ACTS OF THE LEGISLATURE OF WEST VIRGINIA

Volume I
Chapters 1 – 150
FOREWORD

These volumes contain the Acts of the Second Regular Session and the First Extraordinary Session of the 74th Legislature, 2000.

Second Regular Session, 2000

The Second Regular Session of the 74th Legislature convened on January 12, 2000. The Constitutional sixty-day limit on the duration of the session was midnight, March 11, 2000. The Governor issued proclamations on March 8 and March 17, extending the session for the purpose of considering the Budget and supplementary appropriation bills, and the Legislature adjourned sine die on March 19, 2000.

Bills totaling 1,901 were introduced in the two houses during the session (1232 House and 669 Senate). The Legislature passed 295 bills, 163 House and 132 Senate.

The Governor vetoed five House bills (H. B. 4303, Relating to credits against premium tax for investment in West Virginia securities; H. B. 4396, Criminal penalties for misuse of the state purchasing card; H. B. 4477, Relating to the board of examiners for licensed dietitians and defining a scope of practice; H. B. 4579, Certificate of need exemption for behavioral health; H. B. 4689, Providing that thoroughbred horse tracks provide one restricted race per two racing days and removing the cap for moneys placed in the general purse fund) and six Senate bills (S. B. 310, Authorizing certain agencies within bureau of commerce to promulgate legislative rules; S. B. 342, Providing proof of payment of personal taxes prior to receiving business certificate; S. B. 356, Relating to minor boundary adjustments by municipalities; S. B. 470, Rewriting law on state aid for agricultural fairs and festivals; S. B. 582, Permitting certain officers and state employees to waive salaries; and S. B. 653, Relating to higher education generally). The Legislature amended and again passed H. B. 4303, H. B. 4579, H. B. 4689, S. B. 310 and S. B. 653, leaving a net total of 289 bills, 161 House and 128 Senate, which became law.

[ III ]
There were 145 Concurrent Resolutions introduced during the session, 89 House and 56 Senate, of which 28 House and 20 Senate were adopted. Thirty-three House Joint Resolutions and nine Senate Joint Resolutions were introduced, proposing amendments to the State Constitution. The House introduced 25 House Resolutions, and the Senate introduced 48 Senate Resolutions, of which 17 House and 47 Senate were adopted.

The Senate failed to pass 79 House bills passed by the House, and 55 Senate bills failed passage by the House. One bill died in conference: Senate Bill 481, Reorganizing executive branch of cabinet secretaries.

First Extraordinary Session, 2000

The Proclamation calling the Legislature into Extraordinary Session immediately following the conclusion of business and adjournment sine die of the Regular Session, contained five items for consideration.

The Legislature passed 5 bills, all of which were Senate bills. The Senate adopted four Senate Resolutions.

The Legislature adjourned the Extraordinary Session sine die on March 19, 2000.

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

These Acts may be purchased from the Office of the Clerk of the House, 212 Main Unit, State Capitol, Charleston, West Virginia 25305.

GREGORY M. GRAY
Clerk of the House and
Keeper of the Rolls.
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REGULAR SESSION, 2000

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

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(D) Democrats ........................................................................................................ 75
(R) Republicans ......................................................................................................... 25

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

1 Appointed Apr. 22, 1999, to fill the vacancy created by the resignation of Gary O. Tillis.
2 Appointed Jan. 18, 2000, to fill the vacancy created by the resignation of Jerry M. Damron.
3 Appointed Aug. 17, 1999, to fill the vacancy created by the resignation of Margaret Miller.
4 Appointed Sept. 16, 1999, to fill the vacancy created by the death of Richard H. Everson.
MEMBERS OF THE SENATE

REGULAR SESSION, 2000

OFFICERS

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

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<td>John R. Unger II (D)</td>
<td>Martinsburg</td>
<td>74th</td>
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<tr>
<td>Seventeenth</td>
<td>Brooks F. McCabe, Jr. (D)</td>
<td>Charleston</td>
<td>74th</td>
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<tr>
<td></td>
<td>Martha Yeager Walker (D)</td>
<td>Charleston</td>
<td>(House 70th); 71st-74th</td>
</tr>
</tbody>
</table>

(D) Democrats .................................................. 29
(R) Republicans ............................................... 5

TOTAL .............................................................. 34

1 Appointed Sept. 23, 1999, to fill the vacancy created by the resignation of Randy Schoonover.
COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2000

STANDING

AGRICULTURE AND NATURAL RESOURCES
Kelley (Chair of Agriculture), Boggs (Vice Chair of Agriculture), Yeager (Chair of Natural Resources), Ennis (Vice Chair of Natural Resources), Angotti, Butcher, Davis, Dempsey, Ferrell, Flanigan, McGraw, Paxton, Perdue, Pethtel, Prunty, Ross, Stemple, Williams, Willis, Anderson, Border, Evans, Leggett, Overington and Riggs.

BANKING AND INSURANCE
Thompson (Chair of Banking), Cann (Vice Chair of Banking), Beane (Chair of Insurance), Mahan (Vice Chair of Insurance), Amores, Angotti, Davis, Flanigan, Hatfield, Hutchins, Jenkins, Laird, Paxton, Perdue, Spencer, J. Smith, H. White, Wright, Azinger, Capito, Facemyer, Faircloth, Harrison, Romine and L. White.

CONSTITUTIONAL REVISION
Fleischauer (Chair), Kominar (Vice Chair), Collins, Dalton, Frederick, Givens, Hines, Houston, Laird, Leach, Linch, McGraw, Pethtel, Pino, Rowe, Varner, H. White, Wills, Wright, Anderson, Armstead, Harrison, Overington, Riggs and Webb.

