage handled at a Class A facility by an aggregate amount of more than ten percent of the facility's permit tonnage limitation within a two-year period, the permittee shall:

(1) File an application for approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is located. Such application shall be a modification of the Class A facility's certificate of site approval. The county or regional solid waste authority shall act upon such application and either grant or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a completed manner; and

(2) File an application for approval with, and obtain approval from, the public service commission to modify the certificate of need in the manner set forth in section one-c, article two, chapter twenty-four of this code.

ARTICLE 4A. LOCAL PARTICIPATION; REFERENDUM.

§22C-4A-1. Local participation, legislative findings and purposes; referendum.
§22C-4A-2. Approval of new Class A facility.
§22C-4A-3. Referendum for approval of conversion of a Class B facility to a Class A facility.
§22C-4A-4. Approval of increase in maximum allowable monthly tonnage of Class A facilities.

§22C-4A-1. Local participation, legislative findings and purposes; referendum.

(a) The Legislature finds that the potential impacts of commercial solid waste disposal facilities have a deleterious and debilitating effect upon the transportation network, property values, economic growth, environmental quality, other land uses, and the public health and welfare. These impacts are borne predominantly by the local residents in the communities where the facilities are located. The Legislature also recognizes that economic benefits exist for having a solid waste facility, including
new jobs in the local community and increased tax and fee revenues for the state. The largest of facilities authorized to operate in West Virginia, Class A facilities, receive up to thirty thousand tons of solid waste per month. Class A facilities inevitably cause the most severe impacts to the local area. The Legislature further finds that Class A facilities cause significant impact on the local community above and beyond those of smaller landfills, that this impact requires the local community be afforded the opportunity to participate in the decision of locating a landfill of this size in their community. Further, local citizens need governmental entities to assure and verify that the Class A facility will be developed and operated in a manner that complies with all laws, rules and regulations which regulate landfills, and that the local infrastructure and environment are appropriately suited for a Class A facility. As a result, the Legislature finds that a mechanism must be in place to allow for the local community to be a significant participant in the Class A facility siting and expansion decision-making process.

(b) Therefore, it is the purpose of the Legislature to allow the local decision for location of new Class A landfills by county referendum, and further that a petition process be established to allow demand for a county referendum for expansion of an existing Class A landfill or redesignation of a Class B landfill to Class A.

§22C-4A-2. Approval of new Class A facility.

(a) The purpose of the mandatory referendum for approval of new Class A facilities is to verify for the local community that the local infrastructure and environment are appropriate for a new Class A facility and to assure that the local community accepts the associated benefits and detriments of having a new Class A facility located in their county.

(b) Following receipt of a certificate of need from the public service commission as required by section one-c, article two, chapter twenty-four of this code, and local solid waste approval as required in section twenty-six, article four of this chapter for a new Class A facility, the county commission shall cause a referendum to be placed
on the ballot not less than fifty-six days before the next
primary, general or other countywide election:

(1) Such referendum is to determine whether it is the
will of the voters of the county that a new Class A facility
be constructed. Any election at which such question of
locating a solid waste facility is voted upon shall be held at
the voting precincts established for holding primary or
general elections. All of the provisions of the general
election laws, when not in conflict with the provisions of
this article, apply to voting and elections hereunder,
insofar as practicable.

(2) The ballot, or the ballot labels where voting
machines are used, shall have printed thereon substantially
the following:

"The West Virginia Legislature has found that the
location of a Class A solid waste facility has impact upon
the county in which it will be located, and further that
local citizens should be given the opportunity to
participate in the decision of locating a new Class A
facility in their community. A Class A facility is
authorized to receive between ten and thirty thousand tons
of solid waste per month.

The ____________ county commission finds the
following:

I. The ___________________________(name of
applicant) has obtained site approval for a Class A
commercial facility from the __________________________(name
of the county or regional solid waste authority). The
authority has determined that the proposed landfill meets
all local siting plan requirements. The local siting plan
evaluates local environmental conditions and other factors
and authorizes commercial landfills in areas of a county
where a commercial landfill can be appropriately located.

II. The West Virginia public service commission has
issued a certificate of need, and has approved the
operation of the Class A landfill. The public service
commission has determined that the landfill complies with
the state solid waste management plan and based on the
anticipated volume of garbage expected to be received at
the landfill, that the proposal is consistent with public
convenience and necessity.

Please vote whether to approve construction of the
facility by responding to the following question:

Shall the _________ commercial solid waste facility
located within _____ County, be permitted to handle
between ten and thirty thousand tons of solid waste per
month?

☐ For the facility
 ☐ Against the facility

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

(3) If a majority of the legal votes cast upon the
question is against the facility, the division of
environmental protection shall not proceed any further
with the application. If a majority of the legal votes cast
upon the question be for the facility, then the application
process as set forth in this article and article fifteen,
chapter twenty-two of this code may proceed: Provided,
That such vote is not binding on nor does it require the
division of environmental protection to issue the permit.
If the majority of the legal votes cast is against the
question, the question may be submitted to a vote at any
subsequent election in the manner herein specified:
Provided, however, That the question may not be
resubmitted to a vote until two years after the date of the
previous referendum.

§22C-4A-3. Referendum for approval of conversion of a
Class B facility to a Class A facility.

(a) The purpose of the petition and referendum for
approval of conversions of Class B facilities to Class A
facilities is to allow the local community an opportunity to
participate in the decision of whether the local
infrastructure and environment are appropriate for
expansion of a Class B facility to a Class A facility, and to
assure that the local community accepts the associated
benefits and detriments of having a Class A facility located
in their county.
(b) Within twenty-one days following receipt of a certificate of need from the public service commission as required by section one-c, article two, chapter twenty-four of this code, and local solid waste authority approval as required in section twenty-six, article four of this chapter, the county commission shall complete publication of a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in the qualified newspaper of general circulation in the county wherein the solid waste facility is located. Registered voters residing in the county may petition the county commission to place the issue of whether a Class B facility be expanded to a Class A facility be placed on the ballot at the next primary, general or other countywide election held not less than one hundred days after the deadline for filing the petition. The petition shall be in writing, in the form prescribed by the secretary of state, and shall include the printed name, residence address and date of birth of each person whose signature appears on the petition. The petition shall be filed with the county commission not less than sixty days after the last date of publication of the notice provided in this section. Upon receipt of completed petition forms, the county commission shall immediately forward those forms to the clerk of the county commission for verification of the signatures and the voter registration of the persons named on the petition. If a primary, general or other countywide election is scheduled not more than one hundred twenty days and not less than one hundred days following the deadline for filing the petitions, the clerk of the county commission shall complete the verification of the signatures within thirty days and shall report the number of valid signatures to the county commission. In all other cases, the clerk of the county commission shall complete verification in a timely manner. Upon verification of the signatures of registered voters residing in the county equal to not less than fifteen percent of the number of votes cast within the county for governor at the preceding gubernatorial election, and not less than seventy days before the election, the county commission shall order a referendum be placed upon the ballot:
(1) Such referendum is to determine whether it is the will of the voters of the county that the Class B facility be converted to a Class A facility. Any election at which such question of locating a solid waste facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The secretary of state shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition. Should the petition fail to meet the requirements set forth above, the application process as set forth in this article and article fifteen, chapter twenty-two of this code, may proceed.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"The West Virginia Legislature finds that expansion of a Class B solid waste facility to a Class A solid waste facility has impact to the county in which it will be located, and further that local citizens should be afforded the opportunity to participate in the decision of locating a Class A facility in their community. A Class A facility is authorized to receive between ten and thirty thousand tons of solid waste per month. Fifteen percent of the registered voters in ____________ county have signed a petition to cause a referendum to determine the following question:

The ________ county commission finds the following:

I. The _________________(name of applicant) has obtained site approval for a Class A commercial facility from the _________________(name of the county or regional solid waste authority). The authority has determined that the proposed landfill meets all local siting plan requirements. The local siting plan evaluates local environmental conditions and other factors and authorizes
commercial landfills where a commercial landfill can be appropriately located.

II. The West Virginia public service commission has issued a certificate of need, and has approved the operation of the Class A landfill. The public service commission has determined that the landfill complies with the state solid waste management plan and that based on the anticipated volume of garbage expected to be received at the landfill, that the proposal is consistent with public convenience and necessity.

Please vote whether to approve construction of the facility by responding to the following question:

Shall the ________________ solid waste facility, located within ________________ County, West Virginia, be permitted to handle between ten and thirty thousand tons of solid waste per month?

- For conversion of the facility
- Against conversion of the facility

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

(3) If a majority of the legal votes cast upon the question is against the facility, then the division of environmental protection shall not proceed any further with the application. If a majority of the legal votes cast upon the question be for the facility, then the application process as set forth in this article and article fifteen, chapter twenty-two of this code may proceed: Provided, That such vote is not binding on nor does it require the division of environmental protection to modify the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: Provided, however, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

§22C-4A-4. Approval of increase in maximum allowable monthly tonnage of Class A facilities.
(a) The purpose of the petition and referendum for approval of modification of Class A facilities is to allow the local community an opportunity to participate in the decision of whether the local infrastructure and environment are appropriately suited for expansion of the Class A facility, and to assure that the local community accepts the associated benefits and determents of having a Class A facility located in their county.

(b) The referendum provisions contained herein must be met in order to increase the maximum allowable monthly tonnage handled at a Class A facility by an aggregate amount of more than ten percent of the facility's permit tonnage limitation within a two-year period.

(c) Within twenty-one days following receipt of a certificate of need from the public service commission as required by section one-c, article two, chapter twenty-four of this code, and local solid waste approval as required in section twenty-six, article four of this chapter, the county commission shall complete publication of a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in the qualified newspaper of general circulation in the county wherein the solid waste facility is located. Registered voters residing in the county may petition the county commission to place the issue of whether a Class A facility be permitted to increase the maximum tonnage allowed to be received at the facility be placed on the ballot at the next primary, general or other countywide election held not less than one hundred days after the deadline for filing the petition. The petition shall be in writing, in the form prescribed by the secretary of state, and shall include the printed name, residence address and date of birth of each person whose signature appears on the petition. The petition shall be filed with the county commission not less than sixty days after the last date of publication of the notice provided in this section. Upon receipt of completed petition forms, the county commission shall immediately forward those forms to the clerk of the county commission for verification of the signatures and the voter registration of the persons named on the petition. If a primary, general
or other countywide election is scheduled not more than one hundred twenty days and not less than one hundred days following the deadline for filing the petitions, the clerk of the county commission shall complete the verification of the signatures within thirty days and shall report the number of valid signatures to the county commission. In all other cases, the clerk of the county commission shall complete verification in a timely manner. Upon verification of the signatures of registered voters residing in the county equal to not less than fifteen percent of the number of votes cast within the county for governor at the preceding gubernatorial election, and not less than seventy days before the election, the county commission shall order a referendum be placed upon the ballot:

(1) Such referendum is to determine whether it is the will of the voters of the county that the Class A facility applicant be permitted to increase the maximum tonnage allowed to be received at the facility not to exceed thirty thousand tons per month. Any election at which such question is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The secretary of state shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition. Should the petition fail to meet the requirements set forth above, the application process as set forth in this article and article fifteen, chapter twenty-two of this code, may proceed.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"The West Virginia Legislature finds that expansion of a Class A solid waste facility has significant impact to the community in which it will be located, and further that local citizens should be afforded the opportunity to participate in the decision of locating a Class A facility in
their community. The_________ facility is currently authorized to receive____ ____ thousand tons of solid waste per month. The_________ facility is proposing to be authorized to receive____ ____ thousand tons of solid waste per month. Fifteen percent of the registered voters in ____________ county have signed a petition to cause a referendum to determine the following question:

The ____________ county commission finds the following:

I. The ________________ (name of applicant) has obtained site approval to expand a Class A commercial facility from the _____________ (name of the county or regional solid waste authority). The authority has determined that the proposed landfill meets all local siting plan requirements. The local siting plan evaluates local environmental conditions and other factors and authorizes commercial landfills where a commercial landfill can be appropriately located.

II. The West Virginia public service commission has issued a certificate of need, and has approved the expansion of the Class A landfill. The public service commission has determined that the landfill complies with the state solid waste management plan and that based on the anticipated volume of garbage expected to be received at the landfill, that the proposal is consistent with public convenience and necessity.

Please vote whether to approve construction of the facility by responding to the following question:

Shall the _____________ solid waste facility located within __________ County, West Virginia, be allowed to handle a maximum of __________ solid waste per month?

□ For the increase in maximum allowable tonnage

□ Against the increase in maximum allowable tonnage

(Place a cross mark in the square opposite your choice "
(3) If a majority of the legal votes cast upon the question is against allowing the Class A facility to increase the maximum tonnage of solid waste allowed to be received per month at the facility, then the division of environmental protection shall not proceed to modify the Class A facility permit to increase the maximum allowable tonnage. If a majority of the legal votes cast upon the question is for allowing the Class A facility to increase the maximum tonnage of solid waste allowed to be received per month at such facility, then the application process as set forth in this article and article fifteen, chapter twenty-two of this code may proceed: Provided, That such vote is not binding on nor does it require the county or regional solid waste authority or the division of environmental protection to approve an application to modify the permit. If the majority of the legal votes cast is against the question, that does not prevent the question from again being submitted to a vote at any subsequent election in the manner provided for in this section: Provided, however, That an applicant may not resubmit the question for a vote prior to a period of two years from the date of the previous referendum herein described.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1c. Certificates of need required for solid waste facilities.

(a) Any person applying for a permit to construct, operate or expand a commercial solid waste facility as defined in section two, article fifteen, chapter twenty-two of this code, or any person seeking a major permit modification for a commercial solid waste facility from the division of environmental protection first shall obtain a certificate of need from the public service commission. Application for such certificate shall be submitted on forms prescribed by the commission. The commission shall grant or deny a certificate of need, in accordance with provisions set forth in this chapter. If the commission grants a certificate of need, the commission may include conditions not inconsistent with the criteria set forth in section.
(b) For purposes of subsection (a) of this section, a complete application consists of the following and notwithstanding any other provision of this chapter to the contrary, such information contained in the application provided by the applicant is not confidential and may be disclosed pursuant to the provisions of chapter twenty-nine-b of this code:

(1) The names of the owners or operators of the facility including any officer, director, manager, person owning five percent or more interest or other person conducting or managing the affairs of the applicant as to the proposed facility;

(2) The location of the facility;

(3) A description of the geographic area to be served by the facility;

(4) The anticipated total number of citizens to be served by the facility;

(5) The average monthly tonnage of solid waste anticipated to be disposed of by the facility;

(6) The total monthly tonnage of solid waste for which the facility is seeking a permit from the division of environmental protection;

(7) The anticipated life span and closure date of the facility; and

(8) Any other information requested on the forms prescribed by the commission.

(c) In considering whether to grant a certificate of need the commission shall consider, but is not limited to considering, the following factors:

(1) The total tonnage of solid waste, regardless of geographic origin, that is likely to be delivered each month to the facility if the certificate is granted;

(2) The current capacity and life-span of other solid waste facilities that are likely to compete with the applicant's facility;

(3) The life span of the proposed or existing facility;
(4) The cost of transporting solid waste from the points of generation to the disposal facility;

(5) The impact of the proposed or existing facility on needs and criteria contained in the statewide solid waste management plan; and

(6) Any other criteria which the commission regularly utilizes in making such determinations.

(d) The public service commission shall deny a certificate of need upon one or more of the following findings:

(1) The proposed capacity is unreasonable in light of the total tonnage of solid waste that is likely to be delivered each month to the facility if the certificate is granted;

(2) The location of the facility is inconsistent with the statewide solid waste management plan;

(3) The location of the facility is inconsistent with any applicable county or regional solid waste management plan;

(4) The proposed facility is not reasonably cost effective in light of alternative disposal sites;

(5) The proposal, taken as a whole, is inconsistent with the needs and criteria contained in the statewide solid waste management plan; or

(6) The proposal, taken as a whole, is inconsistent with the public convenience and necessity.

(e) An application for a certificate of need shall be submitted prior to submitting an application for certificate of site approval in accordance with section twenty-four, article four, chapter twenty-two-c of this code. Upon the decision of the commission to grant or deny a certificate of need, the commission shall immediately notify the solid waste management board and the division of environmental protection.
(f) Any party aggrieved by a decision of the commission granting or denying a certificate of need may obtain judicial review thereof in the same manner provided in section one, article five of this chapter.

(g) No person may sell, lease or transfer a certificate of need without first obtaining the consent and approval of the commission pursuant to the provisions of section twelve, article two of this chapter.

(h) The commission shall promulgate rules relating to the types of commercial solid waste facility modification or construction that require certificates of need.

CHAPTER 255

(S. B. 600—By Senators Oliverio, Ball, Bowman, Dittmar, Hunter, Kessler, Ross, Schoonover, Snyder, White, Deem and Scott)

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

AN ACT to amend and reenact sections ten and eleven, article sixteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to solid waste landfill closure assistance; providing for application for closure assistance; and allowing certain landfills to apply for assistance.

Be it enacted by the Legislature of West Virginia:

That sections ten and eleven, article sixteen, 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 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§22-16-10. Limitation on assistance.


§22-16-10. Limitation on assistance.
The director may provide closure assistance only to permittees who meet the following requirements:

(1) The permittee of a landfill that does not have a liner and ceases accepting solid waste on or before the thirtieth day of November, one thousand nine hundred ninety-one, except for those landfills allowed to accept solid waste pursuant to the provisions of section seventeen, article fifteen of this chapter and ceases accepting solid waste on or before the extension deadline as determined by the director; or the permittee of a landfill that has only a single liner and ceases accepting solid waste on or before the thirtieth day of September, one thousand nine hundred ninety-three, or the permittee of a landfill as provided for in subsection (g), section twelve, article sixteen of this chapter;

(2) The permittee of the landfill must demonstrate to the satisfaction of the director that it does not have the financial resources on hand or the ability to generate the amounts needed to comply, in a timely manner, with the closure requirements provided in article fifteen of this chapter and any rules promulgated pursuant thereto: Provided, That any permittee required to close a landfill, or any portion thereof, due to the lack of an approved composite liner system, who collects solid waste within this state which is disposed outside this state, shall not be eligible for closure assistance: Provided, however, That any permittee which is a Class I municipality shall be eligible for closure assistance when the permittee elects to and pays the solid waste assessment fee which would otherwise be levied and imposed upon the disposal of the solid waste by subsection (a), section four of this article, if the solid waste was disposed of within the state; and

(3) The permittee must maintain a permit for the landfill pursuant to the provisions of section ten, article fifteen of this chapter and maintain the full amount of the bond required to be submitted pursuant to section twelve of said article.


(a) The director shall provide an application and application procedure for all permittees of solid waste landfills desiring to receive closure assistance under this article. At a minimum the procedure shall require that:
(1) The permittee of a landfill that does not have a liner system must submit its application no later than the fifteenth day of September, one thousand nine hundred ninety-two, except the permittee of a landfill that has been allowed to accept solid waste pursuant to the provisions of section seventeen, article fifteen of this chapter must submit its application no later than the eleven months following the expiration of the extension;

(2) The permittee of a landfill that has only a single liner system must submit its application no later than eleven months following the date of closure of the landfill; and

(3) The permittee of a landfill as provided for in subsection (g), section twelve, article sixteen of this chapter must submit its application for assistance on or before the first day of January, one thousand nine hundred ninety-nine: Provided, That no landfill is eligible for closure assistance if any portion of the landfill remains open or application is made for reopening with the division of environmental protection or the public service commission.

(b) The director shall, within a reasonable time after receipt of a complete application, notify the applicant of the acceptance or rejection of the application. If the application is rejected the notice shall contain the reasons for the rejection.
commission to implement and enforce the compact; setting forth voting requirements for compact pricing orders; establishing commission administrative powers including the right to borrow, acquisition of real and/or personal property, investigatory powers; permitting rule-making powers; providing for milk pricing orders; authorizing the examination of books and records of regulated persons; establishing criminal penalty for disclosure of confidential information not to exceed fine of $1000 and/or confinement of one year; providing for subpoena powers; establishing civil penalties for violation of commission orders; financing the commission by assessment of milk handlers; establishing judicial enforcement jurisdiction with respective states or federal district; setting forth accounting procedures; providing for the enactment of compact effective only after approval by three regional states and U. S. Congress; providing for withdrawal from compact; permitting the commissioner of agriculture to administer compact for West Virginia; and authorizing the commissioner of agriculture to appoint state delegation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11C. SOUTHERN DAIRY COMPACT.

§19-11C-1. Enactment of compact.
§19-11C-2. Compact administrator.
§19-11C-3. Appointment of delegation.
§19-11C-4. Effective date.

§19-11C-1. Enactment of compact.

1 The southern dairy compact is hereby entered into on behalf of the state of West Virginia. The southern dairy compact shall become effective when enacted into law by a majority of the states within the compact group of states and when the consent of Congress has been obtained. The full text of the southern dairy compact is as follows:

SOUTHERN DAIRY COMPACT
ARTICLE I. STATEMENT OF PURPOSE, FINDINGS AND DECLARATION OF POLICY.

§1. STATEMENT OF PURPOSE, FINDINGS AND DECLARATION OF POLICY.

1 The purpose of this compact is to recognize the interstate character of the southern dairy industry and the prerogative of the states under the United States Constitution to form an interstate commission for the southern region. The mission of the commission is to take such steps as are necessary to assure the continued viability of dairy farming in the south, and to assure consumers of an adequate, local supply of pure and wholesome milk.

2 The participating states find and declare that the dairy industry is an essential agricultural activity of the south. Dairy farms, and associated suppliers, marketers, processors and retailers, are an integral component of the region's economy. Their ability to provide a stable, local supply of pure, wholesome milk is a matter of great importance to the health and welfare of the region.

3 The participating states further find that dairy farms are essential and they are an integral part of the region's rural communities. The farms preserve land for agricultural purposes and provide needed economic stimuli for rural communities.

4 By entering into this compact, the participating states affirm that their ability to regulate the price which southern dairy farmers receive for their product is essential to the public interest. Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the vitality of the southern dairy industry, with all the associated benefits.

5 Recent, dramatic price fluctuations, with a pronounced downward trend, threaten the viability and stability of the southern dairy region. Historically, individual state regulatory action had been an effective emergency remedy available to farmers confronting a distressed market. The federal order system, implemented by the
In today's regional dairy marketplace, cooperative, rather than individual state action is needed to more effectively address the market disarray. Under our constitutional system, properly authorized states acting cooperatively may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating states invoke their authority to act in common agreement, with the consent of Congress, under the compact clause of the Constitution.

In establishing their constitutional regulatory authority over the region's fluid milk market by this compact, the participating states declare their purpose that this compact neither displace the federal order system nor encourage the merging of federal orders. Specific provisions of the compact itself set forth this basic principle.

Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the compact also contains a contingency provision should the federal order system be discontinued. In that event, the interstate commission is authorized to regulate the marketplace in replacement of the order system. This contingent authority does not anticipate such a change, however, and should not be so construed. It is only provided should developments in the market other than establishment of this compact result in discontinuance of the order system.

ARTICLE II. DEFINITIONS AND RULES OF CONSTRUCTION.

§2. DEFINITIONS.

For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(a) "Class I milk" means milk disposed of in fluid form or as a fluid milk product, subject to further
definition in accordance with the principles expressed in
subdivision (b) of section three.

(b) "Commission" means the Southern Dairy
Compact Commission established by this compact.

c) "Commission marketing order" means
regulations adopted by the commission pursuant to
sections nine and ten of this compact in place of a
terminated federal marketing order or state dairy
regulation. Such order may apply throughout the region
or in any part or parts thereof as defined in the regulations
of the commission. Such order may establish minimum
prices for any or all classes of milk.

d) "Compact" means this interstate compact.

e) "Compact over-order price" means a minimum
price required to be paid to producers for Class I milk
established by the commission in regulations adopted
pursuant to sections nine and ten of this compact, which is
above the price established in federal marketing orders or
by state farm price regulation in the regulated area. Such
price may apply throughout the region or in any part or
parts thereof as defined in the regulations of the
commission.

(f) "Milk" means the lacteal secretion of cows and
includes all skim, butterfat, or other constituents obtained
from separation or any other process. The term is used in
its broadest sense and may be further defined by the
commission for regulatory purposes.

(g) "Partially regulated plant" means a milk plant not
located in a regulated area but having Class I distribution
within such area. Commission regulations may exempt
plants having such distribution or receipts in amounts less
than the limits defined therein.

(h) "Participating state" means a state which has
become a party to this compact by the enactment of
concurring legislation.

(i) "Pool plant" means any milk plant located in a
regulated area.
(j) "Region" means the territorial limits of the states which are parties to this compact.

(k) "Regulated area" means any area within the region governed by and defined in regulations establishing a compact over-order price or commission marketing order.

(l) "State dairy regulation" means any state regulation of dairy prices, and associated assessments, whether by statute, marketing order or otherwise.

§3. RULES OF CONSTRUCTION.

(a) This compact shall not be construed to displace existing federal milk marketing orders or state dairy regulation in the region but to supplement them. In the event some or all federal orders in the region are discontinued, the compact shall be construed to provide the commission the option to replace them with one or more commission marketing orders pursuant to this compact.

(b) This compact shall be construed liberally in order to achieve the purposes and intent enunciated in section one. It is the intent of this compact to establish a basic structure by which the commission may achieve those purposes through the application, adaptation and development of the regulatory techniques historically associated with milk marketing and to afford the commission broad flexibility to devise regulatory mechanisms to achieve the purposes of this compact. In accordance with this intent, the technical terms which are associated with market order regulation and which have acquired commonly understood general meanings are not defined herein but the commission may further define the terms used in this compact and develop additional concepts and define additional terms as it may find appropriate to achieve its purposes.

ARTICLE III. COMMISSION ESTABLISHED.

§4. COMMISSION ESTABLISHED.
There is hereby created a commission to administer the compact, composed of delegations from each state in the region. The commission shall be known as the Southern Dairy Compact Commission. A delegation shall include not less than three or more than five persons. Each delegation shall include at least one dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, and one consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in, the appointing state. Delegation members shall serve no more than three consecutive terms with no single term of more than four years, and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the state represented. The compensation, if any, of the members of a state delegation shall be determined and paid by each state, but their expenses shall be paid by the commission.

§5. VOTING REQUIREMENTS.

All actions taken by the commission, except for the establishment or termination of an over-order price or commission marketing order, and the adoption, amendment or rescission of the commission’s bylaws, shall be by majority vote of the delegations present. Each state delegation shall be entitled to one vote in the conduct of the commission’s affairs. Establishment or termination of an over-order price or commission marketing order shall require at least a two-thirds vote of the delegations present. The establishment of a regulated area which covers all or part of a participating state shall require also the affirmative vote of that state’s delegation. A majority of the delegations from the participating states shall constitute a quorum for the conduct of the commission’s business.

§6. ADMINISTRATION AND MANAGEMENT.

(a) The commission shall elect annually from among the members of the participating state delegations a chairperson, a vice-chairperson, and a treasurer. The commission shall appoint an executive director and fix his
or her duties and compensation. The executive director shall serve at the pleasure of the commission and, together with the treasurer, shall be bonded in an amount determined by the commission. The commission may establish through its bylaws an executive committee composed of one member elected by each delegation.

(b) The commission shall adopt bylaws for the conduct of its business by a two-thirds vote, and shall have the power by the same vote to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form with the appropriate agency or officer in each of the participating states. The bylaws shall provide for appropriate notice to the delegations of all commission meetings and hearings and of the business to be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating states as provided by the laws of those states.

(c) The commission shall file an annual report with the Secretary of Agriculture of the United States, and with each of the participating states by submitting copies to the governor, both houses of the Legislature, and the head of the state department having responsibilities for agriculture.

(d) In addition to the powers and duties elsewhere prescribed in this compact, the commission shall have the power:

(1) To sue and be sued in any state or federal court;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold and dispose of real and personal property by gift, purchase, lease, license or other similar manner, for its corporate purposes;

(4) To borrow money and to issue notes, to provide for the rights of the holders thereof and to pledge the revenue of the commission as security therefore, subject to the provisions of section eighteen of this compact;

(5) To appoint such officers, agents and employees as it may deem necessary, prescribe their powers, duties and qualifications; and
(6) To create and abolish such offices, employments and positions as it deems necessary for the purpose of the compact and provide for the removal, term, tenure, compensation, fringe benefits, pension and retirement rights of its officers and employees. The commission may also retain personal services on a contract basis.

§7. RULE-MAKING POWER.

In addition to the power to promulgate a compact over-order price or commission marketing orders as provided by this compact, the commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this compact, or to effectuate in any other respect the purpose of this compact.

ARTICLE IV. POWERS OF THE COMMISSION.

§8. POWERS TO PROMOTE REGULATORY UNIFORMITY, SIMPLICITY AND INTERSTATE COOPERATION.

The commission is hereby empowered to:

(a) Investigate or provide for investigations or research projects designed to review the existing laws and regulations of the participating states, to consider their administration and costs, to measure their impact on the production and marketing of milk and their effects on the shipment of milk and milk products within the region.

(b) Study and recommend to the participating states joint or cooperative programs for the administration of the dairy marketing laws and regulations and to prepare estimates of cost savings and benefits of such programs.

(c) Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems. Conduct symposia or conferences designed to improve industry relations, or a better understanding of problems.

(d) Prepare and release periodic reports on activities and results of the commission’s efforts to the participating states.
(e) Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist, improve or promote more efficient assembly and distribution of milk.

(f) Investigate costs and charges for producing, hauling, handling, processing, distributing, selling and for all other services performed with respect to milk.

(g) Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers and the need for an emergency order to relieve critical conditions on dairy farms.

§9. EQUITABLE FARM PRICES.

(a) The powers granted in this section and section ten shall apply only to the establishment of a compact over-order price, so long as federal milk marketing orders remain in effect in the region. In the event that any or all such orders are terminated, this article shall authorize the commission to establish one or more commission marketing orders, as herein provided, in the region or parts thereof as defined in the order.

(b) A compact over-order price established pursuant to this section shall apply only to Class I milk. Such compact over-order price shall not exceed one dollar and fifty cents per gallon at Atlanta, GA; however, this compact over-order price shall be adjusted upward or downward at other locations in the region to reflect differences in minimum federal order prices. Beginning in one thousand nine hundred ninety, and using that year as a base, the foregoing one dollar fifty cents per gallon maximum shall be adjusted annually by the rate of change in the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization of an over-order price, the value of milk used in other use classifications shall be calculated at the appropriate class price established pursuant to the applicable federal order.
or state dairy regulation and the value of unregulated milk shall be calculated in relation to the nearest prevailing class price in accordance with and subject to such adjustments as the commission may prescribe in regulations.

(c) A commission marketing order shall apply to all classes and uses of milk.

(d) The commission is hereby empowered to establish a compact over-order price for milk to be paid by pool plants and partially regulated plants. The commission is also empowered to establish a compact over-order price to be paid by all other handlers receiving milk from producers located in a regulated area. This price shall be established either as a compact over-order price or by one or more commission marketing orders. Whenever such a price has been established by either type of regulation, the legal obligation to pay such price shall be determined solely by the terms and purposes of the regulation without regard to the status of the transfer of title, possession or any other factors not related to the purposes of the regulation and this compact. Producer-handlers as defined in an applicable federal market order shall not be subject to a compact over-order price. The commission shall provide for similar treatment of producer-handlers under commission marketing orders.

(e) In determining the price, the commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production including, but not limited to, the price of feed, the cost of labor including the reasonable value of the producer's own labor and management, machinery expense, and interest expense, the prevailing price for milk outside the regulated area, the purchasing power of the public and the price necessary to yield a reasonable return to the producer and distributor.

(f) When establishing a compact over-order price, the commission shall take such other action as is necessary and feasible to help ensure that the over-order price does not cause or compensate producers so as to generate local production of milk in excess of those quantities necessary
to assure consumers of an adequate supply for fluid purposes.

(g) The commission shall whenever possible enter into agreements with the state or federal agencies for exchange of information or services for the purpose of reducing regulatory burden and cost of administering the compact. The commission may reimburse other agencies for the reasonable cost of providing these services.

§10. OPTIONAL PROVISIONS FOR PRICING ORDER.

Regulations establishing a compact over-order price or a commission marketing order may contain, but shall not be limited to, any of the following:

1. Provisions classifying milk in accordance with the form in which or purpose for which it is used, or creating a fault pricing program;

2. With respect to a commission marketing order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification prescribed by the commission, or a single minimum price for milk purchased from producers or associations of producers;

3. With respect to an over-order minimum price provisions establishing or providing a method for establishing such minimum price for Class I milk;

4. Provisions for establishing either an over-order price or a commission marketing order may make use of any reasonable method for establishing such price or prices including flat pricing and formula pricing. Provision may also be made for location adjustments, zone differentials and for competitive credits with respect to regulated handlers who market outside the regulated area.

5. Provisions for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, or for the payment of producers delivering
milk to the same handler or uniform prices for all milk
delivered by them.

(a) With respect to regulations establishing a compact
over-order price, the commission may establish one
equalization pool within the regulated area for the sole
purpose of equalizing returns to producers throughout the
regulated area.

(b) With respect to any commission marketing order,
as defined in Article II, section two, subdivision (c) of this
compact, which replaces one or more terminated federal
orders or state dairy regulation, the marketing area of now
separate state or federal orders shall not be merged
without its delegation, which is partly or wholly included
within any such new marketing area.

(6) Provisions requiring persons who bring Class I
milk into the regulated area to make compensatory
payments with respect to all such milk to the extent
necessary to equalize the cost of milk purchased by
handlers subject to a compact over-order price or
commission marketing order. No such provisions shall
discriminate against milk producers outside the regulated
area. The provisions for compensatory payments may
require to be paid for such milk in the state of production
by a federal milk marketing order or state dairy regulation
and the Class I price established by the compact over-
order price or commission marketing order.

(7) Provisions specially governing the pricing and
pooling of milk handled by partially required plants.

(8) Provisions requiring that the account of any
person regulated under the compact over-order price shall
be adjusted for any payments made to or received by such
persons with respect to a producer settlement fund of any
federal or state milk marketing order or other state dairy
regulation within the regulated area.

(9) Provisions requiring the payment by handlers of
an assessment to cover the costs of the administration and
enforcement of such order pursuant to Article VII, Section
18(a).

(11) Other provisions and requirements as the commission may find are necessary or appropriate to effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum prices to producers.

ARTICLE V. RULE-MAKING PROCEDURE.

§11. RULE-MAKING PROCEDURE.

Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under subsection 9(f), or amendment thereof, as provided in Article IV, the commission shall conduct an informal rule-making proceeding to provide interested persons with an opportunity to present data and views. Such rule-making proceeding shall be governed by section four of the Federal Administrative Procedure Act, as amended (5 U.S.C. §553). In addition, the commission shall, to the extent practicable, publish notice of rule-making proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the commission shall hold a public hearing. The commission may commence a rule-making proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

§12. FINDINGS AND REFERENDUM.

(a) In addition to the concise general statement of basis and purpose required by section 4(b) of the Federal Administrative Procedure Act, as amended (5 U.S.C.
§553(c)), the commission shall make findings of fact with respect to:

(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV;

(2) What level or prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes;

(3) Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order;

(4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in section thirteen.

§13. PRODUCER REFERENDUM.

(a) For the purpose of ascertaining whether the issuance or amendment of regulations establishing a compact over-order price or a commission marketing order, including any provision with respect to milk supply under subsection 9(f), is approved by producers, the commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the commission. The terms and conditions of the proposed order or amendment shall be described by the commission in the ballot used in the conduct of the referendum, but the nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto.

(b) An order or amendment shall be deemed approved by producers if the commission determines that it is approved by at least two thirds of the voting producers who, during a representative period determined by the commission, have been engaged in the production of milk.
the price of which would be regulated under the proposed order of amendment.

(c) For purposes of any referendum, the commission shall consider the approval or disapproval by any cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of such commodity as the approval or disapproval of the producers who are members or stockholders in, or under contract with, such cooperative association of producers, except as provided in subdivision (I) hereof and subject to the provision of subdivisions (2) through (5) hereof.

(1) No cooperative which has been formed to act as a common marketing agency for both cooperatives and individual producers shall be qualified to block vote for either.

(2) Any cooperative which is qualified to block vote shall, before submitting its approval or disapproval in any referendum, give prior written notice to each of its members as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established, and in the form prescribed, by the commission.

(3) Any producer may obtain a ballot from the commission in order to register approval or disapproval of the proposed order.

(4) A producer who is a member of a cooperative which has provided notice of its intent to approve or not to approve a proposed order, and who obtains a ballot and with such ballot expresses his approval or disapproval of the proposed order, shall notify the commission as to the name of the cooperative of which he or she is a member, and the commission shall remove such producer's name from the list certified by such cooperative with its corporate vote.
§14. TERMINATION OF OVER-ORDER PRICE OR MARKETING ORDER.

(a) The commission shall terminate any regulations establishing an over-order price or commission marketing order issued under this article whenever it finds that such order or price obstructs or does not tend to effectuate the declared policy of this compact.

(b) The commission shall terminate any regulations establishing an over-order price or a commission marketing order issued under this article whenever it finds that such termination is favored by a majority of the producers who, during a representative period determined by the commission, have been engaged in the production of milk the price of which is regulated by such order; but such termination shall be effective only if announced on or before such date as may be specified in such marketing agreement or order.

(c) The termination or suspension of any order or provision thereof, shall not be considered an order within the meaning of this article and shall require no hearing, but shall comply with the requirements for informal rule-making prescribed by section four of the Federal Administrative Procedure Act, as amended (5 U.S.C. §553).

ARTICLE VI. ENFORCEMENT.

§15. RECORDS, REPORTS, ACCESS TO PREMISES.

(a) The commission may by rule and regulation prescribe recordkeeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this compact, the commission is authorized to examine the books and records of any regulated person relating to his or her milk business and
for that purpose, the commission's properly designated officers, employees or agents shall have full access during normal business hours to the premises and records of all regulated persons.

(b) Information furnished to or acquired by the commission officers, employees or its agents pursuant to this section shall be confidential and not subject to disclosure except to the extent that the commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this compact, an over-order price, a compact marketing order or other regulations of the commission. The commission may promulgate regulations further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit: (i) The issuance of general statements based upon the reports of a number of handlers, which do not identify the information furnished by any person; or (ii) the publication by direction of the commission of the name of any person violating any regulation of the commission, together with a statement of the particular provisions violated by such person.

(c) No officer, employee or agent of the commission shall intentionally disclose information, by inference or otherwise, which is made confidential pursuant to this section. Any person violating the provisions of this section shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office. The commission shall refer any allegation of a violation of this section to the appropriate state enforcement authority or United States Attorney.

§16. SUBPOENA, HEARINGS AND JUDICIAL REVIEW.

(a) The commission is hereby authorized and empowered by its members and its properly designated officers to administer oaths and issue subpoenas throughout all signatory states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

(b) Any handler subject to an order may file a written petition with the commission stating that any such order or
any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the commission. After such hearing, the commission shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(c) The district courts or the United States in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within thirty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the commission by delivering to it a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the commission with directions either: (1) To make such ruling as the court shall determine to be in accordance with law, or (2) To take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subdivision shall not impede, hinder or delay the commission from obtaining relief pursuant to section seventeen. Any proceedings brought pursuant to section seventeen, except where brought by way of counterclaim in proceedings instituted pursuant to this section, shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.

§17. ENFORCEMENT WITH RESPECT TO HANDLERS.

(a) Any violation by a handler of the provisions of regulations establishing an over-order price or a commission marketing order, or other regulations adopted pursuant to this compact shall:

(1) Constitute a violation of the laws of each of the signatory states. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the participating states,
recoverable in any state or federal court of competent jurisdiction. Each day such violation continues shall constitute a separate violation;

(2) Constitute grounds for the revocation of license or permit to engage in the milk business under the applicable laws of the participating states.

(b) With respect to handlers, the commission shall enforce the provisions of this compact, regulations establishing an over-order price, a commission marketing order or other regulations adopted hereunder by:

(1) Commencing an action for legal or equitable relief brought in the name of the commission in any state or federal court of competent jurisdiction; or

(2) Referral to the state agency for enforcement by judicial or administrative remedy with the agreement of the appropriate state agency of a participating state.

(c) With respect to handlers, the commission may bring an action for injunction to enforce the provisions of this compact or the order or regulations adopted thereunder without being compelled to allege or prove that an adequate remedy of law does not exist.

ARTICLE VII. FINANCE.

§18. FINANCE OF START-UP AND REGULAR COSTS.

(a) To provide for its start-up costs, the commission may borrow money pursuant to its general power under section six, subdivision (d), paragraph four. In order to finance the costs of administration and enforcement of this compact, including payback of start-up costs, the commission is hereby empowered to collect an assessment from each handler who purchases milk from producers within the region. If imposed, this assessment shall be collected on a monthly basis for up to one year from the date the commission convenes, in an amount not to exceed $.015 per hundredweight of milk purchased from producers during the period of the assessment. The initial assessment may apply to the projected purchase of handlers for the two-month period following the date the commission convenes. In addition, if regulations establishing an over-order price or a compact marketing
order are adopted, they may include an assessment for the
specific purpose of their administration. These
regulations shall provide for establishment of a reserve for
the commissioner's ongoing operating expenses.

(b) The commission shall not pledge the credit of a
participating state or of the United States. Notes issued by
the commission and all other financial obligations
incurred by it, shall be its sole responsibility and no
participating state or the United States shall be liable
therefor.

§19. AUDIT AND ACCOUNTS.

(a) The commission shall keep accurate accounts of all
receipts and disbursements, which shall be subject to the
audit and accounting procedures established under its
rules. In addition, all receipts and disbursements of funds
handled by the commission shall be audited yearly by a
qualified public accountant and the report of the audit
shall be included in and become part of the annual report
of the commissioner.

(b) The accounts of the commission shall be open at
any reasonable time for inspection by duly constituted
officers of the participating states and by any persons
authorized by the commission.

(c) Nothing contained in this article shall be construed
to prevent commission compliance with laws relating to
audit or inspection of accounts by or on behalf of any
participating state or of the United States.

ARTICLE VIII. ENTRY INTO FORCE; ADDITIONAL MEMBERS
AND WITHDRAWAL.

§20. ENTRY INTO FORCE; ADDITIONAL MEMBERS.

The compact shall enter into force effective when
enacted into law by any three states of the group of states
composed of Alabama, Arkansas, Florida, Georgia,
Kentucky, Louisiana, Maryland, Mississippi, North
Carolina, Oklahoma, South Carolina, Tennessee, Texas,
Virginia and West Virginia and when the consent of
Congress has been obtained.

§21. WITHDRAWAL FROM COMPACT.
Any participating state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after notice in writing of the withdrawal is given to the commission and the governors of all other participating states. No withdrawal shall affect any liability already incurred by or chargeable to a participating state prior to the time of such withdrawal.

§22. SEVERABILITY.

If any part or provision of this compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part or provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact. In the event Congress consents to this compact subject to conditions, said conditions shall not impair the validity of this compact when said conditions are accepted by three or more compacting states. A compacting state may accept the conditions of Congress by implementation of this compact.

§19-11C-2. Compact administrator.

The compact administrator of this state is the commissioner of agriculture. The duties of the compact administrator are deemed a regular part of the duties of his office.

§19-11C-3. Appointment of delegation.

There shall be five delegates from this state to the compact commission, and these delegates shall be appointed by the commissioner of agriculture. At least one of the delegates shall be a dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, at least one delegate shall be a consumer representative, one delegate shall be a processor, one delegate shall be a retailer representative from a border county and one delegate at large. Delegates shall serve for a term of four years. Vacancies in the state delegation will be filled in the same manner as the appointment of delegates, and shall be for the term of the position vacated.
§19-11C-4. Effective date.

This article shall become effective at such time as a majority of the contiguous states have passed legislation permitting that state to become a participating state and the consent of Congress has been obtained.

CHAPTER 257

(S. B. 399—By Senators Wooton, Ball, Bowman, Dittmar, Hunter, Kessler, Oliverio, Schoonover, Snyder and White)

[Passed March 12, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-a, relating to establishing an office for the receipt and referral of reports of suspected fraud, misappropriation, mismanagement or waste of state funds for the state of West Virginia; authorizing employment of a staff; procedures; and confidentiality.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. CENTRALIZED MANAGEMENT OF COMPLAINTS.

§12-4A-1. Legislative findings.

§12-4A-2. General purpose.

§12-4A-3. Duties generally.

§12-4A-4. Enforcement.

§12-4A-1. Legislative findings.

The Legislature finds that there is no centralized state authority responsible for receiving and referring reports of possible fraud, misappropriation of, mismanagement or
waste of state funds. It is the intent of the Legislature to see that all state funds are utilized for the maximum benefit of the people of the state of West Virginia. The Legislature finds that it is important to provide the people of this state with both a forum and an opportunity to report suspected fraud, waste or abuse of state funds, and to have those reports properly investigated.

§12-4A-2. General purpose.

The state auditor shall have authority to receive reports of possible fraud, misappropriation, mismanagement or waste of state funds of the state of West Virginia and to refer such reports to the commission on special investigations, county prosecutors and law-enforcement agencies.

§12-4A-3. Duties generally.

(a) The state auditor may employ a forensic accountant to receive and review reports of suspected fraud, misappropriation, mismanagement or waste of state funds which shall be filed in that office. Such reports shall be confidential, except that the state auditor or his or her designee may supply information necessary to effectuate this article to the appropriate governmental entities.

(b) The state auditor shall establish modes of communication sufficient to receive reports of suspected fraud, misappropriation of, mismanagement or waste of state funds. Reports of suspected fraud, misappropriation, mismanagement or waste may be filed by any citizen or employee of the state of West Virginia.

(c) Nothing in this article shall be construed to limit the authority of any other governmental entity to conduct an internal investigation of suspected fraud, misappropriation, mismanagement or waste.

§12-4A-4. Enforcement.

(a) The authority to enforce the provisions of this article shall be vested in the state auditor. The state auditor shall promptly forward any evidence of suspected fraud, misappropriation of, mismanagement or waste of state funds to the commission on special investigations
and, if potentially criminal in nature, to the prosecuting
attorney of the county in which such is alleged to have
taken place, to the law-enforcement agency with
jurisdiction in the area as well as to the commission on
special investigations.

(b) If such reports are made about an agency that has
its own investigative body, then the state auditor may refer
evidence of the fraud, misappropriation, mismanagement
or waste to that investigative body.

CHAPTER 258

(Com. Sub. for H. B. 4016—By Delegates Martin and Michael)

[Passed March 3, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article
two, chapter fifteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to
the structure of the state police; increasing the number of
principal supervisors who may be appointed by the state
police superintendent from eleven to fifteen.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-4. Appointment of commissioned officers, noncommissioned officers,
other members; temporary and permanent positions.


1 The superintendent shall create, appoint and equip the
2 state police which shall consist of the number of troops,
3 districts and detachments required for the proper
4 administration of the state police. Each troop, district or
detachment shall be composed of the number of officers and members the superintendent determines are necessary to meet operational needs and are required for the efficient operation of the state police. The superintendent shall establish the general organizational structure of the state police by interpretive rule in accordance with the provisions of article three, chapter twenty-nine-a of this code. The superintendent shall provide adequate facilities for the training of all members of the state police and shall prescribe basic training requirements for newly enlisted members. He or she shall also provide advanced or in-service training from time to time for all members of the state police. The superintendent shall hold training classes for other peace officers in the state without cost to those officers, except actual expenses for food, lodging and school supplies.

§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.

(a) The superintendent shall appoint, from the enlisted membership of the state police, a deputy superintendent who shall hold the rank of lieutenant colonel and be next in authority to the superintendent. The superintendent shall appoint, from the enlisted membership of the state police, the number of other officers and members he or she considers necessary to operate and maintain the executive offices, training school, and forensic laboratory; and to keep records relating to crimes and criminals, coordinate traffic safety activities, maintain a system of supplies and accounting and perform other necessary services.

(b) The ranks within the membership of the state police shall be colonel, lieutenant colonel, major, captain, first lieutenant, second lieutenant, first sergeant, sergeant, corporal, trooper first class, senior trooper, trooper or cadet trooper. Each member while in uniform shall wear the insignia of rank as provided by law and written state police policies. Members assigned to the forensic laboratory shall hold the title of trooper, be classified as criminalists and wear the insignia of classification as provided by written state police policies.
The superintendent may appoint from the membership of the state police fifteen principal supervisors who shall receive the compensation and hold the temporary rank of lieutenant colonel, major or captain at the will and pleasure of the superintendent. Appointments are exempt from any eligibility requirements established by the career progression system. Any person appointed to a temporary rank under the provisions of this article remains eligible for promotion or reclassification under the provisions of the career progression system if his or her permanent rank is below that of first lieutenant. Upon the termination of a temporary appointment by the superintendent, the member may not be reduced to a rank or classification below his or her permanent rank or classification, unless the reduction results from disciplinary action, and remains eligible for subsequent appointment to a temporary rank.

CHAPTER 259

(S. B. 362—By Senators Tomblin, Mr. President, and Buckalew, By Request of the Executive)

[Passed March 12, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of members of the West Virginia state police.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment;
(a) The superintendent shall establish within the West Virginia state police a system to provide for: The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant and first lieutenant; the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class or corporal; the classification of members assigned to the forensic laboratory as criminalist I-VII; and the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII.

(b) The superintendent is authorized to propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code for the purpose of ensuring consistency, predictability and independent review of any system developed under the provisions of this section.

(c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list.

(d) Members shall receive annual salaries as follows:

<table>
<thead>
<tr>
<th>Rank</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cadet During Training</td>
<td>$1,684 Mo.</td>
</tr>
<tr>
<td>Cadet Trooper After Training</td>
<td>$1,799 Mo.</td>
</tr>
<tr>
<td>Trooper Second Year</td>
<td>$21,984</td>
</tr>
<tr>
<td>Trooper Third Year</td>
<td>$22,308</td>
</tr>
<tr>
<td>Trooper Fourth &amp; Fifth Year</td>
<td>$22,560</td>
</tr>
<tr>
<td>Senior Trooper</td>
<td>$24,360</td>
</tr>
<tr>
<td></td>
<td>Title</td>
</tr>
<tr>
<td>---</td>
<td>------------------------------</td>
</tr>
<tr>
<td>34</td>
<td>Trooper First Class</td>
</tr>
<tr>
<td>35</td>
<td>Corporal</td>
</tr>
<tr>
<td>36</td>
<td>Sergeant</td>
</tr>
<tr>
<td>37</td>
<td>First Sergeant</td>
</tr>
<tr>
<td>38</td>
<td>Second Lieutenant</td>
</tr>
<tr>
<td>39</td>
<td>First Lieutenant</td>
</tr>
<tr>
<td>40</td>
<td>Captain</td>
</tr>
<tr>
<td>41</td>
<td>Major</td>
</tr>
<tr>
<td>42</td>
<td>Lieutenant Colonel</td>
</tr>
</tbody>
</table>

**ANNUAL SALARY SCHEDULE (BASE PAY)**

**ADMINISTRATION**

**SUPPORT SPECIALIST CLASSIFICATION**

<table>
<thead>
<tr>
<th></th>
<th>Classification</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>46</td>
<td>I</td>
<td>22,560</td>
</tr>
<tr>
<td>47</td>
<td>II</td>
<td>24,360</td>
</tr>
<tr>
<td>48</td>
<td>III</td>
<td>26,160</td>
</tr>
<tr>
<td>49</td>
<td>IV</td>
<td>27,960</td>
</tr>
<tr>
<td>50</td>
<td>V</td>
<td>31,560</td>
</tr>
<tr>
<td>51</td>
<td>VI</td>
<td>33,360</td>
</tr>
<tr>
<td>52</td>
<td>VII</td>
<td>35,160</td>
</tr>
<tr>
<td>53</td>
<td>VIII</td>
<td>36,960</td>
</tr>
</tbody>
</table>

**ANNUAL SALARY SCHEDULE (BASE PAY)**

**CRIMINALIST CLASSIFICATION**

<table>
<thead>
<tr>
<th></th>
<th>Classification</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>56</td>
<td>I</td>
<td>22,560</td>
</tr>
<tr>
<td>57</td>
<td>II</td>
<td>24,360</td>
</tr>
<tr>
<td>58</td>
<td>III</td>
<td>26,160</td>
</tr>
<tr>
<td>59</td>
<td>IV</td>
<td>27,960</td>
</tr>
<tr>
<td>60</td>
<td>V</td>
<td>31,560</td>
</tr>
<tr>
<td>61</td>
<td>VI</td>
<td>33,360</td>
</tr>
<tr>
<td>62</td>
<td>VII</td>
<td>35,160</td>
</tr>
</tbody>
</table>
(e) Each member of the West Virginia state police whose salary is fixed and specified pursuant to this section shall receive and is entitled to an increase in salary over that set forth in subsection (d) of this section, for grade in rank, based on length of service, including that service served before and after the effective date of this section with the West Virginia state police as follows: At the end of five years of service with the West Virginia state police, the member shall receive a salary increase of three hundred dollars to be effective during his or her next three years of service and a like increase at three-year intervals thereafter, with the increases to be cumulative.

(f) In applying the salary schedules set forth in this section where salary increases are provided for length of service, members of the West Virginia state police in service at the time the schedules become effective shall be given credit for prior service and shall be paid such salaries as the same length of service entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the unique duties of members of the West Virginia state police, it is not appropriate to apply the provisions of state wage and hour laws to them. Accordingly, members of the West Virginia state police are excluded from the provisions of state wage and hour law. This express exclusion shall not be construed as any indication that the members were or were not covered by the wage and hour law prior to this exclusion.

In lieu of any overtime pay they might otherwise have received under the wage and hour law, and in addition to their salaries and increases for length of service, members who have completed basic training and who are exempt from federal Fair Labor Standards Act guidelines may receive supplemental pay as provided in this section.

The superintendent shall, within thirty days after the effective date of this section, propose a legislative rule for promulgation in accordance with article three, chapter twenty-nine-a of this code to establish the number of hours per month which constitute the standard work month for the members of the West Virginia state police.
The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of supplemental payment when hours are worked in excess of the standard work month. The superintendent shall certify monthly to the West Virginia state police's payroll officer the names of those members who have worked in excess of the standard work month and the amount of their entitlement to supplemental payment.

The supplemental payment may not exceed two hundred thirty-six dollars monthly. The superintendent and civilian employees of the West Virginia state police are not eligible for any supplemental payments.

(h) Each member of the West Virginia state police, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his or her duties, a bond with security in the sum of five thousand dollars payable to the state of West Virginia, conditioned upon the faithful performance of his or her duties, and the bond shall be approved as to form by the attorney general and as to sufficiency by the governor.

(i) Any member of the West Virginia state police who is called to perform active duty for training or inactive duty training in the national guard or any reserve component of the armed forces of the United States annually shall be granted, upon request, leave time not to exceed thirty calendar days for the purpose of performing the active duty for training or inactive duty training and the time granted may not be deducted from any leave accumulated as a member of the West Virginia state police.

(j) Beginning on the first day of July, one thousand nine hundred ninety-eight, and continuing thereafter, members shall receive annual salaries as follows:

<table>
<thead>
<tr>
<th>AMENDED ANNUAL SALARY SCHEDULE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(BASE PAY)</strong></td>
</tr>
<tr>
<td><strong>SUPERVISORY AND NONSUPERVISORY RANKS</strong></td>
</tr>
<tr>
<td>Cadet During Training .......... $1,747 Mo.  $20,964</td>
</tr>
<tr>
<td>Cadet Trooper After Training .. 2,150 Mo.  25,800</td>
</tr>
<tr>
<td>141</td>
</tr>
<tr>
<td>142</td>
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<tr>
<td>143</td>
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<td>150</td>
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<tr>
<td>151</td>
</tr>
<tr>
<td>152</td>
</tr>
<tr>
<td>153</td>
</tr>
</tbody>
</table>

**AMENDED ANNUAL SALARY SCHEDULE**

**BASE PAY**

| 155 | ADMINISTRATION SUPPORT SPECIALIST CLASSIFICATION |
| 157 | I | 26,928 |
| 158 | II | 29,016 |
| 159 | III | 31,104 |
| 160 | IV | 33,192 |
| 161 | V | 37,368 |
| 162 | VI | 39,456 |
| 163 | VII | 41,544 |
| 164 | VIII | 43,632 |

**AMENDED ANNUAL SALARY SCHEDULE**

**CRIMINALIST CLASSIFICATION**

| 165 | I | 26,928 |
Each member of the West Virginia state police whose salary is fixed and specified in the amended annual salary schedules is entitled to the length of service increases set forth in subsection (f) of this section and supplemental pay as provided in subsection (h) of this section.

CHAPTER 260

(H. B. 4698—By Delegates Douglas, Collins, Claypole, Prunty, Tucker, Capito and Stalnaker)

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

AN ACT to amend and reenact sections four, four-a, five and five-a, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to changing termination dates pursuant to the West Virginia sunset law.

Be it enacted by the Legislature of West Virginia:

That sections four, four-a, five and five-a, article ten, chapter 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 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of agencies following full performance evaluations.
§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.
§4-10-5. Termination of agencies following preliminary performance reviews.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

§4-10-4. Termination of agencies following full performance evaluations.

The following agencies shall be terminated on the date indicated, but no agency may be terminated under this section unless a full performance evaluation has been conducted upon such agency:

1. On the first day of July, one thousand nine hundred ninety-nine: West Virginia parkways, economic development and tourism authority; workers' compensation; department of health and human resources; purchasing division within the department of administration.

2. On the first day of July, two thousand: Division of corrections; division of environmental protection.

3. On the first day of July, two thousand one: Division of natural resources.

4. On the first day of July, two thousand two: Division of highways; division of labor.

5. On the first day of July, two thousand three: Division of culture and history; school building authority.

6. On the first day of July, two thousand four: Division of personnel; division of rehabilitation services.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

The following agencies shall be terminated on the date indicated, but no agency may be terminated under this section unless a compliance monitoring and further inquiry update has been completed on the agency subsequent to the prior completion of a full performance evaluation:
On the first day of July, one thousand nine hundred ninety-nine: Tourism functions within the West Virginia development office; office of judges of workers' compensation.

§4-10-5. Termination of agencies following preliminary performance reviews.

The following agencies shall be terminated on the date indicated, but no agency may be terminated under this section unless a preliminary performance review has been conducted upon such agency:

(1) On the first day of July, one thousand nine hundred ninety-six: Juvenile facilities review panel.

(2) On the first day of July, one thousand nine hundred ninety-seven: Public employees insurance agency advisory board; cable television advisory board.

(3) On the first day of July, one thousand nine hundred ninety-nine: Public service commission; tree fruit industry self improvement assessment program; capitol building commission; board of banking and financial institutions; state building commission; West Virginia state police; women's commission; soil conservation committee of the department of agriculture; family law master system; board of examiners in speech pathology and audiology; board of social work examiners; West Virginia lending and credit rate board; public defender services; racing commission; West Virginia commission for the deaf and hard of hearing.

(4) On the first day of July, two thousand: Family protection services board; environmental quality board; West Virginia's membership in the Ohio River valley water sanitation commission; ethics commission; oil and gas inspector's examining board; veterans' council; West Virginia's membership in the southern regional education board; board of respiratory care practitioners; board of examiners in counseling; educational broadcasting authority; West Virginia state rail authority.

(5) On the first day of July, two thousand one: Real estate commission; marketing and development division of the department of agriculture; board of architects; public employees insurance agency; public employees insurance agency;
agency finance board; center for professional development; rural health advisory panel; oil and gas conservation commission; state fire commission.

(6) On the first day of July, two thousand two: Whitewater commission within the division of natural resources; state geological and economic survey; unemployment compensation; West Virginia contractor licensing board.

(7) On the first day of July, two thousand three: Driver's licensing advisory board; West Virginia commission for national and community service.

(8) On the first day of July, two thousand four: Meat inspection program of the department of agriculture; state board of risk and insurance management; board of examiners of land surveyors; interstate commission on uniform state laws; interstate commission on the Potomac River basin.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

The following agencies shall be terminated on the date indicated, but no agency may be terminated under this section unless a compliance monitoring and further inquiry update has been completed on the agency subsequent to the prior completion of a preliminary performance review:

(1) On the first day of July, one thousand nine hundred ninety-nine: Office of water resources of the division of environmental protection; office of environmental advocate of the division of environmental protection; governor's cabinet on children and families; West Virginia health care cost review authority; West Virginia investment management board; emergency medical services advisory council; parks section and parks functions of the division of natural resources.

(2) On the first day of July, two thousand: Child support enforcement division; human rights commission.

(3) On the first day of July, two thousand one: State lottery commission.
CHAPTER 261

(S. B. 537—By Senators Bowman, Bailey, Ball, Jackson, Kessler, Plymale, Schoonover, White, Boley, Minear and Scott)

[Passed March 2, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia human rights commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. HUMAN RIGHTS COMMISSION.

*§5-11-4. Human rights commission continued; status, powers and objects.

1 The West Virginia human rights commission, heretofore created, is hereby continued. The commission shall have the power and authority and shall perform the functions and services as in this article prescribed and as otherwise provided by law. The commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the state and shall strive to eliminate all discrimination in employment and places of public accommodations by virtue of race, religion, color, national origin, ancestry, sex, age, blindness or handicap and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other real property by virtue of race, religion, color, national origin, ancestry, sex, blindness, handicap or familial status.

16 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia human rights commission shall continue to exist until the first day of July, two thousand.

*Clerk's Note: This section was also amended by HB 4545 (Chapter 178), which passed subsequent to this act.
CHAPTER 262

(H. B. 4346—By Delegates Douglas, Collins, Stainaker, Capito, Claypole, Prunty and Tucker)

[Passed March 2, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve, relating to continuing the West Virginia commission for the deaf and hard-of-hearing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD-OF-HEARING.

§5-14-12. Termination of the West Virginia commission for the deaf and hard-of-hearing.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia commission for the deaf and hard-of-hearing shall continue to exist until the first day of July, one thousand nine hundred ninety-nine.
CHAPTER 263
(S. B. 413—By Senators Bowman, Bailey, Ball, Kessler, Plymale, White, Boley, Buckalew and Minear)

[Passed February 23, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the department of health and human resources; and providing for the continuation of the division of human services and its statutory functions within that department.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-1a. Department of welfare renamed division of human services; continuation of the department of health and human resources and the division of human services.

1 The state department of welfare, created pursuant to the provisions of chapter nine of this code, is hereby continued as an official department of the state of West Virginia, but effective the twenty-ninth day of May, one thousand nine hundred eighty-three, its name shall be the division of human services. All references in the code to the department of welfare shall mean the division of human services, and all references to the commissioner of the department of welfare shall mean the commissioner of the division of human services and for all other legal purposes the department of welfare shall continue as the division of human services.
The department of health and human resources and the division of human services within that department shall be charged with the administration of this chapter. The department of health and human resources shall continue to exist and the division of human services shall continue to exist within the department of health and human resources until the first day of July, one thousand nine hundred ninety-nine, to permit a review of their functions to be undertaken by the joint committee on government operations as part of the full performance evaluation of the department of health and human resources scheduled to continue during the interim of the Legislature in the year one thousand nine hundred ninety-nine.

CHAPTER 264

(H. B. 4116—By Delegates Douglas, Collins, Stalnaker, Tucker and Capito)

[Passed February 17, 1998; in effect ninety days from passage. Approved by the Governor.]

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, relating to continuing the West Virginia investment management board.

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, to read as follows:

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-20. Termination of board.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia investment management board shall continue to exist until the first day of July, one thousand nine hundred ninety-nine.
CHAPTER 265
(H. B. 4258—By Delegates Douglas, Collins, Claypole, Prunty, Stalnaker, Tucker and Capito)

[Passed February 23, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the emergency medical services advisory council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses; continuation.

The emergency medical services advisory council, heretofore created and established by former section seven of this article, shall be continued for the purpose of developing, with the commissioner, standards for emergency medical service personnel and for the purpose of providing advice to the office of emergency medical services and the commissioner with respect to reviewing and making recommendations for and providing assistance to the establishment and maintenance of adequate emergency medical services for all portions of this state.

The council shall have the duty to advise the commissioner in all matters pertaining to his or her duties and functions in relation to carrying out the purposes of this article.