EDUCATION
Mezzatesta (Chair), Manuel (Vice Chair), Boggs, Davis, Dempsey, Ennis, Houston, Hubbard, Paxton, Pethtel, Ross, Shelton, Sparks, Stemple, Susman, Williams, Willis, Yeager, Anderson, Armstead, Calvert, Fletcher, Harrison and Romine.

FINANCE
Michael (Chair), Doyle (Vice Chair), Ashley, Beane, Campbell, Cann, Compton, Fleischauer, Frederick, Jenkins, Kelley, Kominar, Laird, Leach, Mezzatesta, Pettit, Proudfoot, Thompson, Warner, Anderson, Border, Evans, Facemyer, Hall and Leggett.
GOVERNMENT ORGANIZATION
Douglas (Chair), Collins (Vice Chair), Angotti, Butcher, Caputo, Flanigan, Hatfield, Kuhn, Louisos, Manchin, Marshall, Martin, Mattaliano, McGraw, Perdue, Prunty, Tucker, Varner, H. White, Azinger, Modesitt, Overington, L. Smith, Stalnaker and Willison.

HEALTH AND HUMAN RESOURCES
Compton (Chair), Hutchins (Vice Chair), Caputo, Fleischauer, Hatfield, Houston, Hubbard, Kelley, Leach, Louisos, Mahan, Marshall, Perdue, Rowe, J. Smith, Spencer, Stemple, Susman, C. White, Calvert, Capito, Fletcher, Harrison, Romine and L. Smith.

INDUSTRY AND LABOR
Pettit (Chair), Kuhn (Vice Chair), Butcher, Cann, Caputo, Coleman, Dalton, Doyle, Frederick, Houston, Louisos, Mahan, Manchin, Paxton, Prunty, Sparks, Tucker, Williams, Armstead, Evans, Modesitt, Overington, Schadler, L. Smith and Webb.

JUDICIARY
Staton (Chair), Amores (Vice Chair), Coleman, Dalton, Ferrell, Givens, Hines, Hunt, Hutchins, Johnson, Linch, Mahan, Rowe, J. Smith, Spencer, Stemple, C. White, Wills, Capito, Faircloth, Riggs, Schadler, Smirl, Webb and L. White.

POLITICAL SUBDIVISIONS
Proudfoot (Chair), Campbell (Vice Chair), Ashley, Davis, Flanigan, Givens, Hines, Johnson, Kuhn, Linch, Marshall, Mattaliano, Pettit, Ross, C. White, Willis, Wills, Yeager, Facemyer, Schadler, Smirl, Stalnaker, Trump, L. White and Willison.

ROADS AND TRANSPORTATION
Warner (Chair), Shelton (Vice Chair), Ashley, Boggs, Butcher, Coleman, Ennis, Hubbard, Kominar, Manchin, Manuel, Marshall, Mattaliano, Pethel, Pettit, Susman, Thompson, C. White, Yeager, Anderson, Border, Calvert, Hall, Leggett, L. Smith and Stalnaker.

RULES
Kiss (Chair), Douglas, Givens, Manuel, Martin, Mezzatesta, Michael, Pino, Staton, Varner, Faircloth, Harrison, Riggs and Trump.
VETERANS AFFAIRS
Givens (Chair), Frederick (Vice Chair), Coleman, Collins, Doyle, Ferrell, Kelley, Kuhn, Linch, Manchin, Manuel, Mattaliano, Shelton, Sparks, Thompson, Tucker, H. White, Wright, Yeager, Azinger, Evans, Fletcher, Modesitt, Smirl and Willison.

JOINT

ENROLLED BILLS
J. Smith (Chair), Dempsey (Vice Chair), Wright and Overington.

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

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

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

PENSIONS AND RETIREMENT
Jenkins (Chair), Hubbard (Vice Chair), Campbell, J. Smith, Williams, Hall and Harrison.

RULES
Kiss (Chair), Martin and Trump.

STATUTORY LEGISLATIVE COMMISSIONS

FOREST MANAGEMENT REVIEW
Williams (Chair), Mahan (Vice Chair), Angotti, Martin, Proudfoot and Willison.
INTERSTATE COOPERATION
Shelton (Chair), Amores, Doyle, Jenkins, Yeager, Overington and Stalnaker.

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

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

OVERSIGHT COMMISSION ON REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY
Manuel (Chair), Leach, Michael, Pino, Warner and Faircloth.

SPECIAL INVESTIGATIONS
Kiss (Chair), Martin, Staton, Faircloth and Trump.
COMMITTEES OF THE SENATE
Regular Session, 2000

STANDING

AGRICULTURE
Anderson (Chair), Love (Vice Chair), Ball, Dittmar, Helmick, Mitchell, Ross, Unger, Deem and Minear.

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

CONFIRMATIONS
Love (Chair), Chafin (Vice Chair), Bailey, Bowman, Jackson, Minard, Mitchell, Wooton and McKenzie.

EDUCATION
Jackson (Chair), Plymale (Vice Chair), Bailey, Ball, Dawson, Edgell, Helmick, Hunter, Mitchell, Oliverio, Redd, Unger, Boley and Minear.

ENERGY, INDUSTRY AND MINING
Sharpe (Chair), McCabe (Vice Chair), Anderson, Chafin, Fanning, Helmick, Hunter, Jackson, Kessler, Oliverio, Ross, Snyder, Deem and McKenzie.

FINANCE
Craigo (Chair), Sharpe (Vice Chair), Anderson, Bailey, Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale, Prezioso, Unger, Walker, Boley, Minear and Sprouse.

GOVERNMENT ORGANIZATION
Bowman (Chair), Bailey (Vice Chair), Ball, Dawson, Jackson, Kessler, McCabe, Minard, Plymale, Redd, Snyder, Walker, Wooton, Boley and Minear.
SENATE COMMITTEES

HEALTH AND HUMAN RESOURCES
Walker (Chair), Prezioso (Vice Chair), Craigo, Hunter, McCabe, Plymale, Redd, Ross, Sharpe, Snyder, Unger, Wooton, Boley and Sprouse.

INTERSTATE COOPERATION
Minard (Chair), Redd (Vice Chair), Anderson, Bowman, Dawson, Unger and Minear.

JUDICIARY
Wooton (Chair), Snyder (Vice Chair), Ball, Dawson, Dittmar, Fanning, Hunter, Kessler, McCabe, Minard, Mitchell, Oliverio, Redd, Ross, Deem and McKenzie.

LABOR
Fanning (Chair), Hunter (Vice Chair), Ball, Dawson, Edgell, Love, Mitchell, Prezioso, Deem and McKenzie.

MILITARY
Prezioso (Chair), Edgell (Vice Chair), Bailey, Dittmar, Helmick, Hunter, Minard, Oliverio and Boley.

NATURAL RESOURCES
Dittmar (Chair), Mitchell (Vice Chair), Anderson, Ball, Bowman, Craigo, Dawson, Love, Minard, Prezioso, Ross, Snyder, Deem and Minear.

PENSIONS
Plymale (Chair), Fanning (Vice Chair), Edgell, Jackson, McCabe, Walker and Sprouse.

RULES
Tomblin (Chair), Anderson, Chafin, Craigo, Jackson, Sharpe, Walker, Wooton, Minear and Sprouse.

SMALL BUSINESS
Oliverio (Chair), Unger (Vice Chair), Anderson, Bowman, Craigo, Fanning, Kessler, McCabe, Ross, Sharpe, Boley and Sprouse.

TRANSPORTATION
Ross (Chair), Ball (Vice Chair), Dittmar, Kessler, Love, Oliverio, Plymale, Redd and McKenzie.
SENATE COMMITTEES

JOINT ENROLLED BILLS
Bailey (Chair), Edgell, Walker and McKenzie.

GOVERNMENT AND FINANCE
Tomblin (Chair), Chafin, Craigo, Jackson, Sharpe, Wooton and Sprouse.

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

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Ross (Chair), Anderson (Vice Chair), Minard, Snyder, Unger and Minear.

PENSIONS AND RETIREMENT
Plymale (Chair), Fanning (Vice Chair), Edgell, Jackson, McCabe, Walker and Sprouse.

RULES
Tomblin (Chair), Chafin and Sprouse.

STATUTORY LEGISLATIVE COMMISSIONS

FOREST MANAGEMENT REVIEW COMMISSION
Helmick (Chair), Bowman, Love, Plymale, Ross and Minear.

INTERSTATE COOPERATION
Minard (Chair), Redd (Vice Chair), Anderson, Bowman, Dawson, Unger and Minear.

OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY
Jackson (Chair), Bailey, Craigo, Plymale, Prezioso and Minear.
OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY
Walker (Chair), Craigo, Hunter, Prezioso, Sharpe, Snyder and Boley.

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

SPECIAL INVESTIGATIONS
Tomblin (Chair), Chafin, Sharpe, Wooton and Sprouse.
AN ACT to amend article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty, relating to limiting civil liability of nonprofits which solely arrange for persons to take train excursions and provide tourist information regarding the excursion area.

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

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-20. Limiting civil liability of nonprofits for arranging passage on excursion trains.

Any not for profit corporation for which one of its purposes is to arrange for persons or groups of persons to take excursions through, on, at or near places of scenic, historic or educational interest using trains, trackage or other related equipment and facilities of a regulated common carrier or governmental entity, shall not be liable for personal injury, wrongful death or property damage arising from the acts or omissions of the regulated common carrier or governmental entity so long as the role of the not for profit is limited to arranging for persons or groups of persons to participate in the excursion and providing tour information regarding the scenic, historic or educational qualities of the excursion area.

CHAPTER 2

(Com. Sub. for H. B. 2377 — By Delegates Ashley and Perdue)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen, relating to establishing a civil remedy for drawing, making, uttering, issuing or delivery of worthless checks, drafts, or other written orders; providing for the recovery of damages; requiring a written demand; establishing affirmative defenses; and limiting criminal prosecutions.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. CIVIL REMEDY FOR WORTHLESS CHECK.

§55-16-1. Civil remedy for making, drawing, issuing, uttering or delivery of worthless check, draft or order.

(a) As used in this section, “check” means a draft or other written order payable on demand and drawn on a bank or depository.

(b) If the maker or drawer of a check (1) draws, makes, utters, or issues and delivers to another a check drawn on a bank or depository that refuses to honor it because the maker or drawer does not have sufficient funds with which to pay the check on deposit in or credit with the bank or depository upon presentation and (2) knowingly fails to pay the amount of the check in cash to the payee, within thirty days following written demand, the payee has a cause of action against the drawer or maker.

(c) In an action under this section, the payee may be awarded:

(1) The face amount of the check, less any money received by the payee in partial payment of the debt of the check;

(2) Damages of five hundred dollars or the face amount of the check, whichever is less; and

(3) Reasonable costs incurred in filing the action.