The council shall be composed of fifteen members appointed by the governor by and with the advice and consent of the Senate. The mountain state emergency
medical services association shall submit to the governor a
list of six names of representatives from their association
and a list of three names shall be submitted to the
governor of representatives of their respective
organizations by the county commissioners' association of
West Virginia, the West Virginia state firemen's association,
the West Virginia hospital association, the West Virginia
chapter of the American college of emergency physicians,
the West Virginia emergency medical services
administrators association, the West Virginia emergency
medical services coalition, the ambulance association of
West Virginia, the county commissioner's association and
the state department of education. The governor shall
appoint from the respective lists submitted, two persons
who represent the mountain state emergency medical
services association, one of whom shall be a paramedic
and one of whom shall be an emergency medical
technician-basic, and one person from the county
commissioners' association of West Virginia, the West
Virginia state firemen's association, the West Virginia
hospital association, the West Virginia chapter of the
American college of emergency physicians, the West
Virginia emergency medical services administrators
association, the West Virginia emergency medical services
coalition, the ambulance association of West Virginia and
the state department of education. In addition the
governor shall appoint one person to represent emergency
medical service providers operating within the state, one
person to represent small emergency medical service
providers operating within this state and three persons to
represent the general public. Not more than six of the
members may be appointed from any one congressional
district.

The current advisory council members' terms shall end
on the thirtieth day of June, one thousand nine hundred
ninety-six, and, pursuant to the provisions of this section,
the governor shall appoint an advisory council on the first
day of July, one thousand nine hundred ninety-six. Of
those first appointed, one-third shall serve for one year,
one-third shall serve for two years and one-third shall
serve for three years. Each subsequent term is to be for
three years and no member may serve more than four
consecutive terms.
The council shall choose its own chairman and meet at the call of the commissioner at least twice a year. The members of the council shall receive compensation and expense reimbursement in an amount not to exceed the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law, for each day or substantial portion thereof engaged in the performance of official duties.

Pursuant to the provisions of article ten, chapter four of this code, the emergency medical services advisory council shall continue to exist until the first day of July, one thousand nine hundred ninety-nine.

CHAPTER 266

(S. B. 412—By Senators Bowman, Bailey, Ball, Jackson, Kessler, Plymale, Schoonover, Boley, Buckalew and Minear)

[Passed February 23, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of rehabilitation services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. VOCATIONAL REHABILITATION.

§18-10A-2. Division of rehabilitation services.

1 The division of rehabilitation services is hereby transferred to the department of education and the arts created in article one, chapter five-f of this code. The secretary shall appoint any such board, commission or council over the division to the extent required by federal
law to qualify for federal funds for providing rehabilitation services for disabled persons. The secretary and such boards, commissions or councils as he or she is required by federal law to appoint are authorized and directed to cooperate with the federal government to the fullest extent in an effort to provide rehabilitation services for disabled persons.

References in this article or article ten-b of this chapter to the state board of vocational education, the state board of rehabilitation or the state board as the governing board of vocational or other rehabilitation services or facilities means the secretary of education and the arts. All references in the code to the division of vocational rehabilitation means the division of rehabilitation services and all references to the director of the division of vocational rehabilitation means the director of the division of rehabilitation services.

Pursuant to the provisions of article ten, chapter four of this code, the division of rehabilitation services shall continue to exist until the first day of July, two thousand four.

CHAPTER 267
(H. B. 4115—By Delegates Douglas, Collins, Stalnaker, Tucker and Capito)

[Passed February 17, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the meat inspection division of the department of agriculture.

Be it enacted by the Legislature of West Virginia:

That section one, article two-b, 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 2B. INSPECTION OF MEAT AND POULTRY.
§19-2B-1. Purpose and construction; continuation of meat and poultry inspection program.

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

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

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CHAPTER 268

(H. B. 4345—By Delegates Douglas, Collins, Stalnaker, Capito, Claypole, Prunty and Tucker)

[Passed March 2, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the state soil conservation committee.

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

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.

§19-21A-4. State soil conservation committee; continuation.

(a) The state soil conservation committee is continued. It is to serve as an agency of the state and to perform the functions conferred upon it in this article. The committee shall consist of seven members. The following shall serve, ex officio, as members of the committee: The director of the state cooperative extension service; the director of the state agricultural experiment station; the director of the division of environmental protection; and the state commissioner of agriculture, who shall be chairman of the committee.

The governor shall appoint as additional members of the committee three representative citizens. The term of members thus appointed shall be four years, except that of the first members so appointed, one shall be appointed for a term of two years, one for a term of three years, and one for a term of four years. In the event of a vacancy, appointment shall be for the unexpired term.

The committee may invite the secretary of agriculture of the United States of America to appoint one person to serve with the committee as an advisory member.

The committee shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings and promulgate such rules as may be necessary for the execution of its functions under this article.

(b) The state soil conservation committee may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The committee may call upon the attorney general of the state for such legal services as it may require. It shall have authority to delegate to its chairman, to one or more of its members, or
to one or more agents or employees, such powers and
duties as it may deem proper. The committee is
empowered to secure necessary and suitable office
accommodations, and the necessary supplies and
equipment. Upon request of the committee, for the
purpose of carrying out any of its functions, the
supervising officer of any state agency, or of any state
institution of learning shall, insofar as may be possible,
under available appropriations, and having due regard to
the needs of the agency to which the request is directed,
assign or detail to the committee, members of the staff or
personnel of such agency or institution of learning, and
make such special reports, surveys or studies as the
committee may request.

(c) A member of the committee shall hold office so
long as he shall retain the office by virtue of which he
shall be serving on the committee. A majority of the
committee shall constitute a quorum, and the concurrence
of a majority in any matter within their duties shall be
required for its determination. The chairman and
members of the committee shall receive no compensation
for their services on the committee, but shall be entitled to
expenses, including traveling expenses, necessarily
incurred in the discharge of their duties on the committee.
The committee shall provide for the execution of surety
bonds for all employees and officers who shall be
entrusted with funds or property; shall provide for the
keeping of a full and accurate public record of all
proceedings and of all resolutions, rules and orders issued
or adopted; and shall provide for an annual audit of the
accounts of receipts and disbursements.

(d) In addition to the duties and powers hereinafter
conferred upon the state soil conservation committee, it
shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to
the supervisors of soil conservation districts, organized as
provided hereinafter, in the carrying out of any of their
powers and programs;

(2) To keep the supervisors of each of the several
districts, organized under the provisions of this article,
informed of the activities and experience of all other
75 districts organized hereunder, and to facilitate an
76 interchange of advice and experience between such
77 districts and cooperation between them;

78 (3) To coordinate the programs of the several soil
79 conservation districts organized hereunder so far as this
80 may be done by advice and consultation;

81 (4) To secure the cooperation and assistance of the
82 United States and any of its agencies, and of agencies of
83 this state, in the work of such districts;

84 (5) To disseminate information throughout the state
85 concerning the activities and programs of the soil
86 conservation districts organized hereunder, and to
87 encourage the formation of such districts in areas where
88 their organization is desirable;

89 (6) To accept and receive donations, gifts,
90 contributions, grants and appropriations in money,
91 services, materials or otherwise, from the United States or
92 any of its agencies, from the state of West Virginia, or
93 from other sources, and to use or expend such money,
94 services, materials or other contributions in carrying out
95 the policy and provisions of this article, including the right
96 to allocate such money, services or materials in part to the
97 various soil conservation districts created by this article in
98 order to assist them in carrying on their operations; and

99 (7) To obtain options upon and to acquire by
100 purchase, exchange, lease, gift, grant, bequest, devise or
101 otherwise, any property, real or personal, or rights or
102 interests therein; to maintain, administer, operate and
103 improve any properties acquired, to receive and retain
104 income from such property and to expend such income as
105 required for operation, maintenance, administration or
106 improvement of such properties or in otherwise carrying
107 out the purposes and provisions of this article; and to sell,
108 lease or otherwise dispose of any of its property or
109 interests therein in furtherance of the purposes and the
110 provisions of this article. Money received from the sale of
111 land acquired in the small watershed program shall be
112 deposited in the special account of the state soil
113 conservation committee and expended as herein provided.
After having conducted a performance audit through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that the state soil conservation committee should be continued and reestablished. Accordingly, pursuant to the provisions of section five of said article, the state soil conservation committee shall continue to exist until the first day of July, one thousand nine hundred ninety-nine.

CHAPTER 269
(H. B. 4347—By Delegates Douglas, Collins, Stalnaker, Capito, Claypole, Tucker and Kuhn)

[Passed March 3, 1998: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty, relating to continuing the racing commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-30. Termination of the racing commission.

Pursuant to the provisions of article ten, chapter four of this code, the racing commission shall continue to exist until the first day of July, one thousand nine hundred ninety-nine.
CHAPTER 270
(S. B. 414—By Senators Bowman, Bailey, Ball, Jackson, Kessler, Plymale, White, Boley, Buckalew and Minear)

[Passed February 17, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the parks section and the parks functions of the division of natural resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-3. Division of natural resources, office of director and commission established; termination date for division of natural resources and for parks section of division of natural resources.

A division of natural resources, the office of director of the division of natural resources and a natural resources commission are hereby created and established in the state government with jurisdiction, powers, functions, services and enforcement processes as provided in this chapter and elsewhere by law.

Pursuant to the provisions of article ten, chapter four of this code, the division of natural resources shall continue to exist until the first day of July, two thousand one.

Pursuant to the provisions of article ten, chapter four of this code, the parks section and parks functions of the division of natural resources, transferred to the division of natural resources pursuant to the provisions of section twelve, article one, chapter five-b of this code, shall continue to exist within the division of natural resources until the first day of July, one thousand nine hundred ninety-nine.
CHAPTER 271
(S. B. 415—By Senators Bowman, Bailey, Ball, Jackson, Kessler, White, Boley, Buckalew and Minear)

[Passed February 23, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of environmental protection.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-4. Division of environmental protection continued.

1 Pursuant to the provisions of article ten, chapter four of this code, the division of environmental protection shall continue to exist until the first day of July, two thousand.

CHAPTER 272
(S. B. 251—By Senators Bowman, Bailey, Ball, Kessler, Plymale, White, Boley, Buckalew, Minear and Scott)

[Passed February 16, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eleven, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the commission on Potomac River basin.

Be it enacted by the Legislature of West Virginia:

That section four, article eleven, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 11. INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN.

§22C-11-4. Effective date; findings; termination date.

This article shall become effective upon the adoption of substantially similar amendments to the interstate compact by each of the signatory states to the compact, and upon the approval of the amendments to the compact by the Congress of the United States.

Pursuant to article ten, chapter four of this code, West Virginia shall continue to be a member of this compact until the first day of July, two thousand four.

CHAPTER 273

(S. B. 250—By Senators Bowman, Bailey, Ball, Kessler, Plymale, White, Wooton, Boley, Buckalew, Minear and Scott)

[Passed February 17, 1998; in effect ninety days from passage. Approved by the Governor.]
CHAPTER 274

(H. B. 4690—By Delegates Douglas, Collins, Stalnaker, Capito and Butcher)

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

AN ACT to amend article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-one, relating to continuing the state fire commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-31. Termination of the state commission.

Pursuant to the provisions of article ten, chapter four of this code, the state fire commission shall continue to exist until the first day of July, two thousand one.

CHAPTER 275

(H. B. 4349—By Delegates Douglas, Collins, Stalnaker, Capito, Claypole, Prunty and Tucker)

[Passed March 3, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the division of personnel.

Be it enacted by the Legislature of West Virginia:
That section five-a, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CIVIL SERVICE COMMISSION.

§29-6-5a. Termination of division.

Pursuant to the provisions of article ten, chapter four of this code, the division of personnel shall continue to exist until the first day of July, two thousand four.

CHAPTER 276

(H. B. 4257—By Delegates Douglas, Collins, Claypole, Prunty, Stalnaker, Tucker and Capito)

[Passed February 23, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the board of risk and insurance management.

Be it enacted by the Legislature of West Virginia:

That section twelve, article twelve, 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 12. STATE INSURANCE.

§29-12-12. Reestablishment of board as state board of risk and insurance management.

After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the state board of insurance should be continued and reestablished but shall be known and referred to as the state board of risk and insurance management.
Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the state board of insurance shall continue to exist until the first day of July, two thousand four, but shall be known and referred to as the state board of risk and insurance management.

CHAPTER 277

(H.B. 4114—By Delegates Douglas, Collins, Tucker, Capito, Thompson and Varner)

[Passed February 18, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the West Virginia women's commission.

Be it enacted by the Legislature of West Virginia:

That section one, article twenty, 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 20. WOMEN'S COMMISSION.

§29-20-1. Continuation; membership; appointment and terms of members; organization; reimbursement for expenses.

The West Virginia commission on the status of women is hereby abolished, and there is hereby continued within the department of health and human resources the West Virginia women's commission, to consist of eighteen members, seven of whom shall be ex officio members, not entitled to vote: The attorney general, the state superintendent of schools, the commissioner of labor, the commissioner of the bureau of human resources of the department of health and human resources, the director of the human rights commission, the director of the division of personnel and the chancellor of the board of directors
of the state college system. Each ex officio member may
designate one representative employed by his or her
department to meet with the commission in his or her
absence. The governor shall appoint the additional eleven
members, by and with the advice and consent of the
Senate, from among the citizens of the state. The
governor shall designate the chairman and vice chairman
of the commission and the commission may elect such
other officers as it deems necessary. The members shall
serve a term beginning the first day of July, one thousand
nine hundred seventy-seven, three to serve for a term of
one year, four to serve for a term of two years and the
remaining four to serve for a term of three years. The
successors of the members initially appointed as provided
herein shall be appointed for a term of three years each in
the same manner as the members initially appointed under
this article, except that any person appointed to fill a
vacancy occurring prior to the expiration of the term for
which his or her predecessor was appointed shall be
appointed for the remainder of such term. Each member
shall serve until the appointment and qualification of his
or her successor.

No member may receive any salary for his or her
services, but each may be reimbursed for actual and
necessary expenses incurred in the performance of his or
her duties out of funds received by the commission under
section four of this article, except that in the event the
expenses are paid, or are to be paid, by a third party, the
members shall not be reimbursed by the commission.

After having conducted a performance audit through
its joint committee on government operations, pursuant to
section nine, article ten, chapter four of this code, the
Legislature hereby finds and declares that the West
Virginia women's commission should be continued and
reestablished. Accordingly, notwithstanding the provisions
of section four, article ten, chapter four of this code, the
West Virginia women's commission shall continue to exist
until the first day of July, one thousand nine hundred
ninety-nine.
CHAPTER 278

(S. B. 536—By Senators Bowman, Bailey, Ball, Jackson, Kessler, Plymale, Schoonover, Boley and Minear)

[Passed March 2, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing public defender services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-3. Establishment of public defender services, termination date.

1 There is hereby created an executive agency known as public defender services. The agency shall administer, coordinate and evaluate programs by which the state provides legal representation to indigent persons, monitor the progress of various delivery systems, and recommend improvements. The agency shall maintain its office at the state capital.

8 Pursuant to the provisions of article ten, chapter four of this code, public defender services shall continue to exist until the first day of July, one thousand nine hundred ninety-nine.
AN ACT to amend and reenact section twenty-six, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the state lottery commission.

Be it enacted by the Legislature of West Virginia:

That section twenty-six, article twenty-two, 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 22. STATE LOTTERY ACT.


After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the state lottery commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the state lottery commission shall continue to exist until the first day of July, two thousand one.
AN ACT to amend and reenact section three, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the continuation of the board of examiners of land surveyors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. LAND SURVEYORS.

§30-13A-3. Board of examiners of land surveyors created; appointment, terms, removal, etc., of members; officers; meetings; quorum; compensation and expenses.

(a) There is hereby created the state board of examiners of land surveyors which shall be composed of three members appointed by the governor by and with the advice and consent of the Senate. Each member shall have been actively engaged in the practice of land surveying for at least ten years and shall be the holder of a license under the provisions of this article.

(b) The members of the board shall be appointed for overlapping terms of three years each ending on the thirtieth day of June, and until their respective successors have been appointed and qualified. Members may be reappointed for any number of terms. Before entering upon the performance of his duties, each member shall take and subscribe to the oath required by section five,
article IV of the constitution of this state. Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant and such appointment shall be made within sixty days of the occurrence of such vacancy. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The board shall elect from its membership a chairman and secretary-treasurer. A majority of the members of the board shall constitute a quorum and meetings shall be held at the call of the chairman or upon the written request of two members at such time and place as designated in such call or request, and, in any event, the board shall meet at least once annually to conduct the examination hereinafter provided for and to transact such other business as may come before it.

(d) Members shall be paid such reasonable compensation as the board may from time to time determine, and in addition may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties, which compensation and expenses shall be paid in accordance with the provisions of subsection (b), section four of this article.

(e) After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the board of examiners of land surveyors should be continued and reestablished. Accordingly, notwithstanding the provisions of section four of said article, the board of examiners of land surveyors shall continue to exist until the first day of July, two thousand four.
AN ACT to amend and reenact section three, article thirty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of social work examiners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 30. SOCIAL WORKERS.

§30-30-3. Board of social work examiners.

(a) For the purpose of carrying out the provisions of this article, there is hereby created a West Virginia board of social work examiners, consisting of seven members who shall be appointed by the governor, subject to the following requirements:

(1) No person may be excluded from serving on the board by reason of race, sex or national origin;

(2) One member shall be an independent clinical social worker, two members shall be certified social workers, one member shall be a graduate social worker and two members shall be social workers. All such members must be licensed under the provisions of this article in accordance with their respective titles. In addition, there shall be one member of the board chosen from the general public: Provided, That those members who are appointed by the governor to serve as the first board after the effective date of this article shall be persons eligible for the licensing required under this article: Provided, however, That the member from the
general public shall never be required to be eligible for licensing;

(3) The members of the first board to serve after the effective date of this article shall be appointed within ninety days thereof;

(4) The term of office for each member of the board shall be three years: Provided, That one of the members of the first board to serve after the effective date of this article shall serve a term of two years, three of them shall serve a term of three years and the remaining three shall serve a term of four years; and

(5) The governor shall, whenever there is a vacancy on the board due to circumstances other than the expiration of the term of a member, appoint another member with the same qualifications as the member who has vacated to serve the duration of the unexpired term.

For the purpose of accepting nominations for the replacement of a member, the governor shall cause a notice of the vacancy to be published at least thirty days prior to an announcement of the replacement member, as a Class I-0 legal advertisement, in accordance with the provisions of section two, article three, chapter fifty-nine of this code. The publication area shall be statewide.

If the governor fails to make appointment in ninety days after expiration of any term, the board shall make the necessary appointment. Each member shall hold office until the expiration of the term for which such member is appointed and until a successor shall have been duly appointed and qualified.

(b) Any members of the board may be removed from office for cause, in accordance with procedures set forth in this code for the removal of public officials from office.

(c) The board shall pay each member the same compensation as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties and shall reimburse each
(d) The board shall hold an annual election for the purpose of electing a chairman, vice chairman and secretary. The requirements for meetings and management of the board shall be established in regulations promulgated by the board as required by this article.

(e) In addition to the duties set forth in other provisions of this article, the board shall:

1. Recommend to the Legislature any proposed modifications to this article;

2. Report to county prosecutors any suspected violations of this article: Provided, That no report shall be made until the board has given the suspected violator ninety days written notice of the suspected violation and the violator has, within such ninety-day period, been afforded an opportunity to respond to the board with respect to the allegation;

3. Publish an annual report and a roster listing the names and addresses of all persons who have been licensed in accordance with the provisions of this article as an independent clinical social worker, certified social worker, graduate social worker or social worker;

4. Establish a fee schedule by legislative rule, pursuant to the provisions of chapter twenty-nine-a of this code, which schedule may include fees for the initial examination, license fee, license renewal, license replacement, reciprocal license, license classification change, continuing education provider approval and monitoring, mailing lists and requests for information and reports; fees for requests for information and reports shall not be greater than the cost of personnel, time and
supplies incurred by the board and shall not be applied to
the annual report;

(5) Establish standards and requirements by legislative
rule, pursuant to the provisions of chapter twenty-nine-a
of this code, for continuing education. In establishing
these requirements the board shall consult with
professional groups and organizations representing all
levels of practice provided for in this article and the board
shall consider recognized staff development programs,
continuing education programs offered by colleges and
universities having social work programs approved or
accredited by the council on social work education, and
continuing education programs offered by recognized
state and national social work bodies: Provided, That
such standards and requirements for continuing education
shall not be construed to alter or affect in any way the
standards and requirements for licensing as set forth
elsewhere in this article;

(6) Establish standards and requirements for the
practice of social work and the differentiation of
qualifications, education, training, experience, supervision,
responsibilities, rights, duties and privileges at the
independent clinical social worker, certified social worker,
graduate social worker and social worker license levels. In
establishing these standards and requirements the board
shall consult with professional groups and organizations
representing all levels of practice provided for in this
article. Standards and requirements may include, but are
not limited to, practice standards, practice parameters,
quality indicators, minimal standards of acceptance,
advanced training and certification and continuing
education: Provided, That such standards and
requirements for practice may not be construed to alter or
affect in any way the standards and requirements for
licensing as set forth elsewhere in this article;

(7) Conduct its proceedings in accordance with
provisions of article nine-a, chapter six of this code; and

(8) Employ, direct and define the duties of
administrative clerical support staff.
After having conducted a preliminary performance review through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that the board of social work examiners be continued and reestablished. Accordingly, notwithstanding the provisions of said article, the board of social work examiners shall continue to exist until the first day of July, one thousand nine hundred ninety-nine.

CHAPTER 282

(S. B. 417—By Senators Bowman, Bailey, Ball, Jackson, Kessler, Plymale, Schoonover, White, Buckalew and Minear)

[Passed February 23, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article thirty-two, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of examiners in speech pathology.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.


The West Virginia board of examiners for speech-language pathology and audiology shall be terminated pursuant to the provisions of article ten, chapter four of this code on the first day of July, one thousand nine hundred ninety-nine, unless sooner terminated or unless continued or reestablished pursuant to that article.
AN ACT to amend and reenact section one, article one, chapter forty-seven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia lending and credit rate board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. LENDING AND CREDIT RATE BOARD.

§47A-1-1. Legislative findings; creation, membership, powers and duties of board; continuation.

(a) The Legislature hereby finds and declares that:

(1) Changes in the permissible charges on loans, credit sales or transactions, forbearance or other similar transactions requires specialized knowledge of the needs of the citizens of West Virginia for credit for personal and commercial purposes and knowledge of the availability of such credit at reasonable rates to the citizens of this state while affording a competitive return to persons extending such credit;

(2) Maximum charges on loans, credit sales or transactions, forbearance or other similar transactions executed in this state should be prescribed from time to time to reflect changed economic conditions, current interest rates and finance charges throughout the United States and the availability of credit within the state in order to promote the making of such loans in this state; and
(3) The prescribing of such maximum interest rates and finance charges can be accomplished most effectively and flexibly by a board comprised of the heads of designated government agencies, university schools of business and administration and members of the public.

(b) In view of the foregoing findings, it is the purpose of this section to establish the West Virginia lending and credit rate board and authorize said board to prescribe semiannually the maximum interest rates and finance charges on loans, credit sales or transactions, forbearance or similar transactions made pursuant to this section subject to the provisions, conditions and limitations hereinafter set forth and to authorize lenders, sellers and other creditors to charge up to the maximum interest rates or finance charges so fixed. The rates prescribed by the board are alternative rates and any creditor may utilize either the rate or rates set by the board or any other rate or rates which the creditor is permitted to charge under any other provision of this code.

(c) The West Virginia lending and credit rate board shall be comprised of:

(1) The director of the governor's office of economic and community development;

(2) The West Virginia state treasurer;

(3) The West Virginia banking commissioner;

(4) The deans of the schools of business and administration at Marshall university and West Virginia university;

(5) The director of the division of consumer protection of the attorney general's office; and

(6) Three members of the public appointed by the governor with the advice and consent of the Senate. The members of the public shall be appointed for terms of six years each, and until their successors are appointed and qualified; except that of the members first appointed, one shall be appointed for a term of two years, one for a term
of four years and one for a term of six years. A member who has served one full term of six years shall be ineligible for appointment for the next succeeding term. Vacancies shall be filled by appointment of the governor with the advice and consent of the Senate, or if any vacancy remains unfilled for three months, by a majority vote of the board. The West Virginia banking commissioner shall serve as chairperson of the board and the rate or rates set by the board shall be determined by a majority vote of those members of the board in attendance at the respective board meeting.

(d) The West Virginia lending and credit rate board is hereby authorized and directed to meet after the thirty-first day of December, one thousand nine hundred eighty-three, on the first Tuesday of April and on the first Tuesday of October of each year or more or less frequently as required by the circumstances and to prescribe by order a maximum rate of interest and finance charge for the next succeeding six months, effective on the first day of June and on the first day of December, for any loans, credit sales or transactions, forbearance or similar transactions made pursuant to this section. In fixing said maximum rates of interest and finance charge, the board shall take into consideration prevailing economic conditions, including the monthly index of long-term United States government bond yields for the preceding calendar month, yields on conventional commercial short-term loans and notes throughout West Virginia and throughout the United States and on corporate interest-bearing securities of high quality, the availability of credit at reasonable rates to the citizens of this state which afford a competitive return to persons extending such credit and such other factors as the board may determine.

(e) Any petition proposing a change in the prescribed maximum rates of interest and finance charges must be filed in the office of the banking commissioner no later than the fifteenth day of February in order to be voted on at the board meeting on the first Tuesday of April and no
later than the fifteenth day of August in order to be voted
on at the board meeting on the first Tuesday of October.
Whenever any change in the prescribed maximum rates of
interest and finance charges is proposed the board shall
schedule a hearing, at least fifteen days prior to the board
meeting at which the proposed rates of interest and
finance charge will be voted on by the members of the
board, and shall give all interested parties the opportunity
to testify and to submit information at such public hearing
that is relevant. Notice of the scheduled public hearing
shall be issued and disseminated to the public at least
twenty days prior to the scheduled date of the hearing.

(f) The board shall prescribe by order issued not later
than the twentieth day of April and not later than the
twentieth day of October, in accordance with the
provisions of subsection (d) of this section the maximum
rates of interest and finance charge for the next
succeeding six months for any loan, credit sale,
forbearance or similar transaction made pursuant to this
section and shall cause such maximum rate of interest and
finance charge to be issued and disseminated to the public,
such maximum rate of interest and finance charge to be
effective on the first day of June and the first day of
December for the next succeeding six months.

(g) Notwithstanding the other provisions of this
chapter, the West Virginia lending and credit rate board
shall not be required to meet if no petition has been filed
with the board requesting a hearing and interest rates and
economic conditions have not changed sufficiently to
indicate that any change in the existing rate order would
be required, and there are not at least two board members
who concur that a meeting of the board is necessary. If
the board does not meet, the maximum rates of interest
and finance charges prescribed by the board in the
existing rate order shall remain in full force and effect
until the next time the board meets and prescribes
different maximum rates of interest and finance charges.
(h) If circumstances and economic conditions require, the chairperson or any three board members, at any time, may call an emergency interim meeting of the West Virginia lending and credit rate board, at which time the chairperson shall give ten days' notice of the scheduled emergency meeting to the public. All interested parties shall have the opportunity to be heard and to submit information at such emergency meeting that is relevant. Any and all emergency rate board orders shall be effective within thirty days from the date of such emergency meeting.

(i) Each member of the board, except those whose regular salary is paid by the state of West Virginia, shall receive seventy-five dollars per diem while actually engaged in the performance of the duties of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of their duties, except that in the event the expenses are paid by a third party the members shall not be reimbursed by the state. The reimbursement shall be paid out of the revolving fund established by section two of this article upon a requisition upon the state auditor, properly certified by the banking commissioner.

(j) In setting the maximum interest rates and finance charges, the board may set varying rates based on the type of credit transaction, the term of transaction, the type of debtor, the type of creditor and other factors relevant to determination of such rates. In addition, the board may set varying rates for ranges of principal balances within a single category of credit transactions.

(k) Pursuant to the provisions of article ten, chapter four of this code, the West Virginia lending and credit rate board shall continue to exist until the first day of July, one thousand nine hundred ninety-nine.
AN ACT to amend and reenact section twenty-four, article four, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the family law masters system.

_Be it enacted by the Legislature of West Virginia:_

That section twenty-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 to read as follows:

**ARTICLE 4. PROCEEDING BEFORE A MASTER.**

§48A-4-24. Continuation of family law masters system.

1 After having conducted a performance and fiscal audit  
2 through its joint committee on government operations,  
3 pursuant to article ten, chapter four of this code, the  
4 Legislature hereby finds and declares the family law  
5 masters system should be continued and reestablished.  
6 Accordingly, notwithstanding the provisions of said article,  
7 the family law masters system shall continue to exist until  
8 the first day of July, one thousand nine hundred ninety-nine, so that the joint committee on government  
9 operations may monitor compliance by the family law  
10 masters system with the recommendations of the  
11 performance audit.
CHAPTER 285
(Com. Sub. for S. B. 181—By Senators Jackson and Kessler)

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

AN ACT to repeal section twenty-five, article one-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section ten, article three of said chapter; and to amend and reenact section three, article twelve-d of said chapter, all relating generally to the assessment and taxation of real or personal property; providing for discretionary penalties for refusal to furnish proper list of property, for refusal to answer or for answering falsely questions posed by assessor or tax commissioner, or for refusal to deliver statement; requiring office of business registration or other appropriate section of the department of tax and revenue to annually provide a list of businesses registered within a county to the county assessor at no cost; limiting fee for additional lists; and making certain technical provisions.

Be it enacted by the Legislature of West Virginia:

That section twenty-five, article one-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section ten, article three of said chapter be amended and reenacted; and that section three, article twelve-d of said chapter be amended and reenacted, all to read as follows:

Article 3. Assessments Generally.

12D. Establishment of Office of Business Registration; Creation of Centralized Records.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-10. Failure to list property, etc.; collection of penalties and forfeitures.

1 If any person, firm or corporation, including public
2 service corporations, whose duty it is by law to list any real
estate or personal property for taxation, refuses to furnish
a proper list thereof or refuses to list within the time
required by law, or if any person, firm or corporation,
including public service corporations, refuses to answer or
answers falsely any question asked by the assessor or by
the tax commissioner, or fails or refuses to deliver any
statement required by law, he, she or it may forfeit, at the
discretion of the assessor or the tax commissioner for
good cause shown, not less than twenty-five nor more than
one hundred dollars, and shall be denied all remedy
provided by law for the correction of any assessment
made by the assessor or by the board of public works. If
any person, firm or corporation, including public service
corporations, required by law to make return of property
for taxation, whether the return is to be made to the
assessor, the board of public works, or any other assessing
officer or body, fails to return a true list of all property
which should be assessed in this state, including notes,
bonds, bills and accounts receivable, stocks and any other
intangible personal property, the person, firm or
corporation, in addition to all other penalties provided by
law, shall forfeit one percent of the value of the property
not yet returned and not otherwise taxed in this state. A
forfeiture as to all property aforesaid may be enforced for
any such default occurring in any year not exceeding five
years immediately prior to the time the default is
discovered, but no liability to penalty or forfeiture as to
notes, bonds, bills and accounts receivable, stocks and
other intangible personal property arising prior to the first
day of January, one thousand nine hundred thirty-three, is
enforceable on behalf of the state or of any of its
subdivisions. Each failure to make a true return as herein
required constitutes a separate offense, and a forfeiture
shall apply to each of them, but all forfeitures, to which
the same person, firm or corporation is liable, shall be
enforced in one proceeding against the person, firm or
corporation, or against the estate of any deceased person,
and may not exceed five percent of the value of the
property not returned. Forfeitures shall be collected as
provided in article two, chapter eleven-a of this code, the
same as any tax liability, against the defaulting taxpayer,
or in case of a decedent, against his or her personal
representative. The sheriff shall apportion such fund among the state, county, district, school district and municipalities which would have been entitled to the taxes upon the property if it had been assessed, in proportion to the rates of taxation for each levying unit for the year in which the judgment was obtained bears to the sum of rates for all. When the list of property returned by the appraisers of the estate of any deceased person shows an amount greater than the last assessment list of the deceased person next preceding the appraisal of his or her estate, it is prima facie evidence that the deceased person returned an imperfect list of his or her property: Provided, That any person liable for the tax or his or her personal representative, may always be permitted to prove by competent evidence that the discrepancy between the assessment list and the appraisal of the estate is caused by a difference of valuation returned by the assessor and that made by the appraisers of the same property or by property acquired after assessment, or that any property enumerated in the appraisers' list had been otherwise listed for taxation, or that it was not liable for taxation. Any judgment recovered under this section is a lien, from the time of the service of the notice, upon all real estate and personal property of the defaulting taxpayer, owned at the time or subsequently acquired, in preference to any other lien.

ARTICLE 12D. ESTABLISHMENT OF OFFICE OF BUSINESS REGISTRATION; CREATION OF CENTRALIZED RECORDS.

§11-12D-3. Agency contact list; dispersal of data base information to agencies; agency contact with prospective businesses.

(a) An agency contact list consisting of state government agencies and offices having registration, licensing or other similar statutory provisions related to the initiation of new businesses in West Virginia or which should otherwise have contact with a new business, will be maintained by the office of business registration in conjunction with the centralized records for new business registration.
(b) Based upon the proposed location, size, number of employees, type of business, standard industry code or codes and other pertinent information relating to the business, each prospective new business, upon having a record established in the centralized records for new business registration, shall be informed by the office of business registration of the state agencies or offices having a registration, licensing and other similar statutory provisions related to the initiation of a new business in West Virginia or other function relating to prospective new business such that the agency or office should by law or regulation be given notice of the establishment or operation of a new business in West Virginia. The office of business registration shall establish a record of the new business in the centralized data base for the use and benefit of any agency or officer of the state of West Virginia having access to the data base and which should by law or regulation receive notice of the establishment or operation of a particular business. The record should contain information necessary to fulfill the regulatory, registration or licensing function of the agency, or in lieu of such information, the name, address and other pertinent information relating to the particular business whereby the agency or office may initiate procedures or make contact with the particular business as is appropriate for the fulfillment of the regulatory, registration, licensing or other statutory duties of the office or agency.

(c) The office of business registration or some other appropriate section of the department of tax and revenue shall provide a list of the names and addresses of all registered businesses located within each county to the county assessor. The list shall be provided at no cost to the county assessor between the first day of July and the first day of August of each year. Any additional list of businesses provided to the county assessor before the next annual list is provided shall be provided at no more than the actual cost to reproduce the list. The production of information required by the provisions of this subsection shall be considered an exception to and not violative of any requirement for confidentiality otherwise established under the provisions of this chapter.
AN ACT to amend and reenact sections two and eleven, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto two new sections, designated sections eleven-a and eleven-b; and to amend article three of said chapter by adding thereto a new section, designated section five-a, all relating generally to taxation of real property; creating legislative findings and intent; adding definitions; classification of managed timberland for taxation; directing tax department to propose legislative rules relating to setting timberland tax values; requiring written report of impact of the program; setting requirements for county assessors applying certain valuations; providing for objection to assessor valuation by any person and for appeals; establishing appeal procedures for designating and changing uses of managed timberland property for tax purposes; establishing new taxing guidelines for managed timberland; collecting back taxes on property improperly classified; creating limitations and criteria for assessing back taxes; creating an appeal process for classification determinations; establishing rates and interest collected for taxes due; providing for collection and liens associated with back taxes; and establishing effective dates for the provisions of this article.

Be it enacted by the Legislature of West Virginia:

That sections two and eleven, article one-c, chapter eleven 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 two new sections, designated sections eleven-a and eleven-b; and that article three of said chapter be amended by adding thereto a new section, designated section five-a, all to read as follows:
Article

1C. Fair and Equitable Property Valuation.

3. Assessments Generally.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-2. Definitions.

§11-1C-11. Managed timberland; findings, purposes and declaration of legislative intent; implementation; inspection and determination of qualification.

§11-1C-11a. Certification of managed timberland; assessment of property; penalty for failure to comply.

§11-1C-11b. Valuation; rulemaking; aggrieved person and taxpayer protests; exhaustion of remedies; compliance inspection; notice of revocation; appeal; effective date.

§11-1C-2. Definitions.

For the purposes of this article, the following words shall have the meanings hereafter ascribed to them unless the context clearly indicates otherwise:

(a) "Timberland" means any surface real property except farm woodlots of not less than ten contiguous acres which is primarily in forest and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site.

(b) "Managed timberland" means surface real property, except farm woodlots, of not less than ten contiguous acres which is devoted primarily to forest use and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site, and that is managed pursuant to a plan provided for in section ten of this article.

(c) "Tax commissioner", "commissioner" or "tax department" means the state tax commissioner or a designee of the state tax commissioner.

(d) "Valuation commission" or "commission" means the commission created in section three of this article.

(e) "County board of education" or "board" means the duly elected board of education of each county.
(f) "Farm woodlot" means that portion of a farm in timber but may not include land used primarily for the growing of timber for commercial purposes except that Christmas trees, or nursery stock and woodland products, such as nuts or fruits harvested for human consumption, shall be considered farm products and not timber products.

(g) "Owner" means the person who is possessed of the freehold, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability is deemed the owner until the mortgagee or trust takes possession, after which such mortgagee or trustee shall be deemed the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before transfer of legal title is also deemed the owner.

The definitions in subdivisions (f) and (g) of this section shall apply to tax years beginning on or after the first day of January, one thousand nine hundred ninety-nine.

§11-1C-11. Managed timberland; findings, purposes and declaration of legislative intent; implementation; inspection and determination of qualification.

(a) The Legislature finds and declares that the public welfare is enhanced by encouraging and sustaining the abundance of high quality forest land within the state; that economic pressures may force industrial, residential or other land development inconsistent with sustaining the forests; and that tax policy should provide an incentive for private owners of forest land to preserve the character and use of land as forest land and to make management decisions which enhance the quality of the future forest.

(b) In exercising the authority granted by the provisions of section fifty-three, article VI of the constitution of West Virginia, the Legislature makes the following declarations of its intent:

(1) Notwithstanding the provisions of section twenty-four, article three of this chapter, timberland certified by the division of forestry as managed timberland shall be valued as managed timberland as provided in this article when it is managed under a cooperative contract with the
division of forestry and the certification has not been surrendered by the owner of the property or revoked by the director of the division of forestry.

The division of forestry shall, at the time of contracting, notify the owner that the owner shall incur a penalty as set forth in section five-a, article three of this chapter if the owner fails to provide written notice to the county assessor of a change in use of the managed timberland.

(2) Property certified as managed timberland which prior to certification is properly taxed in Class II, as defined in section five, article eight of this chapter, may not be reclassified to Class III or Class IV, as defined in section five, article eight of this chapter, merely because the property is certified as managed timberland unless there is some other event or change in the use of the property that disqualifies it from being taxed in Class II.

c To aid the Legislature in assessing the impact of the managed timberland program on the state of West Virginia, the division of forestry and the tax commissioner, on or before the thirty-first day of December, two thousand one, and on the thirty-first day of December each year thereafter, shall report in writing to the joint committee on government and finance of the Legislature or its designated subcommittee. The tax commissioner shall include in his or her report a complete and accurate assessment of the impact of the managed timberland program on the tax collections of the state, including projected increases or decreases in tax collection. The division of forestry shall include in its report detailed information on the number of acres designated as managed timberland and any identified impacts of the program on the state’s timber industry.

§11-1C-11a. Certification of managed timberland; assessment of property; penalty for failure to comply.

(a) Any person who owns timberland comprising ten or more contiguous acres may qualify for identification as managed timberland for property tax purposes as set forth in subdivision (1), subsection (d), section ten of this article.
(b) The assessor, upon receipt of an appraisal or certification of the timberland from the tax commissioner, shall assess the property as managed timberland beginning with the next ensuing assessment year. Except as otherwise provided in this section, the classification of timberland included in a certified managed timberland plan shall not change for property tax purposes until such time as there is: (1) A change in the use of the property which requires a change in classification; (2) a change in the classification of the property from Class III to Class IV; or (3) a change in the classification of the property from Class IV to Class III.

(c) If the director of the division of forestry determines that the owner of timberland failed to implement a certified managed timberland plan within twenty-four months of certifying that the property meets the definition of managed timberland, the director shall give written notice to the owner by certified mail, return receipt requested, that such certification is removed and the owner of the timberland shall pay to the sheriff of the county in which the property is located a fine equal to the amount of property taxes saved due to the property being assessed as managed timberland plus interest calculated at the rate of nine percent per year. Additionally, the assessor shall reassess the property. The amount of this fine is equal to the sum of the following calculations:

(1) For each assessment year, the county assessor shall determine the market value of the property and subtract from that value the value at which the property was appraised as managed timberland. This amount shall be multiplied by sixty percent. This result shall then be multiplied by the applicable levy rate.

(2) Interest shall be imposed on the amount calculated under subdivision (1) of this subsection at the rate of nine percent per annum beginning with the first day of October of the tax year in which the taxes should have been paid based upon the timberland value of the property. Interest shall continue to accrue until the day the fine is paid.

(d) The sheriff shall deposit and account for the fines collected under this section in the same manner as property taxes.
§11-1C-11b. Valuation; rulemaking; aggrieved person and taxpayer protests; exhaustion of remedies; compliance inspection; notice of revocation; appeal; effective date.

(a) The tax commissioner shall establish by legislative rule two methodologies for determining the appraised value of managed timberland, based upon the land's potential to produce future income according to its use and productive potential as managed timberland and whether the property is classified as Class II property or as Class III or IV property for property tax purposes. These values shall be determined by discounting the potential future net income of the timberland to its present value utilizing a discounted cash flow model based upon whether the property is classified as Class II property or as Class III or IV property for property tax purposes.

(b) The tax commissioner shall also establish by legislative rule a method to determine the appraised value of timberland that is not certified as managed timberland. All timberland that is not certified as managed timberland shall be valued at its market value, except for farm woodlots which shall be valued as part of the farm.

(c) Notwithstanding the provisions of section five-a of this article, the legislative rules required by subsections (a) and (b) of this section may be promulgated as emergency legislative rules if they are filed in the state register on or before the first day of July, one thousand nine hundred ninety-eight.

(d) The value of an acre of managed timberland in a county shall always be less than the value of an acre of timberland of comparable soil quality in the county that is not certified as managed timberland.

(e) Any person aggrieved by any valuation of timberland may file a written objection to the valuation with the county assessor on or before the fifteenth day of January of the assessment year. The written objection shall then be treated as a protest filed by the taxpayer under section twenty-four-a, article three of this chapter. If any person fails to exhaust the administrative and
judicial remedies provided in said section, that person shall be barred from taking any further administrative or judicial action regarding the classification of the property for that assessment year.

(f) Upon request of the tax commissioner or the assessor or county commission of the county in which the managed timberland is located, the director of the division of forestry shall inspect the property and determine whether or not the property continues to qualify for preferential valuation as managed timberland under this article. In the event the director of forestry determines that a property does not qualify as managed timberland due to a change in its use, or it is discovered that a material misstatement of fact was made by the owner of the property in the certification of the property as managed timberland under subdivision (1), subsection (d), section ten of this article, or it is discovered that the property owner is not complying with the terms of the managed timberland plan, including any period of time for coming into compliance granted the owner by the director of forestry, the director shall give written notice to the owner of the property by certified mail, return receipt requested, the tax commissioner and the assessor of each county in which the property is located that the certification of the property as managed timberland is revoked.

(g) The aggrieved owner of the property which had its managed timberland certification revoked pursuant to any provision of this code may, at any time up to sixty days from the date of notification from the director of forestry, petition the circuit court of the county in which the property is located for relief.

(h) The provisions of this section shall apply to tax years beginning on or after the first day of January, one thousand nine hundred ninety-nine.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-5a. Notification to assessor of changed use; independent action of director; penalties; effective date.
(a) Whenever property receiving preferential valuation as managed timberland is converted to a use that disqualifies the property from treatment as managed timberland, the person converting the real estate to another use shall immediately, in writing, notify the county assessor of the change in use. The county assessor or tax commissioner, as the case may be, shall then determine the value and classification of the property based upon its new use.

(b) If the director of the division of forestry has reason to believe that managed timberland was or is being converted to a use that disqualifies the property from treatment as managed timberland, the director shall investigate. If, upon investigation, the director determines that the property no longer qualifies for treatment as managed timberland, the director shall revoke the property's certification as managed timberland. The director shall give written notice to the owner of the property by certified mail, return receipt requested, to the tax commissioner and to the assessor of the county in which the property is located that the property no longer qualifies for valuation as managed timberland. If the property is located in two or more counties, notice shall be given to each assessor.

(c) If any person fails to give written notice of the change in use of managed timberland as required in subsection (a) of this section, the person owning the property shall be subject to a penalty in an amount equal to the amount of additional taxes the person would have paid on the property if written notice had been timely given, plus interest calculated at the rate of nine percent per annum: Provided, That the maximum penalty under this section shall be five years of additional taxes plus interest. This penalty may be assessed in the same manner as back taxes are assessed under section five of this article for omitted property and interest shall accrue until the day the penalty is paid.

(d) This section shall apply to tax years beginning on or after the first day of January, one thousand nine hundred ninety-nine, and to changes in use occurring on or after that day.
CHAPTER 287

2(S. B. 366—By Senators Love and Kessler)

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

AN ACT to amend and reenact section eight, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to additional funding for certain assessors' offices beginning on or after the first day of July, one thousand nine hundred ninety-nine; requirements imposed upon use of additional funding; and certification of level of funding by valuation commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-8. Additional funding for assessors' offices; maintenance funding.

(a) In order to finance the extra costs associated with the valuation and training mandated by this article, there is hereby created a revolving valuation fund in each county which shall be used exclusively to fund the assessor's office. No persons whose salary is payable from the valuation fund shall be hired under this section without the approval of the valuation commission, the hirings shall be without regard to political favor or affiliation, and the persons hired under this section are subject to the provisions of the ethics act in chapter six-b of this code, including, but not limited to, the conflict of interest provisions under chapter six-b of this code. Notwithstanding any other provisions of this code to the contrary, assessors may employ citizens of any West Virginia county for the purpose of performing, assessing
and appraising duties under this chapter upon approval of
the employment by the valuation commission.

(b) During the fiscal year commencing the first day of
July, one thousand nine hundred ninety-four, and
thereafter as necessary, any county receiving moneys
provided by the valuation commission under this section
shall use the county's valuation fund receipts which exceed
the total amount received in the fiscal year ending the
thirtieth day of June, one thousand nine hundred
ninety-four, and such other portion of the county's
valuation fund receipts that may be required by the
valuation commission, to repay the valuation commission
the money received plus accrued interest: Provided, That
the fund should not drop below one percent of the total
municipal, county commission and county school board
revenues generated by application of the respective
regular levy rates.

(c) (1) To finance the ongoing extra costs associated
with the valuation and training mandated by this article,
beginning with the fiscal year commencing on the first
day of July, one thousand nine hundred ninety-one, and
for a period of at least three consecutive years, an amount
equal to two percent of the previous year's projected tax
collections, or whatever percent is approved by the
valuation commission, from the regular levy set by, or for,
the county commission, the county school board and any
municipality in the county shall be prorated as to each
levying body, set aside and placed in the valuation fund.
In May of each year the sheriff of each county shall make
a final transfer to the assessor's valuation fund which will
reflect any difference in the amount of actual collections
in the previous fiscal year as opposed to those previously
projected by the chief inspector's office as the basis for the
contributions to the valuation fund, to bring the total
transfers for that year to two percent of the previous year's
actual collections. The two-percent payment shall
continue in any county where funds borrowed from the
state pursuant to subsection (a) of this section have not
been fully repaid until such moneys, together with accrued
interest thereon, have been fully repaid or until the first
day of July, one thousand nine hundred ninety-nine,
whichever comes last. Each year thereafter, for counties with loans, and each fiscal year after the thirtieth day of June, one thousand nine hundred ninety-nine, for those counties without loans, the valuation fund shall be continued at an annual amount not to exceed two percent, as determined by the valuation commission, of the previous year's projected tax collections from such regular levies: Provided, That on and after the first day of July, one thousand nine hundred ninety-nine, a valuation fund of a county with a loan shall be continued at an annual amount not to exceed three percent, as determined by the valuation commission, and any amounts received in excess of two percent of the collections shall be expended solely to repay the loan and for no other purpose. No provision of this subdivision shall be construed to abrogate any requirement imposed under subsection (b) of this section.

(2) For the fiscal year beginning on the first day of July, one thousand nine hundred ninety-nine, and any fiscal year thereafter, the assessors, in order to receive any percent of the previous year's projected tax collections for their valuation funds, must submit a request to the valuation commission no later than the fifteenth day of December, one thousand nine hundred ninety-four, and by the same date in December each year thereafter. The submission shall include a projected expenditure budget, including any balances expected to be carried forward, with justification for the percent requested for their valuation fund for the ensuing fiscal year. A copy of the projected budget and justifications shall also be sent to the assessor's county commission, municipalities and school board. The valuation commission shall meet after the fifteenth day of January but prior to the first day of February each year beginning in the year one thousand nine hundred ninety-five, and has authority to accept and confirm up to two percent as a justifiable amount for counties without loans, and to accept and confirm up to three percent for counties with loans, subject to the requirement of subdivision (1) of this subsection that any amounts received in excess of two percent of the collections shall be expended solely to repay the loan and for no other purpose. The valuation commission may
establish whatever lower percent of the previous year's projected tax collections each assessor shall receive based upon the evidence at hand, and the particular reevaluation needs of the county. Absent a proper application by any assessor, the valuation commission may, after consultation with the tax commissioner's office, set whatever allowable percent it considers proper. Following its decisions, the valuation commission shall certify to the chief inspector's office of the department of tax and revenue and the joint committee on government and finance, the percent approved for each assessor's valuation fund, and the chief inspector's office shall notify each affected sheriff and levying body of the moneys due from their levies to their respective valuation funds. County commissions, boards of education and municipalities may present written evidence, prior to the fifteenth day of January, one thousand nine hundred ninety-five, and by the same date of each year thereafter, acceptable to the valuation commission showing that a lesser amount than that requested by the assessor would be adequate to fund the extra costs associated with the valuation mandated by section seven of this article: Provided, That the county commissions, in addition, shall fund the county assessor's office at least the level of funding provided during the fiscal year in which this section was initially enacted.

These additional funds are intended to enable assessors to maintain current valuations and to perform the periodic reevaluation required under section nine of this article.

(d) Moneys due the valuation fund shall be deposited by the sheriff of the county on a monthly basis as directed by the chief inspector's office for the benefit of the assessor and shall be available to and may be spent by the assessor without prior approval of the county commission, which may not exercise any control over the fund. Clerical functions related to the fund shall be performed in the same manner as done with other normal funding provided to the assessor.
AN ACT to amend and reenact section nine, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemptions from taxation; increasing exemption for certain real estate used in connection with colleges and universities; exempting property used by fraternities and sororities as residential accommodations or dormitories from property taxes; and making the provisions effective to all cases and controversies pending on the date of such enactment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exempt from taxation.

(a) All property, real and personal, described in this subsection, and to the extent herein limited, is exempt from taxation:

(1) Property belonging to the United States, other than property permitted by the United States to be taxed under state law;

(2) Property belonging exclusively to the state;

(3) Property belonging exclusively to any county, district, city, village or town in this state, and used for public purposes;

(4) Property located in this state, belonging to any city, town, village, county or any other political subdivision of another state, and used for public purposes;
(5) Property used exclusively for divine worship;
(6) Parsonages and the household goods and furniture pertaining thereto;
(7) Mortgages, bonds and other evidence of indebtedness in the hands of bona fide owners and holders hereafter issued and sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings used exclusively for divine worship, or for the purpose of paying indebtedness thereon;
(8) Cemeteries;
(9) Property belonging to, or held in trust for, colleges, seminaries, academies and free schools, if used for educational, literary or scientific purposes, including books, apparatus, annuities and furniture;
(10) Property belonging to, or held in trust for, colleges or universities located in West Virginia, or any public or private nonprofit foundation or corporation which receives contributions exclusively for such college or university, if the property or dividends, interest, rents or royalties derived therefrom are used or devoted to educational purposes of such college or university;
(11) Public and family libraries;
(12) Property used for charitable purposes, and not held or leased out for profit;
(13) Property used for the public purposes of distributing water or natural gas, or providing sewer service by a duly chartered nonprofit corporation when such property is not held, leased out or used for profit;
(14) Property used for area economic development purposes by nonprofit corporations when such property is not leased out for profit;
(15) All real estate not exceeding one acre in extent, and the buildings thereon, used exclusively by any college
or university society as a literary hall, or as a dormitory or
clubroom, if not used with a view to profit, including, but
not limited to, property owned by a fraternity or sorority
organization affiliated with a university or college, or
property owned by a nonprofit housing corporation or
similar entity on behalf of a fraternity or sorority
organization affiliated with a university or college, when
the property is used as residential accommodations, or as a
dormitory for members of the organization;

(16) All property belonging to benevolent
associations, not conducted for private profit;

(17) Property belonging to any public institution for
the education of the deaf, dumb or blind, or any hospital
not held or leased out for profit;

(18) Houses of refuge and lunatic or orphan asylums;

(19) Homes for children or for the aged, friendless or
infirm, not conducted for private profit;

(20) Fire engines and implements for extinguishing
fires, and property used exclusively for the safekeeping
thereof, and for the meeting of fire companies;

(21) All property on hand to be used in the
subsistence of livestock on hand at the commencement of
the assessment year;

(22) Household goods to the value of two hundred
dollars, whether or not held or used for profit;

(23) Bank deposits and money;

(24) Household goods, which for purposes of this
section means only personal property and household
goods commonly found within the house and items used
to care for the house and its surrounding property, when
not held or used for profit;

(25) Personal effects, which for purposes of this
section means only articles and items of personal property
commonly worn on or about the human body, or carried
(26) Dead victuals laid away for family use; and

(27) Any other property or security exempted by any other provision of law.

(b) Notwithstanding the provisions of subsection (a) of this section, no property is exempt from taxation which has been purchased or procured for the purpose of evading taxation, whether temporarily holding the same over the first day of the assessment year or otherwise.

(c) Real property which is exempt from taxation by subsection (a) of this section shall be entered upon the assessor's books, together with the true and actual value thereof, but no taxes may be levied upon the property or extended upon the assessor's books.

(d) Notwithstanding any other provisions of this section, this section does not exempt from taxation any property owned by, or held in trust for, educational, literary, scientific, religious or other charitable corporations or organizations, including any public or private nonprofit foundation or corporation existing for the support of any college or university located in West Virginia, unless such property, or the dividends, interest, rents or royalties derived therefrom, is used primarily and immediately for the purposes of the corporations or organizations.

(e) The tax commissioner shall, by issuance of rules, provide each assessor with guidelines to ensure uniform assessment practices statewide to effect the intent of this section.

(f) In as much as there is litigation pending regarding application of this section to property held by fraternities and sororities, amendments to this section enacted in the year one thousand nine hundred ninety-eight shall apply to all cases and controversies pending on the date of such enactment.
AN ACT to amend and reenact section one, article six, chapter eleven 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-b; to further amend said chapter by adding thereto a new article, designated article six-g; and to amend and reenact sections ten and ten-a, article two, chapter seventeen-a of said code, all relating generally to assessment of public service businesses; returns of property to board of public works; valuation of certain classes intrastate public service corporation motor vehicle businesses either registered or not registered under a proportional registration agreement; assessment of interstate public service corporation motor vehicle businesses registered under a proportional registration agreement; valuation of certain classes intrastate public service corporation motor vehicle businesses either registered or not registered under a proportional registration agreement; interstate public service motor vehicle business; calculation of tax; form and manner of making disclosure; failure to make disclosure; criminal penalty; compelling disclosure; procuring information and tentative disclosure; failure to give information required by motor vehicles commissioner; criminal penalty; adjustment of valuation by interstate commerce appeals board; appeal from valuation by board; certification of levies to auditor; failure of officers to perform duties as to property of interstate motor vehicle corporations; injunction to restrain collection of tax; payment of assessment by owner or operator; no release of taxes assessed against such corporations; accounting for levies against interstate commercial motor vehicle corporations; certification by auditor of amount chargeable to sheriff from levies against interstate motor vehicles; payment of amount due municipality; lien of taxes; notice;
collection by suit; operating fund for interstate commerce assessment division in auditor's office; motor vehicles commissioner — reciprocal agreements with other states; severability; authorizing the entry of this state into reciprocal proportional registration agreements; payment of taxes; issuance of registration plates or markers; promulgation of rules; interagency cooperation; requirement that all registrants pay tax; intermittent interstate commerce and promulgation of rules; proportional registration agreement prevails.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

CHAPTER 11. TAXATION.

Article

6. Assessment of Public Service Businesses.

6G. Assessment of Interstate Public Service Corporation Motor Vehicle Businesses Registered Under a Proportional Registration Agreement.

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-1. Returns of property to board of public works.

§11-6-7b. Valuation of certain classes intrastate public service corporation motor vehicle businesses either registered or not registered under a proportional registration agreement.

§11-6-1. Returns of property to board of public works.
(a) On or before the first day of May in each year a
return in writing shall be filed with the board of public
works: (1) By the owner or operator of every railroad,
wholly or in part, within this state; (2) by the owner or
operator of every railroad bridge upon which a separate
toll or fare is charged; (3) by the owner or operator of
every car or line of cars used upon any railroad within the
state for transportation or accommodation of freight or
passengers, other than the owners or operators as may own
or operate a railroad within the state; (4) by the owner or
operator of every express company or express line, wholly
or in part, within this state, used for the transportation by
steam or otherwise of freight and other articles of
commerce; (5) by the owner or operator of every pipeline,
wholly or in part, within this state, used for the
transportation of oil or gas or water, whether the oil or gas
or water be owned by the owner or operator or not, or for
the transmission of electrical or other power, or the
transmission of steam or heat and power or of articles by
pneumatic or other power; (6) by the owner or operator of
every telegraph or telephone line, wholly or in part, within
this state, except private lines not operated for
compensation; (7) by the owner and operator of every gas
company and electric lighting company furnishing gas or
electricity for lighting, heating or power purposes; (8) by
the owner or operator of hydroelectric companies for the
generation and transmission of light, heat or power; (9) by
the owner or operator of water companies furnishing or
distributing water; (10) by the owner or operator of all
other public service corporations or persons engaged in
public service business whose property is located, wholly
or in part, within this state; and (11) on or before the first
day of May, one thousand nine hundred ninety-eight,
and on or before the first day of May, each year
thereafter, by the owner or operator of every truck or
semitrailer used as a commercial motor vehicle in the
transportation of property exclusively within this state by
commercial motor vehicles. For the purposes of this
article, commercial motor vehicle is defined as those
vehicles that would otherwise be subject to registration
under a proportional registration agreement as provided in
section ten-a except that the vehicle is only engaged in intrastate commerce.

(b) The words "owner or operator," as applied herein to railroad companies, shall include every railroad company incorporated by or under the laws of this state for the purpose of constructing and operating a railroad, or of operating part of a railroad within this state, whether the railroad or any part of it be in operation or not; and shall also include every other railroad company, or persons or associations of persons, owning or operating a railroad or part of a railroad in this state on which freight or passengers, or both, are carried for compensation. The word "railroad," as used herein includes every street, city, suburban or electric or other railroad or railway.

(c) The words "owner or operator," as applied herein to express companies, shall include every express company incorporated by or under the laws of this state, or doing business in this state, whether incorporated or not, and any person or association of persons, owning or operating any express company or express line upon any railroad or otherwise, doing business partly or wholly within this state.

(d) The words "owner or operator," as applied herein to trucks or semitrailers used as a commercial motor vehicle in the transportation of property, shall include every company incorporated by or under the laws of this state, or doing business in this state, whether incorporated or not, and any person or association of persons, owning or operating any truck or semitrailer used as a commercial motor vehicle in the transportation of property doing business wholly within this state.

(e) The return shall be signed and sworn to by the owner or operator if a natural person, or, if the owner or operator shall be a corporation, shall be signed and sworn to by its president, vice president, secretary or principal accounting officer.

(f) The return required by this section of every owner or operator shall cover the year ending on the thirty-first day of December, next preceding, and shall be made on
forms prescribed by the board of public works, which board is hereby invested with full power and authority and it is hereby made its duty to prescribe the forms as will require from any owner or operator herein mentioned information as in the judgment of the board may be of use to it in determining the true and actual value of the properties of the owners or operators.

§11-6-7b. Valuation of certain classes intrastate public service corporation motor vehicle businesses either registered or not registered under a proportional registration agreement.

On or before the first day of September, one thousand nine hundred ninety-eight, the tax commissioner shall propose a legislative rule for submission to the Legislature pursuant to the provisions of article three, chapter twenty-nine-a of this code, which rule shall describe in detail the methods whereby the tax commissioner will determine the market value of the following property:

(a) Intrastate public service corporation motor vehicle businesses which may or may not be registered under a proportional registration agreement but which nonetheless is operated exclusively within the state of West Virginia.

(b) A trailer, semitrailer or road tractor operated exclusively in this state or a trailer or trailer of a West Virginia based interstate commerce motor vehicle business registered under the provisions of section ten-a, article two, chapter seventeen-a of this code, the tax shall be determined by multiplying the appraised value by sixty percent to obtain the assessed value which shall be multiplied by the tax rate to obtain the amount of the tax.

(c) For purposes of equitably assessing the valuations between and among interstate commercial motor vehicles and intrastate commercial motor vehicles as defined in section ten-a, article two, chapter seventeen-a, of this code, the levy rate applied to both intrastate commercial motor vehicles and interstate motor vehicles shall run one year in arrears in order for the commissioner of motor vehicles to provide adequate notice to the facilitator of the proportional registration agreement and other jurisdictions
of the assessments due and for counties to supply their levy rates to the state auditor.

As soon as such assessment is made, the secretary of the board shall notify the owner or operator affected thereby of the amount thereof by written notice deposited in the United States post office, addressed to such owner or operator at the principal office or place of business of such owner or operator. Such assessment and valuation shall be final and conclusive, unless the same be appealed from in the manner following, within fifteen days after such notice is so deposited.

(d) Notwithstanding any other provision of the code to the contrary, the department of tax and revenue is hereby authorized to promulgate an emergency rule for the implementation of this section.

ARTICLE 6G. ASSESSMENT OF INTERSTATE PUBLIC SERVICE CORPORATION MOTOR VEHICLE BUSINESSES REGISTERED UNDER A PROPORTIONAL REGISTRATION AGREEMENT.

§11-6G-1. Valuation of certain classes intrastate public service corporation motor vehicle businesses either registered or not registered under a proportional registration agreement.


§11-6G-4. Form and manner of making disclosure; failure to make disclosure; criminal penalty.

§11-6G-5. Compelling such disclosure; procuring information and tentative assessments by motor vehicles commissioner.

§11-6G-6. Failure to give information required by motor vehicles commissioner; criminal penalty.


§11-6G-10. Failure of officers to perform duties as to property of interstate motor vehicle corporations.


§11-6G-12. Payment of assessment by owner or operator.

§11-6G-13. No release of taxes assessed against such corporations.

§ 11-6G-15. Certification by auditor of amount chargeable to sheriff from levies against interstate motor vehicles; payment of amount due municipality.

§ 11-6G-16. Lien of taxes; notice; collection by suit.

§ 11-6G-17. Operating fund for interstate commerce disclosure division in auditor's office.


§ 11-6G-1. Valuation of certain classes intrastate public service corporation motor vehicle businesses either registered or not registered under a proportional registration agreement.

On or before the first day of September, one thousand nine hundred ninety-eight, the tax commissioner shall propose a legislative rule for submission to the Legislature pursuant to the provisions of article three, chapter twenty-nine-a of this code, which rule shall describe in detail the methods whereby the tax commissioner will determine the market value of the following property:

(a) Intrastate public service corporation motor vehicle businesses which may or may not be registered under a proportional registration agreement but which nonetheless is operated exclusively within the state of West Virginia.

(b) A trailer, semitrailer or road tractor operated exclusively in this state or a trailer or trailer of a West Virginia based interstate motor vehicle business registered under the provisions of section ten-a, article two, chapter seventeen-a of this code, the tax shall be determined by multiplying the appraised value by sixty percent to obtain the assessed value which shall be multiplied by the tax rate to obtain the amount of the tax.

(c) For purposes of equitably assessing the valuations between and among interstate commercial motor vehicles and intrastate commercial motor vehicles as defined in section ten-a, article two, chapter seventeen-a, of this code, the levy rate applied to both intrastate commercial motor vehicles and interstate motor vehicles shall run one year in arrears in order for the commissioner of motor vehicles to
provide adequate notice to the facilitator of the proportional registration agreement and other jurisdictions of the assessments due and for counties to supply their levy rates to the state auditor.

As soon as such assessment is made, the secretary of the board shall notify the owner or operator affected thereby of the amount thereof by written notice deposited in the United States post office, addressed to such owner or operator at the principal office or place of business of such owner or operator. Such assessment and valuation shall be final and conclusive, unless the same be appealed from in the manner following, within fifteen days after such notice is so deposited.

(d) Notwithstanding any other provision of the code to the contrary, the department of tax and revenue is hereby authorized to promulgate an emergency rule for the implementation of this section.


(a) "Interstate motor vehicle", for purposes of this article, is defined as every truck, road tractor or semitrailer used as an interstate public service corporation motor vehicle registered under a proportional registration agreement.