(d) In an action under this section, the court or jury may waive all or part of the damages or fees allowed by subdivision (2), subsection (c) of this section upon a finding that the defendant’s failure to satisfy the dishonored check was due to the defendant’s recent discharge from his or her employment, personal or family illness, or personal or family catastrophic loss.
(e) The written demand required in subsection (a) of this section shall:

(1) Describe the check and the circumstances of its dishonor;

(2) Contain a demand for payment and a notice of intent to file suit for damages under this section if payment is not received within thirty days; and

(3) Be delivered by personal service or by certified mail to the defendant at his or her last known address.

(f) It is an affirmative defense to any claim under this section that:

(1) Full satisfaction of the amount of the check was made before the beginning of the action; or

(2) The bank or depository erred in dishonoring the check.

(g) No action may be brought pursuant to both this section and sections thirty-nine-a through thirty-nine-h of article three, chapter sixty-one of this code on the same check.

CHAPTER 3


[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]
seventy-three-b, seventy-three-c, seventy-three-d, seventy-four-a, seventy-four-b, seventy-four-c, seventy-nine, eighty, eighty-one, eighty-two, eighty-three and eighty-four, all relating to establishing farmland protection programs; presenting findings; authorizing county farmland protection boards; establishing a state agricultural land protection authority; defining terms; establishing procedures; authorizing promulgation of rules; and providing for funding.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. PLANNING AND ZONING.

PART XX. VOLUNTARY FARMLAND PROTECTION PROGRAMS.

§8-24-72. Legislative findings and purpose.
§8-24-73. County farmland protection programs and farmland protection boards authorized; authority of county commission to approve purchase of farmland easements; expense reimbursement of actual expenses for the board members.
§8-24-73a. Content and requirements of farmland protection programs.
§8-24-73b. Farmland protection boards—appointment, composition, terms.
§8-24-73c. Farmland protection boards—powers.
§8-24-73d. Farmland protection board duties.
§8-24-74. West Virginia agriculture land protection authority—established.
§8-24-74a. West Virginia agriculture land protection authority—board of trustees.
§8-24-74b. West Virginia agriculture land protection authority—powers.
§8-24-74c. West Virginia agriculture land protection authority—duties.
§8-24-75. Definitions.
§8-24-76. Methods of farmland protection.
§8-24-72. Legislative findings and purpose.

The Legislature hereby finds and declares that agriculture is a unique "life support" industry and that a need exists to assist those agricultural areas of the state which are experiencing the irreversible loss of agricultural land. It is the intent of the Legislature to provide persons and other entities an opportunity to voluntarily protect agricultural land and woodland in order to: (1) Assist in sustaining the farming community; (2) provide sources of agricultural products within the state for the citizens of the state; (3) control the urban expansion which is consuming the agricultural land, topsoil and woodland of the state; (4) curb the spread of urban blight and deterioration; (5) protect agricultural land and woodland as open-space land; (6) enhance tourism; and (7) protect worthwhile community values, institutions and landscapes which are inseparably associated with traditional farming.

Further, it is the intent of the Legislature to establish a West Virginia agricultural land protection authority, hereinafter "authority", to assist persons, other entities and counties to obtain funding from any source available to accomplish the purposes of the voluntary farmland protection programs.

§8-24-73. County farmland protection programs and farmland protection boards authorized; authority of county commission to approve purchase of farmland easements; expense reimbursement of actual expenses for the board members.

The county commission of each county may adopt and implement a farmland protection program within the county.
The county commission of each county which decides to adopt and implement a farmland protection program shall appoint a farmland protection board. The farmland protection board shall administer on behalf of the county commission all matters concerning farmland protection. The county commission has final approval authority for any and all purchases of easements for the farmland protection program by the board.

The farmland protection board shall adopt bylaws prescribing the board’s officers, meeting dates, record-keeping procedures, meeting attendance requirements and other internal operational procedures. The member of the farmland protection board who is a county commissioner shall serve as temporary chairman of the board until the board’s bylaws are adopted and until the board’s officers are selected as prescribed by those bylaws. The farmland protection board shall prepare a document proposing a farmland protection program which is consistent with the Legislature’s intent.

Each member of the board shall receive expense reimbursement for actual expenses incurred while engaged in the discharge of official duties, the actual expenses not to exceed the amount paid to members of the Legislature.

§8-24-73a. Content and requirements of farmland protection programs.

An adopted farmland protection program shall include only those qualifying properties which are voluntarily offered into the program by the landowners of the properties.

An adopted farmland protection program shall meet the following minimum requirements:

(a) The program shall be developed by the county farmland protection board and approved by the county commission. The county farmland protection board, in consultation with the local soil conservation district, shall administer the farmland protection program;

(b) The board shall establish uniform standards and guidelines for the eligibility of properties for the program. The
standards and guidelines shall take into consideration the following: Current and past uses of the property, existing property improvements, property tract size and shape, location of the property tract in relation to other potential agricultural property tracts, impending threat of conversion of the property to nonagricultural uses, property ownership and existing deed covenants and restrictions with respect to the property;

(c) The guidelines established by the board shall outline the various methods of farmland protection which are available to prospective participating property owners and the procedures to be followed in applying for program consideration.

§8-24-73b. Farmland protection boards—appointment, composition, terms.

(a) Composition. — A farmland protection board shall be composed of seven members, each serving without compensation. Membership on the farmland protection board shall consist of the following: One county commissioner; the executive director of the county development authority; one farmer who is a county resident and a member of the county farm bureau; one farmer who is a county resident and a member of a soil conservation district; one farmer who is a county resident; and two county residents who are not members of any of the foregoing organizations. All members of the farmland protection board shall be voting members, except the county commissioner who shall serve in an advisory capacity as a nonvoting member.

(b) Terms. — Each member of a farmland protection board shall be appointed for a term of office of four years except the initial appointment of two voting board members shall be for a term of two years:

(1) No member may serve for more than two consecutive full terms; and

(2) An appointment to fill a vacancy shall be for the remainder of the unexpired term.
§8-24-73c. Farmland protection boards—powers.

A farmland protection board has the following general powers:

(a) Power to sue. — To sue and be sued in contractual matters in its own name;

(b) Power to contract. — To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes;

(c) Power to restrict use of land. — To acquire or cohold, by gift, purchase, devise, bequest or grant, easements in gross, fee or other rights to restrict the use of agricultural land and woodland as may be designated to maintain the character of the land as agricultural land or woodland: Provided, That the county commission has final approval authority for any and all purchases of easements for the farmland protection program by the board;

(d) Power to implement rules. — To implement rules necessary to achieve the purposes of the voluntary farmland protection programs;

(e) Power to disseminate information. — To promote the dissemination of information throughout the county concerning the activities of the farmland protection board; and

(f) Power to seek funding. — To pursue and apply for any and all county, state, federal and private funding available, consistent with the purpose of the voluntary farmland protection programs.

§8-24-73d. Farmland protection board duties.

The duties of each farmland protection board are as follows:

(a) To report to the county commission with respect to the acquisition of easements by the farmland protection board within the county and to obtain final approval authority for any
and all purchases of easements for the farmland protection program by the board;

(b) To advise the authority concerning county priorities for agricultural protection;

(c) To promote protection of agriculture within the county by offering information and assistance to landowners with respect to the acquisition of easements;

(d) To seek and apply for all available funds from federal, state, county and private sources to accomplish the purposes of the voluntary farmland protection programs; and

(e) To perform any other duties assigned by the county commission.

§8-24-74. West Virginia agricultural land protection authority—established.

A West Virginia agricultural land protection authority is established within the department of agriculture. The authority has the powers and duties provided in this article.

§8-24-74a. West Virginia agricultural land protection authority—board of trustees.

(a) Composition; chairman; quorum; qualifications. — The authority shall be governed and administered by a board of trustees composed of the state treasurer, the auditor and the commissioner of agriculture, who shall serve as ex officio members, and nine members to be appointed by the governor, by and with the advice and consent of the Senate, at least five of whom shall be representative of farmers from different areas of the state. The state treasurer, auditor and the commissioner of agriculture may appoint designees to serve on the board of trustees. One of the appointed members who is not a representative of farmers shall be a representative of the division of natural resources; one of the appointed members who is not a representative of farmers shall be a representative of the soil conservation district; and one of the appointed members who is not a representative of farmers shall be a representative of an
I.R.C. 501(c)(3) qualified land trust. Three of the five representatives of farmers shall be appointed as follows:

(1) Two from a list of five nominees submitted by the West Virginia department of agriculture; and

(2) One from a list of three nominees submitted by the West Virginia farm bureau.

The governor shall appoint the chairman of the board, from among the nine appointed members. A majority of the members of the board serving at any one time constitutes a quorum for the transaction of business.

Notwithstanding any provision of law to the contrary, a person may be appointed to and serve on the board as an appointed member even if prior to the appointment the person conveyed an easement on the person’s land to the authority.

(b) Terms. — (1) The governor, with the advice and consent of the Senate, shall appoint the nine members for the following terms:

(A) Three for a term of four years;

(B) Three for a term of three years; and

(C) Three for a term of two years.

(2) Successors to appointed members whose terms expire shall be appointed for terms of four years. Vacancies shall be filled for the unexpired term. An appointed member may not serve more than two successive terms. Appointment to fill a vacancy may not be considered as one of two terms.

(c) Oath. — Appointed members shall take the oath of office as prescribed by law.

(d) Compensation and expenses. — Members shall not receive compensation. Each member of the board shall receive expense reimbursement for actual expenses incurred while engaged in the discharge of official duties, the actual expenses not to exceed the amount paid to members of the Legislature.
§8-24-74b. West Virginia agricultural land protection authority—powers.

1 The authority has the following general powers:

2 (a) Power to sue. — To sue and be sued in contractual matters in its own name;

3 (b) Power to contract. — To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes;

4 (c) Power to restrict use of land. — To acquire or cohold, by gift, purchase, devise, bequest or grant, easements in gross, fee or other rights to restrict the use of agricultural land and woodland as may be designated to maintain the character of the land as agricultural land or woodland;

5 (d) Power to disseminate information. — To promote the dissemination of information throughout the state concerning the activities of the farmland protection board; and

6 (e) Power to seek funding. — To pursue and apply for any and all state, federal and private funding available consistent with the purpose of the voluntary farmland protection programs.

§8-24-74c. West Virginia agricultural land protection authority—duties.

1 The authority shall:

2 (a) Disseminate information regarding agricultural land protection and promote the protection of agricultural land;

3 (b) Assist county farmland protection boards in applying for and obtaining all state and federal funding available consistent with the purposes of the farmland protection programs;

4 (c) Upon request of a farmland protection board, provide technical and legal services necessary to procure, acquire, draft, file and record conservation and preservation easements;
(d) Prepare and file with the governor’s office and with the Legislature by the thirty-first day of August of each year a report including, but not limited to, the following information:

(1) The cost per easement obtained;

(2) The identity of all applicants for conservation and preservation easements; and

(3) The identity of all applicants from whom conservation and preservation easements have been acquired;

(e) Seek and apply for all available funds from federal, state and private sources to accomplish the purposes of the farmland protection programs.

§8-24-75. Definitions.