(b) The procedure for determining the value thereof is exclusively provided for under section two of this article.

(c) The words "owner or operator," as applied herein to trucks or semitrailers used as an interstate motor vehicle in the transportation of property, shall include every company incorporated by or under the laws of this state, or doing business in this state, whether incorporated or not, and any person or association of persons, owning or operating any truck or semitrailer used as a interstate motor vehicle in the transportation of property doing business partly or wholly within this state.

(d) Every interstate commercial motor vehicle covered by this article shall pay such taxes based upon the
assessments as are required by law pursuant to rules promulgated by the tax commissioner.


(a) In the case of interstate public service motor vehicles used for the transportation of property and which are registered under a proportional registration agreement, pursuant to the provisions of section ten-a, article two, chapter seventeen-a of this code, the owners, operator or operators, for each interstate motor vehicle, on forms prescribed by the commissioner of motor vehicles, shall disclose the total miles driven in West Virginia and the total miles driven in any other states as reported in the most recent taxable year to the division of motor vehicles pursuant to any proportional registration agreement on file therewith. The return shall, additionally, show the gross capital cost of the interstate motor vehicle to the purchaser thereof and the year the purchaser acquired the interstate motor vehicle.

(b) Ad valorem taxes provided for in this chapter shall, notwithstanding the provisions of section five, article one-c of this chapter, be determined as follows for: (1) The gross capital cost of an interstate motor vehicle shall be multiplied by a percentage factor representing the remainder of the vehicle's value after depreciation according to a depreciation schedule established by the tax commissioner, which calculation shall yield the appraised value of the vehicle; (2) for the interstate truck, road tractor, or power unit, registered in this state as part of a fleet registered under any proportional registration agreement under the provisions of section ten-a, article two, chapter seventeen-a of this code, the appraised value shall be multiplied by the fraction comprised of a numerator representing the total miles driven in West Virginia (regardless whether property is being transported for commercial purposes) in the taxable year and a denominator representing the total miles driven in the taxable year by the interstate motor vehicle operator during times property was being transported for commercial purposes, as reported to the division of motor
vehicles pursuant to any proportional registration
agreement on file therewith to obtain the apportioned
value, which apportioned value shall be multiplied by sixty
percent to yield the assessed value which shall be
multiplied by the applicable rate of tax.

§11-6G-4. Form and manner of making disclosure; failure to
make disclosure; criminal penalty.

All disclosures to be made to the motor vehicles
commissioner, under this chapter, shall be made in
conformity with any reasonable requirement of the motor
vehicles commissioner of which the person making the
disclosure shall have had notice, and shall be made upon
forms which may be furnished by the motor vehicles
commissioner, and according to instructions which the
motor vehicles commissioner may give relating thereto,
and to the description and itemizing of the property.
Such owner or operator, whether a natural person, or a
corporation or company, failing to make such disclosure
as herein required shall be guilty of a misdemeanor and,
fined one thousand dollars for each month such failure
continues.

§11-6G-5. Compelling such disclosure; procuring information
and tentative assessments by motor vehicles
commissioner.

(a) If any owner or operator fails to make such
disclosure within the time required by section one of this
article, it shall be the duty of the commissioner of motor
vehicles to take such steps as may be necessary to compel
such compliance, and to enforce any and all penalties
imposed by law for such failure, pursuant to his or her
authority under this article as well as section ten, article
two, chapter seventeen-a, and section ten-a, article two,
chapter seventeen-a of this code.

(b) The disclosure delivered to the motor vehicles
commissioner shall be examined by him, and if it be
found insufficient in form or in any respect defective,
imperfect or not in compliance with law, he shall compel
the person required to make it to do so in proper and
sufficient form, and in all respects as required by law.
(c) If any such owner or operator fails to make such disclosure, the motor vehicles commissioner shall proceed, in such manner as to him may seem best, to obtain the facts and information required to be furnished by such disclosures.

(d) The motor vehicles commissioner may send for persons and papers, and may compel the attendance of any person and the production of any paper necessary, in the opinion of said motor vehicles commissioner, to enable him to obtain the information required for the proper discharge of his duties under this section.

(e) The motor vehicles commissioner shall arrange, collate and tabulate such disclosures and all pertinent information and data contained therein, such further evidence or information as may be required by the motor vehicles commissioner of such owner or operator, and all other pertinent evidence, information and data he has been able to procure, upon suitable work sheets, so that they may be conveniently considered, and shall on or before the fifteenth day of September, lay such disclosures and work sheets, together with his recommendations in the form of a tentative assessment of the property of each such owner or operator, before the motor vehicles commissioner. And as soon as the motor vehicles commissioner has completed the preparation of such work sheets and tentative assessments, he shall notify the owner or operator affected thereby of the amount of such tentative assessment by written notice deposited in the United States post office, addressed to such owner or operator at the principal office or place of business of such owner or operator, and the motor vehicles commissioner shall retain in his office true copies of such work sheets which shall be available for inspection by any such owner or operator or his duly authorized representative.

§11-6G-6. Failure to give information required by motor vehicles commissioner; criminal penalty.

If any person shall refuse to appear before the motor vehicles commissioner when required to do so, as aforesaid, or shall refuse to testify before the motor
vehicles commissioner in regard to any matter as to which
the motor vehicles commissioner may require him to
testify, or if any person shall refuse to produce any paper
in his possession or under his control, which the motor
vehicles commissioner may require him to produce, every
such person shall be guilty of a misdemeanor and fined
five hundred dollars, and may be imprisoned not less than
one nor more than six months, at the discretion of the
court.

§11-6G-7. Adjustment of valuation by interstate commerce
appeals board.

There is hereby created the interstate commerce
appeals board the membership of which shall be
comprised of the tax commissioner or his or her designee,
the motor vehicles commissioner or his or her designee,
and the state auditor or his or her designee. The interstate
commerce appeals board shall meet the first Monday in
July, unless the first Monday is a holiday at which time the
interstate commerce appeals board shall meet upon the
first business day thereafter. In the event of an
emergency, the interstate commerce appeals board may be
convened upon the agreement of two of the three
members of the board. Any time before an owner or
operator appeals a valuation to circuit court, as provided
for in section eight of this article, the interstate commerce
appeals board may, after consideration of all relevant facts
and evidence, adjust the valuation made by the interstate
commerce appeals board pursuant to section eleven of this
article.


Any owner or operator claiming to be aggrieved by
any such decision may, within the time aforesaid, apply by
petition in writing, duly verified, to the circuit court of
Kanawha County, and jurisdiction is hereby conferred
upon and declared to exist in such court, in which such
application is filed, to grant, docket and hear such appeal;
and such appeal, as to all of the property so charged,
forthwith be allowed by such court so applied to, and be
heard by such court as to all of such property as soon as
possible after the appeal is docketed, but notice in writing
of such petition shall be given to the motor vehicles commissioner, by mailing a copy of the petition for an appeal filed as aforesaid, which said petition shall recite the fact that copies of such petition have been sent by registered mail. Notice in writing of the hearing shall be given by the motor vehicles commissioner to the state tax commissioner and the state auditor at least fifteen days beforehand. Upon such hearing the court shall hear all such legal evidence as shall be offered on behalf of the state or any other county, district or municipal corporation interested, or on behalf of the appealing owner or operator. If the court be satisfied that the value so charged by the motor vehicles commissioner and affirmed or determined by the interstate commerce appeals board, is correct, it shall confirm the same, but if it be satisfied that the value so fixed by the board or the motor vehicles commissioner is either too high or too low, subject to the assessment valuations provided for in subsection (b), section eleven of this article, the court shall correct the valuation so made and shall ascertain and fix the true and actual value of such property according to the facts proved, and shall certify such value to the auditor, motor vehicles commissioner and to the tax commissioner. The state or the owner or operator may appeal to the supreme court of appeals if the proportional assessed value of the property be fifty thousand dollars or more.

If the court to which an application for appeal would properly be made as aforesaid shall not be in session, the judge thereof in vacation shall forthwith allow the appeal, and if the judge thereof be disqualified or for any reason not be available, the filing of the aforesaid petition in the office of the clerk of the circuit court of Kanawha County, within the time of aforesaid, shall constitute sufficient compliance with this section, and the appeal shall thereafter be proceeded with as otherwise provided in this section.


(a) The clerk of the county commission of every county in which any property lies which was so assessed shall, within thirty days after the county and district levies
are laid by such commission, certify to the auditor the amount levied upon each one hundred dollars' value of the property of each class in the county for county purposes, and on each one hundred dollars of the value of the property of each class in each magisterial district for the district purposes. It shall be the duty of the secretary of the board of education of every school district and independent district in which any part of the property lies, within thirty days after the levies are laid therein for free school and building purposes, or either, to certify to the auditor the amount so levied on each one hundred dollars' value of the property of each class therein for each of such purposes; and it shall be the duty of the recorder, clerk or other recording officer of every municipal corporation in which any part of the property lies, within the same time, after levies are laid therein for any of the purposes authorized by law, to certify to the auditor the amount levied upon each one hundred dollars' value of the property of each class therein for each and every purpose.

(b) Such county levy rates shall be reported to the auditor for use in the following taxable year's assessment pursuant to the provisions of section eleven, article six-d of this chapter.

(c) For purposes of establishing the valuation rate to be supplied to the motor vehicles commissioner by the auditor and the tax commissioner, the auditor shall use such figures and amounts as are certified to him or her under section nine, article six-g, chapter eleven of this code one year in arrears.

§11-6G-10. Failure of officers to perform duties as to property of interstate motor vehicle corporations.

Any clerk of a county commission, secretary of the board of education, or recorder, clerk or other recording officer of a municipal corporation, who shall fail to perform any of the duties herein required of him shall be guilty of a misdemeanor and, upon conviction thereof, fined not less than one hundred nor more than five hundred dollars. In case of the failure of any such officers to furnish to the auditor the certificate herein
required, the auditor may obtain the rate of taxation for any of said purposes from the copies of the land books on file in his office, if the same be found in such books, if not, in such other way or manner as he may deem necessary or proper for the purpose.


No injunction shall be awarded by any court or judge to restrain the collection of the taxes, or any part of them, so assessed upon the property of such owner or operator, except upon the ground that the assessment thereof was in violation of the constitution of the United States, or of this state; or that the same were fraudulently assessed, or that there was a mistake made in the amount of taxes properly chargeable on the property of such owner or operator; and in the latter case no such injunction shall be awarded unless application be first made to the interstate commerce appeals board to correct the mistake claimed, and such board shall refuse to do so, which fact shall be stated in the bill, nor unless the complainant pay into the treasury of the state all taxes appearing by the bill of complaint to be owing.

§11-6G-12. Payment of assessment by owner or operator.

Beginning on the first day of July, one thousand nine hundred ninety-nine, it shall be the duty of such owner or operator, so assessed and charged, to pay annually the amount of such taxes, and such registration fees as are set by the motor vehicles commissioner as are required into the treasury of the state by delivering payment of the same to the commissioner of motor vehicles in the form and manner prescribed by him or her. If such owner or operator fail to pay such taxes, and registration fees when due, as prescribed, then interest thereon at the rate of nine per centum per annum until paid shall be added to any and all other penalties imposed by the motor vehicles commissioner. The payment of such taxes by any such owner or operator shall not prejudice or affect the right of such owner or operator to obtain relief against the assessment or valuation of its property in proceedings now pending or hereafter brought under the provisions of section eight of this article, or in any suit, action or
proceeding in which such relief may be obtainable; and if under the provisions of said section eight or in any suit, action or proceeding, it be ascertained that the assessment or valuation of the property of such owner or operator is too high and the same is accordingly corrected, it shall be the duty of the auditor of the state to issue to the owner or operator a certificate showing the amount of taxes and which have been overpaid, and such certificate shall be receivable thereafter for the amount of such overpayment in payment of any taxes and assessed against the property of such owner or operator, its successors or assigns. It shall likewise be the duty of said auditor to certify to the county commission, school districts and municipalities, the amounts of the respective overpayments distributable to such counties, school districts and municipalities.

Implementation of collection of assessments upon interstate commercial motor vehicles by the commissioner of motor vehicles shall begin the first day of July, one thousand nine hundred ninety-nine. The motor vehicles commissioner, upon receipt of funds from other jurisdictions under a proportional registration agreement, shall deliver such funds received to the auditor beginning in August, one thousand nine hundred ninety-nine, and thereafter every thirty days in arrears. All moneys received by the auditor under the provisions of this section shall be transmitted to the several counties within thirty days from receipt thereof.

§11-6G-13. No release of taxes assessed against such corporations.

Neither the county commission of any county, nor any board of education, nor the municipal authorities of any incorporated town, shall have jurisdiction, power or authority, by compromise or otherwise, to remit or release any portion of the taxes so assessed upon the property of any such owner or operator. It shall be the duty of the motor vehicles commissioner to collect the whole thereof, regardless of any order or direction of any such county commission, board of education or municipal authority to the contrary; and, if he fail to do so, he and his sureties in his official bond, if any, shall, unless he be restrained or
prohibited from so doing by legal process from some
court having jurisdiction to issue the same, be liable
thereon for such taxes that he may so fail to collect, if he
could have collected the same by the use of due diligence.
Any member of the county commission or board of
education, or of the council of a municipal corporation,
who shall vote to remit or release any part of the taxes, so
assessed on the property of any such owner or operator,
shall be guilty of a misdemeanor and fined five hundred
dollars, and shall be removed from his office by the court
by which the judgment of such fine is rendered, in
addition to such fine.

§11-6G-14. Accounting for levies against interstate commercial
motor vehicle corporations.

Subject to the provisions of subsection (b), section
eleven of this article, when such taxes are paid into the
treasury, the auditor shall account to the sheriff of each of
the counties, to which any sum so paid in for county levies
belongs, for the amount due such county, and may
arrange the same with such sheriff in any settlement for
state taxes in such a way as may be most convenient; and
the sheriff shall account to the county commission of his
county for the amount so received by him, in the same
manner as for other county levies. The amount so paid
for each district and independent school district shall be
added to the distributable share of the school fund
payable to such district, and shall be paid upon the
requisition of the county superintendent of free schools in
like manner as other school moneys are paid.

§11-6G-15. Certification by auditor of amount chargeable to
sheriff from levies against interstate motor
vehicles; payment of amount due municipality.

For collection year one thousand nine hundred
ninety-nine, the auditor shall hold such funds in an
interest bearing escrow account until March twentieth, two
thousand, when such funds collected by the motor vehicles
commissioner including the interest in the escrow account
will be disbursed to the counties per the requirements of
section eighteen of this article. Thereafter, the amount so
paid in for each municipal corporation shall, within thirty
days of being received by the auditor, be paid over to the
sheriff, or the treasurer of such municipal corporation, or
to such other officer of the municipality as the council
may designate, and the auditor shall report such payment
to the council. But the failure of the clerk of any county
commission, or the secretary of any board of education, or
the proper officer of any municipal corporation, to certify
the levies to the auditor within the time herein prescribed
shall not invalidate or prevent the assessment required by
this article, but the auditor shall make the assessment and
proceed to collect or certify the same to the sheriff as soon
as practicable after he shall have obtained the information
necessary to make such assessment.

§11-6G-16. Lien of taxes; notice; collection by suit.

The amount of taxes assessed under this article shall
constitute a debt due the state or county, district or
municipal corporation entitled thereto, and shall be a lien
on all of the property and assets of the taxpayer within the
state. The lien shall attach as of the thirty-first day of
December following the commencement of the assessment
year, and shall be prior to all other liens and charges. It
shall be the duty of the attorney general to enforce the
collection of such taxes, and for that purpose he may
distrain upon any personal property of such delinquent
taxpayer, or a sufficient amount thereof to satisfy said
taxes, including accrued interest, penalties and costs.

The attorney general may also enforce the lien created
by this section on the real estate of such delinquent
taxpayer by instituting a suit, or suits, in equity in the
circuit court of Kanawha County, in the name of the state,
in which such delinquent taxpayers shall be made
defendants. In the bill filed in any such suit it shall be
sufficient to allege that the defendant or defendants have
failed to pay the taxes hereunder and that each of them
justly owes the amount of property taxes, levies and
penalties stated therein, which amount shall be computed
up to the first day of the month in which the bill was filed.
No such defendant shall plead that the motor vehicles
commissioner failed to give notice as prescribed by this
section. If, upon the hearing of such suit, it shall appear to
the court that any defendant has failed to pay such taxes
and accrued penalties, the court shall enter a decree
against such defendant for the amount due, and if the
decree be not paid within ten days after made, the court
shall enter a decree directing a sale of the real estate
subject to said lien, or so much thereof as may be
necessary to satisfy said taxes, including interest, penalties
and costs. When two or more taxpayers are included in
one suit, the court shall apportion the cost thereof among
them as it may deem just.

§11-6G-17. Operating fund for interstate commerce disclosure
division in auditor's office.

1 The auditor shall establish a special operating fund in
2 the state treasury for the interstate commerce disclosure
3 division in his or her office. The auditor shall pay into the
4 fund three eighths of one percent of the gross receipts of
5 all moneys collected as provided for in this article. From
6 the fund, the auditor shall reimburse the department of tax
7 and revenue for the actual operating expenses incurred in
8 the performance of its duties required by this article. The
9 reimbursements to the tax department from the fund shall
10 not exceed fifty percent of the annual deposits to the
11 fund. Any moneys remaining in the special operating
12 fund after reimbursement to the tax department shall be
13 used by the auditor for funding the operation of the
14 interstate commerce disclosure division located in his
15 office.

16 The interstate commerce disclosure division is hereby
17 granted authority and required to share any and all
18 information obtained by the division in the
19 implementation of this article with state auditor, tax
20 commissioner and the commissioner of motor vehicles to
21 effectuate the collection of taxes under this article. The
22 motor vehicles commissioner is hereby authorized and
23 required to share any and all information obtained by the
24 department of motor vehicles in the implementation of
25 this article. The commissioner of motor vehicles will
26 supply to the interstate commerce disclosure division the
27 names of, location or locations of, and amount or amounts
28 paid by West Virginia corporations registered under the
terms of any proportional registration agreement. The tax commissioner is hereby authorized and required to share any and all information obtained by the department of tax and revenue. The state auditor and the interstate commerce disclosure division is hereby authorized and required to share any and all information obtained by the auditor or such division.


If any provisions of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or its application and to this end the provisions of this article are declared severable.

CHAPTER 17A.
MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 2. DEPARTMENT OF MOTOR VEHICLES.


§17A-2-10a. Same — Authorizing the entry of this state into reciprocal proportional registration agreements; payment of taxes; issuance of registration plates or markers; promulgation of rules; interagency cooperation; requirement that all registrants pay tax; intermittent interstate commerce and promulgation of rules; proportional registration agreement prevails.


The motor vehicle commissioner in cooperation with the state auditor, state road commissioner, the public service commission and the department of public safety may enter into such reciprocal agreements as he may deem proper or expedient with the proper authorities of other states, regulating the use, on the roads and highways of this state, of trucks, automobiles and any other vehicles
owned in such other states and duly licensed under the laws thereof. The commissioner may confer and advise with the proper officers and legislative bodies of this and other states and federal districts of the United States, to promote reciprocal agreements under which the registration of vehicles owned in this state, and the licenses of operators and chauffeurs residing in this state shall be recognized by other states and federal districts.

§17A-2-10a. Same — Authorizing the entry of this state into reciprocal proportional registration agreements; payment of taxes; issuance of registration plates or markers; promulgation of rules; interagency cooperation; requirement that all registrants pay tax; intermittent interstate commerce and promulgation of rules; proportional registration agreement prevails.

(a) The commissioner of motor vehicles is hereby authorized and empowered to enter into reciprocal agreements on behalf of this state with any jurisdiction which permits or requires the licensing of motor vehicles in interstate or combined interstate and intrastate commerce and the payment of taxes, registration, licensing or other fees fixed by the motor vehicle commissioner, pursuant to the execution of this article on an apportionment basis commensurate with and determined by the miles traveled on public roads and highways in that jurisdiction, as compared with the miles traveled on public roads and highways in other jurisdictions or on any other equitable basis of apportionment, and if that jurisdiction exempts motor vehicles registered in other jurisdictions under that apportionment basis from the requirements of full payment of its own registration, license or other fixed fees, the commissioner, by agreement may adopt the exemption as to those motor vehicles, whether owned by residents or nonresidents of this state and regardless of where the vehicles are registered.

(b) The agreements under such terms, conditions or restrictions as the commissioner deems proper may provide that owners of motor vehicles operated in interstate or combined interstate and intrastate commerce
in this state shall be permitted to pay registration, license
or other fees fixed on an apportionment basis,
commensurate with and determined by the miles traveled
on public roads and highways in this state as compared
with the miles traveled on public roads and highways in
other jurisdictions or any other equitable basis of
apportionment. Such agreements shall not authorize or be
construed as authorizing any motor vehicle so registered
to be operated without complying with the provisions of
chapter eleven and chapter twenty-four-a of this code.

(c) Pursuant to the provisions of this section, the
commissioner is expressly authorized and empowered to
enter into and become a member of the international
registration plan or such other designation that may from
time to time be given to such reciprocal plan.

(d) The commissioner shall prescribe the substance,
form, color and context of any registration plate or
marker issued under the provisions of this section, each of
which shall be visually distinguishable from other
registration plates or markers produced by the department
of motor vehicles.

(e) The commissioner is authorized to promulgate
procedural rules as may be necessary to carry out the
provisions of any agreements entered into pursuant to this
section.

(f) The commissioner is authorized to collect and
receive funds under this article pursuant to the authority
rested in him or her under article six-g of chapter eleven
of this code.

(g) The commissioner is hereby authorized and
required to share with the interstate commerce disclosure
division of the office of the state auditor any and all
information acquired by the department of motor vehicles
pursuant to the implementation of this article. The
department shall provide to the interstate commerce
disclosure division, and the department of tax and revenue
the name of the location and amount paid by West
Virginia corporations registered under such proportional
registration agreement.
(h) The department of motor vehicles shall not permit registration of any commercial vehicle without proof that the public utility tax assessed against it, if any, as certified by the board of public works, has been paid by production of a receipt from the division of public utilities in the office of the state auditor. All such registrants shall pay such assessments regardless of ownership.

(i) For any other irregular, intermittent, or temporary interstate commerce activity, the department of motor vehicles is hereby empowered to promulgate rules for the administration and oversight thereof.

(j) Notwithstanding any other provision of the code to the contrary, the requirements of the proportional assessment plan as contained in article six-g, chapter eleven of this code, and the provisions of this chapter, shall prevail in the event of any conflict with any other portion of the code.

CHAPTER 290

(S. B. 766—By Senators Wooton, Ball, Dittmar, Hunter, Kessler, Oliverio, Ross, Snyder, White, Deem and Scott)

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

AN ACT to amend article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a, relating to authorizing the board of public works to correct erroneous assessments.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.
§11-6-12a. Relief from erroneous assessments.

(a) Any owner or operator claiming to be aggrieved by an assessment of the board of public works, including matters relating to the valuation of property resulting from a clerical error or a mistake occasioned by an unintentional or inadvertent act as distinguished from a mistake resulting from negligence or the exercise of poor judgment may, within sixty days of the effective date of this section and thereafter within one year from the date upon which the board of public works has set final values or within one year from the time such clerical error or mistake is discovered or reasonably could have been discovered, apply for relief to the board of public works as provided in this section.

(b) Upon the discovery of any such clerical error or mistake, the secretary of the board of public works shall send notice to the owner or operator affected by the clerical error or mistake by first class mail advising the owner or operator of the right to make application for relief from the erroneous assessment.

(c) Except as otherwise provided in subsection (a) of this section, the application for relief shall be presented to the secretary of the board of public works no later than one year from the date upon which the error or mistake is discovered.

(d) If the board of public works determines that the applicant is entitled to relief, any excess taxes already paid shall be refunded or, if the taxes are charged but not paid, the applicant shall be released from the payment of such excess: Provided, That except for an application for relief filed within sixty days of the effective date of this section, in the event a mistake or error is discovered more than one year from the date the board has set final values, and the board determines the applicant is entitled to relief, then any correction under this section shall be in the form of a credit against future years' taxes.

(e) Whenever any correction is made by the board of public works, the secretary of the board of public works shall direct that the adjustments be made by the state tax
commissioner and communicated to the auditor for correction of the tax statements. The auditor shall thereafter cease any attempt to collect any amounts erroneously charged against the owner or operator and, if already collected, shall refund any excess taxes paid:

Provided, That except for an application for relief filed within sixty days of the effective date of this section, in the event a mistake or error is discovered more than one year from the date the board has set final values, and the board determines the applicant is entitled to relief, then any correction under this section shall be in the form of a credit against future years' taxes.

(f) The provisions of this section shall not be construed to authorize the board of public works to consider any question involving the assessment or valuation of property which has been the subject matter of an appeal under the provisions of section twelve of this article.

(g) Any owner or operator may appeal the decision of the board of public works with respect to an application made for relief under this section in the same manner as appeals are authorized under the provisions of section twelve of this article.

CHAPTER 291

(H. B. 4629—By Delegates Michael and Jenkins)

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

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-t, relating to the West Virginia tax procedure and administration act; authorizing electronic funds transfers procedures to be implemented; authorizing emergency rules;
and setting forth a civil penalty for failing or refusing to comply with electronic funds transfer requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5t. Payment by electronic funds transfers.

(a) The term "electronic funds transfer" means and includes automated clearinghouse debit, automated clearinghouse credit, wire transfer and any other means recognized by the tax commissioner for payment of taxes.

(b) The tax commissioner may prescribe by emergency rules, administrative notices, forms and instructions, and the procedures and criteria to be followed by certain taxpayers in order to pay taxes by electronic funds transfer methods.

(c) The rules shall set forth the following:

(1) Acceptable indicia of timely payment;

(2) Which type of electronic filing method or methods a particular type of taxpayer may or may not use;

(3) Which types of taxes to which electronic filing requirements apply for any given tax year and implementation dates: Provided, That the type of tax to which electronic funds transfer requirements apply during the first tax year is personal income tax withholding by employers;

(4) The dollar amount of tax liability per year which, when exceeded, requires or permits electronic funds transfer. Unless and until a legislative rule is promulgated or this section is amended, no person may be required to pay any tax by electronic funds transfer if the amount
owed for the tax during the preceding year was less than one hundred twenty thousand dollars;

(5) What, if any, exceptions are allowable, and alternative methods of payment to be used for any exceptions;

(6) Procedures for making voluntary electronic funds transfer payments;

(7) Any provisions needed to implement the civil penalty created by this section; and

(8) Any other provisions necessary to ensure the timely implementation of electronic funds transfer payments.

(d) In addition to any other additions and penalties which may be applicable, there is a civil penalty for failing or refusing to use an appropriate electronic funds transfer method when required to do so. The amount of this penalty is three percent of the total tax liability which is or was to be paid by electronic funds transfer for any tax for which electronic funds transfer methods are required to be used by the taxpayer.

(e) The provisions of this section are not intended to affect the provisions of other sections of this chapter concerning filing of returns or any other provisions which are not in direct conflict with this section.

(f) The state treasurer shall adopt any procedures or rules necessary or convenient for implementing electronic funds transfers of tax payments authorized by this section and rules adopted by the tax commissioner. The treasurer shall draft any procedures and rules adopted in consultation with the tax commissioner and the procedures and rules may not conflict with this section or rules adopted by the tax commissioner.

(g) The provisions of this section become effective on or after the first day of January, one thousand nine hundred ninety-eight.
AN ACT to amend and reenact section seven-a, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to taxation; procedure and administration; and authorizing the commissioner to abate interest on penalties which have been abated.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-7a. Abatement.

(a) General rule. — The tax commissioner is authorized to abate the assessment of any tax or any liability in respect thereto which:

(1) Is void;

(2) Is assessed after the expiration of the period of limitation properly applicable thereto; or

(3) Is voidable: Provided, That no claim for abatement shall be filed by a taxpayer under this subdivision if the assessment has become final.

(b) Small tax balances. — The tax commissioner is authorized to abate the unpaid portion of an assessment of any tax, or any liability in respect thereof, which has become final, if the tax commissioner determines under uniform rules promulgated by him or her that the administration and collection costs involved would not warrant collection of the amount due.

(c) Interest on abated penalties. — The tax commissioner is authorized to abate any interest on a penalty assessed on a tax, when the penalty has been abated.
CHAPTER 293
(H. B. 4303—By Delegates Flanigan and Wright)

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

AN ACT to amend and reenact section eighteen-a, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to taxation; the penalty for underestimating individual quarterly tax payments; and increasing the minimum amount from two hundred fifty dollars to six hundred dollars before an addition to tax may be imposed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-18a. Additions to tax for failure to pay estimated income or business franchise tax.

(a) Additions to tax. — Except as otherwise provided in this section, in the case of any underpayment of estimated tax, there shall be added to the tax due for the taxable year, under article twenty-one, twenty-three or twenty-four of this chapter, an amount determined by applying the rate established under section seventeen or seventeen-a of this article, as appropriate for the taxable year, to the amount of the underpayment of estimated tax, for the period of the underpayment.

(b) Amount of underpayment. — For purposes of subsection (a) of this section, the amount of the underpayment shall be the excess of the amount determined under subdivision (1) of this subsection over the amount determined under subdivision (2) of this subsection.
(1) The amount of the installment required to be paid on or before the due date for the installment, if the estimated tax due for the taxable year were an amount equal to ninety percent of the tax shown on the annual return for the taxable year divided by the number of installments taxpayer was required to make for the taxable year, or, if no return was filed, ninety percent of the tax for such year divided by the number of installment payments taxpayer was required to make for the taxable year.

(2) The amount, if any, of the installment paid on or before the last date prescribed for payment of that installment.

(c) Period of underpayment. — The period of underpayment of an installment shall run from the date the installment was required to be paid (due date) to whichever of the following dates is the earlier:

(1) The due date of the annual return following the close of the taxable year for which the installment was due (determined without regard to any extension of time for filing such annual return); or

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(d) Exception. — Notwithstanding the provisions of the preceding subsections, the additions to tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is lesser:

(1) Prior year's tax. — One hundred percent of the tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was
filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months;

(2) Annualized tax. — In the case of any required installment, if the taxpayer establishes that the annualized income installment is less than the amount determined under subdivision (1) of this subsection and under subsection (b) of this section, then the amount of such required installment shall be the annualized income installment. For purposes of this subdivision, there shall be four required installments for each taxable year and the "annualized income installment" is the difference (if any) determined by subtracting the amount determined under paragraph (B) of this subdivision from the amount determined under the appropriate clause of paragraph (A) of this subdivision. When making these computations, the rules in paragraph (C) of this subdivision shall be followed:

(A) (i) Corporations. — An amount equal to the applicable percentage of the tax of a corporation for the taxable year computed by placing on an annualized basis its taxable income:

(I) For the first three months of the taxable year, in the case of the first installment;

(II) For the first three months of or the first five months of the taxable year, in the case of the second installment;

(III) For the first six months or the first eight months of the taxable year, in the case of the third installment; and

(IV) For the first nine months or for the first eleven months of the taxable year, in the case of the fourth installment.

(ii) Individuals. — An amount equal to the applicable percentage of the tax of an individual for the taxable year computed by placing on an annualized basis the taxable income of the individual for months in the taxable year ending before the due date for the installment.
(B) The aggregate amount of any prior required installments for the taxable year.

(C) Special rules. — For purposes of this subdivision:

(i) Annualization. — Taxpayer's taxable income shall be placed on an annualized basis in the same manner that taxable income is annualized for federal income tax purposes for the taxable year.

(ii) Applicable percentage. — The applicable percentage shall be determined from the following table:

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<th>In the case of the following required installments:</th>
<th>The applicable percentage is:</th>
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<td>1st</td>
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<td>2nd</td>
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<td>3rd</td>
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(e) Additional exceptions. —

(1) Where tax amount is small. — No addition to tax shall be imposed under subsection (a) of this section for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), reduced by the credit allowable for withheld tax, is less than six hundred dollars.

(2) Where individual has no personal income tax liability for preceding taxable year. — No addition to tax shall be imposed under subsection (a) of this section for any taxable year if:

(A) The individual's preceding taxable year was a taxable year of twelve months;

(B) The individual did not have any West Virginia personal income tax liability for the preceding taxable year;

(C) The individual was a citizen or resident of the United States throughout the preceding taxable year; and
(D) The individual's West Virginia personal income tax liability for the current taxable year is less than five thousand dollars.

(3) Waiver in certain cases. — No addition to tax shall be imposed under subsection (a) of this section with respect to any underpayment if and to the extent the tax commissioner determines that by reason of casualty, disaster or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

(f) Tax computed after application of credits against tax. — For purposes of this section, the term "tax" means the amount of any annual tax or fee administered under this article that is generally payable in two or more installment payments during the taxable year, minus the amount of credits allowable against such tax or fee, other than taxes withheld from the taxpayer under section seventy-one or seventy-one-a, article twenty-one of this chapter (relating to taxes withheld on wages, or from distributions of pass-through income to nonresident partners, S corporation shareholders or beneficiaries of an estate or trust).

(g) Application of section in case of personal income tax withheld on wages. —

(1) In general. — For purposes of applying this section, the amount of the credit allowed under section seventy-one, article twenty-one of this chapter, for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed to have been paid on each installment payment due date for such taxable year, unless the taxpayer establishes the specific dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(2) Separate application. — The taxpayer may apply subdivision (1) of this subsection separately with respect to:
(A) Wage withholding; and

(B) All other amounts withheld for which credit is allowed under section seventy-one, article twenty-one of this chapter.

(h) Application of section in case of income tax withheld by pass-through entities from distributions to nonresidents. — For purposes of applying this section, the amount of credit allowed under section seventy-one-a, article twenty-one of this chapter to a nonresident distributee of a pass-through entity, shall be deemed to be a payment of estimated income tax for the taxable year of the nonresident distributee, and an equal part of such amount shall be deemed (only for purposes of this section) to have been paid on each installment due date for the taxable year of the distributee, unless the distributee establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(i) Special rule where personal income tax return filed on or before the thirty-first day of January. — If on or before the last day of the first month following the end of the taxable year, the taxpayer files his or her annual personal income tax return for that taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be imposed under subsection (a) of this section with respect to any underpayment of the fourth required installment for that taxable year.

(j) Special rules for farmers. — For purposes of this section, if an individual is a farmer for any taxable year:

(1) There is only one required installment for that taxable year;

(2) The due date for such installment is the fifteenth day of January of the following taxable year;

(3) The amount of such installment shall be equal to the required annual payment determined under subsection (b) of this section by substituting "sixty-six and two-thirds percent" for "ninety percent"; and
(4) Subsection (h) of this section shall be applied:

(A) By substituting "the first day of March" for the phrase "the thirty-first day of January"; and

(B) By treating the required installment described in subdivision (1) of this subsection as the fourth required installment.

(k) Fiscal years and short years. —

(1) Fiscal years. — In applying this section to a taxable year beginning on any date other than the first day of January, there shall be substituted, for the months specified in this section, the months of the fiscal year that correspond thereto.

(2) Short taxable year. — The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the tax commissioner.

(l) Reserved.

(m) Estates and trusts. —

(1) In general. — Except as otherwise provided in this subsection, this section shall apply to any estate or trust.

(2) Exception for certain estates and certain trusts. — With respect to any taxable year ending before the date two years after the date of the decedent's death, this section shall not apply to:

(A) The estate of such decedent; or

(B) Any trust all of which was treated for federal income tax purposes as owned by the decedent and to which the residue of the decedent's estate will pass under his or her will (or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes and expenses of administration).

(3) Special rule for annualizations. — In the case of any estate or trust to which this section applies, paragraph (A), subdivision (2), subsection (d) of this section shall be
applied by substituting "ending before the date one month before the due date of the installment" for the phrase "ending before the due date for the installment".

(n) Rules. — The tax commissioner may prescribe such rules as the commissioner deems necessary to carry out the purpose of this section. This includes, but is not limited to, equitable rules allowing payment of adjusted seasonal installments in lieu of annualized income installments when the commissioner determines, based on known facts and circumstances, that payment of the annualized income installment will result in significant hardship to the taxpayer due to the seasonal nature of taxpayer's business, and equitable rules for payment of estimated personal income tax by an individual who is:

(I) An employee; (2) employed in another state for some portion or all of the taxable year; and (3) required to pay personal income taxes to such other state on (or measured by) wages earned in that state, for which credit is allowed under section twenty, article twenty-one of this chapter.

(o) Effective date. —

(1) This section, as amended in the year one thousand nine hundred ninety-two, shall apply to taxable years beginning after the thirtieth day of June, one thousand nine hundred ninety-two, and this section as in effect on the first day of January, one thousand nine hundred ninety-two, is preserved and shall apply to taxable years beginning before the first day of July, one thousand nine hundred ninety-two.

(2) This section, as amended in the year one thousand nine hundred ninety-three, shall apply to taxable years ending after the thirtieth day of June, one thousand nine hundred ninety-three. For taxable years ending on or before such dates, the provisions of this section as in effect for such years are fully preserved.

(3) This section, as amended in the year one thousand nine hundred ninety-eight, shall apply to taxable years ending after the thirtieth day of June, one thousand nine hundred ninety-eight. For taxable years ending on or before these dates, the provisions of this section as in effect for those years are fully preserved.
AN ACT to amend and reenact section seventeen, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to estate tax liens, and clarifying that certain estate tax liens are divested and reattach upon transfer of certain property.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. ESTATE TAXES.

§11-11-17. Special lien for estate tax.

(a) Lien created. — Unless the tax imposed by section three of this article is sooner paid in full, or becomes unenforceable by reason of lapse of time, it shall be a lien for ten years after the death of the decedent upon all property, real or personal, of the decedent located in this state, except as provided in subsection (b), (c) or (d) of this section.

(b) Liability of transferees and others; divestment and reattachment of lien. — If the tax imposed by this article is not paid when due, then the spouse, transferee, trustee (except the trustee of an employees' trust which meets the requirements of Section 401(a) of the Internal Revenue Code of 1986, as amended), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or possesses on the date of the decedent's death, property included in the gross estate for
federal estate tax purposes, to the extent of the value at the
time of the decedent's death of the property, shall be
personally liable for the tax. Any part of the property
transferred by (or transferred by a transferee of) the
spouse, transferee, trustee, surviving tenant, person in
possession, or beneficiary, to a purchaser or holder of a
security interest shall be divested of the lien provided in
subsection (a) of this section. However, a like lien shall
attach to all the property not so transferred of such spouse,
transferee, trustee, surviving tenant, person in possession,
or beneficiary, or transferee of any person.

(c) Continuance after discharge of fiduciary;
divestment and reattachment of lien. — The provisions of
section twenty of this article eleven (relating to discharge
of fiduciary from personal liability) shall not operate as a
release of any part of the gross estate from the lien
provided in subsection (a) of this section for any
deficiency that may thereafter be determined to be due,
unless such part of the gross estate (or any interest therein)
has been transferred to a purchaser or a holder of a
security interest, in which case the part (or the interest) so
transferred shall be divested of the lien provided in
subsection (a) of this section or to any claim or demand
for any such deficiency. However, a like lien shall attach
to the consideration received from the purchaser or holder
of a security interest, by the heirs, legatees, devisees, or
distributees.

(d) Other Exceptions. —

(1) The part of the property of the decedent as may at
the time be subject to the lien provided for in subsection
(a) of this section shall be divested of such lien to the
extent used for payment of charges against the estate or
expenses of its administration allowed by the county
commission or court having jurisdiction thereof.

(2) The part of the personal property of the decedent
as may at the time be subject to the lien provided for in
subsection (a) of this section shall be divested of the lien
upon the conveyance or transfer of the property to a bona
fide purchaser or holder of a security interest for an adequate and full consideration in money or money's worth. The liens shall then attach to the consideration received for the property from the purchaser or holder of a security interest.

(e) **Release of lien.** — Subject to such regulations as the tax commissioner may prescribe, the tax commissioner shall issue a certificate of release of any lien arising under this section not later than thirty days after the day on which the tax commissioner finds that the liability for the amount assessed, together with all interest and applicable penalties and additions to tax in respect thereof, has been fully satisfied or has become legally unenforceable.

(f) **Certificate of discharge.** — Subject to such regulations as the tax commissioner may prescribe, the tax commissioner may issue a certificate of discharge of any or all of the property subject to the lien imposed by this section if the tax commissioner finds that the liability secured by the lien has been fully satisfied or provided for.

(g) **Effect of certificate.** —

(1) **Conclusiveness.** — Except as provided in subdivisions (2) and (3) of this subsection, if a certificate is issued pursuant to subsection (f) of this section by the tax commissioner and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed), the certificate shall have the following effect:

(A) In the case of a certificate of release, the certificate shall be conclusive that the lien referred to in the certificate is extinguished;

(B) In the case of a certificate of discharge, the certificate shall be conclusive that the property covered by the certificate is discharged from the lien; and

(C) In the case of a certificate of nonattachment, the certificate shall be conclusive that the lien of the state of
West Virginia does not attach to the property of the person referred to in the certificate.

(2) Revocation of certification of release or nonattachment. — If the tax commissioner determines that a certificate of release or nonattachment of a lien imposed by this section was issued erroneously or improvidently, or if a certificate of release of the lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section five-q, article ten of this chapter, which has been breached, and if the period of limitation on collection after assessment has not expired, the tax commissioner may revoke the certificate and reinstate the lien:

(A) By mailing written notice, by certified mail, return receipt requested, of the revocation to the person against whom the tax was assessed at his or her last known address; and

(B) By filing notice of the revocation in the same office in which notice of lien to which it relates was filed (if the notice of lien had been filed).

Such reinstated lien: (i) Shall be effective on the date the notice of revocation is mailed to the taxpayer in accordance with the provisions of the foregoing paragraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of the foregoing paragraph (B); and (ii) shall have the same force and effect (as of the date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section eleven, article ten of this chapter (relating to lien for taxes).

(3) Certificates void under certain conditions. — Notwithstanding any other provision of this article, any lien imposed by this section shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for payment of the tax reacquires the property after the certificate has been issued.
AN ACT to amend and reenact sections three, five and twenty, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the business registration tax; changing the registration period from one to two years and the tax from fifteen to thirty dollars, beginning on the first day of July, one thousand nine hundred ninety-nine; permitting a phase-in transition for renewal registration.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-3. Business registration certificate required; tax levied; exemption from registration; exemption from tax.

§11-12-5. Time for which registration certificate granted; power of tax commissioner to suspend or cancel certificate; refusal to renew.

§11-12-20. Registration of transient vendors.

§11-12-3. Business registration certificate required; tax levied; exemption from registration; exemption from tax.

(a) Registration required. — No person shall, without a business registration certificate, engage in or prosecute, in the state of West Virginia, any business activity without first obtaining a business registration certificate from the tax commissioner of the state of West Virginia. Additionally, before beginning business in this state, such person:
(1) If a transient vendor, shall comply with the provisions of sections twenty through twenty-five of this article.

(2) If a collection agency, shall comply with the provisions of article sixteen, chapter forty-seven of this code.

(3) If an employment agency, shall comply with the provisions of article two, chapter twenty-one of this code.

(4) If selling drug paraphernalia, as defined in section three, article nineteen, chapter forty-seven of this code, shall comply with the provisions of article nineteen, chapter forty-seven of this code.

Persons engaging in or prosecuting other business activities in this state may also be subject to other provisions of this code which they must satisfy before commencing or while engaging in a business activity in this state.

(b) Tax levied. — The business registration tax hereby levied shall be fifteen dollars for each annual business registration certificate: Provided, That for registration periods beginning on or after the first day of July, one thousand nine hundred ninety-nine, the business registration tax shall be thirty dollars, except as otherwise provided in this article.

(1) A separate business registration certificate is required for each fixed business location from which property or services are offered for sale or lease to the public as a class, or to a limited portion of the public; or at which customer accounts may be opened, closed or serviced.

(2) A separate business registration certificate is not required for each coin-operated machine. A separate certificate is required for each location from which making coin-operated machines available to the public is itself a business activity.

(3) A business that sells tangible personal property or services from or out of one or more vehicles needs a
separate business registration certificate for each fixed location in this state from or out of which business is conducted. A copy of its business registration certificate shall be carried in each vehicle and publicly displayed while business is conducted from or out of the vehicle.

(4) A business registration certificate is required by subsection (a) of this section for every person engaging in purposeful revenue generating activity in this state. If that activity is one for which an employment agency license or a collection agency license or a license to sell drug paraphernalia is required and no other business activity is conducted by that person at each business location for which the employment agency license or collection agency license or license to sell drug paraphernalia is issued, then only that license is required for each such activity conducted by the licensee at each business location. However, if, in addition to the activity for which each license is issued, some other business activity is conducted by the licensee at such business location, a separate business registration certificate is required to conduct the nonlicensed activity.

(c) Exemption from registration. — Any person engaging in or prosecuting business activity in this state:

(1) Who is not required by law to collect or withhold a tax administered under article ten of this chapter; and

(2) Who does not claim exemption from payment of taxes imposed by articles fifteen and fifteen-a of this chapter, shall be exempt from both registration and payment of the tax imposed by this article, if such person had gross income from business activity of four thousand dollars or less during that person's tax year for state income tax purposes immediately preceding the registration period for which a registration certificate is otherwise required by this article.

(d) Exemptions from payment of tax. — Any person engaging in or prosecuting any business activity in this state who is required by law to collect or withhold any tax administered under article ten of this chapter; or who claims exemption from payment of the taxes imposed by
articles fifteen and fifteen-a of this chapter, shall be
required to obtain a business registration certificate, as
herein before provided, but shall be exempt from payment
of the tax levied by subsection (b) of this section, if such
person is:

(1) A person who had gross income from business
activity of four thousand dollars or less during that
person's tax year for state income tax purposes
immediately preceding the registration period for which a
registration certificate is required under this article.

(2) An organization which qualifies, or would qualify,
for exemption from federal income taxes under section

(3) This state, or a political subdivision thereof, selling
tangible personal property, admissions or services, when
those activities compete with or may compete with the
activities of another person.

(4) The United States, or an agency or instrumentality
thereof, which is exempt from taxation by the states.

(5) A person engaged in the business of agriculture
and farming: Provided, That no producer or grower
selling products of the farm, garden or dairy and not
included within the definition of business under
subsection (a), section two of this article shall be required
to obtain a business registration certificate or pay the
business registration tax.

(6) A foreign retailer who is not a "retailer engaging in
business in this state" as defined in section one, article
fifteen-a of this chapter, who enters into an agreement with
the tax commissioner to voluntarily collect and remit use
tax on sales to West Virginia customers.

(e) Money penalty. — Any person required to obtain a
business registration certificate under this section, who is
exempt from payment of the tax, as provided in
subsection (d) of this section, who does not obtain a
registration certificate shall, in lieu of paying the penalty
imposed by section nine of this article, pay a penalty of
fifteen dollars for each business location for which a
Provided, That application for business registration is made and the applicable money penalty tendered to the tax commissioner within fifteen days after such person receives written notice from the tax commissioner that such person is required to obtain a business registration certificate.

§11-12-5. Time for which registration certificate granted; power of tax commissioner to suspend or cancel certificate; refusal to renew.

(a) Registration period. — All business registration certificates issued under the provisions of section four of this article shall be for the period of one year beginning the first day of July and ending the thirtieth day of the following June: Provided, That beginning on or after the first day of July, one thousand nine hundred ninety-nine, all business registration certificates issued under the provisions of section four of this article shall be issued for two fiscal years of this state, subject to the following transition rule. If the first year for which a business was issued a business registration certificate under this article began on the first day of July of an even-numbered calendar year, then the tax commissioner may issue a renewal certificate to that business for the period beginning the first day of July, one thousand nine hundred ninety-nine, and ending the thirtieth day of June, two thousand, upon receipt of fifteen dollars for each such one-year certificate. Thereafter, only certificates covering two fiscal years of this state shall be issued.

(b) Revocation or suspension of certificate. —

(1) The tax commissioner may cancel or suspend a business registration certificate at any time during a registration period if:

(A) The registrant filed an application for a business registration certificate, or an application for renewal thereof, for the registration period that was false or fraudulent.

(B) The registrant willfully refused or neglected to file a tax return or to report information required by the tax
commissioner for any tax imposed by or pursuant to this
chapter.

(C) The registrant willfully refused or neglected to
pay any tax, additions to tax, penalties or interest, or any
part thereof, when they became due and payable under
this chapter, determined with regard to any authorized
extension of time for payment.

(D) The registrant neglected to pay over to the tax
commissioner on or before its due date, determined with
regard to any authorized extension of time for payment,
any tax imposed by this chapter which the registrant
collects from any person and holds in trust for this state.

(E) The registrant abused the privilege afforded to it
by article fifteen or fifteen-a of this chapter to be exempt
from payment of the taxes imposed by such articles on
some or all of the registrant's purchases for use in business
upon issuing to the vendor a properly executed exemption
certificate, by failing to timely pay use tax on taxable
purchase for use in business, or by failing to either pay the
tax or give a properly executed exemption certificate to
the vendor.

(2) Before canceling or suspending any such
certificate, the tax commissioner shall give written notice
of his or her intent to suspend or cancel the business
registration certificate of the taxpayer, the reason for the
suspension or cancellation, the effective date of the
cancellation or suspension, and the date, time and place
where the taxpayer may appear and show cause why such
business registration certificate should not be canceled or
suspended. This written notice shall be served on the
taxpayer in the same manner as a notice of assessment is
served under article ten of this chapter, not less than
twenty days prior to the date of such show cause informal
hearing. The taxpayer may appeal cancellation or
suspension of its business registration certificate in the
same manner as a notice of assessment is appealed under
article ten of this chapter: Provided, That the filing of a
petition for appeal shall not stay the effective date of the
suspension or cancellation. A stay may be granted only
after a hearing is held on a motion to stay filed by the
registrant, upon finding that state revenues will not be jeopardized by the granting of the stay. The tax commissioner may, in his or her discretion and upon such terms as he or she may specify, agree to stay the effective date of the cancellation or suspension until another date certain.

(c) Refusal to renew. — The tax commissioner may refuse to issue or renew a business registration certificate if the registrant is delinquent in the payment of any tax administered by the tax commissioner under article ten of this chapter or the corporate license tax imposed by article twelve-c of this chapter, until the registrant pays in full all such delinquent taxes including interest and applicable additions to tax and penalties. In his or her discretion and upon such terms as he or she may specify, the tax commissioner may enter into an installment payment agreement with such taxpayer in lieu of the complete payment. Failure of the taxpayer to fully comply with the terms of the installment payment agreement shall render the amount remaining due thereunder immediately due and payable and the tax commissioner may suspend or cancel the business registration certificate in the manner hereinbefore provided.

§11-12-20. Registration of transient vendors.

(a) Prior to conducting business or otherwise commencing operations within this state, a transient vendor shall obtain a business registration certificate from the tax commissioner and pay the tax imposed by this article.

(b) Upon receipt of the application for business registration and the posting of the bond required by section twenty-one of this article, the tax commissioner shall issue to the transient vendor a business registration certificate, which shall be valid for the current registration period, if the application is complete and the transient vendor is not delinquent in the payment of any tax imposed by this chapter. Upon renewal of the registration, the tax commissioner shall issue a new certificate, valid for the next ensuing registration period, provided he or she is satisfied that the transient vendor has complied with the
provisions of this article and is not delinquent in the payment of any tax imposed by this article.

(c) The transient vendor shall keep the business registration certificate in his or her possession at all times when conducting business within this state. He or she shall publicly display the certificate whenever conducting business in this state and shall exhibit the certificate upon the request of an authorized employee of the tax commissioner or any law-enforcement officer.

(d) The business registration certificate issued by the tax commissioner shall constitute notice that the transient vendor named therein has registered with the tax commissioner, and shall provide notice to the transient vendor that:

(1) Before entering this state to conduct business the transient vendor must notify the tax commissioner, in writing, of the location or locations in this state where he or she intends to conduct business, and the date or dates on which he or she intends to conduct such business.

(2) Failure to notify, or the giving of false information to the tax commissioner is grounds for suspension or revocation of the transient vendor's business registration certificate.

(3) Conducting business in this state without having a valid business registration certificate after such certificate has been suspended or revoked, may result in criminal prosecution or the imposition of fines, or other penalties, or both for violation of this article.

(e) Definitions. — For purposes of this section:

(1) "Transient vendor" means any person who:

(A) Brings into this state, by automobile, truck or other means of transportation, or purchases in this state, tangible personal property the sale or use of which is subject to one or more taxes administered by the tax commissioner under article ten of this chapter;

(B) Offers or intends to offer such tangible personal property for sale to consumers in this state; and
(C) Does not maintain an established office, distribution house, sales house, warehouse, service enterprise, residence from which business is conducted, or other place of business within this state.

(2) The term "transient vendor" shall not include any person who:

(A) Is a commercial traveler or selling agent who sells only to persons who purchase tangible personal property for purposes of resale to others;

(B) Only sells goods, wares or merchandise by sample catalog or brochure for future delivery;

(C) Only sells or offers for sale crafts or other handmade items that were made by the seller; or

(D) Only sells agricultural and farming products, except nursery products and foliage plants.

CHAPTER 296

(S. B. 716—By Senators Plymale, Helmick, Ross, Minear and Anderson)

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

AN ACT to amend and reenact sections nine and eighteen, article thirteen-a, chapter eleven 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 sixteen-a, all relating to the severance and business privilege taxes; providing that taxpayers severing timber and taking the annual tax credit on the severance and business privilege tax may only deduct the credit on the annual return; requiring every nonresident person or company who at time of severance owns West Virginia timber to have a business registration certificate, to give the tax commissioner written notice before severance of intention to sever West Virginia timber and to prepay
estimated timber severance tax or post a corporate surety bond; setting forth certain reporting requirements; defining nonresident person; imposing sanctions and money penalties for noncompliance; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. SEVERANCE TAX.

§11-13A-9. Periodic installment payments of taxes imposed by sections three-a, three-b and three-c of this article; exceptions.

§11-13A-16a. Nonresident person severing West Virginia timber owned by the person at time of severance required to notify tax commissioner prior to severance and prepay severance tax or post bond.


§11-13A-9. Periodic installment payments of taxes imposed by sections three-a, three-b and three-c of this article; exceptions.

1 (a) General rule. — Except as provided in subsection (b) of this section, taxes levied under section three-a, three-b or three-c of this article are due and payable in periodic installments as follows:

2 (1) Tax of fifty dollars or less per month. — If a person's annual tax liability under this article is reasonably expected to be fifty dollars or less per month, no installment payments of tax are required under this section during that taxable year.

3 (2) Tax of more than one thousand dollars per month. — For taxpayers whose estimated tax liability under this article exceeds one thousand dollars per month, the tax is due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued: Provided, That the installment payment otherwise due under this subdivision on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June each year:
(A) Each taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the estimate and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of tax due to the office of the tax commissioner: Provided, That the installment payment otherwise due under this paragraph on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June.

(B) In estimating the amount of tax due for each month, the taxpayer may deduct one twelfth of any applicable tax credits allowable for the taxable year, and one twelfth of any annual exemption allowed for that year.

(3) **Tax of one thousand dollars per month or less.** — For taxpayers whose estimated tax liability under this article is one thousand dollars per month or less, the tax is due and payable in quarterly installments on or before the last day of the month following the quarter in which the tax accrued:

(A) Each taxpayer shall, on or before the last day of the fourth, seventh and tenth months of the taxable year, make out an estimate of the tax for which the taxpayer is liable for the preceding quarter, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of tax due to the office of the tax commissioner.

(B) In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth of any applicable tax credits allowable for the taxable year, and one fourth of any annual exemption allowed for that year.

(b) **Exceptions.** — (1) Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if he or she considers it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed in subsection (a) of this section.

(2) Notwithstanding the provisions of subsection (a) of this section, taxpayers remitting tax on the privilege of severing timber may deduct the annual tax credit allowed in section ten of this article only on the annual return filed
for any taxable year beginning on or after the first day of
July, one thousand nine hundred ninety-eight. These
taxpayers may not deduct any portion of the annual tax
credit when they determine the amount of periodic
installment payments of timber severance tax due during
their taxable year.

§11-13A-16a. Nonresident person severing West Virginia
timber owned by the person at time of
severance required to notify tax com-
missoner prior to severance and prepay
severance tax or post bond.

(a) Business registration certificate required. — Every
nonresident person who owns or purchases standing West
Virginia timber who either directly, or indirectly through
the activities of others, severs that timber shall apply to the
tax commissioner for a business registration certificate as
provided in article twelve of this chapter, before beginning
to do business in this state, whether or not the person has a
permanent place of business in this state.

(b) "Nonresident person" defined. — The term
"nonresident person" means a "person" or "company" as
defined in section three of this article that, if an individual,
is a nonresident of this state for purposes of the tax
imposed by article twenty-one of this chapter and, if any
other person, does not have its commercial domicile in this
state, or during the three months preceding the date the
application for business registration certificate is filed with
the tax commissioner did not have a permanent office in
this state for the conduct of timbering operations in this
state or any other permanent place of business in this state
for the conduct of timbering operations as that term is
defined in section three, article one-b, chapter nineteen of
this code.

(c) Notice of contract. — Every nonresident person
who severs West Virginia timber, either directly or through
the activity of others, which that person owns, in whole or
in part, at the time that it is severed, shall give the tax
commissioner written notice of the nonresident person's
intent to sever the West Virginia timber identified in the
notice. This notice shall be given no earlier than ninety
days before the timbering operation begins and no later than thirty days before the timbering operation begins.

The notification shall include all of the information required by section six, article one-b, chapter nineteen of this code, the estimated gross value of the timber described in the notice that will be severed and any other information the tax commissioner may require: Provided, that the tax commissioner may accept as the notification required by this section, a true copy of the notice the nonresident person gave under section six, article eleven-b, chapter nineteen of this code to the director of forestry, the estimated gross value of the timber described in the notice that will be severed and any additional information the tax commissioner may require.

(d) Prepayment of severance tax. — If the nonresident person owns, in whole or in part, the timber at the time that it is severed, the nonresident person shall, at the time the notice required by subsection (c) of this section is given to the tax commissioner, pay to the tax commissioner four percent of the estimated gross value of the timber to be severed that is described in the notice: Provided, That the estimated gross value shall not be less than the actual price paid or to be paid for the stumpage. The tax commissioner shall deposit this amount in a revolving account in the treasurer's office to be known as the "Forestry Tax Fund" pending completion of severance of the timber identified in the notice given under subsection (c) of this section, the filing of all required tax returns and payment of all timber severance taxes due under this article attributable to severance of the timber described in the notice given under subsection (c) of this section, including any additions to tax, penalties and interest imposed for failure to timely pay the severance taxes. Within thirty days after the timber identified in the notice is severed, the nonresident person shall file with the tax commissioner a report reconciling the amount of prepaid severance tax with the amount of severance taxes actually due on the gross value of the timber at the point where the privilege of severing timber ends. If this report shows that additional timber severance taxes are due, that amount shall be paid when the report is filed with the tax
commissioner. If the report shows that the amount of timber severance taxes prepaid exceeded the amount actually due, the tax commissioner shall refund the difference.

(e) **Surety bond.** — In lieu of the prepayment of timber severance tax required by subsection (d) of this section, the nonresident person may furnish to the tax commissioner a corporate surety bond in an amount equal to four percent of the estimated gross value of the timber to be severed that is described in the notice: Provided, That the estimated gross value shall not be less than the actual price paid or to be paid for the stumpage, to guarantee timely payment of the taxes due under this article that may be attributable to the timber described in the notice given under subsection (c) of this section. The form of the bond shall be approved by the tax commissioner. The surety shall be qualified to do business in this state. The bond shall be conditioned that the nonresident person shall pay all timber severance taxes due under this article attributable to severance of the timber described in the notice given under subsection (c) of this section, including any additions to tax, penalties or interest that may be imposed due to any failure of the nonresident person to pay those taxes as they become due.

(f) **Conditions for surety.** — Any surety on a bond furnished under subsection (e) of this section shall be qualified to do business in this state. The surety shall be relieved, released and discharged from all liability accruing on the bond after the expiration of sixty days from the date the tax commissioner receives the written request of the surety to be discharged. The written request for discharge may be filed with the tax commissioner by personal service or by certified mail, postage prepaid, addressed to the tax commissioner at his or her office in Charleston, West Virginia. A request for discharge shall not relieve, release or discharge the surety from liability already accrued, or which shall accrue before expiration of the sixty-day period. Whenever any surety seeks discharge as provided in this subsection, it is the duty of the principal of the bond to supply the tax commissioner with another corporate surety bond.
(g) **Penalty for noncompliance.** — (1) A nonresident person who fails to comply, in whole or in part, with the requirements of this section shall forfeit the license issued to that person under section four, article one-b, chapter nineteen of this code for a period of one year for the first offense and for a period of two years for each subsequent violation of this section. When the tax commissioner determines that a nonresident person is failing to comply, in whole or in part, with the requirements of this section, the commissioner shall certify those facts to the director of forestry. Upon the facts certified by the tax commissioner, or upon facts gathered by the director, demonstrating failure of the nonresident person to comply, in whole or in part, with the requirements of this section the director shall then issue an order notifying the nonresident person that the license issued under section four, article one-b, chapter nineteen of this code has been forfeited. A forfeiture order may be appealed as provided in article one-b, chapter nineteen of this code. In addition, the nonresident person shall pay a money penalty equal to fifty percent of the timber severance tax that should have been paid that was not timely paid. This amount shall be in addition to the amount of timber severance taxes not timely paid plus interest and applicable additions to tax. This penalty shall be collected by the tax commissioner in the same manner as taxes are collected under this article.

(2) If a nonresident person underestimates the amount of timber severance taxes that must be prepaid under subsection (d) of this section by more than twenty-five percent, the nonresident person shall pay a money penalty equal to fifty percent of the timber severance tax that should have been prepaid that was not prepaid or guaranteed by the surety bond given under subsection (e) of this section. This amount shall be in addition to the amount of timber severance taxes not timely paid plus interest and applicable additions to tax. This penalty shall be collected by the tax commissioner in the same manner as taxes are collected under this article.

(h) **Effective date.** — The provisions of this section apply to timber severed by a nonresident person on or
(a) General. — Every taxpayer liable for reporting or paying tax under this article shall keep records, receipts, invoices and other pertinent papers in the form required by the tax commissioner.

(b) Period of retention. — Every taxpayer shall keep the records for not less than three years after the annual return is filed under this article, unless the tax commissioner in writing authorizes their earlier destruction. An extension of time for making an assessment automatically extends the time period for keeping the records for all years subject to audit covered in the agreement for extension of time.

(c) Special rule for purchasers of standing timber or of logs. — In addition to the records required by subsection (a) of this section, every person purchasing standing timber, logs or wood products sawn or chip- ped in conjunction with a timber harvesting operation in this state delivered after the thirtieth day of June, one thousand nine hundred ninety-eight, shall obtain from the person from whom the standing timber, logs or wood products sawn or chipped in conjunction with a timbering harvest operation are purchased a true copy of the seller's then current business registration certificate issued under article twelve of this chapter or a copy of federal form 1099 for the year of the purchase. When the seller is a person not required by this chapter to have a business registration certificate, the purchaser shall obtain an affidavit from the seller: (1) Stating that the seller does not have a business registration certificate and that the seller is not required by this chapter to have a business registration certificate; (2) listing the seller's social security number or federal employer identification number; and (3) listing the seller's current mailing address. The tax commissioner may develop a form for this affidavit.
AN ACT to amend and reenact section four-a, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to allowance, determination, computation and application of West Virginia corporate headquarters relocation tax credit; expanding categories of businesses eligible for credits; specifying how new jobs are determined; allowing multiple year headquarters relocation projects; permitting use of alternative apportionment methods when applying credit; adding definitions; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION TAX CREDIT.

§11-13C-4a. Credit allowed for locating corporate headquarters in this state.

(a) Credit allowed. — A corporation that presently has its corporate headquarters located outside this state that relocates its corporate headquarters in this state and employs, on a full-time basis, at its new corporate headquarters location, at least fifteen people, who are domiciled in this state, shall be allowed credit under this article, the amount of which shall be determined as provided in subsection (b). For corporate headquarters relocations occurring on and after the first day of January, one thousand nine hundred ninety-eight, the restrictions set forth in subsection (a), section fifteen of this article shall not apply to the credit allowed under this section.
However, the restrictions set forth in subsection (a), section fifteen of this article and the exceptions thereto set forth in subsection (b) of said section fifteen, shall remain fully applicable and in force and effect for all other tax credits provided or allowable under this article.

(b) Determination of credit. — The amount of credit allowed by subsection (a) shall be determined at the election of the taxpayer:

(1) By multiplying its adjusted qualified investment by its new jobs percentage (as determined under section seven of this article); or

(2) By multiplying its adjusted qualified investment by ten percent.