For purposes of the voluntary farmland protection programs, the following terms have the meanings set forth in this section.

(a) Acquisition of easement. — The holding or coholding of land-use restrictions as defined in this article, whether obtained through purchase, gift, devise, bequest, grant or contract to cohold with another holder.

(b) Conservation easement. — This article incorporates the definition of a conservation easement found in section three, article twelve, chapter twenty of this code except that a conservation easement created under this article must be held or coheld by at least one “holder” as defined in that section in perpetuity.

(c) Farm, farmland or agricultural land. — A tract, or contiguous tracts of land, of any size, used or useable for agriculture, horticulture or grazing and includes all real property designated as wetlands that are part of a property used or useable as farmland.

(d) Preservation easement. — This article incorporates the definition of a preservation easement found in section three,
article twelve, chapter twenty of this code except that a preservation easement created under this article must be held or coheld by at least one "holder" as defined in that section and must be perpetual in its duration.

(e) **Woodland.** — Woodland shall be considered land of a farm only if it is part of or appurtenant to a tract of land which is a farm, or held by common ownership of a person or entity owning a farm, but in no event may woodland include land used primarily in commercial forestry or the growing of timber for commercial purposes or any other use inconsistent with farm use.

(f) **Opt-out provision.** — A provision which may be inserted into any conservation or preservation easement agreement entered into pursuant to this article which would act as a mechanism to place the easement selling price into an escrow fund for the purpose of allowing the owner or owners up to five years to rescind the decision to enter into the farmland protection program.

§8-24-76. Methods of farmland protection.

(a) The authority or a county farmland protection board may negotiate with and compensate eligible property owners to ensure the protection of farmland within the county or state. Methods of protecting farmland may include, but are not limited to, the following:

(1) **Acquisition of conservation easement or preservation easement.** — With the consent of a property owner, the county farmland protection board or the authority may acquire and place on record a conservation or preservation easement. Acquired easements apply only to those properties which qualify for consideration under the terms established by an adopted farmland protection program;

(2) **Acquisition of land and disposition.** — With the consent of a property owner, the county farmland protection board or the authority may acquire any property which qualifies for agricultural protection under terms established by an adopted
farmland protection program. The county farmland protection
board or the authority may lease, as lessor, acquired property
for agricultural uses or may restrict the property to agricultural
uses and sell the property at fair market value for use as a farm.
Any property acquired by a county farmland protection board
or the authority and then sold shall be sold subject to a conserv-
vation or preservation easement. If the property is leased, the
lessee shall pay to the county commission, in addition to rent,
an annual fee set by the county commission. The amount of this
annual fee shall be commensurate with the amount of property
taxes which would be assessed in accordance with the provi-
sions of this code upon the property if the property were held by
a private landowner.

(b) Revenues from the sale of properties restricted to
agricultural uses shall be used to recover the original purchase
costs of the properties and shall be returned to the applicable
funds which were used by the county farmland protection board
or the authority to purchase the property. Any profits resulting
from the sale of property restricted to agricultural uses shall be
deposited in a farmland protection fund.

§8-24-77. Offer of conservation or preservation easements.

(a) Owner may offer to sell or donate a conservation or
preservation easement. — An owner of farmland may offer by
written application to sell or donate a conservation or preserva-
tion easement on all or any portion of the farm to a county
farmland board or the authority.

(b) Requirements for application to sell or donate. — In
order to be considered by a county farmland protection board or
the authority, an application to sell or donate shall:

(1) Include an asking price, if any, at which the owner is
willing to sell a conservation or preservation easement and shall
specify the terms under which the offer is made; and

(2) Include a complete description of the land, including,
but not limited to, an itemization of all debts secured by the
land and the identity and amount of all liens.
§8-24-78. Value of conservation or preservation easement.

(a) **Maximum value.** — The maximum value of any conservation or preservation easement acquired by the county farmland protection board or the authority is the asking price or the difference between the fair market value of the land and the agricultural value of the land, whichever is lower.

(b) **Fair market value.** — The fair market value of the land is the price as of the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property was not subject to any restriction imposed under this article.

(c) **Agricultural value.** — The agricultural value of land is the price as of the valuation date which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property subject to the restrictions placed upon it by the conservation or preservation easement.

(d) **Determination of values.** — The value of the easement is determined at the time the county farmland protection board or the authority is requested in writing to acquire the easement. The fair market value is determined by the county farmland protection board or the authority based on one or more appraisals obtained by the county farmland protection board or the authority, and appraisals, if any, of the landowner.

(e) **Arbitration.** — If the landowner and the county farmland protection board or the authority do not agree on the value of the easement as determined by the state, the landowner, the county farmland protection board or the authority may request that the matter be referred to a mutually agreed upon mediator for arbitration as to the value of the easement. The arbitration shall be conducted in accordance with the rules promulgated by the American arbitration association. The value determined at arbitration is binding upon the owner and the county farmland protection board or the authority in a purchase of the easement.
made subsequent to the arbitration for a period of two years, unless the landowner and the county farmland protection board or the authority agree upon a lesser value or the landowner, the county farmland protection board or the authority appeals the results of the arbitration to the circuit court.


The authority and county farmland protection boards, in ranking applications for conservation and preservation easements, shall consider the following factors as priorities:

(a) The imminence of residential, commercial or industrial development;

(b) The total acreage offered for conservation or preservation easement;

(c) The presence of prime farmland, unique farmland, farmland of statewide importance, other locally significant farmlands and the productive capacity of the acreage;

(d) Whether the property offered is contiguous or appurtenant to working farms;

(e) The ratio of the asking price, if any, of the easement to the fair market value of the easement;

(f) The historical, architectural, archaeological, cultural, recreational, natural, scenic, source water protection or unique value of the easement: Provided, That determinations of the authority or a county farmland protection board are not a substitute for and do not have the effect of other procedures under state or federal law for granting protected status to land, including, but not limited to, procedures under the National Historic Preservation Act of 1966, as amended, or rules of the director of the historic preservation section of the division of culture and history authorized in section eight, article one, chapter twenty-nine of this code, or procedures under the
authority of the tourism commissioner or the parks and recreation section of the division of natural resources;

(g) The existence and amount of secured debt upon the property, as determined by a title search, and whether the total exceeds the agricultural value of the land as determined by the appraisal as required in subsection (d), section seventy-eight of this article; and

(h) The length of the protective easement.

§8-24-80. Use of land for which conservation or preservation easement acquired.

(a) Provisions to be included in conservation or preservation easement and county farmland protection board rules, or the authority rules. — Farmland upon which a conservation or preservation easement has been recorded may be used for the following:

(1) Farm use;

(2) Businesses directly related to the retail sale of farm products;

(3) Any activity performed for religious, charitable or educational purposes or to foster tourism; and

(4) Any home-based business that does not require a division of environmental protection permit to operate.

Notwithstanding any of the exceptions in this subsection, any use of land under preservation or conservation easement must be consistent with the purpose of the farmland protection programs.

(b) Use for commercial, industrial or residential purposes. — Excepting existing and future uses described in subsections (c), (d) and (e) of this section, a landowner whose land is subject to a conservation or preservation easement may not develop the land for any commercial, industrial, residential or
other nonfarm purpose. Nonresidential, noncommercial, nonindustrial farm support buildings or structures are permitted.

(c) Exclusion for single residential dwelling. — On request to a county farmland protection board or the authority, an owner may exclude two acres per each single residential dwelling, which existed at the time of the sale of the easement, from the easement prohibitions on residential development. A land survey and recordation identifying each single residential dwelling shall be provided at the expense of the owner. However, before any exclusion is granted, an owner shall agree with the county farmland protection board or the authority not to subdivide further for residential purposes any acreage allowed to be excluded. This agreement shall be recorded among the land records where the land is located and shall bind all future owners.

(d) Exclusion for certain existing and future uses. — This article neither abrogates nor creates any preexisting rights in the land owned by any person not joining as a grantor of a conservation or preservation easement. Neither the creation nor the existence of a conservation or preservation easement shall prevent existing or future use of the land based on a preexisting right, or prevent any existing or future use consistent with state law with respect to transmission and telecommunications facilities' rights-of-way, easements and licenses.

(e) Condemnation of private property for public use. — This article neither abrogates nor creates any rights inconsistent with state or federal law respecting the power of condemnation of private property for public use. Any person or entity exercising the power of eminent domain must pay compensation at not less than the fair market value of the land to the court having jurisdiction of the proceeding or as directed by the court. The term “fair market value” as used in this subdivision shall be determined without regard to the existence of the conservation or preservation easement. Neither the creation nor the existence of a conservation or preservation easement shall prevent acquisition of real property, or any right or interest in the property, for public use.
§8-24-81. Funding of farmland protection programs.

(a) Creation of fund. — A county commission may use any funds not specifically limited to other uses to fund and support a farmland protection program and, once having created a county farmland protection board, shall authorize the board to create and maintain a farmland protection fund and hire staff as it considers appropriate.

(b) Created and continued. — The West Virginia farmland protection fund is created for the purposes specified in this article.

(c) Sources. — The West Virginia farmland protection fund is comprised of:

(1) Any money made available to the fund by general or special fund appropriations;

(2) Any money made available to the fund by grants or transfers from governmental or private sources;

(3) Any money realized by investments, interest, dividends or distributions; and

(4) Any money appropriated by the Legislature for the West Virginia farmland protection fund.

(d) Disbursements. — The treasurer may not disburse any money from the fund other than:

(1) For costs associated with the staffing, administration, and technical and legal duties of the authority;

(2) For reasonable expenses incurred by the members of the board of trustees of the authority in the performance of official duties; and

(3) For consideration in the purchase of farmland conservation and preservation easements.

(e) Money remaining at end of fiscal year. — Any money remaining in the fund at the end of a fiscal year shall not revert
(f) Budget. — The estimated budget of the authority for the next fiscal year shall be included with the budget of the West Virginia department of agriculture.

(g) Audit. — The fund shall be audited annually.

§8-24-82. Disbursements by the authority to county farmland protection boards.

(a) Applications; amount. — If a county has established a county farmland protection program, the authority shall distribute within sixty days after the end of its fiscal year at least eighty percent of that fiscal year’s remaining funds to county farmland protection boards who have certified to the authority that there is then pending an application for one or more conservation or preservation easements. Each certification shall include:

(1) The name of each applicant for an easement and the date of each application for an easement during the fiscal year;

(2) A description of the property upon which an easement is offered; and

(3) An appraisal of the value of the conservation or preservation easement as provided for in section seventy-eight of this article.

(b) Disbursement formula. — Disbursement of authority funds to qualifying counties shall be based on the ratio of each county farmland protection board’s appraisal value of conservation and preservation easement applications, including those applications to donate easements, received during the fiscal year to the total of the appraisal value of all applications for conservation and preservation easements for the fiscal year received by the authority from county farmland protection boards. Applications for easement donations may only be
counted if the county farmland protection board holds or coholds the easement.

§8-24-83. Classification of land subject to conservation or preservation easement.