(c) Corporate headquarters relocations after December 31, 1997. — For purposes of corporate headquarters relocations occurring on or after the first day of January, one thousand nine hundred ninety-eight, and notwithstanding any other provision of this article to the contrary:

(1) New jobs created in this state by relocation of a corporate headquarters may include jobs created in this state within twelve months before or after the month in which the qualified investment in the corporate headquarters relocation is placed into service or use in this state by:

(A) Relocation or transfer of employees of the corporation or employees of a related corporation or related person from an out-of-state location to the relocated corporate headquarters in this state, who: (i) Are or become employees of the corporation within twelve months before or after the month in which the qualified investment in the corporate headquarters is placed into service or use in this state; and (ii) whose regular place of work is in the corporate headquarters, or

(B) New employees of the corporation whose regular place of work is in the corporate headquarters.

(2) Multiple year projects certified under section four-b of this article may be allowed for corporate headquarters relocations under this section.
(d) Application of credit. — The credit allowed by this section shall be applied in the manner prescribed in section five of this article: Provided, That the amount of corporation net income taxes against which the credit allowed by this section may be applied shall be the sum of the corporation net income tax due on adjusted federal taxable income allocated to this state under section seven, article twenty-four of this chapter, plus that portion of the corporation net income tax due on adjusted federal taxable income apportioned to this state under section seven, article twenty-four of this chapter, that is further apportioned to the qualified investment using the payroll factor provided in paragraph (1), subsection (h) of said section five or an alternative means of apportionment as prescribed by the tax commissioner under said section five. For all other purposes, the credit allowed by this section shall be treated as credit allowed by section four of this article.

(e) Definitions. — For purposes of this section:

(1) Adjusted qualified investment. — The term "adjusted qualified investment" means the taxpayer's qualified investment in the corporate headquarters as determined under section six of this article and rules of the tax commissioner, plus the cost of the reasonable and necessary expenses it incurred to relocate its corporate headquarters at a location in this state from its present location outside this state.

(2) Corporate headquarters. — The term "corporate headquarters" means the place at which the corporation has its commercial domicile and from which the business of the corporation is primarily conducted.

(3) Reasonable and necessary expenses incurred to relocate corporate headquarters. — The phrase "reasonable and necessary expenses incurred to relocate corporate headquarters" means only those expenses incurred and paid by the corporation, to unrelated third parties, to move its corporate headquarters and its corporate headquarters employees to this state that are, upon application by the corporation, determined by the tax commissioner to have been both reasonable and necessary to effectuate the move.
The corporation. — For purposes of this section, the term "the corporation" means the corporation for which the corporate headquarters is relocated.

Effective date. — The credit allowed by this section as amended in the year one thousand nine hundred ninety-eight shall be allowable for corporate headquarters placed in service or use on or after the first day of January, one thousand nine hundred ninety-eight.

CHAPTER 298
(H. B. 4619—By Mr. Speaker, Mr. Kiss, and Delegate Michael)

[Passed March 11, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven-a and fourteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to providing small business tax credit, specifying amount of credit allowed; specifying application of credit; specifying certification of new jobs; providing for small business tax credit projects; providing for issuance of regulations; specifying effective dates; specifying restrictions and limitations on credits allowed by said article thirteen-c; setting forth legislative findings; specifying construction; specifying nonapplication against severance taxes; setting forth transition rules; specifying treatment of successor project participants; setting forth definitions; specifying requirement for application for credit; and specifying penalty for failure to file.

Be it enacted by the Legislature of West Virginia:

That sections seven-a and fourteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION TAX CREDIT.

§11-13C-7a. Small business credit.
§11-13C-14. Restrictions and limitations on credits allowed by this article.

§11-13C-7a. Small business credit.

(a) "Small business" defined. — For purposes of this section, the term "small business" means a business which has an annual payroll of one million five hundred thousand dollars or less, or annual gross sales of not more than five million dollars: Provided, That beginning the first day of January, one thousand nine hundred eighty-nine, and each first day of January thereafter, the tax commissioner shall prescribe amounts which shall apply in lieu of the above amounts during that calendar year. These amounts shall be prescribed by increasing the amount of each by the cost-of-living adjustment for such calendar year. The requirements for annual payroll and annual gross receipts, once met by a given taxpayer in that taxable year when qualified investment is first placed in service or use shall not again be applied to that same taxpayer in subsequent years to defeat the small business credit to which the taxpayer gained entitlement in that year. However, the median compensation requirements applicable to any small business, except a small business entitled to a certified project credit, shall be determined when qualified investment is first placed in service or use; and subsequently redetermined inflation adjusted amounts for median compensation for each year shall be the requirements applicable to that small business for each year throughout the ten-year credit period and any further carryover or other extended credit period for the original credit to which the requirements relate.

(1) Cost-of-living adjustment. — For purposes of subsection (a), the cost-of-living adjustment for any calendar year is the percentage (if any) by which:

(A) The consumer price index for the preceding calendar year exceeds;
(B) The consumer price index for the calendar year one thousand nine hundred eighty-seven.

(2) Consumer price index for any calendar year. — For purposes of subdivision (1), the consumer price index for any calendar year is the average of the federal consumer price index as of the close of the twelve-month period ending on the thirty-first day of August of such calendar year.

(3) Consumer price index. — For purposes of subdivision (2), the term "Federal Consumer Price Index" means the last consumer price index for all urban consumers published by the United States department of labor.

(4) Rounding. — If any increase under subdivision (1) is not a multiple of fifty dollars, such increase shall be rounded to the next lowest multiple of fifty dollars.

(b) Amount of credit allowed.

(1) Credit allowed. — An eligible small business taxpayer shall be allowed a credit against the portion of taxes imposed by this state that are attributable to and the direct consequence of the eligible small business taxpayer's qualified investment in a new or expanded business in this state which results in the creation of at least ten new jobs. The amount of this credit shall be determined as provided in this section.

(2) Amount of credit. — The amount of credit allowable under this section is determined by dividing the amount of the eligible small business taxpayer's "qualified investment" (determined under section six) in "property purchased for business expansion" (as defined in section three) by ten. The amount of qualified investment so apportioned to each year of the ten-year credit period shall be the annual measure against which taxpayer's annual new jobs percentage (determined under subsection (d)) is applied. The product of this calculation establishes the maximum amount of credit allowable each year for ten consecutive years under this section due to the qualified investment.
(3) Application of credit. — The annual credit allowance must be taken beginning with the taxable year in which the taxpayer places the qualified investment into service or use in this state, unless the taxpayer elects to delay the beginning of the ten-year credit period until the next succeeding taxable year. This election shall be made in the annual income tax return filed under this chapter by the taxpayer for the taxable year in which the qualified investment is placed in service or use. Once made, this election cannot be revoked. The annual credit allowance shall be taken and applied in the manner prescribed in section five.

(c) New jobs. — The term "new jobs" has the meaning ascribed to it in subdivision (14), subsection (b), section three of this article: Provided, That the median compensation of such new jobs shall not be less than eleven thousand dollars per year and that beginning the first day of January, one thousand nine hundred eighty-nine, and each first day of January thereafter, the tax commissioner shall adjust the median annual compensation specified in this subsection by increasing the amount thereof by the annual cost-of-living adjustment determined under subsection (a).

(1) The term "new employee" shall have the meaning ascribed to it in subdivision (13), subsection (b), section three of this article: Provided, That such term shall not include employees filling new jobs who:

(A) Are related individuals, as defined in subsection (i), section 51 of the Internal Revenue Code of 1986, or a person who owns ten percent or more of the business with such ownership interest to be determined under rules set forth in subsection (b), section 267 of said Internal Revenue Code; or

(B) Worked for the taxpayer during the six-month period ending on the date taxpayer's qualified investment is placed in service or use and is rehired by the taxpayer during the six-month period beginning on the date taxpayer's qualified investment is placed in service or use.
(2) When a job is attributable. — An employee's position is directly attributable to the qualified investment if:

(A) The employee's service is performed or his or her base of operations is at the new or expanded business facility;

(B) The position did not exist prior to the construction, renovation, expansion or acquisition of the business facility and the making of the qualified investment; and

(C) But for the qualified investment, the position would not have existed.

(d) New jobs percentage. — The annual new jobs percentage is based on the number of new jobs created in this state by the taxpayer that is directly attributable to taxpayer's qualified investment.

(1) If at least ten new jobs are created and filled during the taxable year in which the qualified investment is placed in service or use, the applicable new jobs percentage shall be thirty percent: Provided, That for each new job over ten, up to forty such additional new jobs, the applicable new jobs percentage shall be increased by adding thereto one half of one percent, with the maximum new jobs percentage not to exceed fifty percent.

(2) During each of the remaining nine years of the ten-year credit period, the annual new jobs percentage shall be based on the average number of new jobs that were filled during that taxable year: Provided, That for purposes of estimating the new jobs percentage that will be applicable for each subsequent credit year, the taxpayer shall use the new jobs percentage allowable for the taxable year immediately prior thereto, and in the annual income tax return filed under this chapter for the then current tax year, taxpayer shall redetermine his or her allowable new jobs percentage for that year based on the average number of new employees employed in new jobs during that year.
(determined on a monthly basis) created as the direct result of taxpayer's qualified investment.

(e) Certification of new jobs. — With the annual income tax return filed under this chapter for each taxable year during the ten-year credit period, the taxpayer shall certify:

(1) The new jobs percentage for that taxable year;
(2) The amount of the credit allowance for that year;
(3) If the business is a partnership or electing small business corporation, the amount of credit allocated to the partners or shareholders, as the case may be;
(4) That qualified investment property continue to be used in the business, or if any of it was disposed of during the year the date of disposition and that such property was not disposed of prior to expiration of its useful life, as determined under section six;
(5) That the new jobs created by the qualified investment continue to exist and are filled by persons who meet the definition of new employee (as defined in subdivision (1), subsection (c) of this section) and are paid an average annual compensation equal to or greater than the minimum average annual compensation required by this section.

(f) Small business project. — A small business may apply to the tax commissioner under section four-b for certification of subdivision (1), subsection (a), section four-b project if that project will create at least ten new jobs.

(g) Regulations. — The tax commissioner shall prescribe such regulations as he or she may deem necessary in order to determine the amount of credit allowed under this section to a taxpayer; to verify taxpayer's continued entitlement to claim such credit; and to verify proper application of the credit allowed. The tax commissioner may, by regulation, require a taxpayer intending to claim credit under this section to file with the tax commissioner a notice of intent to claim this credit,
before the taxpayer begins reducing his or her monthly or quarterly installment payments of estimated tax for the credit provided in this section.

(h) Effective date.

(1) The credit provided in this section shall be allowed for qualified investment property purchased or leased after the thirtieth day of June, one thousand nine hundred eighty-seven.

(2) The amendments to this section, enacted in the year one thousand nine hundred ninety-eight, shall be retroactive to tax years beginning on or after the first day of January, one thousand nine hundred ninety-five.

§11-13C-14. Restrictions and limitations on credits allowed by this article.

(a) Findings. — The Legislature finds that the tax credits allowed under provisions of this article heretofore enacted have not effectively and efficiently increased employment through investment in certain industry segments; that while there has been a significant net decrease in employment in the coal industry in recent years the amount of credit being claimed by producers of coal has significantly increased; that the increasing cost of the credits allowed by this article to coal producers is eroding the state's ability to reasonably fund essential state services such as public education, public safety and basic human services; and that this erosion will continue unless remedial legislation is enacted.

(b) Construction. — The rule of statutory construction codified in subsection (b), section twelve of this article, is hereby replaced with a rule of reasonable construction in which the burden of proof is on the taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the benefits allowed by this article.

(c) Credit not to be applied against severance taxes.

(1) Notwithstanding any provision in this chapter to the contrary, no credit shall be allowed against the taxes imposed by article thirteen-a of this chapter for taxable
years ending on or after the tenth day of March, one thousand nine hundred ninety, unless one of the transition rules in paragraph (2) of this subsection (c) applies.

(2) Transition rules. — The general rule stated in paragraph (1) of this subsection (c) shall not apply:

(A) To qualified investment property placed in service or use prior to the tenth day of March, one thousand nine hundred ninety.

(B) To property purchased or leased for business expansion that is placed in service or use on or after the tenth day of March, one thousand nine hundred ninety, if at least one of the following clauses applies to such property:

(i) The new or expanded business facility was constructed, reconstructed or erected, pursuant to a written construction contract executed prior to the tenth day of March, one thousand nine hundred ninety, as limited to the provisions of such contract as of such date then binding on the taxpayer, but only to the extent such new or expanded business facility is placed in service or use prior to the first day of January, one thousand nine hundred ninety-two.

(ii) The new or expanded business facility which is part of a project described in paragraph (1), subsection (a), section four-b of this article, was constructed, reconstructed or erected, pursuant to a written construction contract executed prior to the tenth day of March, one thousand nine hundred ninety, as limited to the provisions of such contract as of such date then binding on the taxpayer: Provided, That only that portion of the contract price attributable to that percentage of the construction contract completed prior to the first day of January, one thousand nine hundred ninety-two, (determined under principles set forth in Section 460(b) of the Internal Revenue Code of 1986, as in effect before the tenth day of March, one thousand nine hundred ninety, which is placed in service or use prior to the first day of January, one thousand nine hundred ninety-four, may be treated as
property purchased for business expansion under section six of this article.

(iii) The new or expanded business facility was purchased or leased pursuant to a written contract executed prior to the tenth day of March, one thousand nine hundred ninety, as limited to the provisions then binding on the taxpayer as of such date, but only to the extent such new or expanded business facility is placed in service or use prior to the first day of January, one thousand nine hundred ninety-two.

(iv) The machinery or equipment or other tangible personal property purchased or leased for business expansion at a new or expanded business facility was purchased or leased by the taxpayer pursuant to a written contract to purchase or lease identifiable tangible personal property executed before the tenth day of March, one thousand nine hundred ninety, as limited to the provisions of such written contract then binding on the taxpayer, but only to the extent the tangible personal property purchased or leased under such contract is placed in service or use before the first day of January, one thousand nine hundred ninety-two: Provided, That when such tangible personal property is purchased or leased as aforesaid as part of a project described in clause (ii) of this subparagraph (B), such tangible personal property must be placed in service or use prior to the first day of January, one thousand nine hundred ninety-four, to be treated as property purchased or leased for business expansion under section six of this article.

(C) To property purchased or leased for business expansion that is placed in service or use on or after the tenth day of March, one thousand nine hundred ninety, as part of a project otherwise eligible for the credit under subsection (a), section four-b of this article, if all of the requirements of clauses (i), (ii), (iii) and (iv) of this subparagraph are satisfied:

(i) The taxpayer and other participants in the project, if any, have made investments in property purchased or leased for business expansion as defined in subsection (b)(19), section three of this article prior to the tenth day
of March, one thousand nine hundred ninety, in excess of

(ii) The investments described in clause (i) were made
pursuant to a plan for an integrated project to be
developed over a period of one or more years and with the
expectation of making additional investments in the
integrated project.

(iii) The portion of the project constructed, purchased
or leased after the tenth day of March, one thousand nine
hundred ninety, meets the definition of new business
facility in subsection (e)(3) of this section.

(iv) The new jobs created by the project after the
tenth day of March, one thousand nine hundred ninety,
are filled by new employees as defined in subsection (e)
(4) of this section.

(3) Notice of claim under transition rules.

(A) Notice required. — Any person intending to assert
a claim for credit based, in whole or in part, on application
of the transition rules in subparagraph (B) or (C),
paragraph (2) of this subsection (c), shall file written
notice of such intention with the tax commissioner on or
before the first day of July, one thousand nine hundred
ninety. In the case of a multiparticipant project, this
notice may be filed by the managing project participant
on behalf of all participants in such project. Such notice
shall be in a form prescribed by the tax commissioner and
all information required by such form shall be provided.

(B) Failure to file notice. — If any person fails to
timely file the notice required by this paragraph (3), such
person shall be precluded from claiming credit under this
article for such investment.

(d) Treatment of successor project participants. —
Whenever a participant in a project certified under
paragraph (2) or (3), subsection (a), section four-b of this
article, is replaced by another participant in that project on
or after the tenth day of March, one thousand nine
hundred ninety, the tax credits available to such successor
participant as a result of the transfer shall not exceed the
amount of credits that would have been available to the
predecessor participant had the transfer to the successor
participant not occurred: Provided, That if the project
plan provides for annual recalculation of the division of
the credit allowable for each year among the participants
in the project in order to maximize the collective use of
such credit by the project participants, or for any other
purpose, then the credit available to the successor
participant as a result of the transfer shall be limited each
year to the amount of credit actually used by the
predecessor participant to offset taxes for the taxable year
immediately preceding the taxable year in which such
participant's obligations or interest in the project, as
described in the project plan certified by the tax
commissioner, passed to the successor participant in the
project.

(e) Certain terms redefined. — Notwithstanding the
provisions of subsection (b), section three of this article, or
any other provision of this article, to the contrary, the
following terms have the meanings assigned to them by
this section.

(1) Construction contract. — The term "construction
contract" means any contract for the building,
construction, reconstruction or rehabilitation of, or the
installation of any integral components to, or
improvements of, a new or existing business facility.

(2) Excluded property. — The term "property
purchased or leased for business expansion" shall not
include:

(A) Property owned or leased by the taxpayer and for
which the taxpayer was previously allowed tax credit for
industrial expansion, tax credit for industrial revitalization,
tax credit for coal loading facilities or the tax credits
allowed by this article.

(B) Property owned or leased by the taxpayer and for
which the seller, lessor, or other transferor, was previously
allowed tax credit for industrial expansion, tax credit for
industrial revitalization, tax credit for coal loading
facilities, or the tax credits allowed by this article.
(C) Repair costs, including materials used in the repair, unless for federal income tax purposes the cost of the repair must be capitalized and not expensed.

(D) Airplanes.

(E) Property which is primarily used outside this state, with use being determined based upon the amount of time the property is actually used both within and without this state.

(F) Property which is acquired incident to the purchase of the stock or assets of the seller, unless for good cause shown, the tax commissioner consents to waiving this requirement.

(G) Natural resources in place purchased or leased prior to the first day of March, one thousand nine hundred eighty-five, or purchased or leased after such date pursuant to an option to purchase or lease such natural resources in place acquired prior to such date but exercised, in whole or in part, on or after the tenth day of March, one thousand nine hundred ninety; and natural resources in place purchased or leased on or after the tenth day of March, one thousand nine hundred ninety, unless pursuant to a written contract to purchase or lease executed prior to the passage of this section.

(H) Property purchased or leased on or after the tenth day of March, one thousand nine hundred ninety, unless executed prior to the passage of this section, the cost or consideration for which cannot be quantified with any reasonable degree of accuracy at the time such property is placed in service or use: Provided, That when the contract of purchase or lease specifies a minimum purchase price or minimum annual rent the amount thereof shall be used to determine the qualified investment in such property under section six of this article if the property otherwise qualifies as property purchased or leased for business expansion.

(3) New business facility. — The term "new business facility" means a business facility which satisfies all the
requirements of subparagraphs (A), (B), (C) and (D) of this paragraph.

(A) The facility is employed by the taxpayer in the conduct of a business the net income of which is or would be taxable under article twenty-one or twenty-four of this chapter. Such facility shall not be considered a new business facility in the hands of the taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person or persons.

(B) Such facility is purchased by, or leased to, the taxpayer after the first day of March, one thousand nine hundred eighty-five.

(C) The facility was not purchased or leased by the taxpayer from a related person or a project participant, or related person of a project participant, in any certified project in which the taxpayer is a participant. The tax commissioner may waive this requirement if the facility was acquired from a related party for its fair market value and the acquisition was not tax motivated.

(D) Such facility was not in service or use during the ninety days immediately prior to transfer of the title to such facility, or prior to the commencement of the term of the lease of such facility: Provided, That this ninety-day period may be waived by the tax commissioner if the commissioner determines that persons employed at the facility may be treated as "new employees" as that term is defined under paragraph (4) of this subsection.

(4) New Employee.

(A) The term "new employee" means a person residing and domiciled in this state, hired by the taxpayer to fill a position or a job in this state which previously did not exist in taxpayer's business enterprise in this state prior to the date on which the taxpayer's qualified investment is placed in service or use in this state. In no case shall the number of new employees directly attributable to such investment for purposes of this credit exceed the total net increase in the taxpayer's employment in this state: Provided, That with respect to taxpayers who file
application for certification after the tenth day of March, one thousand nine hundred ninety, the tax commissioner may require that the net increase in the taxpayer's employment in this state be determined and certified for the taxpayer's controlled group; and in the case of a project involving more than one person for the controlled groups of all participants, taken as a whole:\n\nProvided, however, That persons filling jobs saved as a direct result of taxpayer's qualified investment in property purchased or leased for business expansion on or after the tenth day of March, one thousand nine hundred ninety, may be treated as new employees filling new jobs if the taxpayer certifies the material facts to the tax commissioner and the tax commissioner expressly finds that:

(i) But for the new employer purchasing the assets of a business in bankruptcy under chapter seven or eleven of the United States bankruptcy code and such new employer making qualified investment in property purchased or leased for business expansion, the assets would have been sold by the United States bankruptcy court in a liquidation sale and the jobs so saved would have been lost; or

(ii) But for taxpayer's qualified investment in property purchased or leased for business expansion in this state, taxpayer would have closed its business facility in this state and the employees of the taxpayer located at such facility would have lost their jobs: Provided, That the tax commissioner shall not make this certification unless the tax commissioner finds that the taxpayer is insolvent as defined in 11 U.S.C. §101 (31) or that the taxpayer's business facility was destroyed, in whole or in significant part, by fire, flood or other act of God.

(B) A person shall be deemed to be a "new employee" only if such person's duties in connection with the operation of the business facility are on:

(i) A regular, full-time and permanent basis.

(I) "Full-time employment" means employment for at least one hundred forty hours per month at a wage not less than the prevailing state or federal minimum wage,
depending on which minimum wage provision is applicable to the business;

(II) "Permanent employment" does not include employment that is temporary or seasonal and therefore the wages, salaries and other compensation paid to such temporary or seasonal employees will not be considered for purposes of sections five and seven of this article; or

(ii) A regular, part-time and permanent basis: Provided, That such person is customarily performing such duties at least twenty hours per week for at least six months during the taxable year.

(5) Leased property. — The term "leased property" does not include property which the taxpayer is required to show on its books and records as an asset under generally accepted principles of financial accounting. If the taxpayer is prohibited from expensing the lease payments for federal income tax purposes, the property shall be treated as purchased property under this section if the property was purchased on or after the tenth day of March, one thousand nine hundred ninety.

(6) Small business. — The term "small business" means a small business which has an annual payroll of one million seven hundred thousand dollars or less, and annual gross receipts of not more than five million five hundred thousand dollars: Provided, That on or before the fifteenth of January, one thousand nine hundred ninety-one, and on or before each fifteenth day of January thereafter, the tax commissioner shall prescribe amounts which shall apply in lieu of the above amounts for taxable years beginning on or after the first day of January of the calendar year in which determination is made. The prescribed amounts shall be determined in accordance with section seven-a of this article and notice thereof shall be filed in the state register. The requirements for annual payroll and annual gross receipts, once met by a given taxpayer in that taxable year when qualified investment is first placed in service or use shall not again be applied to that same taxpayer in subsequent years to defeat the small business credit to which the taxpayer gained entitlement in that year. However, the median compensation requirements applicable to any
small business, except a small business entitled to a
certified project credit, shall be determined when qualified
investment is first placed in service or use; and
subsequently redetermined inflation adjusted amounts for
median compensation for each year shall be the
requirements applicable to that small business for each
year throughout the ten-year credit period and any further
carryover or other extended credit period for the original
credit to which the requirements relate. For purposes of
this definition:

(A) Annual Payroll. — The annual payroll of a
business shall include the employees of its domestic and
foreign affiliates, whether employed on a full-time,
part-time, temporary, or other basis, during the preceding
twelve months. If a business has not been in existence for
twelve months, the payroll of the business shall be divided
by the number of weeks, including fractions of a week,
that it has been in business, and the result multiplied by
fifty-two. That amount shall then be added to the twelve
month payrolls of its domestic and foreign affiliates to
determine the annual payroll of the business for purposes
of this section.

(B) Annual gross receipts. — The annual gross
receipts of a business shall include the annual gross
receipts of its foreign and domestic affiliates.

(i) The "annual gross receipts" of a business which has
been in business for three or more complete fiscal years
means the annual gross revenues of the business for the
last three fiscal years. For purposes of this definition, the
gross revenues of the business includes revenues from
sales of tangible personal property and services, interest,
rents, royalties, fees, commissions and receipts from any
other source, but less returns and allowances, sales of fixed
assets, interaffiliated transactions between a business and
its domestic and foreign affiliates, and taxes collected for
remittance to a third party, as shown on its books for
federal income tax purposes.

(ii) The annual receipts of a business that has been in
business for less than three complete fiscal years means its
total receipts for the period it has been in business, divided
by the number of weeks including fractions of a week that it has been in business, and multiplied by fifty-two.

(C) Affiliates. — The term "affiliates" includes all concerns which are affiliates of each other when either directly or indirectly: (i) One concern controls or has the power to control the other; or (ii) a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management and contractual relationships.

(D) Concern. — The term "concern" means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity), having a place of business located in this state, and which makes a contribution to the economy of this state through payment of taxes, or the sale or use in this state of tangible personal property, or the procurement or providing of services in this state, or the hiring of employees who work in this state. "Concern" includes, but is not limited to, any person as defined in paragraph eighteen, subsection (b), section three of this article.

(f) Application for credit required.

(1) Application required. — Notwithstanding any provision of this article to the contrary, no credit shall be allowed or applied under this article for any qualified investment property placed in service or use on or after the first day of January, one thousand nine hundred ninety, until the person asserting a claim for the allowance of credit under this article makes written application to the tax commissioner for allowance of credit as provided in this subsection and receives written acknowledgment of its receipt from tax commissioner: Provided, That in the case of a multiparticipant project this notice may be filed by the managing project participant on behalf of all participants in that project. An application for credit shall be filed no later than the last day of the due date, without extensions, for filing the tax returns required under article twenty-one or twenty-four of this chapter for the taxable year in which the property to which the credit relates is placed in service or use and all information required by such form shall be provided.
(2) Failure to file. — The failure to timely apply for the credit shall result in the forfeiture of fifty percent of the annual credit allowance otherwise allowable under this article. This penalty shall apply annually until such application is filed.

(g) Effective date.

1. Except as otherwise expressly provided in this section, the provisions of this section shall apply to property placed in service or use on or after the tenth day of March, one thousand nine hundred ninety, notwithstanding any provision of prior law which may be in conflict with this section. In the case of any such ambiguity, the provisions of this section shall control resolution of such ambiguity.

2. The amendments to this section enacted in the year, one thousand nine hundred ninety-eight, shall be retroactive, and shall be effective for tax years beginning on or after the first day of January, one thousand nine hundred ninety-five.

CHAPTER 299

(Com. Sub. for H. B. 4308—By Mr. Speaker, Mr. Kiss, and Delegates Beach, Pettit, Michael, Mezzatesta, Warner and Amores)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]
steel products manufacturing facility after the first day of July, one thousand nine hundred ninety-eight; setting forth legislative purpose; specifying definitions; providing that the credit applies to wrought nickel-based products; setting eligibility for credit; creation of the credit; amount of credit allowed; expiration of the credit; annual credit allowance; proration of credit; annual computation; credit to successors; credit recapture; administrative rules; construction and effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13N. TAX CREDIT FOR NEW STEEL MANUFACTURING OPERATIONS AFTER JULY 1, 1998.

§11-13N-1. Legislative purpose.
§11-13N-3. Eligibility for tax credits; creation of the credit.
§11-13N-4. Amount of credit allowed; expiration of the credit.
§11-13N-5. Application of annual credit allowance.
§11-13N-6. Proration of credit among partners, members of limited liability companies, or shareholders in small business corporations.
§11-13N-7. Annual computation of the number of new jobs held by full-time employees.
§11-13N-8. Availability of credit to successors.
§11-13N-9. Credit recapture; interest; penalties; additions to tax; statute of limitations.
§11-13N-10. Administrative rules.
§11-13N-12. Effective date.

§11-13N-1. Legislative purpose.

The Legislature finds that production of value-added steel products is very important to the economy of this state and that a sound economy is in the public interest and promotes the general welfare of the people of this state. In order to encourage capital investment in this
state, through the manufacture of value-added steel
products after the thirtieth day of June, one thousand nine
hundred ninety-eight, thereby increasing employment and
economic development, there is hereby provided to
eligible taxpayers a credit for each new job filled by a
full-time hourly employee who works in a new value-
added steel product manufacturing facility, or in a new
value-added steel product line of an existing
manufacturing facility, that begins operating in this state
after the thirtieth day of June, one thousand nine hundred
ninety-eight.


(a) General. — When used in this article, or in the
administration of this article, terms defined in subsection
(b) of this section have the meanings ascribed to them by
this section, unless a different meaning is clearly required
by the context in which the term is used.

(b) Terms defined. —

(1) "Affiliate" means and includes all persons, as
defined in this section, which are affiliates of each other
when either directly or indirectly:

(A) One person controls or has the power to control
the other; or

(B) A third party or third parties control or have the
power to control two persons, the two thus being affiliates.

In determining whether concerns are independently
owned and operated and whether or not an affiliation
exists, consideration shall be given to all appropriate
factors, including common ownership, common
management and contractual relationships.

(2) "Commissioner" or "tax commissioner" means the
tax commissioner of the state of West Virginia, or the tax
commissioner's designee.

(3) "Corporation" includes any corporation, a joint-
stock company and any association or other organization
which is classified as a corporation under federal income
tax law.
(4) "Designee," when used in reference to the tax commissioner, means any officer or employee of the tax division of the department of tax and revenue duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(5) "Eligible taxpayer" means a person who after the thirtieth day of June, one thousand nine hundred ninety-eight, begins manufacturing a value-added steel product at a new manufacturing facility located in this state, or begins manufacturing a new value-added steel product line at an existing manufacturing facility located in this state, which results in the creation of new jobs filled by full-time employees.

(6) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the person for whom the individual performs or performed the service does not have control of the payment of wages for such services, the term "employer" means the person having control of the payment of such wages.

(7) "Existing manufacturing facility" means a building which, at anytime during the twelve months preceding the month in which manufacture of a value-added steel product begins, was used by the taxpayer, or by a related person, to manufacture tangible personal property.

(8) "Full-time employee" means a permanent hourly employee of an eligible taxpayer, who is a West Virginia domiciled resident, and works in a new value-added steel product manufacturing facility in this state, or in a new value-added steel product line of an existing manufacturing facility in this state, more than eighteen hundred hours during the entire twelve-month period ending on the last day of the taxable year of the eligible employer, whether these hours are hours worked at the manufacturing facility, or include hours of employer paid vacation leave or other employer paid leave. Full-time employee does not include an employee who is a part-time, seasonal or temporary employee.
(9) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, of the United States.

(10) "Manufacturing facility" means any facility which is used in the manufacturing of tangible personal property (including processing resulting in a change in the condition of such property).

(11) "New value-added steel product line" means the manufacture of a value-added steel product in an existing manufacturing facility in this state that first begins manufacturing the new value-added steel product line after the thirtieth day of June, one thousand nine hundred ninety-eight.

(12) "New value-added steel product manufacturing facility" means a building that is primarily used by the eligible taxpayer to manufacture a value-added steel product that is first placed in service and used for that purpose by the eligible taxpayer after the thirtieth day of June, one thousand nine hundred ninety-eight. If the facility was used by the taxpayer, or by a related person, to manufacture tangible personal property at any time during the twelve months preceding the month in which the facility is first used by the taxpayer to manufacture a value-added steel product, the building is not a new value-added steel product manufacturing facility.

(13) "New job" means a job at a new value-added steel product manufacturing facility located in this state, or at a new value-added steel product line at an existing manufacturing facility located in this state, which did not exist in this state with any employer as of the first day of the second calendar month preceding the calendar month in which the new value-added steel product manufacturing facility begins to manufacture value-added steel products, or in which the new value-added steel product line begins to manufacture value-added steel products in an existing manufacturing facility located in this state, that is filled by a full-time employee of the eligible taxpayer.

(14) "Partnership" means and includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business,
104 financial operation or venture is carried on, which is
105 classified as a partnership for federal income tax purposes
106 for the taxable year.

107 (15) "Partner" includes a member in a syndicate,
108 group, pool, joint venture or organization classified as a
109 partnership for federal income tax purposes for the
110 taxable year.

111 (16) "Part-time employee" means any employee who
112 normally works twenty hours or less per week.

113 (17) "Seasonal employee" means an employee who
114 normally works on a full-time basis less than five months
115 in a year.

116 (18) "Temporary employee" means an employee
117 performing services under a contractual arrangement with
118 the employer of two years or less duration.

119 (19) "Person" means and includes an individual, a
120 trust, estate, partnership, association, company or
121 corporation.

122 (20) "Related entity," "related person," "entity related
to" or "person related to" means:

124 (A) An individual, corporation, partnership, affiliate,
125 association or trust or any combination or group thereof
126 controlled by the taxpayer;

127 (B) An individual, corporation, partnership, affiliate,
128 association or trust or any combination or group thereof
129 that is in control of the taxpayer;

130 (C) An individual, corporation, partnership, affiliate,
131 association or trust or any combination or group thereof
132 controlled by an individual, corporation, partnership,
133 affiliate, association or trust or any combination or group
134 thereof that is in control of the taxpayer; or

135 (D) A member of the same controlled group as the
136 taxpayer. For purposes of this subdivision (20), "control,"
137 with respect to a corporation, means ownership, directly or
138 indirectly, of stock possessing fifty percent or more of the
139 total combined voting power of all classes of the stock of
the corporation which entitles its owner to vote. "Control," with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) of the Internal Revenue Code. Provided, That paragraph (3) of section 267(c) of the Internal Revenue Code shall not apply.

(21) "Tax year" or "taxable year," means the tax year of the taxpayer for federal income tax purposes.

(22) "Taxpayer" means any person subject to the tax imposed by article twenty-one, twenty-three or twenty-four of this chapter.

(23) "Value-added steel product" means any product that adds to, increases or enhances the value of any raw, base or unimproved steel or wrought nickel-based product through processes including, but not limited to, anodization, coating, fabrication, machining, molding, melting, stamping and any other processing which adds value.

§11-13N-3. Eligibility for tax credits; creation of the credit.

There shall be allowed to every eligible taxpayer a credit against the taxes imposed in articles twenty-one, twenty-three and twenty-four of this chapter. The amount of this credit shall be determined and applied as provided in this article.

§11-13N-4. Amount of credit allowed; expiration of the credit.

(a) Credit allowable. — The amount of annual credit allowable under this article to an eligible taxpayer shall be two hundred fifty dollars for each new job at a new value-added steel product manufacturing facility located in this state, or at a new value-added steel product line of an existing manufacturing facility located in this state, that is filled by a full-time employee of the eligible taxpayer during the taxable year, subject to the following:
(1) When the new value-added steel product manufacturing facility, or the new steel product line of an existing value-added steel product manufacturing facility, is in operation for less than twelve months of the taxable year in which it is placed in service, the credit allowed by subsection (a) of this section shall be prorated by the ratio that the number of months in the taxpayer's taxable year during which the new value-added steel products facility, or the new products line of an existing value-added steel product manufacturing facility, was in service bears to twelve.

(2) When the eligible taxpayer stops manufacturing value-added steel products at the new value-added steel product manufacturing facility, or at the new steel product line of an existing value-added steel product manufacturing facility, during the taxable year, the credit allowed by subsection (a) of this section shall be prorated by the ratio that the number of months in the taxpayer's taxable year during which the new value-added steel products facility, or the new products line of an existing value-added steel product manufacturing facility, was in operation manufacturing value-added steel product bears to twelve.

(3) When determining the number of full-time employees who fill new jobs at the new value-added steel product manufacturing facility located in this state, or who fill new jobs at a new value-added steel product line of an existing manufacturing facility located in this state, the eligible taxpayer shall not include any position occupied by any employee of the eligible taxpayer, or of a related person, which existed in this state as of the first day of the second calendar month preceding the calendar month in which the new value-added steel product manufacturing facility, or a new value-added steel product line at an existing value-added steel products manufacturing facility first becomes operational, whether such positions are filled by permanent, seasonal, temporary or part-time employees.

(4) The amount of credit allowable each taxable year shall be calculated annually based upon the number of
new jobs filled by full-time employees during the taxable year: Provided, That the credit provided for in this article may only be taken one time for each new job created, and once claimed in a tax year for a new job the credit may not be claimed in a subsequent year for that position.

(b) Expiration of credit. — This credit shall expire on the first day of July, two thousand five. When the first day of July in the year two thousand five falls during the taxable year of the eligible taxpayer, the amount of credit allowable for that taxable year shall be limited to that portion of the amount of credit that would have been allowable had the credit not expired multiplied by the ratio of the number of months during taxpayers taxable year ending before the first day of July, two thousand five, bears to twelve.

§11-13N-5. Application of annual credit allowance.

(a) Application of credit against business franchise tax. — The amount of credit allowed under section four of this article shall first be applied against the eligible taxpayer's liability for the tax imposed by article twenty-three of this chapter that is attributable to a new value-added steel product manufacturing facility located in this state and to a new value-added steel product production line at an existing manufacturing facility located in this state.

(b) Application of remaining credit against income tax. — After application of the allowable credit against the tax imposed by article twenty-three of this chapter, as provided in subsection (a) of this section, any remaining credit may be applied against the taxes imposed by article twenty-one or twenty-four of this chapter to the extent those taxes are attributable to a new value-added steel product manufacturing facility located in this state and to a new value-added steel product production line at an existing manufacturing facility located in this state: Provided, That no credit shall be allowed against employer withholding taxes due under article twenty-one of this chapter.
(c) *Excess credit carried over.* — If after application of subsections (a) and (b) of this section, any credit remains for the taxable year, the amount remaining may be carried over and applied as a credit against the tax liability of the taxpayer in accordance with this section to each of the next five taxable years unless sooner used. Unused credit may not be carried back to any prior taxable year.

(d) *Application of this credit when other credits apply.* — The credit allowed under this article shall be applied after application of all other applicable tax credits allowed for the taxable year against the taxes imposed by article twenty-one, twenty-three or twenty-four of this chapter.

(e) *Completion of annual schedule to assert credit.* — To assert this credit against tax, the eligible taxpayer shall prepare and file with the annual tax return filed under article twenty-one, twenty-three or twenty-four of this chapter, an annual schedule showing the amount of tax paid for the taxable year, and the amount of credit allowed under this article. This annual schedule shall set forth the information and be in the form prescribed by the tax commissioner.

(f) *Payments of estimated tax.* — A taxpayer may consider the amount of credit allowed under this article when determining the taxpayer's liability under articles twenty-one, twenty-three and twenty-four of this chapter for periodic payments of estimated tax for the taxable year, in accordance with the procedures and requirements prescribed by the tax commissioner. The annual total tax liability and total tax credit allowed under this article are subject to adjustment and reconciliation pursuant to the filing of the annual schedule required by subsection (e) of this section.

§11-13N-6. **Proration of credit among partners, members of limited liability companies, or shareholders in small business corporations.**

The amount of credit allowed under this article for the taxable year to a partnership or limited liability company classified as a partnership for the taxable year, or to an
electing small business corporation, that remains after
application the credit against the tax imposed by article
twenty-three of this chapter as provided in subsection (a),
section five of this article shall be allocated to the
individual partners, members or shareholders, as the case
may be, in proportion to their ownership interest in the
partnership, limited liability company or electing small
business corporation. The amount of credit allocated to
the individual partners, members or shareholders, as the
case may be, may be applied against the taxes imposed by
articles twenty-one and twenty-four of this chapter in
accordance with the rule set forth in subsection (b), section
five of this article.

§11-13N-7. Annual computation of the number of new jobs
held by full-time employees.

(a) The eligible taxpayer shall annually determine the
number of new jobs held by full-time permanent
employees of the eligible taxpayer in the taxable year by
calculating the average number of full-time employees
holding jobs for each month of the taxable year by
averaging the beginning and ending monthly
employment of full-time employees, then totaling the
monthly averages and dividing that total by twelve.

(b) The eligible taxpayer shall also annually determine
the number of new jobs filled during the taxable year by
full-time employees of the eligible taxpayer employed
at a new value-added product manufacturing facility, or
at a new value-added steel product line at an existing
manufacturing facility, located in this state that is owned
or operated by the eligible taxpayer, by calculating the
average number of new jobs held by full-time employees
for each month of the taxable year by averaging the
beginning and ending monthly employment of full-time
employees holding new jobs, then totaling the monthly
averages and dividing that total by twelve.

(c) Preexisting jobs carried over from a corporation or
other entity merged with the taxpayer, and not reflective
of a true increase in the number of new jobs in West
Virginia, or preexisting jobs formerly in place with a
contract service provider which are taken over or
supplanted by the internal operations of the taxpayer, or
any other increase in the count of jobs in place with a
taxpayer which is not reflective of new jobs, as defined in
section two of this article, shall not count as new jobs for
purposes of the credit allowed under this article.

(d) The tax commissioner may prescribe by rule
alternative methods for determining the number of jobs
held by full-time permanent employees in the taxable year
upon a finding by the tax commissioner that an alternative
method is appropriate for ascertaining an accurate and
realistic determination of new jobs held by full-time
employees in the taxable year. For purposes of
prescribing alternative methods, the tax commissioner may
require the deduction or inclusion of jobs in place with
contract service providers that provide or at any time
provided any service to any eligible taxpayer or to any
member of the affiliated group related to any eligible
taxpayer or to any one or more entities related to the
eligible taxpayer: Provided, That deduction, or inclusion
of those jobs shall only pertain to jobs held by employees
of the contract service provider that are attributable or that
were formerly attributable to the service provided by the
contract service provider to the taxpayer. The tax
commissioner may require any deconsolidation of any
filing entity, or may require an alternative method based
on separate accounting, unitary combination, combination
of the affiliated group or combination of the taxpayer and
one or more entities related to the taxpayer, or any other
method determined by the tax commissioner to be
appropriate for ascertaining an accurate and realistic
determination of new jobs held by full-time employees in
the taxable year.

§11-13N-8. Availability of credit to successors.

(a) Transfer or sale. — When there is a transfer or sale
of the business assets of an eligible taxpayer to a successor
taxpayer which continues to operate the new value-added
steel product manufacturing facility located in this state,
or the new value-added steel product line of an existing
manufacturing facility located in this state, the successor
taxpayer is entitled to the credit allowed under this article:
Provided, That the successor taxpayer otherwise remains in compliance with the requirements of this article for entitlement to the credit.

(b) Allocation of credit between eligible taxpayer and successor eligible taxpayer. — For any taxable year during which a transfer, or sale of the business assets of an eligible taxpayer to a successor taxpayer under this section occurs, or a merger allowed under this section occurs, the credit allowed under this article shall be apportioned between the predecessor eligible taxpayer and the successor taxpayer based on the number of days during the taxable year that each taxpayer acted as the legal employer of individuals filling new jobs for which the credit allowed under this article is based and the number of days during the taxable year that each taxpayer owned the new value-added steel product manufacturing facility located in this state, or the new value-added steel product line of an existing manufacturing facility located in this state.

(c) Stock purchases. — When a corporation which is an eligible taxpayer entitled to the credit allowed under this article is purchased through a stock purchase by a new owner, and the corporation remains a legal entity so as to retain its corporate identity, the entitlement of that corporation to the credit allowed under this article will not be affected by the ownership change.

(d) Mergers. —

(1) When a corporation or other entity which is an eligible taxpayer entitled to the credit allowed under this article is merged with another corporation, or entity, the surviving corporation, or entity, shall be entitled to the credit to which the predecessor eligible taxpayer was originally entitled only if the surviving corporation, or entity, otherwise complies with the provisions of this article.

(2) The amount of credit available in any taxable year during which a merger occurs shall be apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer based on the number of days during the taxable year that each taxpayer acted as the
legal employer of employees holding the new jobs upon which the credit allowed under this article is based and the number of days during the taxable year that each owned the transferred business assets: Provided, That when the taxable year of the predecessor eligible taxpayer and the taxable year of the successor eligible taxpayer are different, the apportionment shall be made in accordance with legislative rules prescribed by the tax commissioner.

(e) No provision of this section or of this article shall be construed to allow sales or other transfers of the tax credit allowed under this article. The credit allowed under this article may be transferred only in circumstances where there is a valid successorship as described under this section.

§11-13N-9. Credit recapture; interest; penalties; additions to tax; statute of limitations.

(a) If it appears upon audit or otherwise that any person has improperly claimed the credit allowed by this article, the amount improperly claimed and which the person was not entitled to take shall be recaptured. Amended returns shall be filed for any taxable year for which the credit was improperly taken. Any additional taxes due under this chapter shall be remitted with the amended return or returns filed with the tax commissioner, along with interest, as provided in section seventeen, article ten of this chapter, and a ten percent penalty plus such other penalties and additions to tax as may be applicable under the provisions of article ten of this chapter.

(b) Recapture for jobs lost. —

(1) In any tax year the number of individuals employed in full-time positions by the eligible taxpayer decreases by more than ten percent, credit recapture shall apply, and the taxpayer shall return to the state an amount of tax determined by multiplying five hundred dollars by the number of full-time jobs lost which exceed ten percent. An amended return shall be filed for the tax year for which credit recapture is required. Any additional taxes due under this chapter shall be remitted with the amended return filed with the tax commissioner, along with interest, as provided in section seventeen, article ten of this chapter, and a ten percent penalty plus such other
penalties and additions to tax as may be applicable under the provisions of article ten of this chapter.

(2) Notwithstanding the provisions of article ten of this chapter, penalties and additions to tax imposed under article ten of this chapter and the ten percent penalty imposed under this section may be waived, in whole or in part, at the discretion of the tax commissioner. However, interest may not be waived.

(c) Notwithstanding the provisions of article ten of this chapter, the time within which a notice of assessment may be issued by the tax commissioner to recover recapture tax shall be five years from the date of filing of any tax return on which this credit was taken or five years from the date of payment of any tax liability calculated pursuant to the assertion of the credit allowed under this article, whichever is later.

§11-13N-10. Administrative rules.

The tax commissioner may prescribe such rules as may be necessary to carry out the purposes of this article, including, but not limited to, rules relating to applicability of credit, method of claiming of credit, credit recapture, documentation necessary to claim credit and rules preventing abuse of this article by related persons or by change in the form of doing business. All rules promulgated under this article shall be promulgated in accordance with article three, chapter twenty-nine-a of this code.


The provisions of this article shall be reasonably construed. The burden of proof is on the person claiming the credit allowed by this article to establish by clear and convincing evidence that the person is entitled to the amount of credit asserted for the taxable year.

§11-13N-12. Effective date.

This article shall be effective for taxable years beginning on or after the first day of July, one thousand nine hundred ninety-eight.
CHAPTER 300

(Com. Sub. for H. B. 4326—By Mr. Speaker, Mr. Kiss, and Delegates Beach, Kelley, Michael, Mezzatesta and Martin)

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

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-o, relating to allowing a tax credit of two hundred fifty dollars per full-time hourly employees for eligible taxpayers engaged in new aluminum or polymer manufacturing operations manufacturing value-added products and beginning operations within this state after the first day of July, one thousand nine hundred ninety-eight, or for the addition of a new product or line of an existing value-added aluminum or polymer product manufacturing facility after the first day of July, one thousand nine hundred ninety-eight, or for the addition of a new product or line of an existing value-added aluminum or polymer product manufacturing facility after the first day of July, one thousand nine hundred ninety-eight; setting forth legislative purpose; specifying definitions; setting eligibility for credit; creation of the credit; amount of credit allowed; expiration of the credit; annual credit allowance; proration of credit; annual computation; credit to successors; credit recapture; administrative rules; construction and effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13O. TAX CREDIT FOR NEW ALUMINUM OR POLYMER MANUFACTURING OPERATIONS AFTER JULY 1, 1998.

§11-13O-1. Legislative purpose.
§11-13O-3. Eligibility for tax credits; creation of the credit.
§11-13O-4. Amount of credit allowed; expiration of the credit.
§11-13O-5. Application of annual credit allowance.
§11-130-6. Proration of credit among partners, members of limited liability companies, or shareholders in small business corporations.

§11-130-7. Annual computation of the number of new jobs held by full-time employees.

§11-130-8. Availability of credit to successors.

§11-130-9. Credit recapture; interest; penalties; additions to tax; statute of limitations.

§11-130-10. Administrative rules.

§11-130-11. Construction of article.

§11-130-12. Effective date.

§11-130-1. Legislative purpose.

1 The Legislature finds that production of value-added products is very important to the economy of this state and that a sound economy is in the public interest and promotes the general welfare of the people of this state. In order to encourage capital investment in this state, through the manufacture of value-added aluminum and polymer products after the thirtieth day of June, one thousand nine hundred ninety-eight, thereby increasing employment and economic development, there is hereby provided to eligible taxpayers a credit for each new job filled by a full-time hourly employee who works in a new value-added aluminum or polymer product manufacturing facility, or in a new value-added aluminum or polymer product line of an existing manufacturing facility, that begins operating in this state after the thirtieth day of June, one thousand nine hundred ninety-eight.

§11-130-2. Definitions.

1 (a) General. — When used in this article, or in the administration of this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by the context in which the term is used.

(b) Terms defined. —

1 (1) "Affiliate" means and includes all persons, as defined in this section, which are affiliates of each other when either directly or indirectly:
(A) One person controls or has the power to control the other; or

(B) A third party or third parties control or have the power to control two persons, the two thus being affiliates. In determining whether concerns are independently owned and operated and whether or not an affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management and contractual relationships.

(2) “Commissioner” or “tax commissioner” means the tax commissioner of the state of West Virginia or the tax commissioner’s delegate.

(3) “Corporation” includes any corporation, a joint-stock company and any association or other organization which is classified as a corporation under federal income tax law.

(4) “Delegate”, when used in reference to the tax commissioner, means any officer or employee of the tax division of the department of tax and revenue duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(5) “Eligible taxpayer” means a person who after the thirtieth day of June, one thousand nine hundred ninety-eight, begins manufacturing a value-added aluminum or polymer product at a new manufacturing facility located in this state, or begins manufacturing a new value-added aluminum or polymer product line at an existing manufacturing facility located in this state, which results in the creation of new jobs filled by full-time employees.

(6) “Employer” means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the person for whom the individual performs or performed the service does not have control of the payment of wages for such services, the term “employer” means the person having control of the payment of such wages.
(7) "Existing manufacturing facility" means a building which at anytime during the twelve months preceding the month in which manufacture of a value-added aluminum or polymer product begins was used by the taxpayer, or by a related person, to manufacture tangible personal property.

(8) "Full-time employee" means a permanent hourly employee of an eligible taxpayer, who is a West Virginia domiciled resident, and works in a new value-added aluminum or polymer product manufacturing facility in this state, or in a new value-added aluminum or polymer product line of an existing manufacturing facility in this state, more than eighteen hundred hours during the entire twelve-month period ending on the last day of the taxable year of the eligible employer, whether these hours are hours worked at the manufacturing facility, or include hours of employer paid vacation leave or other employer paid leave. Full-time employee does not include an employee who is a part-time, seasonal or temporary employee.

(9) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, of the United States.

(10) "Manufacturing facility" means any facility which is used in the manufacturing of tangible personal property (including processing resulting in a change in the condition of such property).

(11) "New value-added aluminum or polymer product line" means the manufacture of a value-added aluminum or polymer product in an existing manufacturing facility in this state that first begins manufacturing the new value-added aluminum or polymer product line after the thirtieth day of June, one thousand nine hundred ninety-eight.

(12) "New value-added aluminum product manufacturing facility" means a building that is primarily used by the eligible taxpayer to manufacture a value-added aluminum product that is first placed in service and used for that purpose by the eligible taxpayer after the thirtieth day of June, one thousand nine hundred ninety-
eight. If the facility was used by the taxpayer, or by a related person, to manufacture tangible personal property at any time during the twelve months preceding the month in which the facility is first used by the taxpayer to manufacture a value-added aluminum or polymer product, the building is not a new value-added aluminum or polymer product manufacturing facility.

(13) "New job" means a job at a new value-added aluminum or polymer product manufacturing facility located in this state, or at a new value-added aluminum or polymer product line at an existing manufacturing facility located in this state, which did not exist in this state with any employer as of the first day of the second calendar month preceding the calendar month in which the new value-added aluminum or polymer product manufacturing facility begins to manufacture value-added aluminum or polymer products, or in which the new value-added aluminum or polymer product line begins to manufacture value-added aluminum or polymer products in an existing manufacturing facility located in this state, that is filled by a full-time employee of the eligible taxpayer.

(14) "Partnership" means and includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, which is classified as a partnership for federal income tax purposes for the taxable year.

(15) "Partner" includes a member in a syndicate, group, pool, joint venture or organization classified as a partnership for federal income tax purposes for the taxable year.

(16) "Part-time employee" means any employee who normally works twenty hours or less per week.

(17) "Seasonal employee" means an employee who normally works on a full-time basis less than five months in a year.
(18) "Temporary employee" means an employee performing services under a contractual arrangement with the employer of two years or less duration.

(19) "Person" means and includes an individual, a trust, estate, partnership, limited liability company, association, company or corporation.

(20) "Related entity", "related person", "entity related to" or "person related to" means:

(A) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by the taxpayer;

(B) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer;

(C) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer. For purposes of subdivision (3) of this subsection, "control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of the corporation which entitles its owner to vote. "Control," with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) of the Internal Revenue Code: Provided, That paragraph (3) of section 267(c) of the Internal Revenue Code shall not apply.
(21) "Tax year" or "taxable year," means the tax year of the taxpayer for federal income tax purposes.

(22) "Taxpayer" means any person subject to the tax imposed by articles twenty-one, twenty-three or twenty-four of this chapter.

(23) "Value-added aluminum or polymer product" means any product that adds to, increases or enhances the value of any raw, base or unimproved aluminum or polymer product through processes including, but not limited to, anodization, coating, fabrication, machining, molding, extraction, stamping and any other processing which adds value.

§11-130-3. Eligibility for tax credits; creation of the credit.

There shall be allowed to every eligible taxpayer a credit against the taxes imposed in articles twenty-one, twenty-three and twenty-four of this chapter. The amount of this credit shall be determined and applied as provided in this article.

§11-130-4. Amount of credit allowed; expiration of the credit.

(a) Credit allowable. — The amount of annual credit allowable under this article to an eligible taxpayer shall be two hundred fifty dollars for each new job at a new value-added aluminum or polymer product manufacturing facility located in this state, or at a new value-added aluminum or polymer product line of an existing manufacturing facility located in this state, that is filled by a full-time employee of the eligible taxpayer during the taxable year, subject to the following:

(1) When the new value-added aluminum or polymer product manufacturing facility, or the new aluminum or polymer product line of an existing value-added aluminum or polymer product manufacturing facility, is in operation for less than twelve months of the taxable year in which it is placed in service, the credit allowed by subsection (a) of this section shall be prorated by the ratio that the number of months in the taxpayer's taxable year during which the new value-added aluminum or polymer product facility, or the new products line of an existing
value-added aluminum or polymer product manufacturing facility, was in service bears to twelve;

(2) When the eligible taxpayer stops manufacturing value-added aluminum or polymer products at the new value-added aluminum product manufacturing facility, or at the new aluminum or polymer product line of an existing value-added aluminum or polymer product manufacturing facility, during the taxable year, the credit allowed by subsection (a) of this section shall be prorated by the ratio that the number of months in the taxpayer's taxable year during which the new value-added aluminum or polymer product facility, or the new products line of an existing value-added aluminum or polymer product manufacturing facility, was in operation manufacturing value-added aluminum or polymer products bears to twelve;

(3) When determining the number of full-time employees who fill new jobs at the new value-added aluminum or polymer product manufacturing facility located in this state, or who fill new jobs at a new value-added aluminum or polymer product line of an existing manufacturing facility located in this state, the eligible taxpayer shall not include any position occupied by any employee of the eligible taxpayer, or of a related person, which existed in this state as of the first day of the second calendar month preceding the calendar month in which the new value-added aluminum or polymer product manufacturing facility, or a new value-added aluminum or polymer product line at an existing value-added aluminum or polymer products manufacturing facility first becomes operational, whether such positions are filled by permanent, seasonal, temporary or part-time employees;

(4) The amount of credit allowable each taxable year shall be calculated annually based upon the number of new jobs filled by full-time employees during the taxable year: Provided, That the credit provided for in this article may only be taken one time for each new job created, and once claimed in a tax year for a new job the credit may not be claimed in a subsequent year for that position.
(b) **Expiration of credit.** — This credit shall expire on the first day of July, two thousand two. When the first day of July in the year two thousand two falls during the taxable year of the eligible taxpayer, the amount of credit allowable for that taxable year shall be limited to that portion of the amount of credit that would have been allowable had the credit not expired multiplied by the ratio the number of months during taxpayers taxable year ending before the first day of July, two thousand two, bears to twelve.

§11-13O-5. **Application of annual credit allowance.**

(a) **Application of credit against business franchise tax.** — The amount of credit allowed under section four of this article shall first be applied against the eligible taxpayer’s liability for the tax imposed by article twenty-three of this chapter that is attributable to a new value-added aluminum or polymer product manufacturing facility located in this state and to a new value-added aluminum or polymer product production line at an existing manufacturing facility located in this state.

(b) **Application of remaining credit against income tax.** — After application of the allowable credit against the tax imposed by article twenty-three of this chapter, as provided in subsection (a) of this section, any remaining credit may be applied against the taxes imposed by article twenty-one or twenty-four of this chapter to the extent those taxes are attributable to a new value-added aluminum or polymer product manufacturing facility located in this state and to a new value-added aluminum or polymer product production line at an existing manufacturing facility located in this state: **Provided,** That no credit shall be allowed against employer withholding taxes due under article twenty-one of this chapter.

(c) **Excess credit forfeited.** — If after application of subsections (a) and (b) of this section, any credit remains for the taxable year, the amount remaining and not used is forfeited. Unused credit may not be carried back to any prior taxable year and shall not carry forward to any subsequent taxable year.
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29 (d) Application of this credit when other credits apply. — The credit allowed under this article shall be applied after application of all other applicable tax credits allowed for the taxable year against the taxes imposed by article twenty-one, twenty-three or twenty-four of this chapter.

34 (e) Completion of annual schedule to assert credit. — To assert this credit against tax, the eligible taxpayer shall prepare and file with the annual tax return filed under article twenty-one, twenty-three or twenty-four of this chapter, an annual schedule showing the amount of tax paid for the taxable year, and the amount of credit allowed under this article. This annual schedule shall set forth the information and be in the form prescribed by the tax commissioner.

43 (f) Payments of estimated tax. — A taxpayer may consider the amount of credit allowed under this article when determining the taxpayer's liability under articles twenty-one, twenty-three and twenty-four of this chapter for periodic payments of estimated tax for the taxable year, in accordance with the procedures and requirements prescribed by the tax commissioner. The annual total tax liability and total tax credit allowed under this article are subject to adjustment and reconciliation pursuant to the filing of the annual schedule required by subsection (e) of this section.

§11-13O-6. Proration of credit among partners, members of limited liability companies, or shareholders in small business corporations.

1 The amount of credit allowed under this article for the taxable year to a partnership or limited liability company classified as a partnership for the taxable year, or to an electing small business corporation, that remains after application the credit against the tax imposed by article twenty-three of this chapter as provided in subsection (a), section five of this article shall be allocated to the individual partners, members or shareholders, as the case may be, in proportion to their ownership interest in the partnership, limited liability company or electing small business corporation. The amount of credit allocated to the individual partners, members or shareholders, as the
case may be, may be applied against the taxes imposed by
articles twenty-one and twenty-four of this chapter in
accordance with the rule set forth in subsection (b), section
two of this article.

§11-13O-7. Annual computation of the number of new jobs
held by full-time employees.

(a) The eligible taxpayer shall annually determine the
number of new jobs held by full-time permanent
employees of the eligible taxpayer in the taxable year by
calculating the average number of full-time employees
holding jobs for each month of the taxable year by
averaging the beginning and ending monthly
employment of full-time employees, then totaling the
monthly averages and dividing that total by twelve.

(b) The eligible taxpayer shall also annually determine
the number of new jobs filled during the taxable year by
full-time employees of the eligible taxpayer employed
at a new value-added aluminum or polymer product
manufacturing facility, or at a new value-added aluminum
or polymer product line at an existing manufacturing
facility, located in this state that is owned or operated by
the eligible taxpayer, by calculating the average number
of new jobs held by full-time employees for each month
of the taxable year by averaging the beginning and
ending monthly employment of full-time employees
holding new jobs, then totaling the monthly averages and
dividing that total by twelve.

(c) Preexisting jobs carried over from a corporation or
other entity merged with the taxpayer, and not reflective
of a true increase in the number of new jobs in West
Virginia, or preexisting jobs formerly in place with a
contract service provider which are taken over or
supplanted by the internal operations of the taxpayer, or
any other increase in the count of jobs in place with a
taxpayer which is not reflective of new jobs, as defined in
section two of this article, shall not count as new jobs for
purposes of the credit allowed under this article.

(d) The tax commissioner may prescribe by rule
alternative methods for determining the number of jobs
34 held by full-time permanent employees in the taxable year
35 upon a finding by the tax commissioner that an alternative
36 method is appropriate for ascertaining an accurate and
37 realistic determination of new jobs held by full-time
38 employees in the taxable year. For purposes of
39 prescribing alternative methods, the tax commissioner may
40 require the deduction or inclusion of jobs in place with
41 contract service providers that provide or at any time
42 provided any service to any eligible taxpayer or to any
43 member of the affiliated group related to any eligible
44 taxpayer or to any one or more entities related to the
45 eligible taxpayer: Provided, That deduction, or inclusion
46 of those jobs shall only pertain to jobs held by employees
47 of the contract service provider that are attributable or that
48 were formerly attributable to the service provided by the
49 contract service provider to the taxpayer. The tax
50 commissioner may require any deconsolidation of any
51 filing entity, or may require an alternative method based
52 on separate accounting, unitary combination, combination
53 of the affiliated group or combination of the taxpayer and
54 one or more entities related to the taxpayer, or any other
55 method determined by the tax commissioner to be
56 appropriate for ascertaining an accurate and realistic
57 determination of new jobs held by full-time employees in
58 the taxable year.

§11-130-8. Availability of credit to successors.

1 (a) Transfer or sale. — When there is a transfer or sale
2 of the business assets of an eligible taxpayer to a successor
3 taxpayer which continues to operate the new value-added
4 aluminum or polymer product manufacturing facility
5 located in this state, or the new value-added aluminum or
6 polymer product line of an existing manufacturing facility
7 located in this state, the successor taxpayer is entitled to
8 the credit allowed under this article: Provided, That the
9 successor taxpayer otherwise remains in compliance with
10 the requirements of this article for entitlement to the
11 credit.

12 (b) Allocation of credit between eligible taxpayer and
13 successor eligible taxpayer. — For any taxable year
during which a transfer, or sale of the business assets of an
eligible taxpayer to a successor taxpayer under this section
occurs, or a merger allowed under this section occurs, the
credit allowed under this article shall be apportioned
between the predecessor eligible taxpayer and the
successor taxpayer based on the number of days during
the taxable year that each taxpayer acted as the legal
employer of individuals filling new jobs for which the
credit allowed under this article is based and the number
of days during the taxable year that each taxpayer owned
the new value-added aluminum or polymer product
manufacturing facility located in this state, or the new
value-added aluminum or polymer product line of an
existing manufacturing facility located in this state.

(c) *Stock purchases.* — When a corporation which is
an eligible taxpayer entitled to the credit allowed under
this article is purchased through a stock purchase by a new
owner, and the corporation remains a legal entity so as to
retain its corporate identity, the entitlement of that
corporation to the credit allowed under this article will not
be affected by the ownership change.

(d) *Mergers.* —

(1) When a corporation or other entity which is an
eligible taxpayer entitled to the credit allowed under this
article is merged with another corporation or entity, the
surviving corporation or entity, shall be entitled to the
credit to which the predecessor eligible taxpayer was
originally entitled only if the surviving corporation or
entity, otherwise complies with the provisions of this
article.

(2) The amount of credit available in any taxable year
during which a merger occurs shall be apportioned
between the predecessor eligible taxpayer and the
successor eligible taxpayer based on the number of days
during the taxable year that each taxpayer acted as the
legal employer of employees holding the new jobs upon
which the credit allowed under this article is based and the
number of days during the taxable year that each owned
the transferred business assets: *Provided,* That when the
taxable year of the predecessor eligible taxpayer and the
taxable year of the successor eligible taxpayer are different, the apportionment shall be made in accordance with legislative rules prescribed by the tax commissioner.

(e) No provision of this section or of this article shall be construed to allow sales or other transfers of the tax credit allowed under this article. The credit allowed under this article may be transferred only in circumstances where there is a valid successorship as described under this section.

§11-130-9. Credit recapture; interest; penalties; additions to tax; statute of limitations.

(a) If it appears upon audit or otherwise that any person has improperly claimed the credit allowed by this article, the amount improperly claimed and which the person was not entitled to take shall be recaptured. Amended returns shall be filed for any taxable year for which the credit was improperly taken. Any additional taxes due under this chapter shall be remitted with the amended return or returns filed with the tax commissioner, along with interest, as provided in section seventeen, article ten of this chapter, and a ten percent penalty plus such other penalties and additions to tax as may be applicable under the provisions of article ten of this chapter.

(b) Recapture for jobs lost. —

(1) In any tax year the number of individuals employed in full-time positions by the eligible taxpayer decreases by more than ten percent, credit recapture shall apply, and the taxpayer shall return to the state an amount of tax determined by multiplying five hundred dollars by the number of full-time jobs lost which exceed ten percent. An amended return shall be filed for the tax year for which credit recapture is required. Any additional taxes due under this chapter shall be remitted with the amended return filed with the tax commissioner, along with interest, as provided in section seventeen, article ten of this chapter, and a ten percent penalty plus such other penalties and additions to tax as may be applicable under the provisions of article ten of this chapter.
Notwithstanding the provisions of article ten of this chapter, penalties and additions to tax imposed under article ten of this chapter and the ten percent penalty imposed under this section may be waived, in whole or in part, at the discretion of the tax commissioner. However, interest may not be waived.

(c) Notwithstanding the provisions of article ten of this chapter, the time within which a notice of assessment may be issued by the tax commissioner to recover recaptured tax shall be five years from the date of filing of any tax return on which this credit was taken or five years from the date of payment of any tax liability calculated pursuant to the assertion of the credit allowed under this article, whichever is later.

§11-130-10. Administrative rules.

The tax commission may prescribe such rules as may be necessary to carry out the purposes of this article, including, but not limited to, rules relating to applicability of credit, method of claiming credit, credit recapture, documentation necessary to claim credit and rules preventing abuse of this article by related persons or by change in the form of doing business. All rules promulgated under this article shall be promulgated in accordance with article three, chapter twenty-nine-a of this code.

§11-130-11. Construction of article.

The provisions of this article shall be reasonably construed. The burden of proof is on the person claiming the credit allowed by this article to establish by clear and convincing evidence that the person is entitled to the amount of credit asserted for the taxable year.

§11-130-12. Effective date.

This article shall be effective for taxable years beginning on or after the first day of July, one thousand nine hundred ninety-eight.
AN ACT to amend and reenact section four, article fourteen, chapter eleven 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 five-b, all relating generally to gasoline and special fuel taxes and exemptions from those taxes; permitting distributors and producers to sell untaxed gasoline and special fuel to certain entities and organizations for their exclusive use; requirements to obtain exemption; privilege to purchase untaxed gasoline and special fuel subject to suspension or revocation by tax commissioner; and penalties for noncompliance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-5b. Exemptions for sales made through special devices.


(a) Measure of tax.

1 (1) A distributor or producer shall use as the measure of tax all actual metered gallons of gasoline and all actual metered gallons of special fuel withdrawn from storage within this state for use, or for the sale for use, as fuel in an internal combustion engine, or that is sold, transferred or delivered to its company operated retail storage or any
other retail station or user wherein the storage is for use or
for the sale for use as fuel in an internal combustion
engine.

(2) A retail dealer, or importer, or user shall use as the
measure of tax all actual metered gallons of gasoline and
all actual metered gallons of special fuel, not previously
included in the measure of tax, received into such
person’s storage within this state wherein the storage is for
use or for the sale for use as gasoline or special fuel in an
internal combustion engine, or is used by him as fuel in an
internal combustion engine.

(3) A person who is not a distributor or producer,
retail dealer, importer, or user shall use as the measure of
tax all actual metered gallons of gasoline or special fuel
subject to tax under this article and not previously
included in the measure of tax by him or any other
person.

(b) Exemptions. — There may be subtracted from the
measure of tax determined under subsection (a) of this
section, to the extent included in the measure:

(1) The actual metered gallons of gasoline and special
fuel that are exempt under section five of this article from
the tax imposed by this article; and

(2) The actual metered gallons of gasoline and special
fuel sold by a distributor or producer that are exempt
under sections five-a and five-b of this article from the tax
imposed by this article.

(c) This article shall not be construed to require the
inclusion in the measure of tax of any gasoline or special
fuel previously included in the measure of tax upon which
the tax has been previously paid.

(d) The tax imposed by this article shall be in addition
to all other taxes of whatever character imposed by any
other provisions of law.

§11-14-5b. Exemptions for sales made through special devices.

(a) Where the requirements of this section have been
met, gasoline or special fuel sold by a distributor or
producer to a customer described in subsection (b) of this
section through a special device described in subsection (c) of this section is exempt from the taxes otherwise imposed by this article and article fifteen of this chapter.

(b) For purposes of this section, "customer" means any of the following entities that regularly purchase gasoline or special fuel for nontaxable uses for its exclusive use in vehicles it owns or leases:

(A) The United States government or any agency thereof;

(B) A municipality in this state;

(C) A county commission in this state;

(D) A county board of education in this state; and

(E) An organization in a county in this state that is certified annually by the county commission as a bona fide:

(i) Volunteer fire department;

(ii) Nonprofit ambulance service; or

(iii) Nonprofit emergency rescue service.

(c) For purposes of this section, "special device" means a device, such as a cardlock system, that accurately accounts for sales of gasoline or special fuel for nontaxable uses that is maintained by a distributor or producer at an attended or unattended location in this state.

(d)(1) To qualify for the exemption described in subsection (a) of this section, the distributor or producers must maintain accurate records that establish to the satisfaction of the tax commissioner the right to the exemption.

(2) The records must include purchase orders or contracts for the sale or sales of the gasoline or special fuel or, in the absence of such purchase orders or contracts, a certificate, signed by an authorized officer of the customer, that the gasoline or special fuel was purchased for the exclusive use of an entity described in subsection (b) of this section.
(3) The records must also include, for each nontaxable sale:

(A) The names of the customer and the person to whom the gasoline or special fuel was delivered;

(B) The date of delivery;

(C) The license number of the vehicle fueled;

(D) The type and quantity of gasoline or special fuel delivered; and

(E) Such other information as the tax commissioner may require.

(e)(1) A customer's privilege to purchase nontaxable gasoline or special fuel through a special device is subject to suspension or revocation by the tax commissioner.

(2) A customer is required to make and retain such records of its purchases of gasoline and special fuel through a special device as may be required by the tax commissioner.

(f) When the tax commissioner determines, as the result of an audit or investigation, that a customer purchasing gasoline or special fuel that is exempt from tax under subsection (a) of this section is reselling the gasoline or special fuel, is using the gasoline or special fuel for purposes other than the customer's exclusive use, or is failing to make and retain sufficient and adequate records showing the quantity of gasoline or special fuel used or consumed for the customer's exclusive use, the tax commissioner shall suspend the privilege of the customer to purchase untaxed gasoline or special fuel through any special device for such period as the tax commissioner by written order specifies. The order shall be served on the customer in the same manner as a notice of assessment may be served under article ten of this chapter. The customer may appeal the order in the same manner and within the same period of time as a notice of assessment may be appealed under article ten of this chapter. A copy of the order and any subsequent change or revision of the order shall also be served on any distributor or producer that maintains a special device through which the customer purchases untaxed gasoline or special fuel.
(g) When the tax commissioner determines, as the result of an audit or other investigation, that a customer purchasing gasoline or special fuel that is exempt from tax under subsection (a) of this section is knowingly and intentionally failing to comply with any requirements of this section, the tax commissioner shall by written order revoke the customer's privilege to purchase untaxed gasoline or special fuel through any special device. The order of the tax commissioner shall be served on the customer in the same manner as a notice of assessment is served under article ten of this chapter. The customer may appeal the order in the same manner and within the same period of time as a notice of assessment may be appealed under article ten of this chapter. A copy of the order and any subsequent change or revision of that order shall also be served on any distributor or producer that maintains a special device through which the customer purchases untaxed gasoline or special fuel.

(h) Notwithstanding the exemption provided under subsection (a) of this section to the contrary, a customer is liable for the taxes that would otherwise be imposed by this article and article fifteen of this chapter on the gasoline or special fuel delivered to the customer if the customer sells or uses the gasoline or special fuel in a manner or under circumstances that fails to meet the requirements of this article for the exemption of the gasoline or special fuel from taxation.

(i) A customer liable for the taxes described in subsection (h) of this section shall, in addition to paying the taxes described in subsection (h) of this section, pay a money penalty equal to twenty-five percent of the taxes plus interest calculated beginning with the day the gasoline or special fuel was received by the customer until the day the taxes, penalty and interest are paid to the tax commissioner. For each subsequent sale or use, during a fiscal year, of the gasoline or special fuel in a manner or under circumstances that fails to meet the requirements of this article for the exemption of the gasoline or special fuel from taxation, the purchaser shall pay the taxes and a money penalty equal to fifty percent of the tax plus interest calculated in the same manner. For purposes of this section, gasoline and special fuel is received by the customer when it is put into the supply tank of a vehicle owned or leased by the customer.
(j) A customer liable for the taxes described in subsection (h) of this section is not entitled to a refund or any credit for the taxes paid or required to be paid under subsection (i) of this section.

(k) The exemptions created by this section apply to gasoline or special fuel received by a customer through a special device on or after the first day of July, one thousand nine hundred ninety-eight.

CHAPTER 302

(H. B. 4253—By Delegates Seacrist, Manuel, Hunt, Kelley and Azinger)

[Passed March 14, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section five, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting propane gas for off road use from the excise tax on gasoline or special fuel.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-5. Exemptions from tax.

There shall be exempted from the excise tax on gasoline or special fuel imposed by this article the following:

1. All gallons of gasoline or special fuel exported from this state to any other state or nation;

2. All gallons of gasoline or special fuel sold to and purchased by the United States or any agency of the United States when delivered in bulk quantities of five hundred gallons or more;
(3) All gallons of gasoline or special fuel sold to and purchased by a county board of education when delivered in bulk quantities of five hundred gallons or more;

(4) All gallons of gasoline or special fuel sold pursuant to a government contract, in bulk quantities of five hundred gallons or more, for use in conjunction with any municipal, county, state or federal civil defense or emergency service program, or to any person on whom is imposed a requirement to maintain an inventory of gasoline or special fuel for the purpose of the program: Provided, That fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the tax commissioner certifying his or her right to the exemption;

(5) All gallons of gasoline or special fuel imported into this state in the fuel supply tank or tanks of a motor vehicle, other than in the fuel supply tank of a vehicle being hauled. This exemption does not relieve a person owning or operating as a motor carrier of any taxes imposed by article fourteen-a of this chapter;

(6) All gallons of gasoline and special fuel used and consumed in stationary off-highway turbine engines;

(7) All gallons of special fuel for heating any public or private dwelling, building or other premises;

(8) All gallons of special fuel for boilers;

(9) All gallons of gasoline or special fuel used as a dry cleaning solvent or commercial or industrial solvent;

(10) All gallons of gasoline or special fuel used as lubricants, ingredients or components of any manufactured product or compound;

(11) All gallons of gasoline or special fuel sold to any municipality or agency of a municipality for use in vehicles or equipment owned and operated by the municipality or agency of a municipality and when purchased for delivery in bulk quantities of five hundred gallons or more;

(12) All gallons of gasoline or special fuel sold to any urban mass transportation authority, created pursuant to the provisions of article twenty-seven, chapter eight of this code, for use in an urban mass transportation system;
(13) All gallons of gasoline or special fuel sold for use as aircraft fuel;

(14) All gallons of gasoline or special fuel sold for use or used as a fuel for commercial watercraft;

(15) All gallons of special fuel sold for use or consumed in railroad diesel locomotives;

(16) All gallons of gasoline or special fuel sold to and purchased by a unit of county government when delivered in bulk quantities of five hundred gallons or more;

(17) All gallons of special dyed diesel fuel; and

(18) All gallons of propane gas for off road use.

CHAPTER 303

(S. B. 225—By Senators Oliverio and Ross)

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

AN ACT to amend and reenact section two, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to consumers sales tax; definitions; production of natural resources; and including construction of ventilation and dewatering structures within definition of production of natural resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES TAX.


1 For the purpose of this article:
(a) "Business" includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.

(b) "Communication" means all telephone, radio, light, light wave, radio telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or other encoded symbolic information transfers and shall include commercial broadcast radio, commercial broadcast television and cable television.

(c) "Contracting":

(1) In general. -- "Contracting" means and includes the furnishing of work, or both materials and work, for another (by a sole contractor, general contractor, prime contractor or subcontractor) in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for removal or demolition of a building or structure, or any part thereof, or for the alteration, improvement or development of real property.

(2) Form of contract not controlling. -- An activity that falls within the scope of the definition of contracting shall constitute contracting regardless of whether such contract governing the activity is written or verbal and regardless of whether it is in substance or form a lump sum contract, a cost-plus contract, a time and materials contract, whether or not open-ended, or any other kind of construction contract.

(3) Special rules. -- For purposes of this definition:

(A) The term "structure" includes, but is not limited to, everything built up or composed of parts joined together in some definite manner and attached or affixed to real property, or which adds utility to real property or any part thereof, or which adds utility to a particular parcel of
property and is intended to remain there for an indefinite period of time;

(B) The term "alteration" means, and is limited to, alterations which are capital improvements to a building or structure or to real property;

(C) The term "repair" means, and is limited to, repairs which are capital improvements to a building or structure or to real property;

(D) The term "decoration" means, and is limited to, decorations which are capital improvements to a building or structure or to real property;

(E) The term "improvement" means, and is limited to, improvements which are capital improvements to a building or structure or to real property;

(F) The term "capital improvement" means improvements that are affixed to or attached to and become a part of a building or structure or the real property or which add utility to real property or any part thereof and that last, or are intended to be relatively permanent. As used herein, "relatively permanent" means lasting at least a year or longer in duration without the necessity for regularly scheduled recurring service to maintain such capital improvement. "Regular recurring service" means regularly scheduled service intervals of less than one year;

(G) Contracting does not include the furnishing of work, or both materials and work in the nature of hookup, connection, installation or other services if such service is incidental to the retail sale of tangible personal property from the service provider's inventory: Provided, That such hookup, connection or installation of the foregoing is incidental to the sale of the same and performed by the seller thereof or performed in accordance with arrangements made by the seller thereof. Examples of transactions that are excluded from the definition of contracting pursuant hereto include, but are not limited to, the sale of wall-to-wall carpeting and the installation of wall-to-wall carpeting, the sale, hookup and connection of
mobile homes, window air conditioning units, dishwashers, clothing washing machines or dryers, other household appliances, drapery rods, window shades, venetian blinds, canvas awnings, free standing industrial or commercial equipment and other similar items of tangible personal property. Repairs made to the foregoing are within the definition of contracting if such repairs involve permanently affixing to or improving real property or something attached thereto which extends the life of the real property or something affixed thereto or allows or is intended to allow such real property or thing permanently attached thereto to remain in service for a year or longer.

(d) (1) "Directly used or consumed" in the activities of manufacturing, transportation, transmission, communication or the production of natural resources means used or consumed in those activities or operations which constitute an integral and essential part of such activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to such activities.

(2) Uses of property or consumption of services which constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources includes only:

(A) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources;

(B) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources;

(C) Transporting or storing property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(D) Measuring or verifying a change in property directly used in transportation, communication,
transmission, manufacturing production or production of natural resources;

(E) Physically controlling or directing the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(F) Directly and physically recording the flow of property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(G) Producing energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(H) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(I) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources;

(J) Serving as an operating supply for property undergoing transmission, manufacturing production or production of natural resources, or for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(K) Maintenance or repair of property, including maintenance equipment, directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(L) Storage, removal or transportation of economic waste resulting from the activities of manufacturing,
transportation, communication, transmission or the production of natural resources;

(M) Pollution control or environmental quality or protection activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources and personnel, plant, product or community safety or security activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources; or

(N) Otherwise be used as an integral and essential part of transportation, communication, transmission, manufacturing production or production of natural resources.

(3) Uses of property or services which would not constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources include, but are not limited to:

(A) Heating and illumination of office buildings;

(B) Janitorial or general cleaning activities;

(C) Personal comfort of personnel;

(D) Production planning, scheduling of work or inventory control;

(E) Marketing, general management, supervision, finance, training, accounting and administration; or

(F) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources, rather than an integral and essential part of such activities.

(e) (1) "Directly used or consumed" in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business, means used or consumed in those activities or operations which constitute
an integral and essential part of such activities or
operation, as contrasted with and distinguished from
activities or operations which are simply incidental,
convenient or remote to such activities.

(2) Uses of property or consumption of services which
constitute direct use or consumption in the activities of gas
storage, the generation or production or sale of electric
power, the provision of a public utility service, or the
operation of a utility business include only:

(A) Tangible personal property or services, including
equipment, machinery, apparatus, supplies, fuel and power
and appliances, which are used immediately in production
or generation activities and equipment, machinery,
supplies, tools and repair parts used to keep in operation
exempt production or generation devices. For purposes
of this subsection, production or generation activities shall
commence from the intake, receipt or storage of raw
materials at the production plant site;

(B) Tangible personal property or services, including
equipment, machinery, apparatus, supplies, fuel and power,
appliances, pipes, wires and mains which are used
immediately in the transmission or distribution of gas,
water and electricity to the public, and equipment,
machinery, tools, repair parts and supplies used to keep in
operation exempt transmission or distribution devices, and
such vehicles and their equipment as are specifically
designed and equipped for such purposes are exempt
from the tax when used to keep a transmission or
distribution system in operation or repair. For purposes
of this subsection, transmission or distribution activities
shall commence from the close of production at a
production plant or wellhead when a product is ready for
transmission or distribution to the public and shall
conclude at the point where the product is received by the
public;

(C) Tangible personal property or services, including
equipment, machinery, apparatus, supplies, fuel and power,
appliance, pipes, wires and mains, which are used
immediately in the storage of gas or water, and equipment,
machinery, tools, supplies and repair parts used to keep in
operation exempt storage devices;

(D) Tangible personal property or services used
immediately in the storage, removal or transportation of
economic waste resulting from the activities of gas storage,
the generation or production or sale of electric power, the
provision of a public utility service, or the operation of a
utility business;

(E) Tangible personal property or services used
immediately in pollution control or environmental quality
or protection activity or community safety or security
directly relating to the activities of gas storage, generation
or production or sale of electric power, the provision of a
public utility service or the operation of a utility business.

(3) Uses of property or services which would not
consist of direct use or consumption in the activities of gas
storage, generation or production or sale of electric power,
the provision of a public utility service or the operation of
a utility business include, but are not limited to:

(A) Heating and illumination of office buildings;

(B) Janitorial or general cleaning activities;

(C) Personal comfort of personnel;

(D) Production planning, scheduling of work or
inventory control;

(E) Marketing, general management, supervision,
finance, training, accounting and administration; or

(F) An activity or function incidental or convenient to
the activities of gas storage, generation or production or
sale of electric power, the provision of public utility
service or the operation of a utility business.

(f) "Drugs" includes all sales of drugs or appliances to
a purchaser, upon prescription of a physician or dentist
and any other professional person licensed to prescribe.

(g) "Gas storage" means the injection of gas into a
storage reservoir, or the storage of gas for any period of
time in a storage reservoir, or the withdrawal of gas from a
storage reservoir, engaged in by businesses subject to the
business and occupation tax imposed by sections two and
two-e, article thirteen of this chapter.

(h) "Generating or producing or selling of electric
power" means the generation, production or sale of
electric power engaged in by businesses subject to the
business and occupation tax imposed by section two,
two-d, two-m or two-n, article thirteen of this chapter.

(i) "Gross proceeds" means the amount received in
money, credits, property or other consideration from sales
and services within this state, without deduction on account
of the cost of property sold, amounts paid for interest or
discounts or other expenses whatsoever. Losses shall not
be deducted, but any credit or refund made for goods
returned may be deducted.

(j) "Management information services" means, and is
limited to, data processing, data storage, data recovery and
backup, programming recovery and backup,
telecommunications, computation and computer
processing, computer programming, electronic
information and data management activities, or any
combination of such activities, when such activity, or
activities, is not subject to regulation by the West Virginia
public service commission and such activity, or activities, is
for the purpose of managing, planning for, organizing or
operating, any industrial or commercial business, or any
enterprise, facility or facilities of an industrial or
commercial business, whether such industrial or
commercial business or enterprise, facility or facilities of
an industrial or commercial business is located within or
without this state and without regard to whether such
industrial or commercial business, or enterprise, facility or
facilities of an industrial or commercial business is owned
by the provider of the management information services
or by a "related person", as defined in Section 267(b) of
the Internal Revenue Code of 1986, as amended.

(k) "Management information services facility" means
a building, or any part thereof, or a complex of buildings,
or any part thereof, including the machinery and
equipment located therein, that is exclusively dedicated to
providing management information services to the owner
or operator thereof or to another person.

(l) "Manufacturing" means a systematic operation or
integrated series of systematic operations engaged in as a
business or segment of a business which transforms or
converts tangible personal property by physical, chemical
or other means into a different form, composition or
character from that in which it originally existed.

(m) "Personal service" includes those:

(1) Compensated by the payment of wages in the
ordinary course of employment; and

(2) Rendered to the person of an individual without, at
the same time, selling tangible personal property, such as
nursing, barbering, shoe shining, manicuring and similar
services.

(n) "Persons" means any individual, partnership,
association, corporation, state or its political subdivisions
or agency of either, guardian, trustee, committee, executor
or administrator.

(o) "Production of natural resources" means, except
for oil and gas, the performance, by either the owner of
the natural resources or another, of the act or process of
exploring, developing, severing, extracting, reducing to
possession and loading for shipment and shipment for
sale, profit or commercial use of any natural resource
products and any reclamation, waste disposal or
environmental activities associated therewith and the
construction, installation or fabrication of ventilation
structures, mine shafts, slopes, boreholes, dewatering
structures, including associated facilities and apparatus, by
the producer or others, including contractors and
subcontractors, at a coal mine or coal production facility.
For the natural resources oil and gas, "production of
natural resources" means the performance, by either the
owner of the natural resources, a contractor, or a
subcontractor, of the act or process of exploring,
developing, drilling, well stimulation activities such as
logging, perforating or fracturing, well completion
activities such as the installation of the casing, tubing and
other machinery and equipment, and any reclamation, waste disposal or environmental activities associated therewith, including the installation of the gathering system or other pipeline to transport the oil and gas produced or environmental activities associated therewith and any service work performed on the well or well site after production of the well has initially commenced. All work performed to install or maintain facilities up to the point of sale for severance tax purposes would be included in the "production of natural resources" and subject to the direct use concept. "Production of natural resources" does not include the performance or furnishing of work, or materials or work, in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property, by persons other than those otherwise directly engaged in the activities specifically set forth in this subsection as "production of natural resources".

(p) "Providing a public service or the operating of a utility business" means the providing of a public service or the operating of a utility by businesses subject to the business and occupation tax imposed by sections two and two-d, article thirteen of this chapter.

(q) "Purchaser" means a person who purchases tangible personal property or a service taxed by this article.

(r) "Sale", "sales" or "selling" includes any transfer of the possession or ownership of tangible personal property for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his agent for consumption or use or any other purpose.

(s) "Service" or "selected service" includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but shall not include contracting, personal services or the services rendered by an employee to his employer or any service rendered for resale.

(t) "Tax" includes all taxes, interest and penalties levied hereunder.
(u) "Tax commissioner" means the state tax commissioner.

(v) "Taxpayer" means any person liable for the tax imposed by this article.

(w) "Transmission" means the act or process of causing liquid, natural gas or electricity to pass or be conveyed from one place or geographical location to another place or geographical location through a pipeline or other medium for commercial purposes.

(x) "Transportation" means the act or process of conveying, as a commercial enterprise, passengers or goods from one place or geographical location to another place or geographical location.

(y) "Ultimate consumer" or "consumer" means a person who uses or consumes services or personal property.

(z) "Vendor" means any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property.

CHAPTER 304

(H. B. 4686—By Delegates Michael, Kelley, Warner, Pettit, Doyle, Miller and Facemyer)

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

AN ACT to amend article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a; and to amend article fifteen-a of said chapter by adding thereto a new section, designated section two-b, all relating to consumers sales and service and use tax on sales and installation of modular dwellings.

Be it enacted by the Legislature of West Virginia:
That article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seven-a; and that article fifteen-a of said chapter be amended by adding thereto a new section, designated section two-b, all to read as follows:

Article
15. Consumers Sales Tax.
15A. Use Tax

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-7a. Tax on the manufacture, sale and installation of modular dwellings.

(a) Notwithstanding the provisions of section seven of this article, persons engaged in the manufacture and sale or the manufacture, sale and installation of a modular dwelling shall pay the tax imposed by this article only on the value of the building supplies and materials used in the manufacture and installation of the modular dwelling and the preparation of the site for permanent installation, and not on the labor involved in such activities. For purposes of this section, the value of the building supplies and materials shall be the actual cost of the building supplies and materials. If the manufacturer asserts an exemption at the time of purchase of the building supplies and materials, the manufacturer shall remit the tax due on the value of the building supplies and materials used in the manufacture of the modular dwelling at the time of sale of the modular dwelling. If the manufacturer pays the tax at the time of purchase of the building supplies and materials, the manufacturer is responsible for maintaining records evidencing payment of the tax. Failure to maintain such records will result in the tax being assessed to the manufacturer.

(b) Persons engaged in the sale and installation of a modular dwelling shall pay the tax imposed by this article on only the value of the materials used in the manufacture and installation of the modular dwelling and the preparation of the site for permanent installation, and not on the labor involved in such activities. For purposes of this section, the value of the materials used in the manufacture of the modular dwelling shall be the actual cost of the materials and building supplies to the manufacturer as delineated on the invoice to the
If the actual cost of the materials is not available, then the cost of the materials used in the manufacture of the modular dwelling shall be sixty percent of the total cost of the modular dwelling. A credit will be given to the purchaser for any sales or use tax that has been lawfully imposed by another state and paid by the manufacturer on the purchase of building supplies and materials used in the manufacture of the modular dwelling. If the manufacturer pays the tax at the time of purchase of the building supplies and materials, the manufacturer is responsible for maintaining records evidencing payment of the tax and delineating this amount on the invoice. Failure to maintain such records will result in the credit being denied.

(c) Definition of modular dwelling. — For purposes of this article, a modular dwelling shall include, but not be limited to, single and multi-family houses, apartment units and commercial dwellings comprised of two or more sections without a permanent chassis, built to a state or model code other than the National Manufactured Housing Construction and Safety Standards Act of 1974, which are primarily constructed at a location other than the permanent site at which they are to be finally assembled and which are shipped to the site with most permanent components in place.

ARTICLE 15A. USE TAX.

§11-15A-2b. Tax on the manufacture, sale and installation of modular dwellings.

(a) Notwithstanding the provisions of section two-a of this article, persons engaged in the manufacture and sale or the manufacture, sale and installation of a modular dwelling shall pay the tax imposed by this article only on the value of the building supplies and materials used in the manufacture and installation of the modular dwelling and the preparation of the site for permanent installation, and not on the labor involved in such activities. For purposes of this section, the value of the building supplies and materials shall be the actual cost of the building supplies and materials. If the manufacturer asserts an exemption at the time of purchase of the building supplies and materials, the manufacturer shall remit the tax due on the value of the building supplies and materials used in the manufacture of the modular dwelling at the time of sale of
the modular dwelling. If the manufacturer pays the tax at
the time of purchase of the building supplies and
materials, the manufacturer is responsible for maintaining
records evidencing payment of the tax. Failure to
maintain such records will result in the tax being assessed
to the manufacturer.

(b) Persons engaged in the sale and installation of a
modular dwelling shall pay the tax imposed by this article
on only the value of the materials used in the manufacture
and installation of the modular dwelling and the
preparation of the site for permanent installation and not
on the labor involved in such activities. For purposes of
this section, the value of the materials used in the
manufacture of the modular dwelling shall be the actual
cost of the materials and building supplies to the
manufacturer as delineated on the invoice to the
purchaser. If the actual cost of the materials is not
available, then the cost of the materials used in the
manufacture of the modular dwelling shall be sixty
percent of the total cost of the modular dwelling. A credit
will be given to the purchaser for any sales or use tax that
has been lawfully imposed by another state and paid by
the manufacturer on the purchase of building supplies
and materials used in the manufacture of the modular
dwelling. If the manufacturer pays the tax at the time of
purchase of the building supplies and materials, the
manufacturer is responsible for maintaining records
evidencing payment of the tax and delineating the amount
on the invoice. Failure to maintain such records will result
in the credit being denied.

(c) Definition of modular dwelling. — For purposes of
this article, a modular dwelling shall include, but not be
limited to, single and multi-family houses, apartment units
and commercial dwellings comprised of two or more
sections without a permanent chassis, built to a state or
model code other than the National Manufactured
Housing Construction and Safety Standards Act of 1974,
which are primarily constructed at a location other than
the permanent site at which they are to be finally
assembled and which are shipped to the site with most
permanent components in place.
AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia personal income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.


(a) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, one thousand nine hundred ninety-six, but prior to the first day of January, one thousand nine hundred ninety-eight, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether such changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred ninety-eight, shall be given any effect.
(b) Medical savings accounts. — The term "taxable trust" does not include a medical savings account established pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter. Employer contributions to a medical savings account established pursuant to said sections, are not "wages" for purposes of withholding under section seventy-one of this article.

(c) Surtax. — The term "surtax" means the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section twenty, article fifteen, chapter thirty-three of this code, and the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section fifteen, article sixteen of said chapter, which are collected by the tax commissioner as tax collected under this article.

(d) Effective date. — The amendments to this section enacted in the year one thousand nine hundred ninety-eight shall be retroactive to the extent allowable under federal income tax law. With respect to taxable years that begin prior to the first day of January, one thousand nine hundred ninety-seven, the law in effect for each of those years shall be fully preserved as to such year, except as provided in this section.

CHAPTER 306
(Com. Sub. for H. B. 2079—By Delegates Manuel, Michael, Mezzatesta, Collins and Martin)

[Passed March 14, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting hunting clubs from paying a franchise tax if there is no income and no dividends paid.

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

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-7. Persons and organizations exempt from tax.

1 The following organizations and persons shall be exempt from the tax imposed by this article to the extent provided in this section:

2 (a) Natural persons doing business in this state that are not doing business in the form of a partnership (as defined in section three of this article) or in the form of a corporation (as defined in section three of this article). Such persons include persons doing business as sole proprietors, sole practitioners and other self-employed persons.

3 (b) Corporations and organizations which by reason of their purposes or activities are exempt from federal income tax: Provided, That this exemption does not apply to that portion of their capital (as defined in section three of this article) which is used, directly or indirectly, in the generation of unrelated business income (as defined in the Internal Revenue Code) of any such corporation or organization if the unrelated business income is subject to federal income tax.

4 (c) Insurance companies which pay this state a tax upon premiums.

5 (d) Production credit associations organized under the provisions of the federal "Farm Credit Act of 1933": Provided, That this exemption does not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this code.

6 (e) Any trust established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted as section three hundred two (c) of the labor management relations act, one thousand nine hundred forty-seven), as amended
prior to the first day of January, one thousand nine hundred eighty-five.

(f) Any credit union organized under the provisions of chapter thirty-one, or any other chapter of this code: Provided, That this exemption does not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code.

(g) Any corporation organized under this code which is a political subdivision of the state of West Virginia, or is an instrumentality of a political subdivision of this state, and was created pursuant to this code.

(h) Any corporation or partnership engaged in the activity of agriculture and farming, as defined in paragraph (8), subsection (b), section three of this article: Provided, That if a corporation or partnership is not exclusively engaged in such activity, its tax base under this article shall be apportioned, in accordance with regulations promulgated by the tax commissioner, among its several activities and only that portion attributable to the activity of agriculture and farming shall be exempt from tax under this article.

(i) Any corporation or partnership licensed under article twenty-three, chapter nineteen of this code, to conduct horse or dog racing meetings or a pari-mutuel system of wagering: Provided, That if the corporation or partnership is not exclusively engaged in this activity, its tax base under this article shall be apportioned, in accordance with regulations promulgated by the tax commissioner, among its several activities and only that portion attributable to the activity of conducting a horse or dog racing meeting or a pari-mutuel system of wagering shall be exempt from tax under this article.

(j) For those tax years beginning after the thirtieth day of June, one thousand nine hundred ninety-eight, any corporation or partnership operating as a hunting club: Provided, That the corporation or partnership distributes no income or dividends to its owners or stockholders. For the purposes of this subsection, a hunting club is a group
of persons owning land which is used principally for hunting purposes by the members of the club and guests, and where any charges made for hunting are principally for the purpose of defraying the costs of operating and maintaining the club and club properties or establishing a reasonable reserve to meet the operating and maintenance costs of the club. The tax commissioner shall by legislative rule promulgated in accordance with article three of chapter twenty-nine of this code further prescribe the definition of a hunting club and the manner and method in which this credit may be claimed.

CHAPTER 307
(S. B. 208—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

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

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia corporation net income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the
context or by definition in this article. Any reference in
this article to the laws of the United States shall mean the
provisions of the Internal Revenue Code of 1986, as
amended, and such other provisions of the laws of the
United States as relate to the determination of income for
federal income tax purposes. All amendments made to
the laws of the United States after the thirty-first day of
December, one thousand nine hundred ninety-six, but
prior to the first day of January, one thousand nine
hundred ninety-eight, shall be given effect in determining
the taxes imposed by this article to the same extent those
changes are allowed for federal income tax purposes,
whether such changes are retroactive or prospective, but
no amendment to the laws of the United States made on or
after the first day of January, one thousand nine hundred
ninety-eight, shall be given any effect.

(b) The term "Internal Revenue Code of 1986" means
the Internal Revenue Code of the United States enacted by
the "Federal Tax Reform Act of 1986" and includes the
provisions of law formerly known as the Internal Revenue
Code of 1954, as amended, and in effect when the
"Federal Tax Reform Act of 1986" was enacted, that were
not amended or repealed by the "Federal Tax Reform Act
of 1986". Except when inappropriate, any references in
any law, executive order or other document:

(1) To the Internal Revenue Code of 1954 shall
include reference to the Internal Revenue Code of 1986;
and

(2) To the Internal Revenue Code of 1986 shall
include a reference to the provisions of law formerly
known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section
enacted in the year one thousand nine hundred ninety-
eight shall be retroactive to the extent allowable under
federal income tax law. With respect to taxable years that
begin prior to the first day of January, one thousand nine
hundred ninety-seven, the law in effect for each of those
years shall be fully preserved as to such year, except as
provided in this section.
AN ACT to amend and reenact sections six and seven, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to corporation net income tax; allocation and apportionment of net income of corporate partner's distributive share; providing that the allocation and apportionment shall be made using the partnership's property, payroll and sales factors; corporation net income tax adjustments in determining West Virginia taxable income, beginning in taxable year one thousand nine hundred ninety-eight; adding increasing adjustments for foreign taxes and for net operating losses from sources outside of the United States; amending the decreasing adjustment for foreign source income; eliminating the obsolete reference to the net operating loss deduction from the allowance for certain governmental obligations and obligations secured by residential property; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6. Adjustments in determining West Virginia taxable income.

§11-24-6. Adjustments in determining West Virginia taxable income.

(a) General. — In determining West Virginia taxable income of a corporation, its taxable income as defined for federal income tax purposes shall be adjusted and
determined before the apportionment provided by section seven of this article, by the items specified in this section.

(b) Adjustments increasing federal taxable income. — There shall be added to federal taxable income, unless already included in the computation of federal taxable income, the following items:

(1) Interest or dividends on obligations or securities of any state or of a political subdivision or authority of the state;

(2) Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission or instrumentality of the United States which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by this state or any other taxing jurisdiction, to the extent deducted in determining federal taxable income;

(4) The amount of unrelated business taxable income as defined by Section 512 of the Internal Revenue Code of 1986, as amended, of a corporation which by reason of its purposes is generally exempt from federal income taxes;

(5) The amount of any net operating loss deduction taken for federal income tax purposes under Section 172 of the Internal Revenue Code of 1986, as amended;

(6) Any amount included in federal taxable income which is a net operating loss from sources without the United States after making the decreasing adjustments provided in subdivisions (5) and (7), subsection (c) of this section for Section 951 income and Section 78 income. Federal taxable income from sources without the United States shall be determined in accordance with the provisions of Sections 861, 862, and 863 of the Internal Revenue Code of 1986, as amended; and
(7) The amount of foreign taxes deducted in determining federal taxable income.

(c) Adjustments decreasing federal taxable income. — There shall be subtracted from federal taxable income to the extent included therein:

(1) Any gain from the sale or other disposition of property having a higher fair market value on the first day of July, one thousand nine hundred sixty-seven, than the adjusted basis at said date for federal income tax purposes: Provided, That the amount of this adjustment is limited to that portion of any gain which does not exceed the difference between the fair market value and the adjusted basis;

(2) The amount of any refund or credit for overpayment of income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by this state or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(3) The amount added to federal taxable income due to the elimination of the reserve method for computation of the bad debt deduction;

(4) The full amount of interest expense actually disallowed in determining federal taxable income which was incurred or continued to purchase or carry obligations or securities of any state or of any political subdivision of the state;

(5) The amount required to be added to federal taxable income as a dividend received from a foreign (non-United States) corporation under Section 78 of the Internal Revenue Code of 1986, as amended, by a corporation electing to take the foreign tax credit for federal income tax purposes;

(6) The amount of salary expenses disallowed as a deduction for federal income tax purposes due to claiming the federal jobs credit under Section 51 of the Internal Revenue Code of 1986, as amended;
(7) The amount included in federal adjusted gross income by the operation of Section 951 of the Internal Revenue Code of 1986, as amended;

(8) Employer contributions to medical savings accounts established pursuant to section fifteen, article sixteen, chapter thirty-three of this code to the extent included in federal adjusted gross income for federal income tax purposes less any portion of employer contributions withdrawn for purposes other than payment of medical expenses: Provided, That the amount subtracted pursuant to this subsection for any one taxable year may not exceed the maximum amount that would have been deductible from the corporation's federal adjusted gross income for federal income tax purposes if the aggregate amount of the corporation's contributions to individual medical savings accounts established under section fifteen, article sixteen, chapter thirty-three of this code had been contributed to a qualified plan as defined under the Employee Retirement Income Security Act of 1974, as amended; and

(9) Any amount included in federal taxable income which is foreign source income. Foreign source income is any amount included in federal taxable income which is taxable income from sources without the United States, less the adjustments provided in subdivisions (5) and (7) of this subsection.

In determining "foreign source income", the provisions of Sections 861, 862 and 863 of the Internal Revenue Code of 1986, as amended, shall be applied.

(d) Net operating loss deduction. — Except as otherwise provided in this subsection, there is allowed as a deduction for the taxable year an amount equal to the aggregate of: (1) The West Virginia net operating loss carryovers to that year; plus (2) the net operating loss carrybacks to that year: Provided, That no more than three hundred thousand dollars of net operating loss from any taxable year beginning after the thirty-first day of December, one thousand nine hundred ninety-two, may be carried back to any previous taxable year. For purposes of this subsection, the term "West Virginia net operating
loss deduction" means the deduction allowed by this subsection, determined in accordance with Section 172 of the Internal Revenue Code of 1986, as amended.

(1) Special rules. —

(A) When the corporation further adjusts its adjusted federal taxable income under section seven of this article, the West Virginia net operating loss deduction allowed by this subsection shall be deducted after the section seven adjustments are made;

(B) The tax commissioner shall prescribe the transition regulations as he deems necessary for fair and equitable administration of this subsection as amended by this act.

(2) Effective date. — The provisions of this subsection, as amended by chapter one hundred nineteen, acts of the Legislature, one thousand nine hundred eighty-eight, apply to all taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-eight; and to all loss carryovers from taxable years ending on or before said thirtieth day of June.

(e) Special adjustments for expenditures for water and air pollution control facilities. —

(1) If the taxpayer so elects under subdivision (2) of this subsection, there shall be:

(A) Subtracted from federal taxable income the total of the amounts paid or incurred during the taxable year for the acquisition, construction or development within this state of water pollution control facilities or air pollution control facilities as defined in Section 169 of the Internal Revenue Code; and

(B) Added to federal taxable income the total of the amounts of any allowances for depreciation and amortization of the water pollution control facilities or air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

(2) The election referred to in subdivision (1) of this subsection shall be made in the return filed within the time prescribed by law, including extensions of the time, for the
taxable year in which the amounts were paid or incurred. The election shall be made in that manner, and the scope of application of that election shall be defined, as the tax commissioner may by rule prescribe, and shall be irrevocable when made as to all amounts paid or incurred for any particular water pollution control facility or air pollution control facility.

(3) Notwithstanding any other provisions of this subsection or of section seven to the contrary, if the taxpayer's federal taxable income is subject to allocation and apportionment under section seven, the adjustments prescribed in paragraphs (A) and (B), subdivision (1) of this subsection shall, instead of being made to the taxpayer's federal taxable income before allocation and apportionment thereof as provided in section seven, be made to the portion of the taxpayer's net income, computed without regard to the adjustments, allocated and apportioned to this state in accordance with section seven.

(f) Allowance for certain government obligations and obligations secured by residential property. — The West Virginia taxable income of a taxpayer subject to this article as adjusted in accordance with subsections (b), (c) and (e) of this section shall be further adjusted by multiplying the taxable income after the adjustment by said subsections by a fraction equal to one minus a fraction:

(1) The numerator of which is the sum of the average of the monthly beginning and ending account balances during the taxable year (account balances to be determined at cost in the same manner that obligations, investments and loans are reported on Schedule L of the Federal Form 1120) of the following:

(A) Obligations or securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy;
(B) Obligations or securities of this state and any political subdivision or authority of the state;

(C) Investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in this state and occupied by nontransients; and

(D) Loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide, located in this state and occupied by nontransients.

(2) The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the taxpayer which are shown on Schedule L of Federal Form 1120, which are filed by the taxpayer with the Internal Revenue Service.

(g) The amendments to the provisions of this section made during the regular session of the Legislature in the year one thousand nine hundred ninety-eight, apply to all taxable years beginning on or after the thirty-first day of December, one thousand nine hundred ninety-seven.


(a) General. — Any taxpayer having income from business activity which is taxable both in this state and in another state shall allocate and apportion its net income as provided in this section. For purposes of this section, the term "net income" means the taxpayer's federal taxable income adjusted as provided in section six.

(b) "Taxable in another state" defined. — For purposes of allocation and apportionment of net income under this section, a taxpayer is taxable in another state if:

1. In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporation stock tax; or

2. That state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, that state does or does not subject the taxpayer to the tax.
(c) Business activities entirely within West Virginia. — If the business activities of a taxpayer take place entirely within this state, the entire net income of the taxpayer is subject to the tax imposed by this article. The business activities of a taxpayer are considered to have taken place in their entirety within this state if the taxpayer is not "taxable in another state"; Provided, That the business activities of a financial organization having its commercial domicile in this state are considered to take place entirely in this state, notwithstanding that the organization may be "taxable in another state": Provided, however, That the income from the business activities of a financial organization not having its commercial domicile in this state shall be apportioned according to the applicable provisions of this article.

(d) Business activities partially within and partially without West Virginia; allocation of nonbusiness income. — If the business activities of a taxpayer take place partially within and partially without this state and the taxpayer is also taxable in another state, rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income of the taxpayer, shall be allocated as provided in subdivisions (1) through (4): Provided, That to the extent the items constitute business income of the taxpayer, they may not be so allocated but they shall be apportioned to this state according to the provisions of subsection (e) of this section and to the applicable provisions of section seven-b of this article.

(1) Net rents and royalties. —

(A) Net rents and royalties from real property located in this state are allocable to this state.

(B) Net rents and royalties from tangible personal property are allocable to this state:

(i) If and to the extent that the property is utilized in this state; or
(ii) In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(2) Capital gains. —

(A) Capital gains and losses from sales of real property located in this state are allocable to this state.

(B) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) The property had a situs in this state at the time of the sale; or

(ii) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(C) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(D) Gains pursuant to Section 631 (a) and (b) of the Internal Revenue Code of 1986, as amended, from sales of natural resources severed in this state shall be allocated to this state if they are nonbusiness income.

(3) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.
(4) Patent and copyright royalties. —

(A) Patent and copyright royalties are allocable to this state:

(i) If and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(5) Corporate partner's distributive share. —

(A) Persons carrying on business as partners in a partnership, as defined in Section 761 of the Internal Revenue Code of 1986, as amended, are liable for income tax only in their separate or individual capacities.

(B) A corporate partner's distributive share of income, gain, loss, deduction or credit of a partnership shall be modified as provided in section six of this article for each partnership. For taxable years beginning on or after the thirty-first day of December, one thousand nine hundred ninety-eight, the distributive share shall then be allocated and apportioned as provided in this section, using the partnership's property, payroll and sales factors. The sum
of that portion of the distributive share allocated and
apportioned to this state shall then be treated as
distributive share allocated to this state; and that portion of
distributive share allocated or apportioned outside this
state shall be treated as distributive share allocated outside
this state, unless the taxpayer requests or the tax
commissioner, under subsection (h) of this section
requires that the distributive share be treated differently.

(e) Business activities partially within and partially
without this state; apportionment of business income. —
All net income, after deducting those items specifically
allocated under subsection (d), shall be apportioned to this
state by multiplying the net income by a fraction, the
numerator of which is the property factor plus the payroll
factor plus two times the sales factor, and the denominator
of which is four, reduced by the number of factors, if any,
having no denominator.

(1) Property factor. — The property factor is a
fraction, the numerator of which is the average value of
the taxpayer's real and tangible personal property owned
or rented and used by it in this state during the taxable
year and the denominator of which is the average value of
all the taxpayer's real and tangible personal property
owned or rented and used by the taxpayer during the
taxable year, which is reported on Schedule L Federal
Form 1120, plus the average value of all real and tangible
personal property leased and used by the taxpayer during
the taxable year.

(2) Value of property. — Property owned by the
taxpayer shall be valued at its original cost, adjusted by
subsequent capital additions or improvements thereto and
partial disposition thereof, by reason of sale, exchange,
abandonment, etc.: Provided, That where records of
original cost are unavailable or cannot be obtained without
unreasonable expense, property shall be valued at original
cost as determined under rules of the tax commissioner.
Property rented by the taxpayer from others shall be
valued at eight times the annual rental rate. The term "net
annual rental rate" is the annual rental paid, directly or
indirectly, by the taxpayer, or for its benefit, in money or other consideration for the use of property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part of the property, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(3) Movable property. — The value of movable tangible personal property used both within and without this state shall be included in the numerator to the extent of its utilization in this state. The extent of the utilization shall be determined by multiplying the original cost of the property by a fraction, the numerator of which is the number of days of physical location of the property in this state during the taxable period, and the denominator of which is the number of days of physical location of the property everywhere during the taxable year. The number of days of physical location of the property may be determined on a statistical basis or by other reasonable method acceptable to the tax commissioner.

(4) Leasehold improvements. — Leasehold improvements shall, for purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Leasehold improvements shall be included in the property factor at their original cost.

(5) Average value of property. — The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year: Provided,
That the tax commissioner may require the averaging of monthly values during the taxable year if substantial fluctuations in the values of the property exist during the taxable year, or where property is acquired after the beginning of the taxable year, or is disposed of, or whose rental contract ceases, before the end of the taxable year.

(6) Payroll factor. — The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the taxpayer for compensation, and the denominator of which is the total compensation paid by the taxpayer during the taxable year, as shown on the taxpayer's federal income tax return as filed with the Internal Revenue Service, as reflected in the schedule of wages and salaries and that portion of cost of goods sold which reflects compensation, or as shown on a pro forma return.

(7) Compensation. — The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or to any other person not properly classifiable as an employee shall be excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered as paid directly to employees include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services, provided the amounts constitute income to the recipient for federal income tax purposes.

(8) Employee. — The term "employee" means:

(A) Any officer of a corporation; or

(B) Any individual who, under the usual common-law rule applicable in determining the employer-employee relationship, has the status of an employee.

(9) Compensation. — Compensation is paid or accrued in this state if:

(A) The employee's service is performed entirely within this state; or
(B) The employee's service is performed both within and without this state, but the service performed without the state is incidental to the individual's service within this state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction; or

(C) Some of the service is performed in this state and:

(i) The employee's base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(ii) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this state.

The term "base of operations" is the place of more or less permanent nature from which the employee starts his or her work and to which he or she customarily returns in order to receive instructions from the taxpayer or communications from his or her customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his or her trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

(10) Sales factor. — The sales factor is a fraction, the numerator of which is the gross receipts of the taxpayer derived from transactions and activity in the regular course of its trade or business in this state during the taxable year (business income), less returns and allowances. The denominator of the fraction is the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business during the taxable year (business income), and reflected in its gross income reported and as appearing on the taxpayer's Federal Form 1120, and consisting of those certain pertinent portions of the (gross income) elements set forth. Provided, That if either the numerator or the denominator includes interest or dividends from obligations of the United States government which are exempt from taxation by this state, the amount of such
interest and dividends, if any, shall be subtracted from the numerator or denominator in which it is included.

(11) Allocation of sales of tangible personal property. —

(A) Sales of tangible personal property are in this state if:

(i) The property is received in this state by the purchaser, other than the United States government, regardless of the f.o.b. point or other conditions of the sale. In the case of delivery by common carrier or other means of transportation, the place at which the property is ultimately received after all transportation has been completed is the place at which the property is received by the purchaser. Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by the purchaser, is delivery to the purchaser in this state, and direct delivery outside this state to a person or firm designated by the purchaser is not delivery to the purchaser in this state, regardless of where title passes or other conditions of sale; or

(ii) The property is shipped from an office, store, warehouse, factory or other place of storage in this state and the purchaser is the United States government.

(B) All other sales of tangible personal property delivered or shipped to a purchaser within a state in which the taxpayer is not taxed, as defined in subsection (b) of this section, shall be excluded from the denominator of the sales factor.

(12) Allocation of other sales. — Sales, other than sales of tangible personal property are in this state if:

(A) The income-producing activity is performed in this state; or

(B) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance; or

(C) The sale constitutes business income to the taxpayer, or the taxpayer is a financial organization not
having its commercial domicile in this state, and in either
322 case the sale is a receipt described as attributable to this
323 state in subsection (b), section seven-b of this article.
324
(13) Financial organizations and other taxpayers with
325 business activities partially within and partially without
326 this state. — Notwithstanding anything contained in this
327 section to the contrary, in the case of financial
328 organizations and other taxpayers, not having their
329 commercial domicile in this state, the rules of this
330 subsection apply to the apportionment of income from
331 their business activities except as expressly otherwise
332 provided in subsection (b), section seven-b of this article.
333
(f) Income-producing activity. — The term
334 "income-producing activity" applies to each separate item
335 of income and means the transactions and activity directly
336 engaged in by the taxpayer in the regular course of its
337 trade or business for the ultimate purpose of obtaining
338 gain or profit. The activity does not include transactions
339 and activities performed on behalf of the taxpayer, such as
340 those conducted on its behalf by an independent
341 contractor. "Income-producing activity" includes, but is
342 not limited to, the following:
343
(1) The rendering of personal services by employees
344 with utilization of tangible and intangible property by the
345 taxpayer in performing a service;
346
(2) The sale, rental, leasing, licensing or other use of
347 real property;
348
(3) The sale, rental, leasing, licensing or other use of
349 tangible personal property; or
350
(4) The sale, licensing or other use of intangible
351 personal property.
352
The mere holding of intangible personal property is
353 not, in itself, an income-producing activity: Provided,
354 That the conduct of the business of a financial
355 organization is an income-producing activity.
356
(g) Cost of performance. — The term "cost of
357 performance" means direct costs determined in a manner
358 consistent with generally accepted accounting principles
359 and in accordance with accepted conditions or practices in
360 the trade or business of the taxpayer.
(h) Other methods of allocation and apportionment. —

(1) General. — If the allocation and apportionment provisions of subsections (d) and (e) of this section do not fairly represent the extent of the taxpayer's business activities in this state, the taxpayer may petition for or the tax commissioner may require, in respect to all or any part of the taxpayer's business activities, if reasonable:

(A) Separate accounting;

(B) The exclusion of one or more of the factors;

(C) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(D) The employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer's income. The petition shall be filed no later than the due date of the annual return for the taxable year for which the alternative method is requested, determined without regard to any extension of time for filing the return, and the petition shall include a statement of the petitioner's objections and of the alternative method of allocation or apportionment as it believes to be proper under the circumstances with such detail and proof as the tax commissioner may require.

(2) Alternative method for public utilities. — If the taxpayer is a public utility and if the allocation and apportionment provisions of subsections (d) and (e) do not fairly represent the taxpayer's business activities in this state, the taxpayer may petition for, or the tax commissioner may require, as an alternative to the other methods provided for in paragraph (1) of this subsection, the allocation and apportionment of the taxpayer's net income in accordance with any system of accounts prescribed by the public service commission of this state pursuant to the provisions of section eight, article two, chapter twenty-four of this code: Provided, That the allocation and apportionment provisions of the system of accounts fairly represent the extent of the taxpayer's business activities in this state for the purposes of the tax imposed by this article.
(3) Burden of proof. — In any proceeding before the tax commissioner or in any court in which employment of one of the methods of allocation or apportionment provided for in paragraph (1) or (2) of this subsection is sought, on the ground that the allocation and apportionment provisions of subsections (d) and (e) do not fairly represent the extent of the taxpayer's business activities in this state, the burden of proof is:

(A) If the tax commissioner seeks employment of one of the methods, on the tax commissioner; or

(B) If the taxpayer seeks employment of one of the other methods, on the taxpayer.

CHAPTER 309

(Com. Sub. for S. B. 403—By Senator Craigo)

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

AN ACT to amend and reenact sections fourteen, sixteen, nineteen, twenty-one, twenty-three, twenty-four and twenty-five, article three, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to sheriff's tax lien sales; requiring the sheriff to collect subsequent taxes due from the purchaser of a tax lien before a certificate of sale is issued; establishing a time limit before charges attach for expenses incurred for preparation of notices to redeem; requiring the purchaser of a tax lien to furnish the person redeeming the property with a certification of title examination; providing that purchasers may only be reimbursed for title examinations performed by certain persons; modifying form of notice to redeem; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

That sections fourteen, sixteen, nineteen, twenty-one, twenty-three, twenty-four and twenty-five, article three, chapter eleven-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 3. SALE OF TAX LIENS AND NONENTERED, ESCHATEATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-14. Purchase by individual at tax sale; certificate of sale.
§11A-3-16. Subsequent tax payments by purchaser.
§11A-3-19. What purchaser must do before he can secure deed.
§11A-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.
§11A-3-24. Notice of redemption to purchaser; moneys received by sheriff.
§11A-3-25. Distribution of surplus to purchaser.

§11A-3-14. Purchase by individual at tax sale; certificate of sale.

(a) If the highest bidder present at the sale provided for in section five of this article, bids and pays at least the amount of taxes, interest and charges for which the tax lien on any real estate is offered for sale, the sheriff shall issue to him or her a certificate of sale for the purchase money, except the sheriff shall require payment of any subsequent taxes due at the time of the sale before a certificate of sale is issued. The heading of the certificate shall be:

Memorandum of tax lien on real estate sold in the county of __________ on this ___ day of ____, 19 __,
for the nonpayment of taxes charged thereon for the year ___
(or years) 19__.

Except for the heading, the tax commissioner shall prescribe the form of the receipt.

(b) The certificate of sale shall describe the real estate subject to the tax lien that was sold, the total amount of all taxes, interest, penalties and costs paid for each lot or tract, and the rate of interest to which the purchaser is entitled upon redemption. The certificate shall also set forth columns for the entry of subsequent years taxes paid and costs required by the sheriff to be paid on the date of the sale, and for the entry of subsequent taxes and costs paid.
For each certificate delivered, the purchaser shall pay a fee of ten dollars, and that amount shall be included in the costs described in the certificate.

§11A-3-16. Subsequent tax payments by purchaser.

Any person who has paid any subsequent taxes, other than the subsequent taxes paid on the date of the sale as provided for in section fourteen of this article, on lands for which he or she holds the certificate of sale described in section fourteen or fifteen of this article shall produce the certificate and copies of paid tax receipts to the clerk of the county commission, who shall endorse the amount of the subsequent taxes and the date of payment of the taxes in his or her records upon the payment to the clerk of a fee for the endorsement in the amount of two dollars.

§11A-3-19. What purchaser must do before he can secure deed.

(a) At any time after the thirty-first day of October of the year following the sheriff's sale, and on or before the thirty-first day of December of the same year, the purchaser, his or her heirs or assigns, in order to secure a deed for the real estate subject to the tax lien or liens purchased, shall: (1) Prepare a list of those to be served with notice to redeem and request the clerk to prepare and serve the notice as provided in sections twenty-one and twenty-two of this article; (2) provide the clerk with a list of any additional expenses incurred after the first day of January of the year following the sheriff's sale for the preparation of the list of those to be served with notice to redeem including proof of the additional expenses in the form of receipts or other evidence of reasonable legal expenses incurred for the services of any attorney who has performed an examination of the title to the real estate and rendered a written opinion and certification thereon; (3) deposit, or offer to deposit, with the clerk a sum sufficient to cover the costs of preparing and serving the notice; and (4) present the purchaser's certificate of sale, or order of the county commission where the certificate has been lost or wrongfully withheld from the owner, to the clerk of the county commission. For failure to meet these
requirements, the purchaser shall lose all the benefits of
his or her purchase.

(b) If the person requesting preparation and service of
the notice is an assignee of the purchaser, he or she shall,
at the time of the request, file with the clerk a written
assignment to him or her of the purchaser’s rights,
executed, acknowledged and certified in the manner
required to make a valid deed.

(c) Whenever any certificate given by the sheriff for a
tax lien on any land, or interest in the land sold for
delinquent taxes, or any assignment of the lien is lost or
wrongfully withheld from the rightful owner of the land
and the land or interest has not been redeemed, the county
commission may receive evidence of the loss or wrongful
detention and, upon satisfactory proof of that fact, may
cause a certificate of the proof and finding, properly
attested by the county clerk under the seal of the county,
to be delivered to the rightful claimant, and a record of the
certificate shall be duly made by the county clerk in the
recorded proceedings of the commission.


Whenever the provisions of section nineteen of this
article have been complied with, the clerk of the county
commission shall prepare a notice in form or effect as
follows:

To _______________________________________.

You will take notice that _______, the purchaser
(or ________, the assignee, heir or devisee of
__________, the purchaser) of the tax lien(s) on the
following real estate, ________________, (here describe
the real estate for which the tax lien(s) thereon were sold)
located in ________________, (here name the city, town or
village in which the real estate is situated or, if not within a
city, town or village, give the district and a general
description) which was returned delinquent in the name of
__________, and for which the tax lien(s) thereon
was sold by the sheriff of ________________ County at
the sale for delinquent taxes made on the
1876

TAX LIEN SALES

1866

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18 _____________ day of _____________, 19__,
19 has requested that you be notified that a deed for such real
20 estate will be made to him on or after the first day of
21 April, 19__, as provided by law, unless before that day
22 you redeem such real estate. The amount you will have to
23 pay to redeem on the last day, March thirty-first, will be as
24 follows:

25 Amount equal to the taxes, interest, and charges due
26 on the date of sale, with interest to March 31, 19__
27 ........$______________

28 Amount of subsequent years taxes paid on the
29 property, since the sale, with interest to March 31, 19__
30 ........................................ $______________

31 Amount paid for title examination and preparation of
32 list of those to be served, and for preparation and service
33 of the notice with interest from January 1, 19 (insert year)
34 following the sheriff’s sale to March 31, 19__
35 ........................................ $______________

36 Amount paid for other statutory costs
37 (describe) ...................................................................
38 ........................................ $______________

39 Total ............... $______________

40 You may redeem at any time before March thirty-first,
41 nineteen hundred _____________, by paying the
42 above total less any unearned interest.

43 Given under my hand this ________ day of
44 ____________________, 19__.  
45

46

47 Clerk of the County Commission
48 of___________________ County,
49 State of West Virginia

50 The clerk for his or her service in preparing the notice
51 shall receive a fee of five dollars for the original and one
dollar for each copy required. Any additional costs which
must be expended for publication, or service of the notice
in the manner provided for serving process commencing a
civil action, or for service of process by certified mail,
shall be charged by the clerk. All costs provided by this
section shall be included as redemption costs and included
in the notice described in this section.

§11A-3-23. Redemption from purchase; receipt; list of
redemptions; lien; lien of person redeeming
interest of another; record.

(a) After the sale of any tax lien on any real estate
pursuant to section five of this article, the owner of, or any
other person who was entitled to pay the taxes on, any real
estate for which a tax lien thereon was purchased by an
individual may redeem at any time before a tax deed is
issued for the real estate. In order to redeem, he or she
shall pay to the clerk of the county commission the
following amounts: (1) An amount equal to the taxes,
interest and charges due on the date of the sale, with
interest at the rate of one percent per month from the date
of sale; (2) all other taxes which have since been paid by
the purchaser, his or her heirs or assigns, with interest at
the rate of one percent per month from the date of
payment; (3) any additional expenses incurred from the
first day of January of the year following the sheriff’s sale
to the date of redemption for the preparation of the list of
those to be served with notice to redeem and any title
examination incident thereto, with interest at the rate of
one percent per month from the date of payment for
reasonable legal expenses incurred for the services of an
attorney who has performed an examination of the title to
the real estate and rendered a written opinion and
certification thereon: Provided, That the amount he or
she shall be required to pay, excluding the interest, for the
expenses incurred for the preparation of the list of those
to be served with notice to redeem required by section
nineteen of this article and any title examination
performed, shall not exceed two hundred dollars; and (4)
all additional statutory costs paid by the purchaser. Where
the clerk has not received from the purchaser satisfactory
proof of the expenses incurred in preparing the notice to
redeem, and any examination of title incident thereto, in the form of receipts or other evidence of legal expenses incurred as provided in section nineteen of this article, the person redeeming shall pay the clerk the sum of two hundred dollars plus interest at the rate of one percent per month from the first day of January of the year following the sheriff's sale for disposition by the sheriff pursuant to the provisions of sections ten, twenty-four, twenty-five and thirty-two of this article.

The person redeeming shall be given a receipt for the payment.

(b) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased by an individual, is compelled in order to protect himself or herself to redeem the tax lien on all of the real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of that other person for the amount paid to redeem the interest. He or she shall lose his or her right to the lien, however, unless within thirty days after payment he or she files with the clerk of the county commission his or her claim in writing against the owner of the interest, together with the receipt provided for in this section. The clerk shall docket the claim on the judgment lien docket in his or her office and properly index the claim. The lien may be enforced as other judgment liens are enforced.

§11A-3-24. Notice of redemption to purchaser; moneys received by sheriff.

(a) Upon payment of the sum necessary to redeem, the clerk shall deliver to the sheriff the redemption money paid and the name and address of the purchaser, his or her heirs and assigns. The clerk shall also note the fact of redemption on his or her record of delinquent lands.

(b) Of the redemption money received by the sheriff pursuant to this section, the sheriff shall deposit into the sale of tax lien surplus fund provided by section ten of this article an amount equal to the amount of taxes, interest and charges due on the date of the sale, plus the interest at the rate of one percent per month from the date
of sale to the date of redemption, the amount of the
subsequent years taxes paid the day of or after the
sheriff's sale, plus interest at the rate of one percent per
month thereon from the date of payment to the date of
redemption, the amount of any additional expenses
incurred after the first day of January of the year
following the sheriff's sale for the preparation of the list
of those to be served with notice to redeem and any
examination of title performed and certified pursuant to
the provisions of section nineteen of this article, plus
interest at a rate of one percent per month from the date
of payment to the date of redemption. In cases where the
clerk has not received from the purchaser satisfactory
proof of additional expenses incurred after the first day of
January of the year following the sheriff's sale as
provided in section twenty-three of this article, the sheriff
shall deposit the money received in the sale of tax lien
surplus fund provided by section ten of this article.

§11A-3-25. Distribution of surplus to purchaser.

(a) Where the land has been redeemed in the manner
set forth in section twenty-three of this article, and the
clerk has delivered the redemption money to the sheriff
pursuant to section twenty-four of this article, the sheriff
shall, upon delivery of the sum necessary to redeem,
promptly notify the purchaser, his or her heirs or assigns,
by mail, of the fact of the redemption and pay to the
purchaser, his or her heirs or assigns the following
amounts: (1) From the sale of tax lien surplus fund
provided by section ten of this article: (A) The surplus of
money paid in excess of the amount of the taxes, interest
and charges due and paid to the sheriff at the sale; and (B)
the amount of taxes, interest and charges due on the date
of the sale, plus the interest at the rate of one percent per
month from the date of sale to the date of redemption; (2)
all other taxes on the land which have since been paid by
the purchaser, his or her heirs or assigns, with interest at
the rate of one percent per month from the date of
payment to the date of redemption; (3) any additional
expenses that may have been incurred from the first day
of January of the year following the sheriff's sale to the
date of redemption in preparing the list of those to be
served with notice to redeem and any title examination performed in accordance with section nineteen of this article with interest at the rate of one percent per month from the date of payment, but the amount which shall be paid, excluding the interest, for the expenses incurred for the preparation of the list of those to be served with notice to redeem required by section nineteen of this article, and any title examination shall not exceed two hundred dollars; and (4) all additional statutory costs paid by the purchaser.

(b) (1) The notice shall include:

(A) A copy of the redemption certificate issued by the county clerk;

(B) An itemized statement of the redemption money to which the purchaser is entitled pursuant to the provisions of this section; and

(C) Where, at the time of the redemption, the clerk has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem and any title examination performed in accordance with section nineteen of this article, the clerk shall also include instructions to the purchaser as to how these expenses may be claimed.

(2) Subject to the limitations of this section, the purchaser is entitled to recover any expenses incurred in preparing the list of those to be served with notice to redeem and any title examination incident thereto from the first day of January of the year following the sheriff's sale to the date of the sale to the date of the redemption.

(c) Where, pursuant to section twenty-three of this article, the clerk has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem, and any title examination incident thereto, in the form of receipts or other evidence and therefore received from the purchaser as required by that section and delivered to the sheriff the sum of two hundred dollars plus interest at the rate of one percent per month from the first day of
January of the year following the sheriff’s sale to the date of the sale to the date of redemption, and the sheriff has not received from the purchaser satisfactory proof of the expenses within thirty days from the date of notification, the sheriff shall refund the amount to the person redeeming and the purchaser is barred from any claim. Where, pursuant to that section, the clerk has received from the purchaser and therefore delivered to the sheriff the sum of two hundred dollars plus interest at the rate of one percent per month from the first day of January of the year following the sheriff’s sale to the date of the sale to the date of redemption, and the purchaser provides the sheriff within thirty days from the date of notification satisfactory proof of the expenses, and the amount of the expenses is less than the amount paid by the person redeeming, the sheriff shall refund the difference to the person redeeming.

CHAPTER 310

(Com. Sub. for H. B. 4110—By Mr. Speaker, Mr. Kiss, and Delegates Yeager, Mezzatesta, Jenkins, Hubbard, Smith and Hall)

[Passed March 13, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the service credit within the teachers retirement system for teachers who serve as an officer with a statewide professional association and providing that members elected to public office be credited for time served in discharging legislative duties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.
§18-7A-17. Statement and computation of teachers' service.

(a) Under rules adopted by the retirement board, each teacher shall file a detailed statement of his or her length of service as a teacher for which he or she claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing the service, however, it shall credit no period of more than a month's duration during which a member was absent without pay, nor shall it credit for more than one year of service performed in any calendar year.

(b) For the purpose of this article, the retirement board shall grant prior service credit to new entrants and other members of the retirement system for service in any of the armed forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect. For purposes of this section, "armed forces" includes women's army corps, women's appointed volunteers for emergency service, army nurse corps, spars, women's reserve and other similar units officially parts of the military service of the United States. The military service is considered equivalent to public school teaching, and the salary equivalent for each year of that service is the actual salary of the member as a teacher for his or her first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement.

(c) For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of that state or territory, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount he or she contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service credit granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in West Virginia. Any transfer of out-of-state service, as provided in this article, shall not
be used to establish eligibility for a retirement allowance and the retirement board shall grant credit for the transferred service as additional service only: Provided, however, That a transfer of out-of-state service is prohibited if the service is used to obtain a retirement benefit from another retirement system: Provided further, That salaries paid to members for service prior to entrance into the retirement system shall not be used to compute the average final salary of the member under the retirement system.

(d) Service credit for members or retired members shall not be denied on the basis of minimum income rules promulgated by the teachers retirement board: Provided. That the member or retired member shall pay to the system the amount he or she would have contributed during the year or years of public school service for which credit was denied as a result of the minimum income rules of the teachers retirement board.

(e) No members shall be considered absent from service while serving as a member or employee of the Legislature of the state of West Virginia during any duly constituted session of that body or while serving as an elected member of a county commission during any duly constituted session of that body.

(f) No member shall be considered absent from service as a teacher while serving as an officer with a statewide professional teaching association, or who has served in that capacity, and no retired teacher, who served in that capacity while a member, shall be considered to have been absent from service as a teacher by reason of that service: Provided, That the period of service credit granted for that service shall not exceed ten years: Provided, however, That a member or retired teacher who is serving or has served as an officer of a statewide professional teaching association shall make deposits to the teachers retirement board, for the time of any absence, in an amount double the amount which he or she would have contributed in his or her regular assignment for a like period of time.

The teachers retirement board shall grant service credit to any former or present member of the West Virginia public employees retirement system who has been a
contributing member for more than three years, for
service previously credited by the public employees
retirement system and: (1) Shall require the transfer of the
member's contributions to the teachers retirement system;
or (2) shall require a repayment of the amount withdrawn
any time prior to the member's retirement: Provided,
That there shall be added by the member to the amounts
transferred or repaid under this subsection an amount
which shall be sufficient to equal the contributions he or
she would have made had the member been under the
teachers retirement system during the period of his or her
membership in the public employees retirement system
plus interest at a rate of six percent compounded annually
from the date of withdrawal to the date of payment. The
interest paid shall be deposited in the reserve fund.

(g) For service as a teacher in an elementary or
secondary parochial school, located within this state and
fully accredited by the West Virginia department of
education, the retirement board shall grant credit to the
member: Provided, That the member shall pay to the
system double the amount contributed during the first full
year of current employment, times the number of years
for which credit is granted, plus interest at a rate to be
determined by the retirement board. The interest shall be
deposited in the reserve fund and service granted at the
time of retirement shall not exceed the lesser of ten years
or fifty percent of the member's total service as a teacher
in the West Virginia public school system. Any transfer of
parochial school service, as provided in this section, may
not be used to establish eligibility for a retirement
allowance and the board shall grant credit for the transfer
as additional service only: Provided, however, That a
transfer of parochial school service is prohibited if the
service is used to obtain a retirement benefit from another
retirement system.

(h) If a member is not eligible for prior service credit
or pension as provided in this article, then his or her prior
service shall not be considered a part of his or her total
service.

(i) A member who withdrew from membership may
regain his or her former membership rights as specified in
section thirteen of this article only in case he or she has
served two years since his or her last withdrawal.
(j) Subject to the provisions of subsection (a) through (i) of this section, the board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible for the certificates under the provisions of this article. The certificates shall state the length of the prior service credit, but in no case shall the prior service credit exceed forty years.

Notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office require that member to be absent from his or her teaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit: Provided, That the board may not require any additional contributions from that member in order for the board to credit him or her with the contributing service credit earned while discharging official legislative duties.

CHAPTER 311

(Com. Sub. for H. B. 2430—By Mr. Speaker, Mr. Kiss)

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

AN ACT to amend and reenact section twenty-five, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state teachers retirement system; and retirement plan selection by teachers retired due to disability.

Be it enacted by the Legislature of West Virginia:

That section twenty-five, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-25. Eligibility for retirement allowance.

Any member who has attained the age of sixty years or who has had thirty-five years of total service as a teacher in West Virginia, regardless of age, shall be eligible for an annuity. No new entrant nor present member shall be eligible for an annuity, however, if either has less than five years of service to his or her credit.

Any member who has attained the age of fifty-five years and who has served thirty years as a teacher in West Virginia shall be eligible for an annuity.

Any member who has served at least thirty but less than thirty-five years as a teacher in West Virginia and is less than fifty-five years of age shall be eligible for an annuity, but the same shall be the reduced actuarial equivalent of the annuity the member would have received if such member were age fifty-five at the time such annuity was applied for.

The request for any annuity shall be made by the member in writing to the retirement board, but in case of retirement for disability, the written request may be made by either the member or the employer.

A member shall be eligible for annuity for disability if he or she satisfies the conditions in either subdivision (a) or subdivision (b) and meets the conditions of subdivision (c) as follows:

(a) His or her service as a teacher in West Virginia must total at least ten years, and service as a teacher must have been terminated because of disability, which disability must have caused absence from service for at least six months before his or her application for disability annuity is approved.

(b) His or her service as a teacher in West Virginia must total at least five years, and service as a teacher must have been terminated because of disability, which disability must have caused absence from service for at
least six months before his or her application for disability
annuity is approved and said disability is a direct and total
result of an act of student violence directed toward the
member.

(c) An examination by a physician or physicians
selected by the retirement board must show that the
member is at the time mentally or physically incapacitated
for service as a teacher, that for such service the disability
is total and likely to be permanent, and that he or she
should be retired in consequence thereof.

Continuance of the disability of the retired teacher
shall be established by medical examination, as prescribed
in the preceding paragraph, annually for five years after
retirement, and thereafter at such times as the retirement
board may require. Effective the first day of July, one
thousand nine hundred ninety-eight, a member who has
retired because of a disability may select an option of
payment under the provisions of section twenty-eight of
this article: Provided, That any option selected under the
provisions of section twenty-eight of this article shall be in
all respects the actuarial equivalent of the straight life
annuity benefit the disability retiree receives or would
receive if the options under section twenty-eight of this
article were not available and that no beneficiary or
beneficiaries of the disability annuitant may receive a
greater benefit, nor receive any benefit for a greater length
of time, than such beneficiary or beneficiaries would have
received had the disability retiree not made any election of
the options available under said section twenty-eight. In
determining the actuarial equivalence, the board shall take
into account the life expectancies of the member and the
beneficiary: Provided, however, That the life expectancies
may at the discretion of the board be established by an
underwriting medical director of a competent insurance
company offering annuities. Payment of the disability
annuity provided in this article shall cease immediately if
the retirement board finds that the disability of the retired
teacher no longer exists, or if the retired teacher refuses to
submit to medical examination as required by this section.
AN ACT to amend article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections twenty-six-p and twenty-six-q, all relating to providing supplemental benefits to certain retired teachers.

Be it enacted by the Legislature of West Virginia:

That article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections twenty-six-p and twenty-six-q, all to read as follows:

§18-7A-26p. Supplemental benefits for certain teachers who retired on or after July 1, 1986, but prior to April 1, 1988.

§18-7A-26q. Supplemental benefits for certain teachers who retired prior to April 1, 1988.

§18-7A-26p. Supplemental benefits for certain teachers who retired on or after July 1, 1986, but prior to April 1, 1988.

1 As an additional supplement to other retirement allowances provided, each annuitant who retired on or after the first day of July, one thousand nine hundred eighty-six, and before the first day of April, one thousand nine hundred eighty-eight, shall receive a monthly amount equal to two dollars multiplied by his or her total service credit.

§18-7A-26q. Supplemental benefits for certain teachers who retired prior to April 1, 1988.
As an additional supplement to other retirement allowances provided, each annuitant who retired before the first day of April, one thousand nine hundred eighty-eight, and who is receiving a monthly pension of three hundred dollars or less, shall receive a monthly total amount equal to one dollar multiplied by his or her total service credit.

CHAPTER 313

(Com. Sub. for S. B. 94—By Senators Bowman and Snyder)

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

AN ACT to amend and reenact section thirty-five-b, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to raising the earnings cap from two thousand five hundred dollars to seven thousand five hundred dollars per year for appointed or elected officials receiving incentive retirement benefits; and removing obsolete provisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-35b. Temporary early retirement incentives program; legislative declarations and findings; termination date.

Under the prior enactment of this section, the Legislature found and declared that a compelling state interest existed in providing a temporary, early retirement incentives program for encouraging the early, voluntary retirement of those public employees who were current, active, contributing members of this retirement system on
the first day of April, one thousand nine hundred eighty-eight, in the reduction of the number of the employees and in reduction of governmental costs for the employees. The Legislature further found that maintaining an actuarially sound retirement fund is essential and that the reemployment in any manner, including reemployment on a contract basis, by the state of any person who retired under this section is contrary to the intent of the early retirement program and severely threatens the fiscal integrity of the retirement fund. The early retirement program under the prior enactment of this section, offered employees three retirement incentive options. Any person who retired under the provisions of the prior enactment of this section are subject to the restrictions contained in this section.

(a) For the purposes of this section: (1) "Contract" means any personal service agreement, not involving the sale of commodities, that cannot be performed within sixty days or for which the total compensation exceeds seven thousand five hundred dollars in any twelve-month period. The term "contract" does not include any agreement obtained by a retirant through a bidding process and which is for the furnishing of any commodity to a government agency; (2) "governmental entity" means the state of West Virginia; a constitutional branch or office of the state government, or any subdivision of state government; a county, city or town in the state; a county board of education; a separate corporation or instrumentality established pursuant to a state statute; any other entity currently permitted to participate in any state public retirement system or the public employees insurance agency; or any officer or official of any entity listed in this subsection who is acting in his or her official capacity; (3) "substitute teacher" means a teacher, public school librarian, registered professional nurse employed by the county board of education or any other person employed for counselling or instructional purposes in a public school in this state who is temporarily fulfilling the duties of an existing person employed in a specific position who is temporarily absent from that specific
position; and (4) "part-time elected or appointed office" means any elected or appointed office that compensates its members in an amount less than two thousand five hundred dollars or requires less than sixty days of service in any twelve-month period.

(b) Any member who participated in the retirement incentive program under the prior enactment of this section is not eligible to accept further employment or accept, directly or indirectly, work on a contract basis from a governmental entity: Provided, That the executive director may approve, upon written request for good cause shown, an exception allowing a retirant to perform work on a contract basis: Provided, however, That a person may retire under this section and thereafter serve in an elective office: Provided further, That he or she shall not receive the incentive option he or she elected under the prior enactment of this section during the term of service in that office for which the total compensation exceeds seven thousand five hundred dollars, but shall receive his or her annuity calculated on regular basis, as if originally taken not under the prior enactment of this section but on a regular basis. At the end of the term and cessation of service in the office, the incentive option resumes. In respect of an appointive office, as distinguished from an elective office, any person retiring under this section and thereafter serving in the appointive office for which the total compensation exceeds seven thousand five hundred dollars shall not receive the incentive option he or she elected under the prior enactment of this section during the term of service in that office, but the incentive option resumes during that period: And provided further, That at the end of the term and cessation of service in the appointive office the incentive option provided for under the prior enactment of this section resumes: And provided further, That any person elected or appointed to office by the state or any of its political subdivisions who waives whatever salary, wage or per diem compensation he or she may be entitled to by virtue of service in that office and who does not receive any income from service in that office except the reimbursement of out-of-pocket costs
and expenses that are permitted by the statutes governing the office shall continue to receive the incentive option he or she elected under this section. The service may not be counted as contributed or credited service for purposes of computing retirement benefits.

(c) If the elected or appointed office is a part-time elected or appointed office, a person electing retirement under this section may serve in the elective or appointive office with no loss of the benefits provided under the prior enactment of this section.

(d) Prior to the initiation or renewal of any contract for which the total compensation exceeds seven thousand five hundred dollars and entered into pursuant to this section or the acceptance of any elective or appointive office for which the total compensation exceeds seven thousand five hundred dollars, a person who has elected to retire under the early retirement provisions of the prior enactment of this section shall complete a disclosure and waiver statement executed under oath and acknowledged by a notary public. The board shall propose rules for promulgation, pursuant to article three, chapter twenty-nine-a of this code, regarding the form and contents of the waiver and disclosure statement. The disclosure and waiver statement shall be forwarded to the appropriate state public retirement system administrator who shall take action to ensure that the early retirement incentive option benefit is reduced in accordance with the provisions of this section. The administrator shall then certify that action in writing to the appropriate governmental entity.

(e) In any event, an eligible member who retired under the prior enactment of this section may continue to receive his or her incentive annuity and be employed as a substitute teacher, as adjunct faculty, as a school service personnel substitute, or as a part-time member of the faculty of southern West Virginia community college or West Virginia northern community college: Providing, That the board of directors determines that the part-time
employment is in accordance with policies to be adopted by the board regarding adjunct faculty. For purposes of this section, a "part-time member of the faculty" means an individual employed solely to provide instruction for not more than twelve college credits per semester.

(f) Any incentive retirants, under the prior enactment of this section, may not receive an annuity and enter or reenter any governmental retirement system established or authorized to be established by the state, notwithstanding any provision of the code to the contrary, unless required by constitutional provision.

(g) The additional annuity allowed for temporary early retirement is intended to be paid from the retirement incentive account created as a special account in the state treasury and from the funds in the special account established with moneys required to be applied or transferred by heads of spending units from the unused portion of salary and fringe benefits in their budgets accruing in respect to the positions vacated and subsequently canceled under this temporary early retirement program. Salary and fringe benefit moneys actually saved in a particular fiscal year constitute the fund source. No additional annuity shall be disallowed even though initial receipts may not be sufficient, with funds of the system to be applied for the purpose, as for the base annuity.

(h) The executive secretary of the retirement system shall file a quarterly report to the Legislature detailing the number of retirees who have elected to accept early retirement incentive options, the dollar cost to date by option selected, and the projected annual cost through the year two thousand.

(i) Termination of temporary retirement incentives program. — The right to retire under this section terminated on the thirtieth day of June, one thousand nine hundred eighty-nine.
CHAPTER 314

(Com. Sub. for H. B. 4267—By Delegates Amores, Coleman, Pino, Kominar, Staton, Smirl and L. White)

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

AN ACT to amend and reenact sections one hundred four, four hundred sixteen and four hundred seventeen, article three, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two hundred seven and two hundred eight, article four of said chapter; to amend chapter forty-six-a of said code by adding thereto a new article, designated article six-f; and to amend and reenact section five, article four, chapter sixty-one of said code, all relating to the regulation of telemarketing activities generally; defining the term "demand draft"; making transfer warranties applicable to demand drafts transferred by a person for consideration; making presentment warranties applicable to demand drafts; making transfer warranties applicable to demand drafts transferred by a customer or collecting bank; making presentment warranties applicable to demand drafts presented to the drawee for payment; defining certain terms related to the regulation of telemarketing; exempting certain persons and entities from telemarketing registration; requiring the registration of telemarketers; requiring surety bond upon application for registration; levying of civil administrative penalty for failing to register or meet security requirement; requiring a telemarketer to keep records related to telemarketing activities; mandating disclosures which a telemarketer must make when communicating with a consumer; requiring a minimum policy on accepting returns or canceling services; describing unfair or deceptive acts or practices; establishing causes of action for unfair or deceptive acts or practices; creating the felony offense of operating a criminal recovery service and establishing the penalty therefor; describing abusive acts or practices; providing for civil remedies; providing that remedies are not exclusive; providing for service of process on certain
nonresidents; and making the creation of a fraudulent demand draft a felony forgery offense subject to criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections one hundred four, four hundred sixteen and four hundred seventeen, article three, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two hundred seven and two hundred eight, article four of said chapter be amended and reenacted; that chapter forty-six-a of said code be amended by adding thereto a new article, designated article six-f; and that section five, article four, chapter sixty-one of said code be amended and reenacted, all to read as follows:

Chapter
46. Uniform Commercial Code.
46A. West Virginia Consumer Credit and Protection Act.
61. Crimes and Their Punishment.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

Article
4. Bank Deposits and Collections.

ARTICLE 3. NEGOTIABLE INSTRUMENTS.

§46-3-104. Negotiable instrument.
§46-3-416. Transfer warranties.
§46-3-417. Presentment warranties.

§46-3-104. Negotiable instrument.

(a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) Is payable on demand or at a definite time; and
(3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) “Instrument” means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of “check” in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this article.

(e) An instrument is a “note” if it is a promise and is a “draft” if it is an order. If an instrument falls within the definition of both “note” and “draft”, a person entitled to enforce the instrument may treat it as either.

(f) “Check” means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as “money order”.

(g) “Cashier's check” means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) “Teller's check” means a draft drawn by a bank (i) on another bank or (ii) payable at or through a bank.

(i) “Traveler's check” means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term “traveler's
check” or by a substantially similar term and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) “Certificate of deposit” means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

(k) “Demand draft” means a writing that is not signed by a customer, as defined in subdivision (5), subsection (a), section one hundred four, article four of this chapter, and that is created by a third party under the purported authority of the customer for the purpose of charging the customer's account with a bank. A demand draft does not include a check drawn by a fiduciary, as defined in section three hundred seven of this article. A demand draft may contain any or all of the following:

(1) The customer's printed or typewritten name or account number;

(2) A notation that the customer authorized the draft; and

(3) The statement “No signature required”, “Authorization on file”, “Signature on file”, or words to that effect.

§46-3-416. Transfer warranties.

(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(1) The warrantor is a person entitled to enforce the instrument;

(2) All signatures on the instrument are authentic and authorized;

(3) The instrument has not been altered;
9 (4) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor;

10 (5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

11 (6) If the instrument is a demand draft, the creation of the instrument according to the terms on its face was authorized by the person identified as drawer.

12 (b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

13 (c) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

14 (d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

15 (e) If the warranty under subdivision (6), subsection (a) is not given by a transferor under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee.

§46-3-417. Presentment warranties.

1 (a) If an unaccepted draft is presented to the drawee for payment of acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment and (ii) a previous transferor of
the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

7. (1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

8. (2) The draft has not been altered;

9. (3) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized; and

10. (4) If the instrument is a demand draft, the creation of the draft according to the terms on its face was authorized by the person identified as drawer.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 3-404 or 3-405 or the drawer is precluded under section 3-406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the
The person obtaining payment and prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(3) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(f) If the warranty under subdivision (4), subsection (a) is not given by a transferor under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee.

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.

§46-4-207. Transfer warranties.

(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

1. The person obtaining payment and prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

2. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

3. The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

4. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

5. If the warranty under subdivision (4), subsection (a) is not given by a transferor under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee.
5 (1) The warrantor is a person entitled to enforce the item;
6 (2) All signatures on the item are authentic and authorized;
7 (3) The item has not been altered;
8 (4) The item is not subject to a defense or claim in recoupment (section 3-305(a)) of any party that can be asserted against the warrantor;
9 (5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and
10 (6) If the item is a demand draft, the creation of the item according to the terms on its face was authorized by the person identified as drawer.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in sections 3-115 and 3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made “without recourse” or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within
thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(f) If the warranty under subdivision (6), subsection (a) is not given by a transferor or collecting bank under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee or to any prior collecting bank of that transferee.

§46-4-208. Presentment warranties.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to endorse the draft;

(2) The draft has not been altered;

(3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; and

(4) If the instrument is a demand draft, the creation of the draft according to the terms on its face was authorized by the person identified as drawer.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any
failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, (i) breach of warranty is a defense to the obligation of the acceptor and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 3-404 or 3-405 or the drawer is precluded under section 3-406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.
(g) If the warranty under subdivision (4), subsection (a) is not given by a transferor under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 6F. TELEMARKETING.

PART I. DEFINITIONS.

§46A-6F-102. Chance promotion.
§46A-6F-103. Consumer; purchaser.
§46A-6F-104. Consumer goods or services.
§46A-6F-105. Division.
§46A-6F-106. Individual.
§46A-6F-107. Investment opportunity.
§46A-6F-108. Material aspect or element.
§46A-6F-109. Person.
§46A-6F-110. Prize, gift or award.
§46A-6F-111. Prize promotion.
§46A-6F-112. Telemarketing solicitation.
§46A-6F-113. Telemarketer.
§46A-6F-114. Telemarketer in good standing.
§46A-6F-201. Inapplicability of registration and bonding provisions of this article to charitable organizations.
§46A-6F-202. Inapplicability of article to licensed securities, commodities, or investment broker, dealer, or investment adviser.
§46A-6F-203. Inapplicability of article to licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser.
§46A-6F-204. Inapplicability of article to person who does not make the major sales presentation.
§46A-6F-205. Inapplicability of article to person who solicits sales by catalog.
§46A-6F-206. Inapplicability of article to business-to-business sale.
§46A-6F-207. Inapplicability of article to person who solicits contracts for the maintenance or repair of goods.
§46A-6F-208. Inapplicability of article to person soliciting a transaction regulated by the commodity futures trading commission.
§46A-6F-209. Inapplicability of article to supervised financial organization.
§46A-6F-210. Inapplicability of article to licensed insurance broker, agent, customer representative, or solicitor.

§46A-6F-211. Inapplicability of article to person soliciting the sale of services provided by a cable television system.

§46A-6F-212. Inapplicability of article to certain telephone and communications companies.

§46A-6F-213. Inapplicability of article to persons maintaining continuing business locations for sales of consumer goods or services.

§46A-6F-214. Inapplicability of article to issuer of certain securities.

§46A-6F-215. Inapplicability of article to book, video, record, or multimedia club.

§46A-6F-216. Inapplicability of article to registered developer or a real estate salesperson or broker.

§46A-6F-217. Inapplicability of article to person soliciting the sale of electric or natural gas energy or related goods or services.

§46A-6F-218. Inapplicability of article to person soliciting the sale of a magazine or newspaper.

§46A-6F-219. Inapplicability of article to certain telemarketers based on continuous sales and gross sales for exempt persons.

§46A-6F-220. Inapplicability of article to the annual sale of less than one hundred dollars for food stuffs and edibles.

§46A-6F-301. Registration of telemarketers.


§46A-6F-303. Failure to register or meet security requirement; remedies.

§46A-6F-304. Record keeping requirements.

§46A-6F-401. Mandatory disclosures.

§46A-6F-402. Accepting returns or canceling services.

§46A-6F-501. Unfair or deceptive acts or practices.

§46A-6F-502. Causes of action arising out of unfair or deceptive acts or practices; limitation of actions.

§46A-6F-503. Operating a criminal recovery service; penalties.

§46A-6F-601. Abusive acts or practices.

§46A-6F-701. Civil remedies.

§46A-6F-702. Remedies not exclusive.

§46A-6F-703. Service of process on certain nonresidents.


1 For the purposes of this article, the words or terms defined in this part have the meanings ascribed to them.

2 These definitions are applicable unless a different meaning clearly appears from the context.
§46A-6F-102. Chance promotion.

"Chance promotion" means any plan in which premiums are distributed by random or chance selection.

§46A-6F-103. Consumer; purchaser.

"Consumer" or "purchaser" means a person who is solicited to become or does become obligated to pay for consumer goods or services offered by a telemarketer through telemarketing.

§46A-6F-104. Consumer goods or services.

"Consumer goods or services" means:

1. Any property or services offered or sold to a natural person primarily for personal, family, household or agricultural purposes;
2. Any property or service offered or sold for the purpose of providing a profit or investment opportunity;
3. Any property intended to be attached to or installed in any real property, without regard to whether it is so attached or installed, as well as timeshare estates and licenses, resort and campground memberships, and any services related to such property.

§46A-6F-105. Division.

"Division" means the consumer protection division of the office of the attorney general.

§46A-6F-106. Individual.

"Individual" means a single human being and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity.

§46A-6F-107. Investment opportunity.

"Investment opportunity" means anything tangible or intangible, that is offered for sale, sold or traded based, wholly or in part, on representations, either express or
4 implied, about past, present or future income, profit or
5 appreciation.

§46A-6F-108. Material aspect or element.
1 "Material aspect or element" means any factor likely
2 to affect a person's choice of, or conduct regarding, goods
3 or services and includes currency values and comparative
4 expressions of value including, but not limited to,
5 percentages or multiples.

§46A-6F-109. Person.
1 "Person" includes any individual, group of
2 individuals, firm, association, corporation, partnership,
3 joint venture, sole proprietorship, or any other business
4 entity.

§46A-6F-110. Prize, gift or award.
1 "Prize, gift or award" means anything offered or
2 given, or purportedly offered or given, to a consumer as
3 part of a prize promotion.

§46A-6F-111. Prize promotion.
1 "Prize promotion" means:
2 (1) A sweepstakes or other game of chance; or
3 (2) An oral or written express or implied
4 representation that a person has won, has been selected to
5 receive, or may be eligible to receive a prize, gift or award.

§46A-6F-112. Telemarketing solicitation.
1 (a) "Telemarketing solicitation" means and includes
2 any communication between a telemarketer and a
3 prospective purchaser for the purpose of selling or
4 attempting to sell the purchaser any consumer goods or
5 services, if it is intended by the telemarketer that an
6 agreement to purchase the consumer goods or services will
7 be made after any of the following events occur:
8 (1) The telemarketer makes an unsolicited telephone
9 call to a consumer, attempting to sell consumer goods or
10 services to the consumer, when the consumer has not
previously expressed an interest to the telemarketer in purchasing, investing in, or obtaining information regarding, the consumer goods or services offered by the telemarketer; or

(2) The telemarketer communicates with a consumer by any means and invites or directs the consumer to respond by any means to the telemarketer’s communications, and the telemarketer intends to enter into an agreement with the consumer for the purchase of consumer goods or services at some time during the course of one or more subsequent telephone communications with the consumer.

(b) For purposes of this article, “communication” means a written or oral notification or advertisement transmitted from a telemarketer to a consumer by any means.

§46A-6F-113. Telemarketer.

(a) “Telemarketer” means any person who initiates or receives telephone calls to or from a consumer in this state for the purpose of making a telemarketing solicitation as defined in section one hundred thirteen of this article.

(b) A telemarketer may initiate or receive a communication that constitutes a telemarketing solicitation on his own behalf, through a salesperson, or through an automated dialing machine.

(c) A telemarketer does not include any of the persons or entities exempted pursuant to Part II of this article.

(d) A telemarketer does not include a salesperson as defined in section one hundred fourteen of this article.

(e) A telemarketer includes, but is not limited to, owners, operators, officers, directors, partners, or other individuals engaged in the management activities of a business entity that is subject to licensing and registration pursuant to this article.

§46A-6F-114. Telemarketer in good standing.
“Telemarketer in good standing” means a telemarketer who, during the previous two years has continually been engaged in the business of telemarketing and who has not been convicted, or pled guilty or nolo contendere to racketeering, embezzlement, fraudulent conversion, misappropriation of property or any violations of state or federal securities laws, a theft offense, or any consumer protection law or telemarketing law.

PART II. EXEMPT PERSONS OR ENTITIES.

§46A-6F-201. Inapplicability of registration and bonding provisions of this article to charitable organizations.

A charitable organization that is exempt from filing an annual registration statement with the secretary of state under the provisions of section six, article nineteen, chapter twenty-nine of this code is exempt from the registration and bonding provisions of this article when making a telemarketing solicitation.

§46A-6F-202. Inapplicability of article to licensed securities, commodities, or investment broker, dealer, or investment adviser.

The provisions of this article do not apply to any licensed securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his license. As used in this section, “licensed securities, commodities, or investment broker, dealer, or investment adviser” means a person who is licensed or registered as such by the securities and exchange commission, by the national association of securities dealers or some other self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U.S.C. §781), or by an official or agency of this state or of any state of the United States.

§46A-6F-203. Inapplicability of article to licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser.
The provisions of this article do not apply to any licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his license. As used in this section, "licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser" means any associated person registered or licensed by the national association of securities dealers or other self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U.S.C. §781) or by an official or agency of this state or of any state of the United States.

§46A-6F-204. Inapplicability of article to person who does not make the major sales presentation.

The provisions of this article do not apply to a person who does not make the major sales presentation during the telephone solicitation and who does not intend to, and does not actually, complete or obtain provisional acceptance of a sale during the telephone solicitation, but who makes the major sales presentation and completes the sale at a later face-to-face meeting between the seller and the prospective consumer in accordance with the home solicitation provisions in this chapter and as a home solicitation sale as defined by section one hundred two, article one of this chapter. However, if a seller, in violation of subdivision (4), subsection (a), section five hundred one of this article, causes an individual to go to the prospective consumer for the primary purpose of collecting payment or delivering any item purchased, this exemption does not apply.

§46A-6F-205. Inapplicability of article to person who solicits sales by catalog.

The provisions of this article do not apply to a person who solicits sales by periodically publishing and delivering a catalog of a seller's merchandise to prospective purchasers, if the catalog:

(1) Contains a written description or illustration of each item offered for sale;
(2) Includes the business address or home address of the seller;

(3) Includes at least twenty pages of written material and illustrations and is distributed in more than one state;

and

(4) Has an annual circulation, by mailing, of not less than one hundred fifty thousand catalogs.

§46A-6F-206. Inapplicability of article to business-to-business sale.

1. The provisions of this article do not apply to a business-to-business sale.

§46A-6F-207. Inapplicability of article to person who solicits contracts for the maintenance or repair of goods.

1. The provisions of this article do not apply to a person who solicits contracts for the maintenance or repair of goods previously purchased from the person making the solicitation or on whose behalf the solicitation is made.

§46A-6F-208. Inapplicability of article to person soliciting a transaction regulated by the commodity futures trading commission.

1. The provisions of this article do not apply to a person soliciting a transaction regulated by the federal commodity futures trading commission if the person is registered or temporarily licensed for this activity with the commodity futures trading commission under the Commodity Exchange Act (7 U.S.C. §1 et seq.) and the registration or license has not expired or been suspended or revoked.

§46A-6F-209. Inapplicability of article to supervised financial organization.

1. The provisions of this article do not apply to any supervised financial organization or an affiliate or subsidiary thereof or regulated consumer lender subject to regulation by the commissioner of banking or a federal agency charged with regulating such supervised financial
organizations or regulated consumer lenders when acting within the scope of the supervised or regulated activity. As used in this section, the terms “supervised financial organization” and “regulated consumer lender” shall have the same meanings as ascribed to them in section one hundred two, article one of this chapter.

§46A-6F-210. Inapplicability of article to licensed insurance broker, agent, customer representative, or solicitor.

The provisions of this article do not apply to any licensed insurance broker, agent, customer representative, or solicitor when soliciting within the scope of his or her license. As used in this section, “licensed insurance broker, agent, customer representative, or solicitor” means any insurance broker, agent, customer representative, or solicitor licensed by an official or agency of this state pursuant to subsection (a), section one, article twelve, chapter thirty-three of this code, or of any state of the United States.

§46A-6F-211. Inapplicability of article to person soliciting the sale of services provided by a cable television system.

The provisions of this article do not apply to a person soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit, or to a person soliciting the sale of subscriber television services or advertising.

§46A-6F-212. Inapplicability of article to certain telephone and communications companies.

The provisions of this article do not apply to any of the following entities to the extent that its acts or practices are subject to the jurisdiction or regulation of the West Virginia public service commission or the federal communications commission:

(1) A telephone company, or any affiliate or agent of a telephone company; or
8 (2) Any provider of commercial mobile service, as defined by the Communications Act of 1934, as amended by the Telecommunications Act of 1966 (47 U.S.C. §151, et seq.).

§46A-6F-213. Inapplicability of article to persons maintaining continuing business locations for sales of consumer goods or services.

The provisions of this article do not apply to a person who offers to sell consumer goods or services through telemarketing activities if the person maintains a permanent business location under the same exact name as that used in connection with the telemarketing sales, and both of the following activities occur on a continuing basis:

(1) The identical consumer goods or services offered for sale by the person through telemarketing activities are offered for sale at the person's business location; and

(2) More than fifty percent of all of the consumer goods or services offered for sale by the person are provided to consumers at the person's business location rather than through telemarketing sales.

§46A-6F-214. Inapplicability of article to issuer of certain securities.

The provisions of this article do not apply to an issuer or a subsidiary of an issuer that has a class of securities which is subject to §12 of the Securities Exchange Act of 1934 (15 U.S.C. §78l) and which is either registered or exempt from registration under paragraphs (A), (B), (C), (E), (F), (G), or (H) of subsection (g)(2) of that section.

§46A-6F-215. Inapplicability of article to book, video, record, or multimedia club.

The provisions of this article do not apply to a book, video, record, or multimedia club or contractual plan or arrangement:

(1) Under which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise;
(2) That is regulated by the federal trade commission trade regulation concerning use of negative option plans by sellers in commerce; or

(3) That provides for the sale of books, records, videos, multimedia products or other goods that are not covered under subdivisions (1) or (2) of this section, including continuity plans, subscription arrangements, standing order arrangements, single sales of items offered for sale one time, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.

§46A-6F-216. Inapplicability of article to registered developer or a real estate salesperson or broker.

The provisions of this article do not apply to a person who is licensed as a real estate broker, associate broker, or real estate salesperson, in accordance with the provisions of article twelve, chapter forty-seven of this code, when such person is acting within the scope of their license.

§46A-6F-217. Inapplicability of article to person soliciting the sale of electric or natural gas energy or related goods or services.

The provisions of this article do not apply to a person soliciting on behalf of an entity that sells electric or natural gas energy, or an affiliate of such an entity, if the solicitation is for the sale of electric or natural gas energy or related goods and services, and the transaction is governed and regulated by the public service commission or the federal energy regulatory commission.

§46A-6F-218. Inapplicability of article to person soliciting the sale of a magazine or newspaper.

The provisions of this article do not apply to a person primarily soliciting the sale of a single magazine subscription or subscription to a newspaper of general circulation or the sale of advertisements therein.
§46A-6F-219. Inapplicability of article to certain telemarketers based on continuous sales and gross sales for exempt persons.

The provisions of this article do not apply to any telemarketer, in good standing, who has been providing telemarketing sales services continuously for at least two years under the same name and ownership and which derives fifty percent of its gross telemarketing sales revenues from contracts with persons exempted from this part: Provided, That telemarketers under this exemption must register, without bond, with the secretary of tax and revenue to establish eligibility for this exemption.

§46A-6F-220. Inapplicability of article to the annual sale of less than one hundred dollars for food stuffs and edibles.

The provisions of this article do not apply to a person soliciting the sale of food stuffs and edibles, except vitamins, if the solicitations neither intends to result in, or actually results in a sale or sales which costs the consumer in excess of one hundred dollars annually to a single address: Provided, That such sales are not solicited by professional telemarketers.

PART III. REGISTRATION, SECURITY AND RECORD KEEPING.

§46A-6F-301. Registration of telemarketers.

(a) No person shall act as a telemarketer without first having registered with the secretary of the department of tax and revenue.

(b) The initial application for registration shall be made at least sixty days prior to offering consumer goods or services, or offering for sale consumer goods or services through any medium, and an application for renewal shall be made on an annual basis thereafter. The department of tax and revenue shall charge reasonable application and renewal fees for administration of the registration requirements pursuant to this article. The application and renewal fees shall be established through the promulgation of a legislative rule pursuant to chapter twenty-nine-a of this code. The fees so collected shall be
15 deposited into the state treasury to the credit of the special
16 revenue fund known as the "telemarketer registration
17 fund" pursuant to section three hundred four of this
18 article.
19
20 (c) The application for a certificate of registration or
21 renewal shall include, but not be limited to, the following
22 information:
23
24 (1) The true name, mailing address, telephone number
25 and physical address of the telemarketer, including each
26 name under which the telemarketer intends to engage in
27 telemarketing;
28
29 (2) Each occupation or business that the
30 telemarketer's principal owner has engaged in for two
31 years immediately preceding the date of the application;
32
33 (3) Whether any principal or manager has been
34 convicted, or pled guilty to, or is being prosecuted by
35 indictment for, racketeering, any violations of state or
36 federal securities laws, a theft offense, or any consumer
37 protection law or telemarketing law;
38
39 (4) Whether there has been entered against any
40 principal or manager an injunction, temporary restraining
41 order or a final judgment in any civil or administrative
42 action, involving fraud, theft, racketeering, embezzlement,
43 fraudulent conversion, misappropriation of property, or
44 any consumer protection law or telemarketing law,
45 including any pending litigation against the applicant;
46
47 (5) Whether the telemarketer, at any time during the
48 previous seven years, has filed for bankruptcy, been
49 adjudged bankrupt or been reorganized because of
50 insolvency;
51
52 (6) The true name, current home address, date of birth,
53 social security number and all other names of the
54 following:
55
56 (A) Each person participating in or responsible for the
57 management of the seller's business;
(B) Each person, office manager, or supervisor principally responsible for the management of the seller's business.

(7) The name, address and account number of every institution where banking or any other monetary transactions are done by the seller.


(a) An application for registration or renewal shall be accompanied by a continuing surety bond executed by a corporation that is licensed to transact the business of fidelity and surety insurance in the state of West Virginia. The bond must be approved by the department of tax and revenue before a certificate of registration is issued in accordance with the provisions of section three hundred one of this article. A separate bond in the amount of one hundred thousand dollars may be filed for each telemarketing location, including each principal office and each branch office thereof, or a single bond in the amount of five hundred thousand dollars may be filed for all locations of the telemarketer.

(b) The bond shall provide that the telemarketer will pay all damages to the state or a private person resulting from any unlawful act or action by the telemarketer or its agent in connection with the conduct of telemarketing activities.

(c) The registration of any telemarketer shall be void upon termination of the bond of the surety company, or loss of the bond, unless, prior to such termination, a new bond has been filed with the department of tax and revenue. The surety, for any cause, may cancel the bond upon giving a sixty-day written notice by certified mail to the telemarketer and to the department of tax and revenue. Unless the bond is replaced by that of another surety before the expiration of the sixty-day notice of cancellation, the registration of the telemarketer shall be treated as lapsed.
(d) The surety bond shall remain in effect for three years from the period the telemarketing business ceases to operate in this state.

(e) Any business required under this article to file a bond with a registration application, may file, in lieu thereof, an irrevocable letter of credit, with annual renewals, a certificate of deposit, cash or government bond in the same amount as would be required for the bond. The department of tax and revenue shall deposit any such funds in an interest bearing account. The department of tax and revenue shall hold such letter of credit, cash, certificate of deposit or government bond for three years from the period the telemarketing business ceases to operate or registration lapses, in order to pay claims made against the telemarketing business during its period of operation. At the end of the three-year term all interest accrued, not required for payment of claims, shall be remitted to the telemarketer.

(f) The registration of the telemarketing business will be treated as lapsed if at any time, the amount of the letter of credit, bond, cash, certificate of deposit or government bond falls below the amount required by this section.

(g) Should the license of any surety company to transact business in this state be terminated, all bonds given pursuant to this article upon which such company is surety shall thereupon be suspended, and the department of tax and revenue shall immediately notify each affected licensee of such suspension and require that a new bond be filed. This notice shall be sent by registered or certified mail, return receipt requested, and shall be addressed to the telemarketer at his or its principal place of business as shown by the department of tax and revenue records. The failure of any telemarketer to file a bond with new or additional surety within thirty days after being advised in writing by the department of tax and revenue of the necessity to do so shall be cause for the department of tax and revenue to revoke the telemarketer's registration.

(h) An action may be brought in any court of competent jurisdiction upon the bond by any person to
whom the licensee fails to account and pay as set forth in such bond. The aggregate liability of the surety company to all persons injured by a telemarketer's violations may not exceed the amount of the bond.

§46A-6F-303. Failure to register or meet security requirement; remedies.

(a) Any person is subject to a civil administrative penalty, to be levied by the department of tax and revenue, of not more than five thousand dollars if the person:

(1) Acts as a telemarketer without first registering pursuant to section three hundred one of this article;

(2) Acts as a telemarketer without first meeting the security requirements set forth in section three hundred two of this article;

(3) Acts as a telemarketer after failing to maintain a certificate of registration accompanied by a surety bond as required by sections three hundred one and three hundred two of this article;

(4) Includes any material information on a registration application that is false or misleading; or

(5) Misrepresents that a telemarketer is registered.

In assessing a civil administrative penalty, department of tax and revenue shall take into account the seriousness of the violation, any good faith efforts to comply with applicable requirements, any benefit obtained by the act or omission, and any other appropriate factors as the department of tax and revenue may establish by rules proposed for promulgation by the Legislature in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(b) No assessment shall be levied pursuant to subsection (a) of this section until after the alleged violator has been notified by certified mail or personal service. The notice shall include:
(1) A reference to this section, sections three hundred one and three hundred two of this article, and any legislative rule that was allegedly violated;

(2) A concise statement of the facts alleged to constitute the violation;

(3) A statement of the amount of the administrative penalty to be imposed; and

(4) A statement of the alleged violator's right to an informal hearing.

(c) The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the department of tax and revenue a written request for a hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested, the department of tax and revenue shall inform the alleged violator of the time and place of the hearing. The department of tax and revenue may appoint a hearing examiner to conduct the hearing and then make a written recommendation to the department of tax and revenue concerning the assessment of a civil administrative penalty. Within thirty days following the hearing, the department of tax and revenue shall issue and furnish to the alleged violator a written decision which explains the rationale for any assessment of an administrative penalty. The authority to levy an administrative penalty is in addition to all other enforcement provisions of this article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied. No assessment levied pursuant to this section becomes due and payable until the procedures for review of such assessment as set out in this subsection have been completed.

(d) The department of tax and revenue may seek an injunction, or may institute a civil action against any person allegedly in violation of the provisions of this section, sections three hundred one and three hundred two of this article. An application for injunctive relief or civil action under this section may be filed and relief granted
notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought. Upon request of the department of tax and revenue, the division or the prosecuting attorney of the county in which the violation occurs shall assist the department of tax and revenue in any civil action under this section.

(e) Independently of the department of tax and revenue, with respect to any action brought by the division or a private citizen regarding unfair or deceptive acts or practices, or abusive acts or practices under the provisions of this article or under other applicable consumer protection laws set forth in this code, the division or a private citizen may also apply to the court for appropriate relief under this section against a person violating the provisions of sections three hundred one and three hundred two of this article, pending final determination of the proceedings.

(f) Any funds recovered and all registration fees, as provided for in this article, shall be paid into the state treasury to the credit of a special revenue fund to be known as the “telemarketer registration fund” which is hereby created. The moneys so credited to the fund shall be used solely for the purposes of administering and enforcing the registration and security requirements of this article.

§46A-6F-304. Record keeping requirements.

(a) A telemarketer shall keep for a period of four years from the date the record is produced the following records related to its telemarketing activities:

(1) One of each advertisement, brochure and other promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of twenty-five dollars or more;
(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;

(4) The name, last known home address and telephone number, and the job title for all current and former employees directly involved in telephone sales;

(5) All verifiable authorizations required to be provided or received under this article; and

(6) A copy of all scripts, outlines or presentation material the seller will require the telemarketer to use when soliciting, as well as all sales information to be provided by the seller to a purchaser in connection with any solicitation.

(b) A seller or telemarketer may keep the records required by subsection (a) of this section in any form, and in any manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by subsection (a) of this section shall be a violation of this article.

(c) The telemarketer is responsible for complying with the above provisions.

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that telemarketer shall maintain all records as required under this section. In the event of any sale, assignment or other change in ownership of the seller’s business, the successor shall maintain all records required under this section.

(e) (1) The division may require a telemarketer to file true copies of all scripts, outlines and promotional material and any modifications thereto with the division of consumer protection for a time period to be determined by the division. Such filing may be required upon an investigation and finding by the division that:

(A) A telemarketer is using scripts, outlines or presentation material that contain material misrepresentations or that fail to state material facts; or
(B) A telemarketer is deviating from scripts, outlines or presentation material so as to make material misrepresentations or to fail to state material facts.

(2) The attorney general shall comply with the requirements of article five, chapter twenty-nine-a of this code for hearings requested pursuant to Part III.

PART IV. DISCLOSURES AND CONTRACT REQUIREMENTS.

§46A-6F-401. Mandatory disclosures.

(a) A telemarketer shall promptly disclose, in a clear and conspicuous manner, the following material information when making a telemarketing communication with a consumer:

(1) The true identity of the telemarketer;

(2) That the purpose of the call is to sell consumer goods or services; and

(3) The nature of the goods or services offered for sale.

(b) Before a consumer pays for the goods or services offered for sale, the telemarketer shall disclose, in a clear and conspicuous manner, the following material information:

(1) The total costs to purchase, receive or use the consumer goods or services that are the subject of the telemarketing communication;

(2) The quantity of the consumer goods or services that are the subject of the telemarketing solicitation;

(3) All material restrictions, limitations or conditions to purchase, receive, or use the consumer goods or services that are the subject of the telemarketing solicitation;

(4) All material aspects of the performance, quality, efficacy, nature or basic characteristics of the consumer goods or services that are the subject of the telemarketing solicitation;
26 (5) All material aspects of the nature or terms of the
telemarketer’s refund, cancellation, exchange or
repurchase policies;

29 (6) All material aspects of a prize promotion, disclosed
prior to requesting the consumer to enter into a sale or
lease, including, but not limited to, the following:

32 (A) A description of the prizes, gifts or awards offered
or to be given to consumers participating in the prize
promotion;

35 (B) A statement of the true retail value of each prize,
gift or award offered or to be given to participating
consumers;

38 (C) A clear identification of the person or entity on
whose behalf the contest or promotion is conducted;

40 (D) A description of all material conditions which a
participant must satisfy;

42 (E) A clear and unequivocal statement that the
consumer is not required to make any purchase, lease or
rental of consumer goods or services in order to qualify
for any prize, gift or award or to otherwise participate in
the prize promotion;

47 (F) A clear and unequivocal statement that the
consumer is not required to pay any handling or shipping
costs or to make any other payment of any kind in order
to win or receive a prize, gift or award or to otherwise
participate in the prize promotion;

50 (G) The actual numbers of the prizes, gifts or awards
to be awarded;

54 (H) The odds of receiving a prize, gift or award; and

58 (7) All material aspects of any investment opportunity
being offered, including, but not limited to, a description
of the following factors:
(A) Risk;
(B) Liquidity;
(C) Earnings potential;
(D) Profitability;
(E) Benefits; and

(F) If applicable, the value, price and location of any real or personal property that the consumer will acquire by investing.

§46A-6F-402. Accepting returns or canceling services.

(a) Every telemarketer shall, at a minimum, have the following policy:

(1) Accepting returns or canceling services for a period of not less than seven days after the date of delivery to the consumer and providing a cash refund for a cash purchase or issuing a credit for a credit purchase, which credit is applied to the account to which the purchase was debited in connection with the return of its unused and undamaged merchandise or canceled services. For purposes of this subsection, it will be presumed that goods were received seven days after they were mailed unless it can be clearly demonstrated that the goods were not received or received at a later date;

(2) Disclosing the telemarketer's return and refund policy to the buyer, orally by telephone or in writing with advertising, promotional material, or with delivery of the products or service; and

(3) Restoring such payment or issuing such credit, as required under subdivision (1) of this section, within thirty days after the date on which the telemarketer receives returned merchandise or notice of cancellation of services. A seller who discloses, in writing, that a sale is made or provided "satisfaction guaranteed", with "free inspection", "no risk guarantee", or similar words or phrases, shall be deemed to meet the requirements of the review and return for refund policy set forth in this subparagraph.
(b) Failure to comply with the provisions of this section is unfair or deceptive act or practice.

PART V. UNFAIR OR DECEPTIVE ACTS OR PRACTICES; PENALTIES.

§46A-6F-501. Unfair or deceptive acts or practices.

It is an unfair or deceptive act or practice and a violation of this article for any seller or telemarketer to engage in the following conduct:

(1) To advertise or represent that registration as a telemarketer equals an endorsement or approval by the state or any governmental agency of the state;

(2) To request or receive payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(A) The time frame in which the telemarketer has represented all of the goods or services will be provided to that person has expired; and

(B) The telemarketer has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved;

(3) To obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

(A) Express written authorization by the customer, which may include the customer's signature on the negotiable instrument; or

(B) Express oral authorization which is tape recorded and made available upon request to the customer's bank and which evidences clearly both the customer's authorization of payment for the goods and services that
are the subject of the sales offer and the customer's receipt of all of the following information:

(i) The date of the draft(s);
(ii) The amount of the draft(s);
(iii) The payor's name;
(iv) The number of draft payments (if more than one);
(v) A telephone number for customer inquiry that is answered during normal business hours; and
(vi) The date of the customer's oral authorization.

(C) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer's check, draft, or other form of negotiable paper, that includes:

(i) All of the information contained in subparagraphs (i) through (vi), paragraph (B), subdivision (3) of this section; and
(ii) The procedures by which the customer can obtain a refund from the telemarketer in the event the confirmation is inaccurate;

(4) To procure the services of any professional delivery, courier or other pick-up service to obtain immediate receipt and possession of a consumer's payment unless:

(A) Such service is requested by the consumer;
(B) The consumer is informed that he or she can inspect the goods or services prior to payment and may refuse to accept the goods or services; and
(C) The consumer is actually afforded an opportunity to inspect the goods or services prior to payment;

(5) To engage in any other unfair or deceptive conduct which will create a likelihood of confusion or misunderstanding to any reasonable consumer;

(6) To misrepresent the requirements of this section;
To provide substantial assistance or support to any telemarketer when that person knows or consciously avoids knowing that the telemarketer is engaged in any act or practice that violates this section.

(8) To engage in any "unfair methods of competition and unfair or deceptive acts or practices" as specified in subsection (f), section one hundred two, article six of this chapter and made unlawful by the provisions of section one hundred four, article six of this chapter.

§46A-6F-502. Causes of action arising out of unfair or deceptive acts or practices; limitation of actions.

(1) If a telemarketer violates the provisions of section five hundred one of this article, the consumer has a cause of action to recover actual damages and, in addition, a right to recover from the violator a penalty in an amount, to be determined by the court, of not less than one hundred dollars nor more than three thousand dollars. No action brought pursuant to the provisions of this subsection may be brought more than two years after the date upon which the violation occurred or the due date of the last scheduled payment of the agreement, whichever is later.

(2) If a telemarketer violates the provisions of section five hundred one of this article, any sale or lease of consumer goods or services is void and the consumer is not obligated to pay either the principal or any finance charge. If the consumer has paid any part of the principal or of the finance charge, he or she has a right to recover the payment from the violator or from any assignee of the violator's rights who undertakes direct collection of payments or enforcement of rights arising from the debt.

(3) A consumer is not obligated to pay a charge in excess of that allowed by the sales agreement, and if the consumer has paid an excess charge, he or she has a right to a refund. A refund may be made by reducing the consumer's obligation by the amount of the excess charge. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may
recover in an action the excess amount from the person
who made the excess charge or from an assignee of that
person's rights who undertakes direct collection of
payments from or enforcement of rights against the
consumer arising from the debt.

(4) If a telemarketer has contracted for or received a
charge in excess of that allowed by the sales agreement,
the consumer may, in addition to recovering such excess
charge, also recover from the telemarketer or the person
liable in an action a penalty in an amount determined by
the court not less than one hundred dollars nor more than
three thousand dollars. No action brought pursuant to the
provisions of this subsection may be brought more than
two years after the date upon which the violation occurred
or the due date of the last scheduled payment of the
agreement, whichever is later.

(5) A telemarketer has no liability for a penalty under
subsection (1) or subsection (4) of this section if, within
fifteen days after discovering an error, and prior to the
institution of an action under this section or the receipt of
written notice of the error, the telemarketer notifies the
consumer of the error and corrects the error.

(6) If the telemarketer establishes by a preponderance
of evidence that a violation is unintentional or the result of
a bona fide error of fact notwithstanding the maintenance
of procedures reasonably adapted to avoid any such
violation or error, no liability is imposed under
subsections (1), (2) and (4) of this section, and the validity
of the transaction is not affected.

§46A-6F-503. Operating a criminal recovery service;
penalties.

(a) A person is guilty of operating a criminal recovery
service when the person:

(1) Makes a representation that he will recover all or
any portion of the consideration that a consumer has paid
to a telemarketer in response to a telemarketing
§46A-6F-601. Abusive acts or practices.

(a) It is an abusive telemarketing act or practice and a violation of this article for any telemarketer to engage in the following conduct:

(1) Threaten, intimidate or use profane or obscene language;

(2) Engage any person repeatedly or continuously with behavior a reasonable person would deem to be annoying, abusive or harassing;

(3) Initiate an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the telemarketer whose goods or services are being offered;

(4) Engage in telemarketing to a person's residence at any time other than between eight a.m. and nine p.m. local time, Monday through Sunday, at the called person's location; or

(5) Engage in any other conduct which would be considered abusive to any reasonable consumer.

(b) A telemarketer will not be liable for violating subdivision (3), subsection (a) of this section if:
(1) It has established and implemented written procedures to avoid outbound telephone calls to persons who have previously stated that they do not wish to receive such calls;

(2) It has trained its personnel in the procedures established pursuant to subdivision (1) of this subsection;

(3) The telemarketer has maintained and recorded lists of persons who have previously stated that they do not wish to receive such calls; and

(4) Any subsequent call is the result of error.

PART VII. REMEDIES.

§46A-6F-701. Civil remedies.

(a) If a telemarketer violates the provisions of section six hundred one of this article, the consumer has a cause of action to recover actual damages and, in addition, a right to recover from the violator a penalty in an amount, to be determined by the court, of not less than one hundred dollars nor more than three thousand dollars. No action brought pursuant to the provisions of this subsection may be brought more than two years after the date upon which the violation occurred or the due date of the last scheduled payment of the agreement, whichever is later.

(b) If a telemarketer violates the provisions of section six hundred one of this article, any sale or lease of consumer goods or services is void and the consumer is not obligated to pay either the principal or any finance charge. If the consumer has paid any part of the principal or of the finance charge, he or she has a right to recover the payment from the violator or from any assignee of the violator's rights who undertakes direct collection of payments or enforcement of rights arising from the debt.

(c) Any consumer that suffers harm as a result of any abusive act or practice shall receive injunctive or declaratory relief.
(d) The state, on behalf of its residents who have suffered a loss or harm as a result of a violation of this article, may seek injunctive or declaratory relief, actual damages, consumer restitution, civil penalties, forfeiture of bond, attachment of property, costs, attorney's fees and any other remedies available to the division under the provisions of this chapter or otherwise provided by law.

(e) In any action brought under this article where damages are awarded to a consumer, the court may adjust the damages to account for inflation from the first day of July, one thousand nine hundred ninety-eight, to the time of the award of damages, in an amount determined by the application of data from the consumer price index. Consumer price index means the last consumer price index for all consumers published by the United States department of labor.

§46A-6F-702. Remedies not exclusive.

Nothing contained in this article shall be construed to adversely alter or affect a right or benefit accruing to a consumer or the state in accordance with other provisions of this chapter, or to limit any civil or criminal remedy otherwise provided for by law. In the case of provisions contained in this article that exempt a person from the requirements of this article or that otherwise limit the applicability of this article to a person, those provisions are exclusive to this article and shall not be construed to otherwise exempt a person or to limit the applicability of any other provisions of this code.

§46A-6F-703. Service of process on certain nonresidents.

Any nonresident person, except a nonresident corporation authorized to do business in this state pursuant to the provisions of chapter thirty-one of this code, who directs telemarketing solicitations to persons residing in this state, shall be conclusively presumed to have appointed the department of tax and revenue as his attorney-in-fact with authority to accept service of notice and process in any action or proceeding brought against
him arising out of such consumer credit sale, consumer lease or consumer loan. A person shall be considered a nonresident hereunder if he is a nonresident at the time such service of notice and process is sought. No act of such person appointing the department of tax and revenue shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the department of tax and revenue with the original notice or process, together with the fee required by section two, article one, chapter fifty-nine of this code, the department of tax and revenue shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, to such person at his address, which address shall be stated in such process or notice: Provided, That such return receipt shall be signed by such person or an agent or employee of such person if a corporation, or the registered or certified mail so sent by said department of tax and revenue is refused by the addressee and the registered or certified mail is returned to said department of tax and revenue, or to his office, showing thereon the stamp of the U.S. postal service that delivery thereof has been refused, and such return receipt or registered or certified mail is appended to the original process or notice and filed therewith in the clerk's office of the court from which such process or notice was issued. But no process or notice shall be served on the department of tax and revenue or accepted fewer than ten days before the return date thereof. The court may order such continuances as may be reasonable to afford each defendant opportunity to defend the action or proceeding.

The provisions for service of process or notice herein are cumulative and nothing herein contained shall be construed as a bar to the plaintiff in any action from having process or notice in such action served in any other mode and manner provided by law.
CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 4. FORGERY AND CRIMES AGAINST THE CURRENCY.

§61-4-5. Forging or uttering other writing; penalty; creation of unauthorized demand draft.

(a) If any person forge any writing, other than such as is mentioned in the first and third sections of this article, to the prejudice of another's right, or utter or attempt to employ as true such forged writing, knowing it to be forged, he shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and be fined not exceeding five hundred dollars.

(b) It is a violation of this section to create a demand draft under the purported authority of another person for the purpose of charging the other person’s account with a bank or other financial institution, or to utter or attempt to employ as true such demand draft, if the demand draft is created with the intent to defraud, and either or both of the following elements is present:

1. The person does not, in fact, have the authority to charge the other person’s account; or
2. The amount of the demand draft exceeds the amount authorized to be charged.

(c) If a person creates a demand draft without authority or which exceeds the amount authorized to be charged to an account, and the demand draft contains the account holder’s printed or typewritten name or account number, or a notation that the account holder authorized the draft, or a statement “No signature required”, “Authorization on file”, “Signature on file”, or words to that effect, the demand draft is the equivalent of a check on which the drawer’s signature is forged or altered.

(d) For purposes of this section, the term “demand draft” shall have the meaning ascribed to it in section one hundred four, article three, chapter forty-six of this code.
CHAPTER 315

(Com. Sub. for H. B. 2395—By Delegates Manuel, Doyle, Douglas, Amores and C. White)

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

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-u; to amend article twelve of said chapter by adding thereto a new section, designated section four-a; and to amend and reenact sections two, three and seven, article nine-a, chapter sixteen of said code, all relating to disclosures of persons making retail sales of tobacco products; requiring certain agencies to compile, distribute, report and make available lists of those who intend to sell tobacco products; requiring retailers of tobacco products to provide additional information upon business registration and annual renewals; modifying the penalty for minors found to possess or use tobacco products; modifying the penalty for businesses and individuals who sell or give tobacco or tobacco products to minors; providing legal protection for minors who participate in inspection; authorizing the commissioner of the alcohol beverage control commission, the state police, sheriffs and local police to assist in the enforcement of youth smoking laws and to use minors in the inspection of retailers who sell tobacco products; requiring clerks of courts to record certain convictions and to notify the commissioner of the alcohol beverage control administration of payment of fines and satisfaction of community service penalties.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five-u; that article twelve of said chapter be amended by adding thereto a new section, designated section four-a; and that sections two, three and seven, article nine-a, chapter sixteen of said code, be amended and reenacted, all to read as follows:
ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5u. Disclosure of persons making retail sales of tobacco products.

1. Notwithstanding any provision of this article to the contrary, the tax commissioner shall, at least semi-annually, provide to the commissioner of the West Virginia alcohol beverage control administration, the superintendent of the West Virginia state police and the secretary of the West Virginia department of health and human resources by the first day of April and October of each year, a list of the names and business locations of each person who indicates on a new application for a business registration certificate or on a current application for renewal of a business registration certificate that the person sells or intends to sell cigarettes or other tobacco products to consumers: Provided, That when available, the tax commissioner will provide the name of the business owner, county of location, and the business description code: Provided, however, That the tax commissioner may also file a copy of the list provided to the commissioner of the West Virginia alcohol beverage control administration, the superintendent of the West Virginia state police and the secretary of the West Virginia department of health and human resources in the state register maintained by the secretary of state, who shall make the list available for inspection and copying: Provided further, That the results of the inspections of retail establishments which sell tobacco products may be reported to the federal government by the commissioner of the West Virginia alcohol beverage control administration.

ARTICLE 12. BUSINESS REGISTRATION TAX.
§11-12-4a. Retailers of tobacco products to provide additional information.

For registration years beginning on or after the first day of July, one thousand nine hundred ninety-eight, each person applying for a business registration certificate and each person applying for renewal of a business registration certificate shall indicate in the application for a business registration certificate or for the renewal of a business registration certificate whether the person is selling or intends to sell cigarettes or other tobacco products to consumers during the registration period.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-2. Sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, or chewing tobacco to persons under eighteen; penalty.

§16-9A-3. Use or possession of tobacco or tobacco products by persons under the age of eighteen years; penalty.

§16-9A-7. Enforcement of youth smoking laws; retail tobacco outlet inspections; use of minors in inspections; annual reports; penalties; defenses.

§16-9A-2. Sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, or chewing tobacco to persons under eighteen; penalty.

No person or business entity may sell, give or furnish, or cause to be sold, given or furnished, to any person under the age of eighteen years:

(a) Any cigarette, cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco or tobacco product; or

(b) Any cigar, pipe, snuff, chewing tobacco or tobacco product, in any form.

Any firm or corporation which violates any of the provisions of subdivision (a) or (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined twenty-five dollars for the first offense. Upon any subsequent violation by that firm or corporation at the same location or operating unit, the firm or corporation...
§16-9A-3. Use or possession of tobacco or tobacco products by persons under the age of eighteen years; penalty.

No person under the age of eighteen years shall have on or about his or her person or premises or use any cigarette, or cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; or, any pipe, snuff, chewing tobacco or tobacco product: Provided, That minors participating in the inspection of locations where tobacco products are sold or distributed pursuant to section seven of this article and chapter shall not be deemed to violate the provisions of this section: Provided, however, That any person violating the provisions of this section is punishable by eight hours of community service: Provided further, That notwithstanding the provisions of section two, article five, chapter forty-nine, the magistrate court shall have concurrent jurisdiction.

§16-9A-7. Enforcement of youth smoking laws; retail tobacco outlet inspections; use of minors in inspections; annual reports; penalties; defenses.

(a) The commissioner of the West Virginia alcohol beverage control administration, the superintendent of the West Virginia state police, the sheriffs of the counties of this state and the chiefs of police of municipalities of this state, may periodically conduct unannounced inspections...
at locations where tobacco products are sold or distributed
to ensure compliance with the provisions of sections two
and three of this article and in such manner as to conform
with applicable federal and state laws, rules and
regulations. Persons under the age of eighteen years may
be enlisted by such commissioner, superintendent, sheriffs
or chiefs of police or employees or agents thereof to test
compliance with these sections: Provided, That the minors
may be used to test compliance only if the testing is
conducted under the direct supervision of the
commissioner, superintendent, sheriffs or chiefs of police
or employees or agents thereof and written consent of the
parent or guardian of such person is first obtained and
such minors shall not be in violation of section three of
this article and chapter when acting under the direct
supervision of the commissioner, superintendent, sheriffs
or chiefs of police or employees or agents thereof and
with the written consent of the parent or guardian. It is
unlawful for any person to use persons under the age of
eighteen years to test compliance in any manner not set
forth herein and the person so using a minor is guilty of a
misdemeanor and, upon conviction thereof, shall be fined
the same amounts as set forth in section two of this article.

(b) A person charged with a violation of section two
or three of this article as the result of an inspection under
subsection (a) of this section has a complete defense if, at
the time the cigarette or other tobacco product or cigarette
wrapper was sold, delivered, bartered, furnished or given:

(1) The buyer or recipient falsely evidenced that he
was eighteen years of age or older;

(2) The appearance of the buyer or recipient was such
that a prudent person would believe the buyer or recipient
to be eighteen years of age or older; and

(3) Such person carefully checked a driver's license
or an identification card issued by this state or another
state of the United States, a passport or a United States
armed services identification card presented by the buyer
or recipient and acted in good faith and in reliance upon
the representation and appearance of the buyer or
recipient in the belief that the buyer or recipient was
eighteen years of age or older.
(c) Any fine collected after a conviction of violating section two of this article shall be paid to the clerk of the court in which the conviction was obtained: Provided, That the clerk of the court upon receiving the fine shall promptly notify the commissioner of the West Virginia alcohol beverage control administration of the conviction and the collection of the fine: Provided, however, That any community service penalty imposed after a conviction of violating section three of this article shall be recorded by the clerk of the court in which the conviction was obtained: Provided further, That the clerk of the court upon being advised that community service obligations have been fulfilled shall promptly notify the commissioner of the West Virginia alcohol beverage control administration of the conviction and the satisfaction of imposed community service penalty.

(d) The commissioner of the West Virginia alcohol beverage control administration or his or her designee shall prepare and submit to the governor on the last day of September of each year a report of the enforcement and compliance activities undertaken pursuant to this section and the results of the same, with a copy to the secretary of the West Virginia department of health and human resources. The report shall be in the form and substance that the governor shall submit to the applicable state and federal programs.

CHAPTER 316

(Com. Sub. for S. B. 191—By Senators Ross, Anderson, Helmick, Love and Buckalew)

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

AN ACT to repeal section thirteen, article four, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, three, five, six, seven, eight, nine, ten, twelve,
fifteen and sixteen of said article; and to amend and reenact section thirty-one, article six, chapter thirty-three of said code, all relating to repealing the requirement that accident reports be confidential; revising accident reporting requirements; revising accident report forms; revising reporting requirements for garages; and revising reporting requirements to the commissioner of motor vehicles under certain motor vehicle insurance policies.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article four, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, three, five, six, seven, eight, nine, ten, twelve, fifteen and sixteen of said article be amended and reenacted; and that section thirty-one, article six, chapter thirty-three of said code be amended and reenacted, all to read as follows:

Chapter
17C. Traffic Regulations and Laws of the Road.
33. Insurance.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 4. ACCIDENTS.

§17C-4-1. Accidents involving death or personal injuries.
§17C-4-3. Duty to give information and render aid.
§17C-4-5. Duty upon striking fixtures upon a highway.
§17C-4-6. Immediate reports of accidents.
§17C-4-7. Written reports of accidents.
§17C-4-8. When driver unable to report.
§17C-4-9. Accident report forms.
§17C-4-10. Penalty for failure to report.
§17C-4-12. Garages to report bullet damage.
§17C-4-15. Any incorporated city, town, etc., may require accident reports.
§17C-4-16. Accidents involving state and municipal property; reports to be provided.

§17C-4-1. Accidents involving death or personal injuries.

(a) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall
immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of section three of this article. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by imprisonment for not less than thirty days nor more than one year or by fine of not less than one hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment.

(c) The commissioner shall revoke the license or permit to drive and any nonresident operating privilege of the person so convicted for a period of one year.

§17C-4-3. Duty to give information and render aid.

The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his or her name, address and the registration number of the vehicle he or she is driving and shall upon request and if available exhibit his or her driver’s license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making arrangements for the carrying of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

§17C-4-5. Duty upon striking fixtures upon a highway.

The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his or her name and address and of the registration number of the
vehicle he or she is driving and shall upon request and if
available exhibit his or her driver's license and shall make
report of such accident when and as required in section
seven of this article.

§17C-4-6. Immediate reports of accidents.

The driver of a vehicle involved in an accident
resulting in injury to or death of any person or total
property damage to an apparent extent of two hundred
fifty dollars or more shall immediately by the quickest
means of communication, whether oral or written, give
notice of such accident to the local police department if
such accident occurs within a municipality, otherwise to
the office of the county sheriff or the nearest office of the
West Virginia state police.

§17C-4-7. Written reports of accidents.

Every law-enforcement officer who, in the regular
course of duty, investigates a motor vehicle accident
occurring on the public highways of this state resulting in
bodily injury to or death of any person or total property
damage to an apparent extent of two hundred fifty dollars
or more shall, either at the time of and at the scene of the
accident or thereafter by interviewing participants or
witnesses shall, within twenty-four hours after completing
such investigation, forward a written report of such
accident to the division. The division shall prepare a form
for such accident report and, after approval of such form
by the commissioner, the superintendent of the West
Virginia state police and the commissioner of highways,
shall supply copies of such form to police departments,
sheriffs and other appropriate law-enforcement agencies.
Every accident report required under the provisions of this
section shall be made on such form.

§17C-4-8. When driver unable to report.

Whenever the driver of a vehicle is physically
incapable of making an immediate report of an accident
as required in section six of this article and there was
another occupant in the vehicle at the time of the accident
§17C-4-9. Accident report forms.

(a) The division shall prepare and upon request supply to police departments, coroners, sheriffs, division of natural resources, and other suitable agencies or individuals, forms for accident reports required hereunder, appropriate with respect to the persons required to make such reports and the purposes to be served. The written reports to be made by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing, and the persons and vehicles involved.

(b) Every accident report required to be made in writing shall be made on the appropriate form approved by the division and shall contain all of the information required therein unless not available.

(c) Every such report shall also contain information sufficient to enable the commissioner to determine whether the requirements for security upon motor vehicles is in effect in accordance with chapter seventeen-d of this code.

§17C-4-10. Penalty for failure to report.

The commissioner may suspend the license or permit to drive and any nonresident operating privileges of any person failing to report an accident as herein provided under section six of this article until such report has been filed. Any person convicted of failing to make a report as required herein shall be punished as provided in section one, article eighteen of this chapter.

§17C-4-12. Garages to report bullet damage.

The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been struck by any bullet, shall report to the local law-enforcement agency within twenty-four hours after such motor vehicle is received, giving the engine
§17C-4-15. Any incorporated city, town, etc., may require accident reports.

Any incorporated city, town, village or other municipality may by ordinance require that the driver of a vehicle involved in an accident shall file with a designated city department a report of such accident. All such reports shall be for the confidential use of the city department.

§17C-4-16. Accidents involving state and municipal property; reports to be provided.

Whenever a report of a motor vehicle accident prepared by a member of the West Virginia state police, conservation officer of the division of natural resources, a member of a county sheriff's department or a municipal police officer, in the regular course of their duties, indicates that as a result of such accident damage has occurred to any bridge, sign, guardrail or other property, exclusive of licensed motor vehicles, a copy of such report shall, in the case of such property belonging to the division of highways, be provided to the commissioner of the division of highways, and, in the case of such property belonging to a municipality, be provided to the mayor of that municipality. The copies of such reports shall be provided to the commissioner or mayor, as applicable, without cost to them.

CHAPTER 33. INSURANCE.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31. Motor vehicle policy; omnibus clause; uninsured and underinsured motorists' coverage; conditions for recovery under endorsement; rights and liabilities of insurer.

(a) No policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle, shall be issued or delivered in
this state to the owner of such vehicle, or shall be issued or
delivered by any insurer licensed in this state upon any
motor vehicle for which a certificate of title has been
issued by the division of motor vehicles of this state, unless
it shall contain a provision insuring the named insured and
any other person, except a bailee for hire and any persons
specifically excluded by any restrictive endorsement
attached to the policy, responsible for the use of or using
the motor vehicle with the consent, expressed or implied,
of the named insured or his or her spouse against liability
for death or bodily injury sustained or loss or damage
occasioned within the coverage of the policy or contract as
a result of negligence in the operation or use of such
vehicle by the named insured or by such person:
Provided, That in any such automobile liability insurance
policy or contract, or endorsement thereto, if coverage
resulting from the use of a nonowned automobile is
conditioned upon the consent of the owner of such motor
vehicle, the word "owner" shall be construed to include the
custodian of such nonowned motor vehicles.
Notwithstanding any other provision of this code, if the
owner of a policy receives a notice of cancellation
pursuant to article six-a of this chapter and the reason for
the cancellation is a violation of law by a person insured
under the policy, said owner may by restrictive
endorsement specifically exclude the person who violated
the law and the restrictive endorsement shall be effective in
regard to the total liability coverage provided under the
policy, including coverage provided pursuant to the
mandatory liability requirements of section two, article
four, chapter seventeen-d of this code, but nothing in such
restrictive endorsement shall be construed to abrogate the
"family purpose doctrine".

(b) Nor shall any such policy or contract be so issued
or delivered unless it shall contain an endorsement or
provisions undertaking to pay the insured all sums which
he shall be legally entitled to recover as damages from the
owner or operator of an uninsured motor vehicle, within
limits which shall be no less than the requirements of
section two, article four, chapter seventeen-d of this code,
as amended from time to time: Provided, That such
policy or contract shall provide an option to the insured with appropriately adjusted premiums to pay the insured all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle up to an amount of one hundred thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, in the amount of three hundred thousand dollars because of bodily injury to or death of two or more persons in any one accident and in the amount of fifty thousand dollars because of injury to or destruction of property of others in any one accident: Provided, however, That such endorsement or provisions may exclude the first three hundred dollars of property damage resulting from the negligence of an uninsured motorist: Provided further, That such policy or contract shall provide an option to the insured with appropriately adjusted premiums to pay the insured all sums which he shall legally be entitled to recover as damages from the owner or operator of an uninsured or underinsured motor vehicle up to an amount not less than limits of bodily injury liability insurance and property damage liability insurance purchased by the insured without setoff against the insured's policy or any other policy. Regardless of whether motor vehicle coverage is offered and provided to an insured through a multiple vehicle insurance policy or contract, or in separate single vehicle insurance policies or contracts, no insurer or insurance company providing a bargained for discount for multiple motor vehicles with respect to underinsured motor vehicle coverage shall be treated differently from any other insurer or insurance company utilizing a single insurance policy or contract for multiple covered vehicles for purposes of determining the total amount of coverage available to an insured. "Underinsured motor vehicle" means a motor vehicle with respect to the ownership, operation or use of which there is liability insurance applicable at the time of the accident, but the limits of that insurance are either: (i) Less than limits the insured carried for underinsured motorists' coverage; or (ii) has been reduced by payments to others injured in the accident to limits less than limits the insured carried for underinsured motorists' coverage. No sums
payable as a result of underinsured motorists' coverage shall be reduced by payments made under the insured's policy or any other policy.

(c) As used in this section, the term "bodily injury" shall include death resulting therefrom and the term "named insured" shall mean the person named as such in the declarations of the policy or contract and shall also include such person's spouse if a resident of the same household and the term "insured" shall mean the named insured and, while resident of the same household, the spouse of any such named insured and relatives of either, while in a motor vehicle or otherwise, and any person, except a bailee for hire, who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies or the personal representative of any of the above; and the term "uninsured motor vehicle" shall mean a motor vehicle as to which there is no: (i) Bodily injury liability insurance and property damage liability insurance both in the amounts specified by section two, article four, chapter seventeen-d of this code, as amended from time to time; or (ii) there is such insurance, but the insurance company writing the same denies coverage thereunder; or (iii) there is no certificate of self-insurance issued in accordance with the provisions of said section. A motor vehicle shall be deemed to be uninsured if the owner or operator thereof be unknown: Provided, That recovery under the endorsement or provisions shall be subject to the conditions hereinafter set forth.

(d) Any insured intending to rely on the coverage required by subsection (b) of this section shall, if any action be instituted against the owner or operator of an uninsured or underinsured motor vehicle, cause a copy of the summons and a copy of the complaint to be served upon the insurance company issuing the policy, in the manner prescribed by law, as though such insurance company were a named party defendant; such company shall thereafter have the right to file pleadings and to take other action allowable by law in the name of the owner, or operator, or both, of the uninsured or underinsured motor vehicle or in its own name.
Nothing in this subsection shall prevent such owner or 
operator from employing counsel of his or her own 
choice and taking any action in his or her own interest in 
connection with such proceeding.

(e) If the owner or operator of any motor vehicle 
which causes bodily injury or property damage to the 
insured be unknown, the insured, or someone in his or her 
behalf, in order for the insured to recover under the 
uninsured motorist endorsement or provision, shall:

(i) Within twenty-four hours after the insured discover, 
and being physically able to report the occurrence of such 
accident, the insured, or someone in his or her behalf, shall 
report the accident to a police, peace or to a judicial 
officer, unless the accident shall already have been 
investigated by a police officer;

(ii) Notify the insurance company, within sixty days 
after such accident, that the insured or his or her legal 
representative has a cause or causes of action arising out 
of such accident for damages against a person or persons 
whose identity is unknown and setting forth the facts in 
support thereof; and, upon written request of the insurance 
company communicated to the insured not later than five 
days after receipt of such statement, shall make available 
for inspection the motor vehicle which the insured was 
occupying at the time of the accident; and

(iii) Upon trial establish that the motor vehicle, which 
caus[ed] the bodily injury or property damage, whose 
operator is unknown, was a "hit and run" motor vehicle, 
meaning a motor vehicle which causes damage to the 
property of the insured arising out of physical contact of 
such motor vehicle therewith, or which causes bodily 
injury to the insured arising out of physical contact of 
such motor vehicle with the insured or with a motor 
vehicle which the insured was occupying at the time of the 
accident. If the owner or operator of any motor vehicle 
causing bodily injury or property damage be unknown, an 
action may be instituted against the unknown defendant as 
"John Doe", in the county in which the accident took place.
or in any other county in which such action would be
proper under the provisions of article one, chapter fifty-
six of this code; service of process may be made by
delivery of a copy of the complaint and summons or other
pleadings to the clerk of the court in which the action is
brought, and service upon the insurance company issuing
the policy shall be made as prescribed by law as though
such insurance company were a party defendant. The
insurance company shall have the right to file pleadings
and take other action allowable by law in the name of
John Doe.

(f) An insurer paying a claim under the endorsement
or provisions required by subsection (b) of this section
shall be subrogated to the rights of the insured to whom
such claim was paid against the person causing such
injury, death or damage to the extent that payment was
made. The bringing of an action against the unknown
owner or operator as John Doe or the conclusion of such
an action shall not constitute a bar to the insured, if the
identity of the owner or operator who caused the injury or
damages complained of, becomes known, from bringing
an action against the owner or operator theretofore
proceeded against as John Doe. Any recovery against
such owner or operator shall be paid to the insurance
company to the extent that such insurance company shall
have paid the insured in the action brought against such
owner or operator as John Doe, except that such insurance
company shall pay its proportionate part of any
reasonable costs and expenses incurred in connection
therewith, including reasonable attorney's fees. Nothing in
an endorsement or provision made under this subsection,
or any other provision of law, shall operate to prevent the
joining, in an action against John Doe, of the owner or
operator of the motor vehicle causing injury as a party
defendant, and such joinder is hereby specifically
authorized.

(g) No such endorsement or provisions shall contain
any provision requiring arbitration of any claim arising
under any such endorsement or provision, nor may
anything be required of the insured except the
establishment of legal liability, nor shall the insured be
restricted or prevented in any manner from employing
legal counsel or instituting legal proceedings.

(h) The provisions of subsections (a) and (b) of this
section shall not apply to any policy of insurance to the
extent that it covers the liability of an employer to his or
her employees under any workers' compensation law.

(i) The commissioner of insurance shall formulate and
require the use of standard policy provisions for the
insurance required by this section, but use of such
standard policy provisions may be waived by the
commissioner in the circumstances set forth in section ten
of this article.

(j) A motor vehicle shall be deemed to be uninsured
within the meaning of this section, if there has been a valid
bodily injury or property damage liability policy issued
upon such vehicle, but which policy is uncollectible, in
whole or in part, by reason of the insurance company
issuing such policy upon such vehicle being insolvent or
having been placed in receivership. The right of
subrogation granted insurers under the provisions of
subsection (f) of this section shall not apply as against any
person or persons who is or becomes an uninsured
motorist for the reasons set forth in this subsection.

(k) Nothing contained herein shall prevent any insurer
from also offering benefits and limits other than those
prescribed herein, nor shall this section be construed as
preventing any insurer from incorporating in such terms,
conditions and exclusions as may be consistent with the
premium charged.

(l) The insurance commissioner shall review on an
annual basis the rate structure for uninsured and
underinsured motorists' coverage as set forth in subsection
(b) of this section and shall report to the Legislature on
said rate structure on or before the fifteenth day of
January, one thousand nine hundred eighty-three, and on
or before the fifteenth day of January of each of the next
two succeeding years.
AN ACT to amend and reenact section three, article six, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to when municipalities may lower the twenty-five mile per hour speed limit in residential areas.

Be it enacted by the Legislature of West Virginia:

That section three, article six, 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 6. SPEED RESTRICTIONS.

§17C-6-3. When local authorities may alter speed limits.

(a) At intersection. — Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that the speed permitted under this chapter at any intersection is greater than is reasonable or safe under the conditions found to exist at such intersection, such local authority subject to subsection (e) of this section shall determine and declare a reasonable and safe speed limit thereat, which shall be effective at all times or during hours of daylight or darkness or at such other times as may be determined when appropriate signs giving notice thereof are erected at such intersection or upon the approaches thereto.

(b) Authority to increase twenty-five mile limit. — Local authorities in their respective jurisdictions may in their discretion, but subject to subsection (e) of this section, authorize by ordinance higher speeds than those stated in section one of this article upon through highways or upon highways or portions thereof where there are no
intersections or between widely spaced intersections, which higher speed shall be effective at all times or during hours of daylight or at such other times as may be determined when signs are erected giving notice of the authorized speed, but local authorities shall not have authority to modify or alter the basic rule set forth in subsection (a), section one of this article or in any event to authorize by ordinance a speed in excess of fifty-five miles per hour.

(c) Authority to decrease fifty-five mile limit. — Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that the speed under this chapter upon open country highway outside a business or residence district is greater than is reasonable or safe under the conditions found to exist upon such street or highway, the local authority may determine and declare a reasonable and safe limit thereon but in no event less than thirty-five miles per hour and subject to subsection (e) of this section, which reduced limit shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected upon such street or highway.

(d) Authority to decrease twenty-five mile limit. — A municipality may in its discretion, but subject to subsection (e) of this section, authorize by ordinance lower speeds than those stated in subdivision (2), subsection (b), section one of this article upon local dedicated rights-of-way in a residential district or portions thereof, which lower speed shall be effective at all times or during hours of daylight or at such other times as may be determined when signs are erected giving notice of the authorized speed.

(e) Alteration of limits on state highways in municipalities. — Alteration of limits on state highways or extensions thereof in a municipality by local authorities shall not be effective until such alteration has been approved by the commissioner of highways.
CHAPTER 318

(H. B. 2625—By Delegates Anderson, Stalnaker, Border, Warner, Everson, Williams and Clements)

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

AN ACT to amend and reenact section three, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to stopping, standing and parking in specified places.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-3. Stopping, standing or parking prohibited in specified places.

(a) No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:

1. (1) On a sidewalk;
2. (2) In front of a public or private driveway;
3. (3) Within an intersection;
4. (4) Within fifteen feet of a fire hydrant;
5. (5) In a properly designated fire lane;
6. (6) On a crosswalk;
7. (7) Within twenty feet of a crosswalk at an intersection;
8. (8) Within thirty feet upon the approach to any flashing beacon, stop sign or traffic-control signal located at the side of a roadway;
(9) Between a safety zone and the adjacent curb or
within thirty feet of points on the curb immediately
opposite the ends of a safety zone, unless a different
length is indicated by signs or markings;

(10) Within fifty feet of the nearest rail of a railroad
crossing;

(11) Within twenty feet of the driveway entrance to
any fire station and on the side of a street opposite the
entrance to any fire station within seventy-five feet of the
entrance (when properly signposted);

(12) Alongside or opposite any street excavation or
obstruction when stopping, standing or parking would
obstruct traffic;

(13) On the roadway side of any vehicle stopped or
parked at the edge or curb of a street;

(14) On any bridge or other elevated structure on a
highway or within a highway tunnel;

(15) At any place where official signs prohibit
stopping;

(16) Within twenty feet of any mail receptacle served
regularly by a carrier using a motor vehicle for daily
deliveries, if the parking interferes with or causes delay in
the carrier's schedule;

(17) On any controlled-access highway;

(18) At any place on any highway where the safety
and convenience of the traveling public is thereby
endangered;

(19) In front of a wheelchair accessible ramp or curb
cut which is part of a sidewalk designed for use by the
general public when the ramp or curb cut is properly
marked with yellow paint.

(b) No person shall move a vehicle not lawfully under
his or her control into any prohibited area or away from a
curb such distance as is unlawful.
CHAPTER 319

(Com. Sub. for H. B. 4120—By Delegates Caputo, Kuhn, Given, Pettit, Warner, Sparks and Boggs)

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

AN ACT to amend article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six-a, relating to the transportation of compressed gas containers; defining a misdemeanor offense of transporting compressed gas containers unsecured, uncapped or with gauges attached, subject to criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-6a. Vehicles transporting compressed gas containers.

1 It is unlawful for any person operating a vehicle transporting any container of compressed gas as a cargo or part of a cargo upon a highway in an open motor vehicle to transport a container designed to receive a valve protection cap that is unsecured, uncapped or that has a gauge attached: Provided, That propane gas used for household use shall be exempt.

8 The commissioner of the division of highways is hereby authorized and directed to propose a legislative rule governing the transportation of compressed gas containers by vehicles upon the highways for promulgation in accordance with the provisions of chapter twenty-nine-a of this code.
AN ACT to amend and reenact sections two, three and twelve, article one, chapter twelve 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 twelve-a; to amend and reenact sections fourteen, seventeen and eighteen, article one, chapter thirteen of said code; and to amend and reenact section two, article two of said chapter, all relating to the clarification and technical clean-up of language concerning the responsibilities of the state treasurer; authorizing investment accounts by the state treasurer; authorizing money needed for current operation purposes to be invested in short term investments not to exceed five days; authorizing the state treasurer to designate banks as depositories for interest earning deposits of the state and to apportion such interest earning deposits; authorizing the treasurer to invest up to one hundred twenty-five million dollars of the operating funds of the state to meet current operational needs; clarifying the meaning of operating funds; limiting investments by the state treasurer; and authorizing the treasurer to be bond payor and registrar.

Be it enacted by the Legislature of West Virginia:

That sections two, three and twelve, article one, chapter twelve 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 twelve-a; that sections fourteen, seventeen and eighteen, article one, chapter thirteen of said code be amended and reenacted; and that section two, article two of said chapter be amended and reenacted, all to read as follows:
Chapter
13. Public Bonded Indebtedness.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by state treasurer.

§12-1-3. Depositories for interest earning deposits; qualifications.

§12-1-12. When treasurer shall make funds available to the investment management board; depositories outside the state.

§12-1-12a. Investment of operating funds for cash flow needs.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by state treasurer.

The state treasurer shall designate the state and national banks in this state which shall serve as depositories for all state funds placed in demand deposits. Any such state or national bank shall, upon request to the treasurer, be designated as a state depository for such deposits, if such bank meets the requirements set forth in this chapter.

Demand deposit accounts shall consist of receipt and disbursement. Receipt accounts shall be those accounts in which are deposited moneys belonging to or due the state of West Virginia or any official, department, board, commission or agency thereof.

Disbursement accounts shall be those accounts from which are paid moneys due from the state of West Virginia or any official, department, board, commission, political subdivision or agency thereof to any political subdivision, person, firm or corporation, except moneys paid from investment accounts.

Investment accounts shall be those accounts established by the West Virginia investment management
board or the state treasurer for the buying and selling of securities for investment for the state of West Virginia.

The state treasurer shall promulgate rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, concerning depositories for receipt accounts prescribing the selection criteria, procedures, compensation and such other contractual terms as it considers to be in the best interests of the state giving due consideration to: (1) The activity of the various accounts maintained therein; (2) the reasonable value of the banking services rendered or to be rendered the state by such depositories; and (3) the value and importance of such deposits to the economy of the communities and the various areas of the state affected thereby.

The state treasurer shall select depositories for disbursement accounts through competitive bidding by eligible banks in this state. The treasurer shall promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, prescribing the procedures and criteria for the bidding and selection. The treasurer shall, in the invitations for bids, specify the approximate amounts of deposits, the duration of contracts to be awarded and such other contractual terms as it considers to be in the best interests of the state, consistent with obtaining the most efficient service at the lowest cost.

The amount of money needed for current operation purposes of the state government, as determined by the state treasurer, shall be maintained at all times in the state treasury, in cash, in short term investments not to exceed five days, or in disbursement accounts with banks designated as depositories in accordance with the provisions of this section. No state officer or employee shall make or cause to be made any deposits of state funds in banks not so designated.

§12-1-3. Depositories for interest earning deposits; qualifications.
Any state or national bank or any state or federal savings and loan association in this state shall, upon request made to the state treasurer, be designated as an eligible depository for interest earning deposits of state funds if such bank or state or federal savings and loan association meets the requirements set forth in this chapter. For purposes of this article, the term "interest earning deposits" includes certificates of deposit. The state treasurer shall make and apportion such interest earning deposits and shall prescribe the interest rates, terms and conditions of such deposits, all in accordance with the provisions of article six of this chapter: Provided, That state or federal savings and loan associations insured by an agency of the federal government shall be eligible for such deposits not in excess of one hundred thousand dollars: Provided, however, That notwithstanding any provision of this article to the contrary, no such interest earning deposits may be deposited in any depository which has been in existence over a period of five years which does not have a loan to deposit ratio of fifty percent or more and which does not have farm, single or multifamily residential unit loans in an amount greater than twenty-five percent of the amount of loans representing a loan-to-deposit ratio of fifty percent. For the purpose of making the foregoing calculation, the balances due the depository on the following loans shall be given effect: (1) Qualifying residential loans held by the depository; (2) qualifying loans made in participation with other financial institutions; (3) qualifying loans made in participation with agencies of the state, federal or local governments; and (4) qualifying loans originated and serviced by the depository but owned by an out-of-state investor. The computation of the criteria for eligibility specified above shall be based on the average daily balances of deposits, the average daily balances of total loans and qualifying residential loans for the period being reported.

§12-1-12. When treasurer shall make funds available to the investment management board; depositories outside the state.
When the funds in the treasury exceed the amount needed for current operational purposes, as determined by the treasurer, the treasurer shall make all of such excess available for investment by the investment management board which shall invest the excess for the benefit of the general revenue fund: Provided, That the state treasurer, after reviewing the cash flow needs of the state, may withhold and invest amounts not to exceed one hundred twenty-five million dollars of the operating funds needed to meet current operational purposes. Investments made by the state treasurer under this section shall be made in short term investments not to exceed five days. Operating funds means the consolidated fund established in section eight, article six of this chapter, including all cash and investments of the fund.

Whenever the funds in the treasury exceed the amount for which depositories within the state have qualified, or the depositories within the state which have qualified are unwilling to receive larger deposits the treasurer may designate depositories outside the state, disbursement accounts being bid for in the same manner as required by depositories within the state, and when such depositories outside the state have qualified by giving the bond prescribed in section four of this article, the state treasurer shall deposit funds therein in like manner as funds are deposited in depositories within the state under this article.

The state treasurer may transfer funds to banks outside the state to meet obligations to paying agents outside the state and any such transfer must meet the same bond requirements as set forth in this article.

§12-1-12a. Investment of operating funds for cash flow needs.

(a) The Legislature hereby finds and declares that the cash flow needs of the state require short term and liquid investments, and that up to one hundred twenty-five million dollars of the operating funds of the state should be sufficient to meet cash flow needs. The Legislature further finds that the state treasurer may withhold from transfer to the investment management board up to one hundred twenty-five million dollars of the operating funds
of the state and invest those funds in short term and liquid investments.

(b) The state treasurer may exercise any and all powers reasonably necessary or appropriate to carry out and effectuate the purposes of this section.

(c) Investments shall be made in accordance with the provisions of the "Uniform Prudent Investor Act" codified as article six-c, chapter forty-four of this code.

(d) The state treasurer is authorized to invest the funds in repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities.

(e) The state treasurer shall prepare monthly a report of the investments he or she administers. A copy of each report shall be furnished to the president of the Senate, speaker of the House, legislative auditor, council of finance and administration, and upon request to any legislative committee, banking institution, state or federal savings and loan association in this state, and any member of the news media. The report shall also be kept available for inspection by the public.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-17. Bonds may be registered; coupon bonds may be registered as to principal.
§13-1-18. Registration of coupon bonds as to interest; exchange of registered bond for coupon bond.


If three fifths of all the votes cast for and against the proposition to incur debt and issue negotiable bonds shall be in favor of the same, the governing body of the political division shall, by resolution, authorize the issuance of such bonds in an amount not exceeding the amount stated in the proposition; fix the date thereof; set forth the denominations in which they shall be issued, which denominations shall be one hundred dollars or
multiples thereof; determine the rate or rates of interest which the bonds shall bear, which rate or rates of interest shall be within the maximum rate stated in the proposition submitted to vote and payable semiannually; prescribe the medium with which the bonds shall be payable; require that the bonds shall be made payable at the office of the state treasurer and at such other place or places as the body issuing the same may designate; provide for a sufficient levy to pay the annual interest on the bonds and the principal at maturity; fix the times within the maximum period, as contained in the proposition submitted to vote, when the bonds shall become payable, which shall not exceed thirty-four years from the date thereof; determine whether all or a portion of the bonds shall be subject to redemption prior to the maturity thereof and, if so, the terms of the redemption; and prescribe a form for executing the bonds authorized.

§13-1-17. Bonds may be registered; coupon bonds may be registered as to principal.

The bonds issued hereunder may be registered or coupon bonds. Coupon bonds may be registered as to the principal in the owner's name by the state treasurer on books which shall be kept at its office for the purpose and the registration shall also be noted on the bonds, after which no transfer shall be valid unless made by the state treasurer on the books of registration and similarly noted on the bonds. Bonds registered as to principal may be discharged from registration by being transferred to bearer, after which they shall be transferable by delivery; but may again, and from time to time, be registered as to the principal amount as before. The registration of coupon bonds as to the principal sum shall not affect the negotiability of the interest coupons, but title to the same shall pass by delivery.

§13-1-18. Registration of coupon bonds as to interest; exchange of registered bond for coupon bond.

Coupon bonds may also be registered as to the interest by the holder surrendering the bonds with the unpaid coupons attached, which bonds and coupons shall be canceled by the state treasurer. New bonds of the same date and tenor and for the same amounts as the bonds surrendered, or, at the option of the holder, a single bond
for the aggregate amount of the bonds surrendered, but
without interest coupons attached, shall be issued in the
place of the coupon bonds and registered in the manner
required in the preceding section. A registered bond may
at any time be surrendered and be exchanged by the
holder for a coupon bond by the holder delivering the
registered bond to the state treasurer who shall cancel the
same and who shall cause a new bond of the same date
and tenor and for the same amount to be issued, and with
interest coupons for the interest thereafter to accrue
thereon attached, and deliver the same to the holder of the
surrendered bond. The governing body of the county,
municipal corporation or school district which issued the
original bond shall issue and execute the new bond
required by this section and shall pass the resolutions and
ordinances necessary to authorize the same. The expense
of such registration shall in all cases be paid by the holder
of the bonds.

ARTICLE 2. REFUNDING BONDS.

§13-2-2. Terms of refunding bonds; time, place and amount of
payments.

Upon determining to issue such refunding bonds, the
governing body of such political division shall, by
resolution, authorize the issuance of such bonds in an
amount not exceeding the principal amount permitted by
section one of this article, fix the date thereof, the rate or
rates of interest which such bonds shall bear, payable
semiannually, and require that the bonds shall bear,
payable at the office of the state treasurer and at such
other place or places as the body issuing the same may
designate. Such resolution shall also provide that such
bonds shall mature serially in annual installments
beginning not more than three years after the date thereof,
and the last of such annual installments shall mature in not
exceeding thirty-four years from the date of such bonds.
The amount payable in each year on the refunding bonds,
 together with any unrefunded or unissued bonds of the
prior issue, may be so fixed that, when the amount of
interest is added to the principal amount to be paid during
the respective years, the total amount payable in each year
shall be as nearly equal as practicable; or such bonds may
be made payable in annual installments as nearly equal in
principal as may be practicable.
All or a portion of the refunding bonds may be subject to redemption prior to the maturity thereof, at the option of the body issuing the same, at such times and prices and on such terms as shall be designated in the resolution required by this section. The body issuing the refunding bonds may not levy taxes in connection with the redemption of any refunding bonds in excess of the taxes that would have been levied for the payment of principal of and interest on such refunding bonds in such year.

CHAPTER 321

(S. B. 605—By Senators Wooton, Ball, Bowman, Dittmar, Kessler, Oliverio, Ross, Schoonover, Snyder, White, Buckalew and Scott)

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

AN ACT to amend and reenact section seventeen, article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section sixteen, article six of said chapter; to amend and reenact section nine, article nine of said chapter; and to amend and reenact sections two and nineteen, article ten of said chapter, all relating generally to unemployment compensation; clarifying certain exclusions from the definition of employment; changing references to federal statutes; recognizing authority of certain federal levies against benefits; allowing disclosure of unemployment compensation information to child support agencies; and continuing authority to expend Reed Act funds.

Be it enacted by the Legislature of West Virginia:

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

Article

1A. Definitions.

6. Employee Eligibility; Benefits.


ARTICLE 1A. DEFINITIONS.

§21A-1A-17. Exclusions from employment.

1 The term "employment" does not include:

2 (1) Service performed in the employ of the United States or any instrumentality of the United States exempt under the constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law are applicable to the instrumentalities and to service performed for the instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, That if this state is not certified for any year by the secretary of labor under 26 U.S.C. §3404, subsection (c), the payments required of the instrumentalities with respect to the year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section nineteen, article five of this chapter, with respect to payments erroneously collected;

2 (2) Service performed with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress. The commissioner may enter into agreements with the proper agency established under an act of Congress to
provide reciprocal treatment to individuals who, after
acquiring potential rights to unemployment compensation
under an act of Congress, or who have, after acquiring
potential rights to unemployment compensation under an
act of Congress, acquired rights to benefit under this
chapter. Such agreement shall become effective ten days
after the publications which shall comply with the general
rules of the department;

(3) Service performed by an individual in agricultural
labor, except as provided in subdivision (12), section
sixteen of this article, the definition of "employment". For
purposes of this subdivision, the term "agricultural labor"
includes all services performed:

(A) On a farm, in the employ of any person, in
connection with cultivating the soil, or in connection with
raising or harvesting any agricultural or horticultural
commodity, including the raising, shearing, feeding,
caring for, training and management of livestock, bees,
poultry and fur-bearing animals and wildlife;

(B) In the employ of the owner or tenant or other
operator of a farm, in connection with the operation,
management, conservation, improvement or maintenance
of the farm and its tools and equipment, or in salvaging
timber or clearing land of brush and other debris left by a
hurricane, if the major part of the service is performed on
a farm;

(C) In connection with the production or harvesting of
any commodity defined as an agricultural commodity in
section fifteen (g) of the Agricultural Marketing Act, as
amended, as codified in 12 U.S.C. §1141j, subsection (g),
or in connection with the ginning of cotton, or in
connection with the operation or maintenance of ditches,
canals, reservoirs or waterways, not owned or operated for
profit, used exclusively for supplying and storing water
for farming purposes;

(D) (i) In the employ of the operator of a farm in
handling, planting, drying, packing, packaging,
processing, freezing, grading, storing or delivering to
storage or to market or to a carrier for transportation to
market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than one half of the commodity with respect to which the service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which the operators are members) in the performance of service described in subparagraph (i) of this paragraph, but only if the operators produced more than one half of the commodity with respect to which the service is performed; but the provisions of subparagraphs (i) and (ii) of this paragraph are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(E) On a farm operated for profit if the service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subdivision, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, truck farms, plantations, ranches, greenhouses, ranges and nurseries, or other similar land areas or structures used primarily for the raising of any agricultural or horticultural commodities;

(4) Domestic service in a private home except as provided in subdivision (13), section sixteen of this article, the definition of "employment";

(5) Service performed by an individual in the employ of his or her son, daughter or spouse;

(6) Service performed by a child under the age of eighteen years in the employ of his or her father or mother;

(7) Service as an officer or member of a crew of an American vessel, performed on or in connection with the vessel, if the operating office, from which the operations of the vessel operating on navigable waters within or without the United States are ordinarily and regularly
(8) Service performed by agents of mutual fund broker-dealers or insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis;

(9) Service performed: (A) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches; or (B) by a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order; or (C) by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of either: (i) Rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury; or (ii) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market: Provided, That this exemption does not apply to services performed by individuals if they are not receiving rehabilitation or remunerative work on account of their impaired capacity; or (D) as part of an unemployment work-relief or work-training program assisted or financed, in whole or in part, by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving the work relief or work training; or (E) by an inmate of a custodial or penal institution;

(10) Service performed in the employ of a school, college or university, if the service is performed: (A) By a student who is enrolled and is regularly attending classes at the school, college or university; or (B) by the spouse of a student, if the spouse is advised, at the time the spouse commences to perform the service, that: (i) The employment of the spouse to perform the service is
provided under a program to provide financial assistance
to the student by the school, college or university; and (ii)
the employment will not be covered by any program of
unemployment insurance;

(11) Service performed by an individual who is
enrolled at a nonprofit or public educational institution
which normally maintains a regular faculty and
curriculum and normally has a regularly organized body
of students in attendance at the place where its educational
activities are carried on as a student in a full-time program,
taken for credit at the institution, which combines
academic instruction with work experience, if the service is
an integral part of the program, and the institution has so
certified to the employer, except that this subdivision does
not apply to service performed in a program established
for or on behalf of an employer or group of employers;

(12) Service performed in the employ of a hospital, if
the service is performed by a patient of the hospital, as
defined in this article;

(13) Service in the employ of a governmental entity
referred to in subdivision (9), section sixteen of this article,
the definition of "employment" if the service is performed
by an individual in the exercise of duties: (A) As an
elected official; (B) as a member of a legislative body, or a
member of the judiciary, of a state or political subdivision;
(C) as a member of the state national guard or air national
guard; (D) as an employee serving on a temporary basis in
case of fire, storm, snow, earthquake, flood or similar
emergency; (E) in a position which, under or pursuant to
the laws of this state, is designated as: (i) A major
nontenured policymaking or advisory position; or (ii) a
policymaking or advisory position the performance of the
duties of which ordinarily does not require more than
eight hours per week;

(14) Service performed by a bona fide partner of a
partnership for the partnership; and

(15) Service performed by a person for his or her own
sole proprietorship.
Notwithstanding the foregoing exclusions from the definition of "employment", services, except agricultural labor and domestic service in a private home, are in employment if with respect to the services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund, or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act are required to be covered under this chapter.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.


(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes child support obligations as hereafter defined under subsection (g) of this section. If any such individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the commissioner shall notify the child support enforcement division of the department of health and human resources that the individual has been determined to be eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation payable to an individual that owes such child support obligations as defined under subsection (g) of this section:

(1) The amount specified by the individual to the commissioner to be deducted and withheld under this subsection, if neither subdivision (2) nor subdivision (3) is applicable;

(2) The amount, if any, determined pursuant to an agreement submitted to the commissioner under section 454 (19)(B)(i) of the Social Security Act, (B)(i), by the department of health and human resources, unless subdivision (3) is applicable; or
(3) Any amount otherwise required to be deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section 459 (i)(5) of the Social Security Act, as codified in 42 U.S.C. §659 (i)(5), properly served upon the commissioner.

(c) Any amount deducted and withheld under subsection (b) of this section shall be paid by the commissioner to the child support enforcement division of the department of health and human resources.

(d) Any amount deducted and withheld under subsection (b) of this section shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the child support enforcement division of the department of health and human resources in satisfaction of the individual’s child support obligations.

(e) For purposes of subsections (a) through (d) of this section, the term "unemployment compensation" means any compensation payable under this chapter, including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.

(f) This section applies only if appropriate arrangements have been made for reimbursement by the child support enforcement division of the department of health and human resources for the administrative costs incurred by the commissioner under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(g) The term "child support obligations" means, for purposes of these provisions, only obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act, as codified in 42 U.S.C. §654, which has been approved by the secretary of health and human services under Part D of Title IV of
ARTICLE 9. UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND.


(a) There is hereby appropriated out of funds made available to this state under section 903 of the Social Security Act, as amended, as codified in 42 U.S.C. §1103, the sum of four hundred thirty-four thousand five hundred seventy-four dollars and eighty-four cents, or so much thereof as may be necessary, to be used, for the purpose of property improvements and/or automation enhancements of the unemployment insurance or job service activities within the bureau of employment programs.

(b) No part of the money hereby appropriated may be obligated after the ninth day of March, two thousand.

(c) The amount obligated pursuant to this section shall not exceed at any time the amount by which: (1) The aggregate of the amounts transferred to the account of this state pursuant to section 903 of the Social Security Act, as codified in 42 U.S.C. §1103; exceeds (2) the aggregate of the amounts obligated for administration and paid out for benefits and required by law to be charged against the amounts transferred to the account of this state.

(d) This section is effective on and after the ninth day of March, one thousand nine hundred ninety-eight.

(e) Notwithstanding any other provision of this section, moneys credited to the state under section 903 of the Social Security Act, as codified in 42 U.S.C. §1103, with respect to federal fiscal years 1999, 2000 and 2001 are authorized to be used only for the administration of the state’s unemployment compensation program.

ARTICLE 10. GENERAL PROVISIONS.
§21A-10-2. Assignment of benefits invalid; exemption from process; exception.


§21A-10-2. Assignment of benefits invalid; exemption from process; exception.

(a) An assignment, pledge or encumbrance of any benefit due or payable under this chapter is invalid. Right to benefits is exempt from levy, execution, attachment or other processes for the collection of debt. Benefits received by an individual so long as they are not mingled with other funds of the recipient, are exempt from process for the collection of a debt. The waiver of any exemption provided in this section is void.

(b) The provisions of subsection (a) of this section do not apply to:

1. The assignment or collection of child support payments under the provisions of section sixteen, article six of this chapter;

2. A levy by the internal revenue service authorized by 26 U.S.C. §6331 subsection (h); or

3. Collection of debts incurred for necessaries furnished to an individual, the individual's spouse or dependents, during a period of unemployment.


(a) The bureau of employment programs shall disclose, upon request, to officers or employees of any state or local child support enforcement agency, and to employees of the federal secretary of health and human services, any wage and benefit information with respect to individuals which is contained in its records.

The term "state or local child support enforcement agency" means any agency of a state or political subdivision thereof operating pursuant to a plan described in section 453, 453a or 454 of the Social Security Act, as
(b) The requesting agency shall agree that the information is to be used only for the purpose of establishing and collecting child support obligations from, and locating, individuals owing the obligations which are being enforced pursuant to a plan described in section 453, 453a or 454 of the Social Security Act, as codified in 42 U.S.C. §§653, 653a and 654 respectively, which has been approved by the secretary of health and human services under Part D, Title IV of the Social Security Act, as codified in 42 U.S.C. §§651 through 669b, or as otherwise authorized in 42 U.S.C. §653 (i)(1), (i)(3) and (j).

(c) The information may not be released unless the requesting agency agrees to reimburse the costs involved for furnishing the information.

(d) In addition to the requirements of this section, all other requirements with respect to confidentiality of information obtained in the administration of this chapter and the sanctions imposed on improper disclosure shall apply to the use of the information by officers, and employees of child support enforcement agencies. A state or local child support enforcement agency may disclose to any agent of the agency that is under contract with the agency to carry out the purposes described in subsection (b) of this section, wage information that is disclosed to an officer or employee of the agency under subsection (a) of this section. Any agent of a state or local child support agency that receives wage information under this paragraph shall comply with the safeguards established to keep the information confidential and is subject to the criminal provisions of subsection (g), section eleven of this article.
AN ACT to amend and reenact section one hundred three, article one, chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the uniform common interest ownership act; providing for definitions; and allowing a resort owner to impose a charge to cover costs incurred for maintenance and improvements to real estate made available to unit owners without creating a common interest ownership community.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§36B-1-103. Definitions.

In the declaration and bylaws (section one hundred six, article three of this chapter), unless specifically provided otherwise or the context otherwise requires, and in this chapter:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person: (i) Is a general partner, officer, director or employer of the declarant; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the declarant;
(iii) controls in any manner the election of a majority of the directors of the declarant; or (iv) has contributed more than twenty percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant: (i) Is a general partner, officer, director or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the following interests allocated to each unit: (i) In a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association; (ii) in a cooperative, the common expense liability and the ownership interest and votes in the association; and (iii) in a planned community, the common expense liability and votes in the association.

(3) "Association" or "unit owners' association" means the unit owners' association organized under section one hundred one, article three of this chapter.

(4) "Common elements" means: (i) In a condominium or cooperative, all portions of the common interest community other than the units; and (ii) in a planned community, any real estate within a planned community owned or leased by the association, other than a unit.

(5) "Common expenses" means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

(6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section one hundred seven, article two of this chapter.
(7) "Common interest community" means real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in a declaration: Provided, That any resort owner which, prior to the effective date of this article, began the development of a resort and imposed fees or assessments upon owners of real estate in the resort for maintenance and care of the roads, streets, alleys, sidewalks, parks, common areas and common facilities in and around the resort, for fire and police protection and for such other services as may be made available to owners of real estate, may also impose the same fees and assessments to be used for the same or similar purposes upon persons purchasing real estate in the resort after the effective date of this article without creating a common interest community.

"Ownership of a unit" does not include holding a leasehold interest of less than twenty years in a unit, including renewal options.

(8) "Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interest in the common elements are vested in the unit owners.

(9) "Conversion building" means a building that at any time before creation of the common interest community was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

(10) "Cooperative" means a common interest community in which the real estate is owned by an association, each of whose members is entitled by virtue of his ownership interest in the association to exclusive possession of a unit.
(11) "Dealer" means a person in the business of selling units for his own account.

(12) "Declarant" means any person or group of persons acting in concert who: (i) As part of a common promotional plan, offers to dispose of his or its interest in a unit not previously disposed of; or (ii) reserves or succeeds to any special declarant right.

(13) "Declaration" means any instruments, however denominated, that create a common interest community, including any amendments to those instruments.

(14) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to: (i) Add real estate to a common interest community; (ii) create units, common elements or limited common elements within a common interest community; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a common interest community.

(15) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but the term does not include the transfer or release of a security interest.

(16) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

(17) "Identifying number" means a symbol or address that identifies only one unit in a common interest community.

(18) "Leasehold common interest community" means a common interest community in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the common interest community or reduce its size.

(19) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of subdivision (2) or (4), section one hundred
two, article two of this chapter for the exclusive use of one or more but fewer than all of the units.

(20) "Master association" means an organization described in section one hundred twenty, article two of this chapter, whether or not it is also an association described in section one hundred one, article three of this chapter.

(21) "Offering" means any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a common interest community not located in this state, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the common interest community is located.

(22) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. In the case of a trust, the corpus of which is real estate, however, "person" means the beneficiary of the trust rather than the trust or the trustee.

(23) "Planned community" means a common interest community that is not a condominium or a cooperative. A condominium or cooperative may be part of a planned community.

(24) "Proprietary lease" means an agreement with the association pursuant to which a member is entitled to exclusive possession of a unit in a cooperative.

(25) "Purchaser" means a person, other than a declarant or a dealer, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than: (i) A leasehold interest (including renewal options) of less than twenty years; or (ii) as security for an obligation.
"Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures and other improvements and interest that by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

"Residential purposes" means use for dwelling or recreational purposes, or both.

"Resort" means a destination location which consists of: (i) One or more persons offering recreational facilities and services such as skiing, golf, tennis or boating to the general public and commercial facilities such as retail stores, restaurants and hotels or other lodging accommodations; and (ii) at least one hundred residential units, a majority of which are used as vacation or second homes rather than primary residences.

"Resort owner" means any person owning or operating substantially all of the recreational facilities located within a resort, or the predecessor in title of any such person.

"Security interest" means an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

"Special declarant rights" means rights reserved for the benefit of a declarant to: (i) Complete improvements indicated on plans and plans filed with the declaration (section one hundred nine, article two of this chapter) or, in a cooperative, to complete improvements described in the public offering statement pursuant to subdivision (2), subsection (a), section one hundred three,
article four of this chapter; (ii) exercise any development
right (section one hundred ten, article two of this chapter); (iii) maintain sales offices, management offices, signs
advertising the common interest community, and models
(section one hundred fifteen, article two of this chapter); (iv) use easements through the common elements for the
purpose of making improvements within the common
interest community or within real estate which may be
added to the common interest community (section one
hundred sixteen, article two of this chapter); (v) make the
common interest community subject to a master
association (section one hundred twenty, article two of this
chapter); (vi) merge or consolidate a common interest
community with another common interest community of
the same form of ownership (section one hundred twenty-
one, article two of this chapter); or (vii) appoint or remove
any officer of the association or any master association or
any executive board member during any period of
declarant control (subsection (d), section one hundred
three, article three of this chapter).

"Time share" means a right to occupy a unit or
any of several units during five or more separated time
periods over a period of at least five years, including
renewal options, whether or not coupled with an estate or
interest in a common interest community or a specified
portion thereof.

"Unit" means a physical portion of the common
interest community designated for separate ownership or
occupancy, the boundaries of which are described
pursuant to subdivision (5), subsection (a), section one
hundred five, article two of this chapter. If a unit in a
cooperative is owned by a unit owner or is sold, conveyed,
voluntarily or involuntarily encumbered or otherwise
transferred by a unit owner, the interest in that unit which
is owned, sold, conveyed, encumbered, or otherwise
transferred is the right to possession of that unit under a
proprietary lease, coupled with the allocated interests of
that unit, and the association's interest in that unit is not
thereby affected.
(34) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease, the expiration or termination of which will remove the unit from the common interest community, but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration. In a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated (section one hundred seven, article two of this chapter) until that unit has been conveyed to another person.

CHAPTER 323

(Com. Sub. for H. B. 4508—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]
authorizing agreements between public agencies and such authorities; establishment of the authority as a quasi-public corporation; establishing requirements for the governing board of such authority; requiring meetings and an audit of the authority; establishing powers of the authority; authorizing the sale of bonds for constructing or acquiring water supply systems or for constructing or acquiring wastewater transportation and treatment facilities; authorizing items to be included as costs of properties; providing that the bonds may be secured by trust indenture; requiring the establishment of a sinking fund; establishing enforcement provisions for bondholders; establishing a statutory mortgage lien in favor of bondholders; providing for the requirement that the authority establish appropriate rates and charges for the use of services rendered; refunding issued bonds; exempting bonds and bond interest from taxation; establishing that bonds issued by authorities are legal investments; requiring the article to be liberally construed to effectuate its purposes; and providing for partial invalidity.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13D. REGIONAL WATER AND WASTEWATER AUTHORITY ACT.

§16-13D-1. Statement of purpose.
§16-13D-3. Joint exercise of powers by certain public agencies; agreements among agencies, contents; submission to public service commission; filing of agreement; prohibition against competition; retirement of bonds.
§16-13D-4. Furnishing of funds, personnel or services by certain public agencies, agreements for purchase, sale, distribution, transmission, transportation and treatment of water or wastewater; terms and conditions.
§16-13D-6. Governing body; appointments; terms of members, voting rights.
§16-13D-1. Statement of purpose.

It is the purpose of this article, to permit certain public agencies to make the most efficient use of their powers relating to public water supplies and the transportation and treatment of wastewater by enabling them to cooperate with other public agencies on a basis of mutual advantage and thereby to provide services and facilities to participating public agencies and to provide for the establishment for such purpose of a quasi-governmental public corporation which shall be known as a regional water authority, or where appropriate, a regional wastewater authority, or regional water and wastewater authority. The function of the regional water authority shall be to secure a source of water on a scale larger than is feasible for individual public agencies acting alone, and to sell such water to public service districts, municipalities, publicly and privately owned water utilities, and others. The function of the regional wastewater authority shall be to enable public agencies to join together to provide the most economical method of transportation and treatment of wastewater and to provide such transportation and treatment services to public service districts, municipalities, publicly and privately owned wastewater utilities, and others.
authority shall be to enable public agencies to join
together to carry out the joint functions of both regional
water authority and a regional wastewater authority.

In addition to the purposes for which it may have
originally been created, any authority created pursuant to
this article shall have the power to enter into agreements
with public agencies, privately owned utilities, and other
authorities, for the provision of related services including,
but not limited to the following: administration, operation
and maintenance, billing and collection.


For the purposes of this article:

(a) The term "authority" shall mean any regional water
authority, regional wastewater authority, or regional water
and wastewater authority organized pursuant to the
provisions of this article; and

(b) The term "public agency" shall mean any
municipality, county, public service district, or other
political subdivision of this state.

§16-13D-3. Joint exercise of powers by certain public
agencies; agreements among agencies, contents;
submission to public service commission; filing
of agreement; prohibition against competition;
retirement of bonds.

(a) Any powers, privileges or authority of a public
agency of this state relating to public water supplies, or the
transportation or treatment of wastewater, may be
exercised jointly with any other public agency of this state,
or with any agency of the United States to the extent that
the laws of the United States permit. Any agency of the
state government when acting jointly with any public or
private agency may exercise all of the powers, privileges
and authority conferred by this act upon a public agency.

(b) Any public agency may enter into agreements with
one or more other public agencies for the purpose of
organizing a regional water authority, regional wastewater
authority, or regional water and wastewater authority.
Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(c) Any such agreement shall specify the following:

1. Its duration;

2. The precise organization, composition and nature of the authority created thereby together with the powers delegated thereto;

3. Its purpose or purposes;

4. The manner of financing for the authority and of establishing and maintaining a budget therefor;

5. The permissible methods for partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

6. The manner of acquiring, holding and disposing of real and personal property of the authority;

7. Any other necessary and proper matters.

(d) Any such agreement may be amended to include additional public agencies by consent of two thirds of the signatories to the agreement, if no terms of agreement are changed, otherwise a new agreement with the new public agency shall be drawn. Where fewer than three public agencies come together to form an authority, both parties must consent to the amendment of the agreement to include additional public agencies.

(e) Prior to taking effect, every agreement made hereunder shall be submitted to the public service commission for its approval. Failure to disapprove an agreement submitted hereunder within ninety days of its submission shall constitute approval thereof.

(f) Prior to taking effect, an agreement made hereunder shall be filed with the clerk of the county commission of each county in which a member of the authority is located and such agreement then also shall be
filed with the secretary of state, accompanied by a certificate from the clerk of the county commission of the county, or counties, where filed, stating that such agreement has been filed in such county.

(g) A public agency which enters into an agreement made hereunder shall not offer or provide water or wastewater services in competition with another public agency entering into such agreement.

(h) A public agency which enters into an agreement made hereunder shall not withdraw from the agreement until such time as the outstanding bonded indebtedness of the authority is retired or the bond holders are otherwise protected.

§16-13D-4. Furnishing of funds, personnel or services by certain public agencies, agreements for purchase, sale, distribution, transmission, transportation and treatment of water or wastewater; terms and conditions.

Any public agency entering into an agreement pursuant to this article may appropriate funds and may sell, lease, give, or otherwise supply to the authority created such personnel or services for the operation of such authority as may be within its legal power to furnish.

Any public agency, whether or not a party to an agreement pursuant to this article, and any publicly or privately owned water distribution company may enter into contracts with any regional water authority or regional water and wastewater authority created pursuant to this article for the purchase of water from such authority or the sale of water to the authority, the treatment of water by either party and the distribution or transmission of water by either party and any such authority may enter into such contracts, subject to the prior approval of the public service commission pursuant to the provisions of section twelve, article two of chapter twenty-four of this code. Any public agency, whether or not a party to an agreement pursuant to this act, and any publicly or privately owned wastewater transportation or treatment system may enter into contracts with any
22 regional wastewater authority or regional water and
23 wastewater authority created pursuant to this article for the
24 transportation and treatment of wastewater by either party
25 and any such authority may enter into such contracts,
26 subject to the prior approval of the public service
27 commission pursuant to the provisions of section twelve,
28 article two of chapter twenty-four of this code: Provided,
29 That if the public service commission has not acted on any
30 such proposed contract within ninety days of its filing,
31 such approval shall be deemed to have been granted. Any
32 such contract may include an agreement for the purchase
33 of water not actually received or the treatment of
34 wastewater not actually treated. No such contract shall be
35 made for a period in excess of forty years, but renewal
36 options may be included therein. The obligations of any
37 public agency under any such contract shall be payable
38 solely from the revenues produced from such public
39 agency's water or wastewater system, and the public service
40 commission, in the case of a public agency whose rates are
41 subject to its jurisdiction, shall permit the public agency to
42 recover through its rates revenues sufficient to meet its
43 obligations under such agreement.

§16-13D-5. Declaration of authority organization, when quasi-
governmental public corporation.

Upon the approval of the public service commission
and filing with the secretary of state, the secretary of state
shall declare the authority organized and give it the
Corporate name of regional water authority number __,
regional wastewater authority number __, or regional water
and wastewater authority number __, whichever is
appropriate. Thereupon the authority shall be a quasi-
governmental public corporation.

§16-13D-6. Governing body; appointments; terms of members,
voting rights.

The governing body of the authority shall consist of
not less than three persons selected by the participating
public agencies. Each participating public agency shall
appoint at least one and not more than two members.
Each member's full term shall be not less than one year
nor more than four years and initial terms shall be
staggered in accordance with procedures set forth in the
government provided for in section three of this article and
amendments thereto. In the case of an authority which is
made up by the agreement of two public agencies, each
public agency shall appoint two representatives to the
governing body.

The manner of selection of such governing body and
terms of office shall be set forth in the agreement
provided for in section three of this article and
amendments thereto. The governing body of the
authority shall elect one of its members as president, one
as treasurer and one as secretary.

Each member shall have one vote in any matter that
comes before the authority for decision. However, the
member agencies shall, in the original agreement
establishing the authority, set forth any special weighing
of such votes based upon population served, volumes of
water purchased, volumes of wastewater treated, numbers
of customers, or some other criterion, so as to maintain
fairness in the decisions and operations of the authority.

§16-13D-7. Meetings of governing body; annual audit.

The governing body of the authority shall meet as
often as the needs of the authority require; but not less
frequently than on a quarterly basis. The governing body
shall cause to be made an annual audit of the financial
records of the authority, the cost of said audit to be paid
by the authority.


For the purpose of providing a water supply,
transportation facilities, or treatment system to the
participating public agencies, and others, the governing
body of the authority shall have the following powers,
authorities and privileges:

(1) To accept by gift or grant from any person, firm,
corporation, trust or foundation, or from this state or any
other state or any political subdivision or municipality
thereof, or from the United States, any funds or property
or any interest therein for the uses and purposes of the
authority and to hold title thereto in trust or otherwise and
to bind the authority to apply the same according to the
terms of such gift or grant;

(2) To sue and be sued;

(3) To enter into franchises, contracts and agreements
with this or any other state or the United States or any
municipality, political subdivision or authority thereof, or
any of their agencies or instrumentalities, or any public or
private person, partnership, association, or corporation of
this state or of any other state or the United States, and this
state and any such municipality, political subdivision,
authority, or any of their agencies or instrumentalities, and
any such public or private person, partnership, association,
or corporation is hereby authorized to enter into contracts
and agreements with such authority for any term not
exceeding forty years for the planning, development,
construction, acquisition, maintenance, or operation of any
facility or for any service rendered to, for, or by said
authority;

(4) To borrow money and evidence the same by
warrants, notes, or bonds as hereinafter provided in this
article, and to refund the same by the issuance of
refunding obligations;

(5) To acquire land and interests in land by gift,
purchase, exchange or eminent domain, such power of
eminent domain to be exercised within or without the
boundaries of the authority in accordance with provisions
of article two, chapter fifty-four of this code;

(6) To acquire by purchase or lease, construct, install,
and operate reservoirs, pipelines, wells, check dams,
pumping stations, water purification plants, and other
facilities for the production, distribution and utilization of
water, and transportation facilities, pump stations, lift
stations, treatment facilities and other facilities for the
transportation and treatment of wastewater, and to own and
hold such real and personal property as may be necessary
to carry out the purposes of its organization, subject to the
advance approval of the public service commission for
any proposed acquisition, construction, installation or
operation: Provided, That the public service commission shall act on all proposals submitted under this paragraph within one hundred twenty days of filing with the commission: Provided, however, That if the public service commission has not acted within such period of time, approval of such proposal shall be deemed granted;

(7) To have the general management, control, and supervision of all the business, affairs, property and facilities of the authority, and of the construction, installation, operation and maintenance of authority improvements, and to establish regulations relating thereto;

(8) To hire and retain agents, employees, engineers and attorneys and to determine their compensation. The governing body shall select and appoint a general manager of the authority who shall serve at the pleasure of said governing body. The general manager shall have training and experience in the supervision and administration of the system or systems operated by the authority and shall manage and control the system under the general supervision of said governing body. All employees, servants and agents of the authority shall be under the immediate control and management of said general manager. The general manager shall perform all such other duties as may be prescribed by said governing body and shall give the governing body a good and sufficient surety company bond in a sum to be set and approved by the governing body conditioned upon the satisfactory performance of the general manager's duties. The governing body may also require that any other employees be bonded in such amount as it shall determine. The cost of said bonds shall be paid out of the funds of the authority;

(9) To adopt and amend rules and regulations not in conflict with the constitution and laws of this state, necessary for the carrying on of the business, objects and affairs of the governing body and of the authority;

(10) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein. Such specific powers shall not be
considered as a limitation upon any power necessary or appropriate to carry out the purposes of this article.


For constructing or acquiring any water supply, wastewater transportation, or treatment system for the authorized purposes of the authority, or necessary or incidental thereto, and for constructing improvements and extensions thereto, and also for reimbursing or paying the costs and expenses of creating the authority, the governing body of any such authority is hereby authorized to borrow money from time to time and in evidence thereof issue the revenue bonds of such authority. Such revenue bonds are hereby made a lien on the revenues produced from the operation of the authority's system, but shall not be general obligations of the public agencies participating in the agreement. All revenue bonds issued under this article shall be signed by the president of the governing body of the authority and attested by the secretary of the governing body of the authority and shall contain recitals stating the authority under which such bonds are issued and that they are to be paid by the authority from the net revenue derived from the operation of the authority's system and not from any other fund or source and that said bonds are negotiable and payable solely from the revenues derived from the operation of the system under control of the authority: Provided, That in the case of a regional water and wastewater authority, the statutory lien created hereby shall only be a lien on the revenues of that service funded by the proceeds of the sale of the bonds, it being understood that such combined authority shall maintain separate books and records for its water and wastewater operations. Such bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may bear interest at a rate not exceeding two percent above the interest rate on treasury notes, bills or bonds of the same term as the term of the bond or bonds the week of closing on the bond or bonds as reported by the treasury of the United States, may be payable at such times, may be in such form, may carry such registration privileges, may be executed in such
manner, may be payable at such place or places, may be
subject to such terms of redemption with or without
premium, may be declared or become due before maturity
date thereof, may be authenticated in any manner, and
upon compliance with such conditions, and may contain
such terms and covenants as may be provided by
resolution or resolutions of the governing body of such
authority. Notwithstanding the form or tenor thereof, and
in the absence of any express recital on the face thereof,
that the bond is nonnegotiable, all such bonds shall be,
and shall be treated as, negotiable instruments for all
purposes. Bonds bearing the signatures of officers in
office on the date of the signing thereof shall be valid and
binding for all purposes notwithstanding that before the
delivery thereof any or all of the persons whose signatures
appear thereon shall have ceased to be such officers.
Notwithstanding the requirements or provisions of any
other law, any such bonds may be negotiated or sold in
such manner and at such time or times as is found by the
governing body to be most advantageous, and all such
bonds may be sold at such price that the interest cost of
the proceeds therefrom does not exceed three percent
above the interest rate on treasury notes, bills or bonds of
the same term as the term of the bond or bonds the week
of closing on the bond or bonds as reported by the
treasury of the United States, based on the average
maturity of such bonds and computed according to
standard tables of bond values. Any resolution or
resolutions providing for the issuance of such bonds may
contain such covenants and restrictions upon the issuance
of additional bonds thereafter as may be deemed
necessary or advisable for the assurance of the payment of
the bonds thereby authorized.

§16-13D-10. Items included in cost of properties.

1 The cost of any water supply, wastewater
transportation or treatment system acquired or
constructed under the provisions of this article shall be
deemed to include the cost of the acquisition or
construction thereof, the cost of all property rights,
easements and franchises deemed necessary or convenient
therefor and for the improvements and extensions thereto;
interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof.

§16-13D-11. Bonds may be secured by trust indenture.

In the discretion and at the option of the governing body of the authority, such bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the state of West Virginia, but no such trust indenture shall convey, mortgage or create any lien upon the water supply, wastewater transportation or treatment system or any part thereof of the authority or its member public agencies. The resolution authorizing the bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the authority and the members of its governing body and officers in relation to the construction or acquisition of the water supply, wastewater transportation or treatment system and the improvement, extension, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that all or any part of the construction work shall be contracted for, constructed and paid for, under the supervision and approval of consulting engineers employed or designated by the governing body and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given
by contractors and by any depository of the proceeds of bonds or revenues of the water supply, wastewater transportation or treatment system or other money pertaining thereto be satisfactory to such purchasers, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders and such trustee.


At or before the time of the issuance of any bonds under this article the governing body of the authority shall by resolution or in the trust indenture provide for the creation of a sinking fund and for monthly payments into such fund from the revenues of the water supply, wastewater transportation or treatment system operated by the authority such sums in excess of the cost of maintenance and operation of such properties as will be sufficient to pay the accruing interest and retire the bonds at or before the time each will respectively become due and to establish and maintain reserves therefor. All sums which are or should be, in accordance with such provisions, paid into such sinking fund shall be used solely for payment of interest and for the retirement of such bonds at or prior to maturity as may be provided or required by such resolutions.

§16-13D-13. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.

The governing body of any such authority shall have power to insert enforceable provisions in any resolution authorizing the issuance of bonds relating to the collection, custody and application of revenues of the authority from the operation of the water supply, wastewater transportation or treatment system under its control and to the enforcement of the covenants and undertakings of the authority. In the event there shall be default in the sinking fund provisions aforesaid or in the payment of the principal or interest on any of such bonds or, in the event the authority or its governing body or any of its officers, agents or employees, shall fail or refuse to
comply with the provisions of this article, or shall default in any covenant or agreement made with respect to the issuance of such bonds or offered as security therefor, then any holder or holders of such bonds and any such trustee under the trust indenture, if there be one, shall have the right by suit, action, mandamus or other proceeding instituted in the circuit court for the county or any of the counties wherein the authority extends, or in any other court of competent jurisdiction, to enforce and compel performance of all duties required by this article or undertaken by the authority in connection with the issuance of such bonds, and upon application of any such holder or holders, or such trustee, such court shall, upon proof of such defaults, appoint a receiver for the affairs of the authority and its properties, which receiver so appointed shall forthwith directly, or by his agents and attorneys, enter into and upon and take possession of the affairs of the authority and each and every part thereof, and hold, use, operate, manage and control the same, and in the name of the authority exercise all of the rights and powers of such authority as shall be deemed expedient, and such receiver shall have power and authority to collect and receive all revenues and apply same in such manner as the court shall direct. Whenever the default causing the appointment of such receiver shall have been cleared and fully discharged and all other defaults shall have been cured, the court may in its discretion and after such notice and hearing as it deems reasonable and proper direct the receiver to surrender possession of the affairs of the authority to its governing body. Such receiver so appointed shall have no power to sell, assign, mortgage, or otherwise dispose of any assets of the authority except as hereinbefore provided.


There shall be and is hereby created a statutory mortgage lien upon such water supply, wastewater transportation or treatment system of the authority, which shall exist in favor of the holders of bonds hereby authorized to be issued, and each of them, and such system shall remain subject to such statutory mortgage lien until payment in full of all principal of and interest on such bonds.

1 The governing body shall by appropriate resolution make provisions for the payment of said bonds by fixing rates, fees and charges, for the use of all services rendered by such authority, which rates, fees and charges shall be sufficient to pay the costs of operation, improvement and maintenance of the authority's water supply or wastewater transportation and/or treatment system, to provide an adequate depreciation fund, provide an adequate sinking fund to retire said bonds and pay interest thereon when due, and to create reasonable reserves for such purposes.

2 Said fees, rates or charges shall be sufficient to allow for miscellaneous and emergency or unforeseen expenses.

3 The resolution of the governing body authorizing the issuance of revenue bonds may include agreements, covenants or restrictions deemed necessary or advisable by the governing body to effect the efficient operation of the system and to safeguard the interests of the holders of the revenue bonds and to secure the payment of the bonds and the interest thereon.

§16-13D-16. Refunding revenue bonds.

1 The authority having issued bonds under the provisions of this article is hereby empowered thereafter by resolution to issue refunding bonds of such authority for the purpose of retiring or refinancing such outstanding bonds, together with any unpaid interest thereon and redemption premium thereunto appertaining and all of the provisions of this article relating to the issuance, security and payment of bonds shall be applicable to such refunding bonds, subject, however, to the provisions of the proceedings which authorized the issuance of the bonds to be so refunded.

§16-13D-17. Exemption of bonds from taxation.

1 Said bonds and the interest thereon, together with all properties and facilities of the authority owned or used in connection with the water or wastewater system, and all the moneys, revenues and other income of such authority derived from such water or wastewater system shall be exempt from all taxation by the state of West Virginia or any county, municipality, political subdivision or agency thereof.

1 Bonds issued under the provisions of this article shall be legal investments for banks, building and loan associations, and insurance companies organized under the laws of this state and for a business development corporation organized pursuant to chapter thirty-one, article fourteen of the code of West Virginia.


1 If any section or sections of this article be declared unconstitutional or invalid, this shall not invalidate any other section of this article.

§16-13D-20. Article to be liberally construed.

1 This article is necessary for the public health, safety and welfare and shall be liberally construed to effectuate its purposes.

§16-13D-21. Citation of article.

1 This article may be known and cited as the "Regional Water and Wastewater Authority Act".

CHAPTER 324

(S. B. 64—By Senators Jackson and Tomblin, Mr. President)

[Passed March 6, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and fourteen, chapter two hundred fifty-five, acts of the Legislature, regular session, one thousand nine hundred ninety-five, all relating to making the president of southern West Virginia community college a voting member of the Corridor G regional development authority board; and requiring notice be published in lieu of publishing annual report.

Be it enacted by the Legislature of West Virginia:
That sections four and fourteen, chapter two hundred fifty-five, acts of the Legislature, regular session, one thousand nine hundred ninety-five, be amended and reenacted, all to read as follows:

CORRIDOR G REGIONAL DEVELOPMENT AUTHORITY.

§4. Management and control of county authority vested in board; appointment and terms of members; vacancies; removal of members.

§14. Contributions by members counties, local entity and others; fund and accounts; reports; audit and examination of books, records and accounts.

§4. Management and control of county authority vested in board; appointment and terms of members; vacancies; removal of members.

(a) The management and control of the authority, its property, operations, business and affairs shall be lodged in a board of seventeen voting members and four nonvoting ex officio members to be appointed as follows: Each of the county commissions of the counties of Boone, Lincoln, Logan and Mingo shall appoint four voting members to the authority, one of whom shall be a member of the county commission; the member of the county commission shall serve at the will and pleasure of the county commission; the initial terms of the other voting members appointed by a county commission are as follows: One member shall be appointed for a term of one year; one member shall be appointed for a term of two years; and one member shall be appointed for a term of three years; all successive appointments shall be for a term of three years. A member may be reappointed for such additional term or terms as the appointing agency may deem proper. If a member resigns, is removed or for any other reason his or her membership terminates during his or her term of office, a successor shall be appointed by the appointing county to fill out the remainder of the term. Members in office at the expiration of their respective terms shall continue to serve until their successors have been appointed and have qualified. The president of the southern West Virginia community college shall be an ex officio voting member.
(b) The directors of the county development authorities of each of the member counties shall be ex officio nonvoting members.

(c) Should a vacancy occur, the person appointed to fill the vacancy shall serve only for the unexpired portion thereof.

(d) Any voting member appointed to the authority by a county commission may be removed by the appointing county commission for such causes and reasons as a member of such county commission may be removed from office.

(e) All initial members shall be appointed on or before the first day of July, one thousand nine hundred ninety-five.

§14. Contributions by member counties, local entity and others; fund and accounts; reports; audit and examination of books, records and accounts.

Contributions may be made to the authority from time to time by the member counties or local entities, and by any persons, firms or corporations which shall desire to do so. All such funds and all other funds received by the authority shall be deposited in such bank or banks as the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct. The authority shall keep strict account of all its receipts and disbursements for the preceding year, and such annual report shall be delivered to the county commission of each member county and a notice that the annual report is available from the authority shall be published as a Class I legal advertisement in compliance with the provisions of section two, article three, chapter fifty-nine of the code of West Virginia, and the publication area for such publication shall be the member counties. The books, records and accounts of the authority shall be subject to audit and examination by the office of the state tax commissioner of West Virginia and by any other proper public official or body in the manner provided by law.
AN ACT to authorize and empower the county commission of Kanawha County to appoint an emergency operations center board to oversee the operation of the enhanced emergency telephone system serving Kanawha County and to authorize and empower the county commission of Cabell County to appoint an emergency operations center board to oversee the operation of the enhanced emergency telephone system serving Cabell County.

Be it enacted by the Legislature of West Virginia:

EMERGENCY OPERATIONS CENTER BOARDS FOR KANAWHA COUNTY AND CABELL COUNTY.

§1. Kanawha County authorized to appoint an emergency operations center board.

The county commission of Kanawha County is hereby authorized and empowered to appoint a board to be known as the “Emergency Operations Center Board” with the power to oversee the operation of the enhanced emergency telephone system serving Kanawha County.

§2. Cabell County authorized to appoint an emergency operations center board.

The county commission of Cabell County is hereby authorized and empowered to appoint a board to be known as the “Emergency Operations Center Board” with the power to oversee the operation of the enhanced emergency telephone system serving Cabell County.
CHAPTER 326

(S. B. 471—By Senators Jackson, Tomblin, Mr. President, and Bailey)

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

AN ACT to transfer land located on Lower Mud River in Carroll District of Lincoln County to the Lincoln County Commission and to transfer land situate along U. S. Route 219 in Huttonsville District of Randolph County to the Randolph County Commission from the department of agriculture of the state of West Virginia.

Be it enacted by the Legislature of West Virginia:

LAND TRANSFERS FROM THE DEPARTMENT OF AGRICULTURE TO THE LINCOLN COUNTY COMMISSION AND TO THE RANDOLPH COUNTY COMMISSION.

§1. Land transfer to Lincoln County Commission; description.

The department of agriculture of the state of West Virginia shall transfer to the Lincoln County Commission, without consideration, the parcel of land on the Lower Mud River Road in Carroll District of Lincoln County described as follows:

Beginning at an iron stake a distance of 15 feet southeast of a culvert under the state road on Lower Mud River, said stake being in the southwest right-of-way line of said road; thence in a straight line in a southwesterly direction a distance of 765 feet to an iron stake; thence N. 80° 30' W. 440 feet to an iron stake; thence N. 87° 30' E. 700 feet to an iron stake in the right-of-way line of said state road; thence with the right-of-way line of said road N. 63° 05' E. 226.6 feet to a stake; S. 22° 00' E. 68.6 feet to a stake; thence continuing with the right-of-way line of said road in a southeasterly direction a distance of 219 feet to the place of beginning, containing eight acres, more or less.

§2. Land transfer to Randolph County Commission; description.

The department of agriculture of the state of West Virginia shall transfer to the Randolph County Commission, without consideration, the parcel of land on U. S. route 219 in Huttonsville District of Randolph County described as follows:
Beginning at a culvert on the southerly side of U. S. Route 219 and a 3/4" x 42" rebar with plastic cap (set) thence proceeding northerly along U. S. Route 219, N 11° 09' E 589.08 feet to PC sta 1061; thence Δ-26° 07', D-10" 00', R-573.0 feet, chord- N 24° 41' E 258.97 feet to a point along side U. S. Route 219; thence proceeding along the southerly side of U. S. Route 219 N 38° 13' E 91.80 feet; thence along side said route S 51° 47' E 5 feet; thence along side of said route N 38° 13' E 452.56 feet to a point; thence N 36° 50' E 52.00 feet along said route; thence N 53° 10' W 5.00 feet along side said route; thence N 36° 50' E 18.5 feet to a 3/4" x 42" rebar with plastic cap and metal guard post (set); thence proceeding along side said U. S. Route 219 N 38° 13' E 49.34 feet to a point along side U. S. Route 219 S 66° 46' E 1,958.56 feet to a 3/4" x 42" rebar with alum. cap (set) in concrete; thence S 2° 30' W 541.75 feet to 3/4" x 42" rebar with alum. cap (set) in concrete under power line; thence S 65° 09' W 2,495.98 feet to a 3/4" x 42" rebar with plastic cap (set); thence N 49° 34' W 141.68 feet to a black walnut at fence corner; thence N 38° 03' E 729.83 feet to a maple (found) at fence corner; thence N 40° 16' W 205.5 feet to a 3/4" x 42" rebar with plastic cap and metal guard post (set); thence N 48° 18' W 250.65 feet to a 3/4" x 36" rebar with plastic cap and metal guard post (set); thence N 77° 40' W 170.00 feet to a 3/4" x 42" rebar with plastic cap (set) at the place of beginning, containing 75.01 acres, being two tracts, with Tract No. 1 containing 50.36 acres and a part of the real estate conveyed by Deed and of record in the Office of the County Commission of Randolph County in Deed Book 146 at page 482 and Tract No. 2 containing 24.85 acres and being a part of the real property conveyed by Deed which is of record in the office of the aforesaid clerk Deed Book 146 at page 482, as shown and depicted upon that certain map or plat by Leon B. Mallow, Licensed Professional Surveyor No. 567, dated September 15, 1997, and entitled "Plat of Survey for WV Board of Control", scale 1 inch = 400 feet, and being a part of a 251.04 acre tract of land as was conveyed by Tucker H. Ward, et al through Order of Condemnation to the West Virginia Board of Control on October 5, 1938, as recorded in Deed Book 146 at page 482, Tax Map Sheet 112, Part of Parcel No. 6, reference being made to said deed, maps and survey for all pertinent purposes.
CHAPTER 327
(H. B. 4334—By Delegate Fantasia)

[Passed March 3, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Marion County, West Virginia, to meet as alevying body for the purpose of presenting to the voters of the county an election to extend an additional county levy for parks and recreation equipment and development in Marion County from between the seventh and twenty-eighth days of March until the twenty-first day of May, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

MARION COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for Marion County commission to meet as levying body for election of additional levy for parks and recreation equipment and development.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the county commission of Marion County is hereby authorized to extend the time for its meeting as a levying body and certifying its actions to the state tax commissioner from between the seventh and twenty-eighth days of March until the twenty-first day of May, one thousand nine hundred ninety-eight, for the purpose of submitting to the voters of Marion County an additional county levy for parks and recreation equipment and development in Marion County.
AN ACT to amend and reenact section two, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-five, as last amended and reenacted by chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-eight; and to amend and reenact section two-a, chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-eight, all relating to the New River parkway authority; requiring a development certification process for issuance of certifications of compliance with the authority's plan or plans; providing an appeal process; providing injunctive relief to force compliance with the authority's plans; and redefining the territory included in the parkway.

Be it enacted by the Legislature of West Virginia:

That section two, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-five, as last amended and reenacted by chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-eight, be amended and reenacted, and that section two-a, chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-eight, be amended and reenacted, all to read as follows:

NEW RIVER PARKWAY AUTHORITY.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules; compensation.

§2a. Setting of standards and a development certification process for the regulation of use of property within the parkway corridor; definition of corridor; presentation of standards to governmental entities; requirement that governmental entities adopt and enforce standards; process of appeals and injunctive relief.
§2. Members; appointment; powers and duties generally; officers; bylaws; rules; compensation.

(a) The authority consists of nine voting members and four to six ex officio nonvoting members.

(b) Three voting members shall be appointed by the Mercer County commission. Three voting members shall be appointed by the Raleigh County commission. Three voting members shall be appointed by the Summers County commission. No more than two of the three voting members appointed by a county commission may be members of the same political party, which said members shall not be elected to, appointed to or hold any other public office during their tenure as members of the authority. The regular term of a voting member is three years, provided that the terms of the voting members initially appointed by a county commission are as follows: One member shall be appointed for a term of one year, one member shall be appointed for a term of two years and one member shall be appointed for a term of three years. Should a vacancy occur, the person appointed to fill the vacancy shall serve only for the unexpired portion thereof. All voting members are eligible for reappointment. Any voting member may be removed for cause by the appointing county commission.

(c) The ex officio nonvoting members are the commissioner of the division of highways or his or her designee, the director of the division of natural resources or his or her designee, the commissioner of agriculture or his or her designee, the commissioner of commerce or his or her designee, and, if they choose to serve, the district engineer of the Huntington district of the United States army corps of engineers or his or her designee and the superintendent of the New River gorge national river or his or her designee. Any designee serving as a nonvoting member may be removed at the will and pleasure of the officer designating the member.

(d) Each voting member of the authority may be compensated monthly by the county commission which appointed such member in an amount to be fixed by said county commission.

(e) There shall be an annual meeting of the authority on the second Monday in July in each year and a monthly
meeting on a day and at such time as the authority may designate in its bylaws. A special meeting may be called by the president, the secretary or any three voting members of the authority and may be held only after all voting and nonvoting members are given notice thereof in writing. Five voting members constitute a quorum for all meetings. At each annual meeting of the authority, it shall elect a president, vice president, secretary and treasurer. The authority shall adopt such bylaws and rules that are necessary for its operation and management.

(f) The authority has all powers necessary, incidental, convenient and advisable to accomplish the following purposes:

(1) The preparation of a plan or plans for the New River parkway and the New River parkway corridor;

(2) To create and administer a development certification process for issuance by the authority, where appropriate, of certifications of compliance with the authority's plan or plans;

(3) To hear and decide appeals from initial decisions made upon requests for certification of compliance with the authority's plan or plans;

(4) Advocating actions consistent with the plan or plans, to or before any governmental entity or any private person or entity; and

(5) Otherwise acting in an advisory capacity with regard to any aspect of the New River parkway and New River parkway corridor upon or without request to any governmental entity or private person or entity. The authority shall not own or hold any real estate or real property and shall not operate or maintain the parkway.

§2a. Setting of standards and a development certification process for the regulation of use of property within the parkway corridor; definition of corridor; presentation of standards to governmental entities; requirement that governmental entities adopt and enforce standards; process of appeals and injunctive relief.
(a) The authority may develop and set for land-use regulations performance standards which are necessary to implement the authority's plan or plans and which are consistent with the purpose of this chapter. The standards apply to the New River parkway corridor. New development within the parkway corridor requires certification by the authority that all requirements of its plan or plans have been complied with and that a certificate of compliance has been issued for the new development. The certification process shall be included in the authority's plan or plans and shall include the right of appeal by any person adversely affected by the process as provided for in subdivision (3), subsection (f), section two of this article. For purposes of this chapter, "New River parkway corridor" or "corridor" means that area within five hundred feet of the parkway centerline, from interstate 64 to the Hinton New River bridge, as delineated on an official parkway corridor map. Areas which the standards may address include:

(1) Buffer areas between the roadway and paved parking areas;

(2) Landscaping or vegetation requirements, or both;

(3) Land coverage, frontage, setback, design and building height for new structures;

(4) Siting of new structures to enhance the scenic qualities of the parkway and avoid visual intrusions;

(5) Design and placement of on-site advertising signs along the parkway;

(6) The dumping or storing of refuse to prevent deterioration of the natural or traditional parkway scene: Provided, That the standards shall not discourage constructive development and uses of the property which are consistent with the purpose of this chapter; and

(7) Any other area, if regulation over such area is consistent with the purpose of this chapter. Standards which are developed by the authority shall not apply to
structures existing in the corridor prior to the effective date of this section.

(b) Upon the development of standards and a development certification process, the authority shall present the standards and certification process to relevant governmental entities within the corridor. The presentation shall include relevant findings as to whether local plans and ordinances conform with the authority's performance standards and certification process and this presentation shall specify deviations, if any, from the performance standards and certification process.

(c) Within ninety days of the presentation of the authority's performance standards and development certification process, the relevant governmental entities shall adopt and enforce the standards and certification process in the parkway corridor.

(d) The development certification process as provided for in subdivision (3), subsection (f), section two of this article, included in the authority's plan or plans and adopted by the relevant governmental entities shall include an appeals process. The appeals process shall include an informal administrative appeal by which an adversely affected person may appeal the initial decision regarding a request for issuance of certification for proposed new development within the parkway corridor. If the appeal of the initial decision regarding certification is affirmed, the adversely affected person has the right to judicial review in the circuit court of the county where the relevant portion of the parkway corridor is located. The review is de novo. The burden is on the adversely affected person to prove the initial decision of the authority is contrary to the requirements of the authority's plan or plans as adopted by the relevant governmental entity.

(e) The circuit court of the county where the relevant portion of the parkway corridor is located has the power to and may grant injunctive relief to compel compliance by any person with the plan or plans of the authority adopted by the relevant governmental entity.
AN ACT to extend the time for the city council of Richwood, Nicholas County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the city an election to impose an additional city levy for street maintenance and improvements, police and fire protection in the city of Richwood from between the seventh and twenty-eighth days of March until the thirty-first day of May, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

CITY OF RICHWOOD MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for the City of Richwood to meet as levying body for election to impose an additional city levy for street maintenance and improvements, police and fire protection.

Notwithstanding the provisions of sections nine and fourteen, article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the city council of Richwood is hereby authorized to extend the time for its meeting as a levying body and certifying its actions to the state tax commissioner from between the seventh and twenty-eighth days of March until the thirty-first day of May, one thousand nine hundred ninety-eight, for the purpose of submitting to the voters of the city of Richwood an additional city levy for street maintenance and improvements, police and fire protection.
AN ACT authorizing the state building commission to sell the land, together with the building thereon, known as the former Thomas Jefferson Junior High School in Charleston.

Be it enacted by the Legislature of West Virginia.

SALE OF PROPERTY.

§1. Land sale; description.

The executive director of the state building commission is authorized to solicit interest in, enter into a contract for sale, sell and convey, for good and valuable consideration as negotiated by the executive director of the state building commission, after publishing notice of the opportunity to submit sealed bids to purchase the parcel of land, together with the three-story brick building thereon, located on Morris Street, Charleston, Kanawha County, described as follows:

That certain lot or parcel of land, together with the three-story brick building thereon, known as Thomas Jefferson Junior High School, described as Charleston East tax map number seventeen (17), parcel one hundred fifty-nine (159), situate at the corner of Quarrier and Morris Streets, in the city of Charleston, Kanawha County, West Virginia, fronting two hundred thirty feet (230), more or less, on the easterly side of Morris Street and extending back approximately one hundred fifty-six feet to an alley as described in a deed dated May 2, 1979.

The executive director of the state building commission shall not sell said property for anything less than the appraised value of the property as determined by an appraisement of the property performed by an appraiser licensed in this state that is completed within one year prior to the date of the sale of the property.
Proceeds from the sale of the property shall first be applied for the expenses related to the relocation of the occupants of the Thomas Jefferson Junior High School, including, but not limited to, the moving of the employees and remodeling and renovating office space to be used by the relocated employees and the remainder shall be deposited in the account of the state building commission.

CHAPTER 331
(Com. Sub. for H. B. 4631—By Delegate Pettit)

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

AN ACT to amend and reenact section one, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred ninety-one, relating to directing the commissioner of highways to issue a permit to certain users of two highways in the city of Weirton and allowing the increasing of gross weight limitations on certain roads in the city of Weirton, West Virginia.

Be it enacted by the Legislature of West Virginia:

That section one, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred ninety-one, be amended and reenacted to read as follows:

SIZE, WEIGHT AND LOAD LIMITATIONS ON CERTAIN ROADS IN WEIRTON, WEST VIRGINIA.

§1. Authority of the commissioner of the division of highways to increase weight limitations upon highways within the city of Weirton, West Virginia.

If the commissioner of the division of highways determines that the design, construction and safety of the highways within the city of Weirton, West Virginia, are such that tonnage limits may be increased without undue damage, the commissioner may increase them. The
The commissioner shall then set new weight limitations applicable to said highways or portions thereof.

The commissioner may not establish any weight limitation in excess of or in conflict with any weight limitation prescribed by or pursuant to acts of Congress with respect to the national system of interstate and defense highways.

If the commissioner determines that the portion of State Route 2 located in the city of Weirton in the counties of Hancock and Brooke, named "Main Street" and that portion of U.S. Route 22 within the city of Weirton in the county of Brooke named "Freedom Way" are designed and constructed to allow the gross weight limitation to be increased up to one hundred twenty thousand pounds without undue damage, the commissioner may increase the weight limitations from eighty thousand pounds up to one hundred twenty thousand pounds on those sections of State Route 2 and U.S. Route 22 described above:

Provided, That any person, organization or corporation exceeding eighty thousand pounds gross weight limitation while using said routes shall first obtain a permit from the commissioner before proceeding and shall provide the commissioner with a bond sufficient to cover any potential undue damage which may result from the use: Provided, however, That if it is the determination of the commissioner that said routes, as specifically described herein, are in need of repaving, those persons, organizations or corporations shall pay the cost of repaving in amounts as assessed, from time to time, by the commissioner: Provided further, That the commissioner also determines that the increased limitation is not barred by an act of the United States Congress and the commissioner has received approval from the United States department of transportation to increase the weight limitation.

The director of the enforcement division of the division of highways shall identify the trucks exceeding eighty thousand pounds gross weight using the said routes and the companies they represent and report this information to the commissioner of the division of highways.
The commissioner of the division of highways shall, every six months, review the damages to the said routes and report the damages to: (1) The local legislative delegation, consisting of two delegates from Brooke County and two delegates from Hancock County and the two senators representing the first senatorial district; and (2) the companies identified by the director of the enforcement division.

The commissioner shall assess the damages to the companies, identified by the director of the enforcement division, using the said routes. Notification, by the commissioner, of the amount of the assessment to the companies shall be by certified mail. A copy of the notice of the assessment of damages shall also be forwarded to the local legislative delegation.

The companies must pay the assessed damages to the division of highways within thirty days of receipt of the notice or penalties. If such payments are not made within thirty days, a penalty in the amount of ten percent per annum of the outstanding assessment shall be imposed quarterly. The division of highways shall, to the best of its ability, commence the repair of the damaged routes within six months of the assessment.

The commissioner of the division of highways shall report to the Legislature before the fifteenth day of January, two thousand one. The report shall contain: (1) How the increased weight of trucks has affected the said routes; (2) damages caused; (3) how much was assessed in damages; and (4) how much was paid. After review by the Legislature, the Legislature shall continue, amend, or terminate this practice.
RESOLUTIONS

(Only Resolutions of general interest are included herein.)

SENATE RESOLUTION 6

(By Senator Plymale)

[Adopted January 28, 1998]

Creating a Select Committee on Public Employees’ Insurance.

Resolved by the Senate:

That for a period of time not to exceed the term of the seventy-third Legislature there is hereby created a Senate Select Committee on Public Employees’ Insurance. This committee shall consist of nine members as appointed by the President who may authorize payment of members’ expenses incurred since January 14, 1998. Notwithstanding the provisions of any Senate rule to the contrary, this committee shall have jurisdiction of legislative proposals affecting the insurance requirements and needs of the employees of the State of West Virginia as the President may deem appropriate: Provided, That reference of a bill to the Select Committee on Public Employees’ Insurance shall not preclude a standing committee of the Senate from consideration of legislation addressing the same subject within its jurisdiction. The rules of the Senate governing standing committees shall govern the actions and proceedings of this committee insofar as applicable.

HOUSE CONCURRENT RESOLUTION 3

(By Mr. Speaker, Mr. Kiss, and Delegate Martin and all other members of the House)

[Adopted January 20, 1998]

Requesting the President of the United States to carefully consider all possible economic and social effects of the Kyoto Protocol to the United Nations Framework Convention on Global
RESOLUTIONS

Climate Change (FCCC) and not to sign the Protocol unless it is certain that the provisions of the Protocol will not result in serious negative effects upon the economy of the United States, upon the economies of states economically dependent upon fossil fuel industry and upon the daily financial well being of the American citizen; and urging the Senate of the United States to, in the event of its deliberation over the Protocol for ratification, consider the same effects and to reject the Protocol so long as the above mentioned effects are possible.

WHEREAS, The United States is a signatory to the 1992 United Nations Framework Convention on Global Climate Change; and

WHEREAS, In December, 1997, the United States participated in negotiations in Kyoto, Japan, resulting in the agreement known as the Kyoto Protocol, which calls for the United States to reduce emissions of greenhouse gases by 7 percent from 1990 levels during the period A.D. 2008 to 2012, with potentially larger reductions thereafter; and

WHEREAS, The United States delegation signed the Protocol on December 10, 1997; and

WHEREAS, The Kyoto Protocol calls for reductions by other industrial nations from 1990 levels by 6 to 8 percent during the same period; and

WHEREAS, Developing nations are exempted from greenhouse gas emission limitation requirements of the Framework Convention and refused to accept any new commitments for such limitations during the negotiations of the Kyoto Protocol; and

WHEREAS, The United States relies on carbon-based fossil fuels for more than 90 percent of its total energy supply; and

WHEREAS, The requirements of the Protocol would bind the United States to more than a 35 percent reduction in carbon dioxide emissions between 2008 and 2012; and

WHEREAS, Research has not reached convincing proof that fossil fuel related emissions is in fact creating global climate changes; and

WHEREAS, Economic impact studies by the United States government estimate that the requirements of the treaty could
result in the loss of 900,000 jobs, increased energy prices, losses of output in energy intensive industries such as aluminum, steel, rubber, chemical and utility production and especially the coal industry; and

WHEREAS, The State of West Virginia, being dependent upon these industries and especially upon the coal industry, would experience these effects severely, including the possible loss of thousands of jobs; and

WHEREAS, The President of the United States pledged on October 22, 1997, that the United States will not assume binding obligations unless key developing nations meaningfully participate in this effort; and

WHEREAS, The failure of key developing nations to participate will create unfair competitive imbalances between the United States and these developing nations, potentially leading to the transfer of jobs vital to the West Virginia economy to developing nations; and

WHEREAS, On July 25, 1997, the United States Senate adopted Senate Resolution No. 98, expressing the sense of the Senate that the United States should not be a signatory to any protocol or to any other agreement which would require the advice and consent of the Senate to ratify, and which would mandate new commitments to mitigate greenhouse gas emissions unless the protocol or agreement mandates commitments and compliance by developing nations; therefore, be it

Resolved by the Legislature of West Virginia:

That the President of the United States is requested not to sign the Kyoto Protocol so long as the possibility of all above mentioned negative effects upon the American economy exists; and, be it

Further Resolved, That, in the event that the President signs the Kyoto Protocol, the Senate of the United States is requested to refuse ratification of the Protocol so long as the possibility of said effects exists; and, be it

Further Resolved, That the Clerk of the House of Delegates shall, immediately upon its adoption, transmit duly authenticated copies of this resolution to the President of the United States, to
the President Pro Tempore and the Secretary of the United States Senate, and to the United States Senators representing West Virginia.

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COMMITTEE SUBSTITUTE
FOR
HOUSE CONCURRENT RESOLUTION 62
(By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]
[Adopted March 14, 1998]

Providing for the issuance of two hundred twenty million dollars of bonds pursuant to the “Safe Roads Amendment of 1996” and chapter seventeen, article twenty-six of the code of West Virginia, 1931, as amended.

Resolved by the Legislature of West Virginia:

That state road bonds in the par value of two hundred twenty million dollars are authorized to be sold by the governor during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine. The bonds shall be issued in registered form, in such denominations, maturing at such times and bear such date or dates as the governor may determine.

All such bonds shall be payable at the office of the treasurer of the State of West Virginia, or at some bank in the City of Charleston to be designated by the governor. The bonds shall bear interest at a rate not exceeding seven percent per annum, in the aggregate, payable semiannually, beginning not more than nine months following the date of issue. The State Treasurer shall pay the interest then due on the bonds to the registered owners thereon, at the addresses shown by the record of registration.

The bonds shall be signed as provided in section two, article twenty-six, chapter seventeen of the code of West Virginia.

The bonds may be redeemable on such date or dates prior to maturity as determined by the governor.
The governor shall sell the bonds herein mentioned at such time or times during the fiscal year as he may determine necessary to provide funds for the purposes provided below, upon recommendation of the commissioner of highways. All sales shall be at par plus accrued interest, if any.

The net proceeds of sale of all bonds herein authorized shall be paid into the state road fund created by section one, article three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and used for the purposes set forth in article twenty-six, chapter seventeen of the code of West Virginia and in the Safe Roads Amendment of 1996.

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COMMITTEE SUBSTITUTE FOR
HOUSE JOINT RESOLUTION 104

(By Mr. Speaker, Mr. Kiss, and Delegates Martin, Michael, Mezzatesta, Ashley, Pino and Fleischauer)

[Adopted March 9, 1998]

Proposing an amendment to the Constitution of the State of West Virginia, amending article ten thereof by adding thereto a new section, designated section eight-a, relating to the authority of the Legislature to define types of improvement projects and to authorize the issuance by counties or municipalities of bonds to be payable from revenues derived from increased real or personal property taxes on such improvement projects in the county or municipality upon approval by majority vote in the county or counties and in the municipality where the proposed project is located; numbering and designating the proposed amendment; and providing a summarized statement of the purpose of the proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred ninety-eight,
which proposed amendment is that article ten thereof be amended by adding thereto a new section, designated section eight-a, to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§8a. Issuance of bonds payable from incremental increases in property taxes; voter approval required.

Notwithstanding any other provisions of this constitution to the contrary, the Legislature by general law may define and prescribe specific types of material improvements to real and personal property which constitute economic development projects and authorize the issuance by counties or municipalities of bonds to finance the public portion of those economic development projects. The Legislature may further determine the rights, remedies and conditions governing the projects, which may be located upon one or more parcels of real estate owned by one or more public or private entities.

The economic development projects shall be entered, valued and assessed on the land and personal property tax records of the appropriate taxing authority. The entries shall be made separately from the property so improved and, if located in more than one county or municipality, by separate entry for each applicable tax rate. The separate assessment is in addition to, and not in lieu of, the assessment for the property prior to the improvement. The bonds are payable from the property taxes on the private portion of the economic development projects.

No tax revenues of the county or municipality may be pledged to, or used for, the payment of the bonds, except for the increased tax revenues. The bonds issued shall be for a term not to exceed forty tax years, and may provide for the pledge of any other funds as the owner of the improvements may by contract or otherwise be required to pay. Upon payment in full of the bonds, the increased tax revenues shall revert to the appropriate levying bodies. The increased tax revenues from which the bonds may be paid shall not include taxes from excess levies, bond levies or other special levies.

No bonds may be issued unless the issuance of the bonds is approved by a majority of the voters of the county or counties if it is the issuing body, or if a municipality is the issuing body, by
a majority of the voters in both the municipality and the county in which the municipality is located.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, this proposed amendment is hereby numbered “Amendment No. 1” and designated as the “Local Option Economic Development Amendment”, and the purpose of the proposed amendment is summarized as follows: “To amend the State Constitution to permit the Legislature to authorize the financing of the public portion of economic development projects through the issuance by counties or municipalities of bonds payable from increases in real and personal property taxes, not including taxes from excess levies, bond levies or other special levies, on the private portion of the economic development projects. Upon payment in full of the bonds, for a term not to exceed forty years, the increased tax revenues revert to the appropriate levying bodies. No tax revenues of the county or counties or municipality may be pledged to, or used for, the payment of the bonds, except for the increased tax revenues. No bonds may be issued unless the issuance of the bonds is approved by a majority of the voters of the county if it is the issuing body, or if a municipality is the issuing body, by a majority of the voters in both the municipality and the county in which the municipality is located.”

HOUSE JOINT RESOLUTION 116

(By Delegates Fleischauer, Staton, Osborne, Givens, Kominar, Webb and Smirl)

[Adopted March 14, 1998]

Proposing an amendment to the Constitution of the State of West Virginia, amending sections one and five, article eight thereof, authorizing the Legislature to create courts of original and appellate jurisdiction; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:
That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred ninety-eight, which proposed amendment is that sections one and five, article eight thereof be amended to read as follows:

ARTICLE VIII. THE JUDICIARY.

§1. Judicial Power.

The judicial power of the state shall be vested solely in a supreme court of appeals, in the circuit courts and in such other courts, subordinate to the supreme court of appeals, of original or appellate jurisdiction as the Legislature may from time to time establish and in the justices, judges and magistrates of such courts.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered “Amendment No. 2” and designated as the “Judicial Reform Amendment” and the purpose of the proposed amendment is summarized as follows: “To amend the Constitution of West Virginia to authorize the Legislature to create additional courts of original and appellate jurisdiction.”
AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the executive - governor’s office, account no. fund 0101, fiscal year 1998, organization 0100, in the amount of five hundred thousand dollars, 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 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 the executive - governor's office, account no. fund 0101, fiscal year 1998, organization 0100, be supplemented and amended by increasing the total appropriation by five hundred thousand dollars as follows:

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<thead>
<tr>
<th>TITLE II—APPROPRIATIONS.</th>
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<tr>
<td>Sec. 1. Appropriations from general revenue.</td>
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<tr>
<td>EXECUTIVE</td>
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<td>5—Governor's Office</td>
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<td>(WV Code Chapter 5)</td>
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<td>Account No.</td>
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<td>Fund 0101 FY 1998 Org 0100</td>
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<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
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<tr>
<td>5</td>
<td>Unclassified ........ 099 $ 500,000</td>
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Any unexpended balance remaining in the appropriation for Unclassified (fund 0101, activity 099) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding five hundred thousand dollars to the existing appropriation for expenditure during fiscal year one thousand nine hundred ninety-eight.
AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of administration - office of the secretary, account no. fund 0186, fiscal year 1998, organization 0201, in the amount of three million five hundred fifty thousand dollars, 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 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 the department of administration - office of the secretary, account no. fund 0186, fiscal year 1998, organization 0201, be supplemented and amended by increasing the total appropriation by three million five hundred fifty thousand dollars as follows:
TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

20—Department of Administration—
Office of the Secretary

(WV Code Chapter 5F)

Account No.

Fund 0186 FY 1998 Org 0201

<table>
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<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
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<tbody>
<tr>
<td>1a Public Employees' Insurance</td>
<td></td>
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<tr>
<td>1b Match(R)-Transfer . . . . . . . . . . 012</td>
<td>$3,550,000</td>
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Any unexpended balance remaining in the appropriation for Public Employees' Insurance Match (R)-Transfer (fund 0186, activity 012) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99. The above appropriation for Public Employees' Insurance Match (R)-Transfer (fund 0186, activity 012) shall be transferred to the Public Employees Insurance Agency for expenditure.

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding three million five hundred fifty thousand dollars to the existing appropriation in a new line item for expenditure during fiscal year one thousand nine hundred ninety-eight.
CHAPTER 3
(H. B. 5005—By Delegate Michael)

[Passed March 21, 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 three million eighty-one thousand two hundred sixty-eight dollars from the department of education and the arts-board of trustees of the university system of West Virginia control account, account no. fund 0327, organization 0461 (activity 435), 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 department of education and the arts, board of trustees of the university system of West Virginia control account, account no. fund 0327, fiscal year 1998, organization 0461; to the department of health and human services, division of health-central office, account no. fund 0407, fiscal year 1998, organization 0506; 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 juvenile services, account no. fund 0570, fiscal year 1998, organization 0621, all for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The Legislature finds that the fund balance in the department of education and the arts-board of trustees of the university system of West Virginia control account, account no. fund 0327, organization 0461 (activity 435) exceeds that which is necessary for the purposes for which the account was established; 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
Be it enacted by the Legislature of West Virginia:

That the balance of funds in the department of education and the arts-board of trustees of the university system of West Virginia control account, account no. fund 0327, organization 0461 (activity 435), be decreased by expiring the amount of three million eighty-one thousand two hundred sixty-eight 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 0327, organization 0461, be supplemented and amended by increasing the total appropriation by five hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF EDUCATION AND THE ARTS

4 46—Board of Trustees of the University System of West Virginia

5 Control Account

(WV Code Chapter 18B)

6 Account No.

7 Fund 0327 FY 1998 Org 0461

8 General

9 Activity

10 Revenue

11 Fund

12 $500,000

13 17a Jackson’s Mill ............... 461

14 Any unexpended balances remaining in the appropriation for Jackson’s Mill (fund 0327, activity 461) at the close of the fiscal year 1997-98 are hereby reappropriated for expenditure during the fiscal year 1998-1999. The appropriation to Jackson’s Mill (fund 0327, activity 461) is made for the purpose of providing for a joint venture between Jackson’s Mill and West Virginia university to establish a fire training facility.
That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0407, organization 0506, be supplemented and amended by increasing the total appropriation by one million four hundred thousand dollars as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

51—Division of Health—
Central Office

(WV Code Chapter 16)

Account No.

Fund 0407 FY 1998 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>33 Primary Care Support</td>
<td>$200,000</td>
</tr>
<tr>
<td>36a Grant Memorial Hospital</td>
<td>$500,000</td>
</tr>
<tr>
<td>36b County Health Departments</td>
<td>$700,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for County Health Departments (fund 0407, activity 833), Primary Care Support (fund 0407, activity 628) and Grant Memorial Hospital (fund 0407, activity 834) at the close of the fiscal year 1997-98 are hereby reapportioned for expenditure during the fiscal year 1998-1999.

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0403, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by six hundred eighty-one thousand two hundred sixty-eight dollars as follows:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH
AND HUMAN SERVICES

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

Account No.

Fund 0403 FY 1998 Org 0511

General Revenue Fund

35c Juvenile Gatekeeping System . . . 835 $681,268

Any unexpended balances remaining in the appropriation for Juvenile Gatekeeping System (fund 0403, activity 835) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-1999.

And, that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0570, organization 0621, be supplemented and amended by increasing the total appropriation by five hundred thousand dollars as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

68a—Division of Juvenile Services—
(WV Code Chapter 49)

Account No.

Fund 0570 FY 1998 Org 0621
Any unexpended balances remaining in the appropriation for Juvenile Gatekeeping System (fund 0570, activity 835) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-1999.

The purpose of this bill is to expire the sum of three million eighty-one thousand two hundred sixty-eight dollars from the department of education and the arts, board of trustees of the university system of West Virginia control account, account no. fund 0327, organization 0461 (activity 435), and to supplement the department of education and the arts, board of trustees of the university system of West Virginia control account, account no. fund 0327, organization 0461, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding five hundred thousand dollars to the existing appropriation; to supplement the department of health and human services, division of health-central office, account no. fund 0407, fiscal year 1998, organization 0506, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding one million four hundred thousand dollars to the existing appropriation; to supplement the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1998, organization 0511, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding six hundred eighty-one thousand two hundred sixty-eight dollars to the existing appropriation; and to supplement the department of military affairs and public safety, division of juvenile services, account no. fund 0570, fiscal year 1998, organization 0621, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding five hundred thousand dollars to the existing appropriation, for expenditure during fiscal year one thousand nine hundred ninety-eight.
CHAPTER 4

(H. B. 5003—By Delegate Michael)

[Passed March 21, 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, in the amount of three hundred fifty thousand dollars, 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 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 the department of tax and revenue - tax division, account no. fund 0470, fiscal year 1998, organization 0702, be supplemented and amended by increasing the total appropriation by three hundred fifty thousand dollars in a new line item as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 1. Appropriations from general revenue.
3 DEPARTMENT OF TAX AND REVENUE
4 70—Tax Division
Account No.  
Fund 0470 FY 1998 Org 0702

5b Property Tax and Coal Reserve  
5c Valuation Automation Projects  . 831  $350,000

Any unexpended balance remaining in the appropriation for Property Tax and Coal Reserve Valuation Automation Projects (fund 0470, activity 831) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding three hundred fifty thousand dollars in a new line item to the existing appropriation for expenditure during fiscal year one thousand nine hundred ninety-eight.

CHAPTER 5

(H. B. 5006—By Delegate Michael)

[Passed March 21, 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 transportation - office of the secretary, account no. fund 0500, fiscal year 1998, organization 0801, in the amount of one hundred thousand dollars, 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 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 the department of transportation - office of the secretary, account no. fund 0500, fiscal year 1998, organization 0801, be supplemented and amended by increasing the total appropriation by one hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.

3 DEPARTMENT OF TRANSPORTATION

4 72—Department of Transportation—

5 Office of the Secretary

6 (WV Code Chapter 5F)

7 Account No.

8 Fund 0500 FY 1998 Org 0801

9 Activity  General Revenue Fund

10 11

12 3 Port Authority (R) ............... 443 $100,000
Any unexpended balance remaining in the appropriation for Port Authority (R) (fund 0500, activity 443) at the close of the fiscal year 1997-98 is hereby reappropriated for expenditure during the fiscal year 1998-99.

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding one hundred thousand dollars to the existing appropriation for expenditure during fiscal year one thousand nine hundred ninety-eight.

CHAPTER 6

(H. B. 5007—By Mr. Speaker, Mr. Kiss, and Delegates Martin, Michael and Warner)

[Passed March 21, 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 transportation — office of the secretary, account no. fund 0500, fiscal year 1998, organization 0801, 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 0500, fiscal year 1998, organization 0801, be supplemented and amended by increasing the total appropriation by one million dollars in a new line item as follows:

TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

DEPARTMENT OF TRANSPORTATION

72—Department of Transportation—Office of the Secretary

(WV Code Chapter 5F)

Account No.

Fund 0500 FY 1998 Org 0801

General Activity Revenue Fund

5a Aeronautics Commission . . . . . . . . . . 818 $1,000,000

Any unexpended balance remaining in the appropriation for the Aeronautics Commission (fund 0500, activity 818) at the close of fiscal year 1997-1998 is hereby reappropriated for expenditure during the fiscal year 1998-99.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding one million dollars to a new appropriation for the Aeronautics Commission for the purchase of property by the Benedum Airport Authority for the expansion of the Mid-Atlantic Aerospace Park for expenditure during the fiscal year one thousand nine hundred ninety-eight.
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-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 by adding new items of appropriations to Title II, section ten thereof as follows:

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<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>TITLE II—APPROPRIATIONS.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Section 10. Appropriations from lottery net profit surplus.</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>282a—West Virginia Development Office Tourism Commission</td>
<td>3067</td>
<td>1998</td>
<td>0304</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>(WV Code Chapter 5B)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Unclassified</td>
<td>096</td>
<td></td>
<td></td>
<td>$500,000</td>
</tr>
<tr>
<td>9</td>
<td>Hatfield-McCoy Regional Recreation Authority</td>
<td>824</td>
<td></td>
<td></td>
<td>$750,000</td>
</tr>
<tr>
<td>10</td>
<td>Oglebay Park</td>
<td>825</td>
<td></td>
<td></td>
<td>$200,000</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement this account in the budget bill for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by providing for a new item of appropriation to be established therein to appropriate one million five hundred twenty-five thousand dollars to the West Virginia Development Office-Division of Tourism and by providing for a new item of appropriation to be established therein to appropriate four million one hundred twenty-three thousand eight hundred sixty-nine dollars to the department of education and the arts, office of the secretary, to be expended during the fiscal year one thousand nine hundred ninety-eight.
AN ACT to amend and reenact section two, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salary increases for teachers.

Be it enacted by the Legislature of West Virginia:

That section two, article four, chapter eighteen-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. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.

(a) Each teacher shall receive the amount prescribed in the "state minimum salary schedule I" as set forth in this section, specific additional amounts prescribed in this section or article, and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

STATE MINIMUM SALARY SCHEDULE I

<table>
<thead>
<tr>
<th>Years</th>
<th>4th Class</th>
<th>3rd Class</th>
<th>2nd Class</th>
<th>A.B.</th>
<th>AB +15</th>
</tr>
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<tbody>
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<td>19,464</td>
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<td>22,339</td>
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<tr>
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<td>20,053</td>
<td>20,308</td>
<td>22,069</td>
<td>22,804</td>
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<td>14</td>
<td>19,933</td>
<td>20,570</td>
<td>20,826</td>
<td>22,770</td>
<td>23,505</td>
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<tr>
<td>15</td>
<td>20,214</td>
<td>20,852</td>
<td>21,107</td>
<td>23,235</td>
<td>23,970</td>
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<tr>
<td>16</td>
<td>20,496</td>
<td>21,133</td>
<td>21,388</td>
<td>23,700</td>
<td>24,435</td>
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</table>
### Table: Education and Salary by Years of MA Education

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<tr>
<th>Years Exp.</th>
<th>M.A.</th>
<th>MA +15</th>
<th>MA +30</th>
<th>MA +45</th>
<th>Doctorate</th>
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<td>24,587</td>
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<td>25,052</td>
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<td>26,787</td>
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<tr>
<td>2</td>
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<td>24,782</td>
<td>25,517</td>
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<td>27,252</td>
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<tr>
<td>3</td>
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<td>25,982</td>
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<td>27,717</td>
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<td>25,213</td>
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<td>28,739</td>
<td>29,474</td>
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<td>31,209</td>
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<tr>
<td>11</td>
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<td>30,674</td>
<td>31,674</td>
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<td>29,669</td>
<td>30,404</td>
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<td>29,399</td>
<td>30,134</td>
<td>30,869</td>
<td>31,604</td>
<td>32,604</td>
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<td>30,599</td>
<td>31,334</td>
<td>32,069</td>
<td>33,069</td>
</tr>
</tbody>
</table>
Subject to a recommendation by the governor for a pay raise through the delivery of an executive message to the Legislature and an appropriation by the Legislature for a pay raise, each teacher shall receive, effective the first day of July, one thousand nine hundred ninety-nine, and thereafter, the amount prescribed in "state minimum salary schedule II" as set forth in this section or article, and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

**STATE MINIMUM SALARY SCHEDULE II**

<table>
<thead>
<tr>
<th>Years Exp.</th>
<th>4th Class</th>
<th>3rd Class</th>
<th>2nd Class</th>
<th>A.B. +15</th>
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<td>20,809</td>
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<td>22,452</td>
<td>22,707</td>
<td>25,386</td>
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</tr>
<tr>
<td>9</td>
<td>22,988</td>
<td>25,851</td>
<td>26,586</td>
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</tr>
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<td>15</td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
If "state minimum salary schedule II" becomes effective on the first day of July, one thousand nine hundred ninety-nine, and the governor recommends a pay raise through the delivery of an executive message to the Legislature and the Legislature appropriates money for a pay raise, each teacher shall receive, effective the first day
of July, two thousand, and thereafter, the amount prescribed in "state minimum salary schedule III" as set forth in this section or article, and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

### STATE MINIMUM SALARY SCHEDULE III

<table>
<thead>
<tr>
<th>Years Exp.</th>
<th>4th Class</th>
<th>3rd Class</th>
<th>2nd Class</th>
<th>A.B.</th>
<th>AB +15</th>
</tr>
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<td>21,257</td>
<td>22,651</td>
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</tr>
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(b) Six hundred dollars shall be paid annually to each classroom teacher who has at least twenty years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable state minimum salary schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.
AN ACT to amend and reenact section eight-a, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salary increases for service personnel.

Be it enacted by the Legislature of West Virginia:

That section eight-a, article four, chapter eighteen-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. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8a. Service personnel minimum monthly salaries.

1 (1) The minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the “state minimum pay scale pay grade I” and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the “state minimum pay scale pay grade I” set forth in this section.

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Subject to a recommendation by the governor for a pay raise through the delivery of an executive message to the Legislature and an appropriation by the Legislature for a pay raise, effective the first day of July, one thousand nine hundred ninety-nine and thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the “state minimum pay scale pay grade II” and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the “state minimum pay scale pay grade II” set forth in this section.

### STATE MINIMUM PAY SCALE PAY GRADE II

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If “state minimum pay scale pay grade II” becomes effective on the first day of July, one thousand nine hundred ninety-nine, and the governor recommends a pay
raise through the delivery of an executive message to the Legislature and the Legislature appropriates money for a pay raise, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the "state minimum pay scale pay grade III" and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the "state minimum pay scale pay grade III" set forth in this section.

**STATE MINIMUM PAY SCALE PAY GRADE III**

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202  Handyman .................................... B
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204  Heating and Air Conditioning Mechanic II .. G
205  Heavy Equipment Operator .................. E
206  Inventory Supervisor .......................... D
207  Key Punch Operator ........................... B
208  Locksmith ................................... G
209  Lubrication Man ................................ C
210  Machinist ..................................... F
211  Mail Clerk .................................... D
212  Maintenance Clerk ............................. C
213  Mason ......................................... G
214  Mechanic ..................................... F
215  Mechanic Assistant ............................ E
216  Office Equipment Repairman I ............... F
217  Office Equipment Repairman II .............. G
218  Painter ........................................ E
219  Paraprofessional .............................. F
220  Plumber I ..................................... E
221  Plumber II .................................... G
222  Printing Operator .............................. B
223  Printing Supervisor ............................ D
224  Programmer .................................... H
225  Roofing/Sheet Metal Mechanic ................ F
226  Sanitation Plant Operator ..................... F
227  School Bus Supervisor .......................... E
(2) An additional ten dollars per month shall be added to the minimum monthly pay of each service employee who holds a high school diploma or its equivalent.

(3) An additional ten dollars per month shall also be added to the minimum monthly pay of each service employee who holds twelve college hours or comparable credit obtained in a trade or vocational school as approved by the state board.

(4) When any part of a school service employee's daily shift of work is performed between the hours of six o'clock p.m. and five o'clock a.m. the following day, the employee shall be paid no less than an additional ten dollars per month and one half of the pay shall be paid with local funds.

(5) Any service employee required to work on any legal school holiday shall be paid at a rate one and one-half times the employee's usual hourly rate.

(6) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid shall be paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.
(7) No service employee may have his or her daily work schedule changed during the school year without the employee's written consent, and the employee's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(8) The minimum hourly rate of pay for extra duty assignments as defined in section eight-b of this article shall be no less than one seventh of the employee's daily total salary for each hour the employee is involved in performing the assignment and paid entirely from local funds: Provided, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be utilized if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time employees within that classification category of employment within that county: Provided, however, That the vote shall be by secret ballot if so requested by a service personnel employee within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment shall be prorated accordingly. When performing extra duty assignments, employees who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the employee were employed on a full-day salary basis.

(9) The minimum pay for any service personnel employees engaged in the removal of asbestos material or related duties required for asbestos removal shall be their regular total daily rate of pay and no less than an additional three dollars per hour or no less than five dollars per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos related duties outside of the employee's regular employment
county, the daily rate of pay shall be no less than the minimum amount as established in the employee's regular employment county for asbestos removal and an additional thirty dollars per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel employees may be utilized in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(10) For the purpose of qualifying for additional pay as provided in section eight, article five of this chapter, an aide shall be considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort or render service to a child or children when not under the direct supervision of certificated professional personnel within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds or wherever supervision is required. For purposes of this section, "under the direct supervision of certificated professional personnel" means that certificated professional personnel is present, with and accompanying the aide.
LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 1998

CHAPTER 1

(H. B. 101—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

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

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, in the amount of seven million five hundred thousand dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to the governor's office, civil contingent fund, fund 0105, fiscal year 1999, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine; and

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

**Be it enacted by the Legislature of West Virginia:**

That the balance of funds in the revenue shortfall reserve fund, fund 2038, organization 0201, be decreased by expiring the amount of seven million five hundred thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 0105, fiscal year 1999, organization 0100, be supplemented and amended by increasing the total appropriation by seven million five hundred thousand dollars as follows:

**TITLE II—APPROPRIATIONS.**

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

8—Governor's Office—Civil Contingent Fund

(WV Code Chapter 5)

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The purpose of this bill is to expire the sum of seven million five hundred thousand dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and to supplement the governor's office, civil contingent fund, fund 0105, fiscal year 1999, organization 0100, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, by adding seven million five hundred thousand dollars to the appropriation for Civil Contingent Fund-Surplus.
CHAPTER 2

(H. B. 102—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

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

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, in the amount of seven million five hundred thousand dollars from the income tax refund reserve fund, fund 1313, organization 1300, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to the governor's office, civil contingent fund, fund 0105, fiscal year 1999, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine; 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-nine; 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-nine; therefore

Be it enacted by the Legislature of West Virginia:
That the balance of funds in the income tax refund reserve fund, fund 1313, organization 1300, be decreased by expiring the amount of seven million five hundred thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 0105, fiscal year 1999, organization 0100, be supplemented and amended by increasing the total appropriation by seven million five hundred thousand dollars as follows:

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TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

  8—Governor's Office—

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 1999 Org 0100

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<td>Surplus(R)</td>
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The purpose of this bill is to expire the sum of seven million five hundred thousand dollars from the income tax refund reserve fund, fund 1313, organization 1300, and to supplement the governor's office, civil contingent fund, fund 0105, fiscal year 1999, organization 0100, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, by adding seven million five hundred thousand dollars to the appropriation for Civil Contingent Fund-Surplus.
CHAPTER 3

(S. B. 1—By Senators Tomblin, Mr. President, and Buckalew)

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

AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-d, relating to security at the capitol complex; creating within the department of military affairs and public safety the state facilities protection division; authorizing appointment of director and providing qualifications; providing for duties of the division; authorizing legislative rules; and clarifying that current authority for supreme court and legislative security at the capitol complex is not terminated.

Be it enacted by the Legislature of West Virginia:

That chapter fifteen 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-d, to read as follows:

ARTICLE 2D. STATE FACILITIES PROTECTION DIVISION.

§15-2D-1. Policy.

§15-2D-2. Division created.

§15-2D-3. Duties of division.

§15-2D-4. Effect of article.

§15-2D-1. Policy.

The Legislature finds and declares that citizens, state employees and visitors who park, attend functions or work at the capitol complex should be safe and secure. The Legislature further finds that it is in the public interest to provide for the safety and security of individuals who visit and work at the capitol complex and that this can best be accomplished through a single division within the department of military affairs and public safety.

§15-2D-2. Division created.

There is hereby created the state facilities protection division within the department of military affairs and public safety. The governor shall appoint, with the advice
and consent of the Senate, a qualified director who has
been a law-enforcement officer for at least ten years, has
successfully completed supervisory and management
training, has held a supervisory position in law
enforcement for at least three years and has completed the
professional training required for police officers at the
West Virginia state police academy or equivalent
professional law-enforcement training at another state,
federal or United States military institution. The director
is responsible for the control and supervision of each of
the division's offices. The director may appoint deputy
directors and assign them duties as may be necessary for
the efficient management and operation of the division.

§15-2D-3. Duties of division.

The state facilities protection division has the duty to:

(1) Gather information from a broad base of
employees and visitors as to their security needs and
develop a comprehensive plan to maintain and improve
security at the capitol complex;

(2) Establish qualifications and training requirements
for persons providing security at the capitol complex,
including law-enforcement officers, who shall have powers
of arrest, all powers and authority of law-enforcement
officials set forth in section three, article fourteen, chapter
eight of this code and the duty to enforce all applicable
provisions of this code within the capitol complex;

(3) Employ personnel or contract for services;

(4) Purchase necessary equipment to maintain security
at the capitol complex; and

(5) Establish, through rules proposed for legislative
approval in accordance with the provisions of article three,
chapter twenty-nine-a of this code, which rules shall, at
minimum, establish qualification, training and certification
procedures for security personnel, and guidelines and
protocols necessary to carry out the intent of this article.

§15-2D-4. Effect of article.

The provisions of this article shall not apply to the
West Virginia Senate, the West Virginia House of
AN ACT to amend and reenact sections one and one-a, article eleven, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the authority of municipalities to prescribe reasonable penalties in the form of fines, forfeitures and imprisonment; and providing for the assessment of additional costs against a defendant.

Be it enacted by the Legislature of West Virginia:

That sections one and one-a, article eleven, 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 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.

§8-11-1. Ordinances to make municipal powers effective; penalties imposed under judgment of mayor or police court or municipal judge; right to injunctive relief; right to maintain action to collect fines; additional assessment of costs.

§8-11-1a. Disposition of criminal costs into state treasury account for regional jail and correctional facility development fund.

§8-11-1. Ordinances to make municipal powers effective; penalties imposed under judgment of mayor or police court or municipal judge; right to injunctive relief; right to maintain action to collect fines; additional assessment of costs.

(a) To carry into effect the powers and authority conferred upon any municipality or its governing body by the provisions of this chapter, or any past or future act of the Legislature of this state, the governing body has plenary power and authority to:

(1) Make and pass all needful ordinances, orders, bylaws, acts, resolutions, rules and regulations not contrary to the constitution and laws of this state; and

(2) Prescribe reasonable penalties for violation of its ordinances, orders, bylaws, acts, resolutions, rules and regulations, in the form of fines, forfeitures and confinement in the county or regional jail or the place of confinement in the municipality, if there is one, for a term not exceeding thirty days.

(b) The fines, forfeitures and confinement shall be recovered, imposed or enforced under the judgment of the mayor of the municipality or the individual lawfully exercising the mayor's functions, or the police court judge or municipal court judge of a city, if there is one, and may be suspended upon reasonable conditions as may be imposed by the mayor, other authorized individual or judge.

(c) Any municipality may also maintain a civil action in the name of the municipality in the circuit court of the
county in which the municipality or the major portion of
the territory of the municipality is located to obtain an
injunction to compel compliance with, or to enjoin a
violation or threatened violation of, any ordinance of the
municipality, and the circuit court has jurisdiction to grant
the relief sought. A certified transcript of a judgment for
a fine rendered by a municipal court may be filed in the
office of the clerk of a circuit court and docketed in the
judgment lien book kept in the office of the clerk of the
county commission in the same manner and with the same
effect as the filing and docketing of a certified transcript
of judgment rendered by a magistrate court as provided
for in section two, article six, chapter fifty of this code.
The judgment shall include costs assessed against the
defendant.

(d) In addition to any other costs which may be
lawfully imposed, an additional cost shall be imposed in
an amount of not less than forty-two dollars for a traffic
offense constituting a moving violation, regardless of
whether the penalty for the violation provides for a period
of incarceration, and for any other offense for which the
ordinance prescribing the offense provides for a period of
incarceration.

(3) Of the forty-two dollars imposed as an additional
cost, two dollars are administrative costs to be retained by
the municipality, and forty dollars shall be paid into the
regional jail and correctional facility development fund in
the state treasury in accordance with section one-a of this
article.

(e) Execution shall be by fieri facias issued by the
clerk of the circuit court in the same manner as writs are
issued on judgments for a fine rendered by circuit courts
or other courts of record under the provisions of section
eleven, article four, chapter sixty-two of this code.

§8-11-la. Disposition of criminal costs into state treasury
account for regional jail and correctional facility
development fund.

The clerk of each municipal court, or other person
designated to receive fines and costs, shall at the end of
each month pay into the regional jail and correctional facility development fund in the state treasury an amount equal to forty dollars of the costs collected in each proceeding involving a traffic offense constituting a moving violation, regardless of whether the penalty for such violation provides for a period of incarceration, or any other offense for which the ordinance prescribing the offense provides for a period of incarceration: Provided, That in a case where a defendant has failed to pay all costs assessed against him or her, no payment shall be made to the regional jail and correctional facility development fund unless and until the defendant has paid all costs which, when paid, are available for the use and benefit of the municipality.
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 1998

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**DISPOSITION OF BILLS ENACTED**

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**Regular Session, 1998**

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