Notwithstanding any statute or rule to the contrary, any property held or coheld by a holder under a conservation or preservation easement as defined in this article, regardless of ownership, shall be taxed as "agricultural lands" for ad valorem property tax purposes without further requirement, restriction or disqualification. For ad valorem property tax purposes, any property held or coheld by a holder under a perpetual conservation or preservation easement as defined by this article, regardless of ownership, shall be taxed as "agricultural lands" without further requirement, restriction or disqualification.

§8-24-84. Authorization for commissioner of agriculture to promulgate proposed rules.

The commissioner of agriculture may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article.

CHAPTER 4

(Com. Sub. for H. B. 4380 — By Delegates Michael, Williams, Stemple, Kelley, Mezzatesta, Martin and Proudfoot)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]
including nutrient management plans and best management practices, when used as certain established procedures for managing applications of certain poultry litter as fertilizer applications, within the definition of qualified agricultural equipment for which an investment tax credit is allowed; establishment of amount of credit upon certification of commissioner of agriculture; and establishing the use of certain composted or deep stacked poultry litter products produced and packaged in this state as having priority over the use of other compost by agencies and instrumentalities of the state in land maintenance and landscaping activities unless determined to be economically unfeasible by the agency or instrumentality.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

20. Natural Resources.

CHAPTER 11. TAXATION.

ARTICLE 13K. TAX CREDIT FOR AGRICULTURAL EQUIPMENT.


§11-13K-3. Amounts of credit.


1 As used in this section the following terms have the meanings ascribed in this section:

2 (a) "Advanced technology pesticide and fertilizer application equipment" means machinery certified by the West Virginia division of environmental protection as providing precise pesticide and fertilizer application. The agriculture commission and the West Virginia division of environmental protection shall provide technical assistance to the tax
commissioner to determine appropriate specifications for machinery which would provide for more precise pesticide and fertilizer application to reduce the potential for adverse environmental impacts for purposes of application of the credit provided by this article. The machinery shall include, but not be limited to:

(1) Sprayers for pesticides and liquid fertilizers;
(2) Pneumatic fertilizer applicators;
(3) Monitors, computer regulators and heights adjustable booms for sprayers and liquid fertilizer applicators;
(4) Manure applicators; and
(5) Tramline adapters.

(b) "Conservation tillage equipment" means a planter or drill commonly known as a "no-till" planter or drill, designed to minimize disturbance of the soil in planting crops, including such planters or drills which may be attached to equipment already owned by the taxpayer.

c) "Dead poultry composting facility" is a structure consisting of a roof, an impervious weight bearing foundation, such as concrete and rot resistant building materials such as pressure treated lumber or similar material, which is used to biologically treat poultry carcasses by composting.

d) "Mortality incinerator" means a structure certified by the director of the division of environmental protection which is used for the purpose of burning animal carcasses.

e) "Nutrient management plan" or "best management practice" means an established procedure for managing the amount, form, placement and timing of applications of poultry litter, certified by the commissioner of agriculture as being free from organisms that are not found in poultry litter produced in this state, as fertilizer application.
(f) "Nutrient management system" means an established procedure for managing the amount, form, placement and timing of applications of plant nutrients.

(g) "Qualified agricultural equipment" means advanced technology pesticide and fertilizer application equipment, conservation tillage equipment, dead poultry composting facilities, nutrient management plans, best management practices, nutrient management systems, streambank and shoreline protection systems, stream channel stabilization systems, stream crossing or access plans, waste management systems, waste storage facilities, and waste treatment lagoons located on or at agricultural operations in this state and certified by the tax commissioner in accordance with section five of this article.

(h) "Streambank and shoreline protection system" means the consistent use of vegetation or structures to stabilize and protect banks of streams, lakes, estuaries, or excavated channels in order to stabilize or protect banks of streams, lakes, estuaries or excavated channels for one or more of the following purposes:

1. To prevent the loss of land or damage to utilities, roads, buildings, or other facilities adjacent to the banks;

2. To maintain the capacity of the channel;

3. To control channel meander that would adversely affect downstream facilities;

4. To reduce sediment loads causing downstream damages and pollution; or

5. To improve the stream for recreation or as a habitat for fish and wildlife.

(i) "Stream channel stabilization system" means an established structure for the stabilization of the channel of a stream.
(j) "Stream crossing or access plan" means the maintenance of a stabilized area to provide for crossing of a stream by livestock and farm machinery, or to provide access to the stream for livestock water.

(k) "Waste management system" means a planned system in which all necessary components are installed for managing liquid and solid waste, including runoff from concentrated waste areas at an agricultural operation, in a manner that does not degrade air, soil or water resources.

(l) "Waste storage facility" means a waste impoundment made by constructing an embankment or excavating a pit or dugout, or both, or by fabricating a facility for the storage of waste from livestock or poultry.

(m) "Waste treatment lagoon" means an impoundment made by excavation or earthfill for biological treatment of animal or other agricultural waste.

§11-13K-3. Amount of credit.

(a) There is allowed to eligible taxpayers who have made investments in qualified agricultural equipment in this state, a credit against taxes imposed by articles twenty-one and twenty-four of this chapter in the amount set forth in subsection (b) of this section.

(b) The amount of credit is equal to twenty-five percent of the purchase price of qualified agricultural equipment, but not to exceed two thousand five hundred dollars for purchases during a taxable year or the total amount of tax imposed by articles twenty-one or twenty-four of this chapter, whichever is less, in the year of purchase of qualified agricultural equipment. If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, the amount which exceeds the tax liability may be carried over and applied as a credit against the tax liability of the taxpayer pursuant to article twenty-one or twenty-four of this chapter to each of the next five taxable years unless sooner used.
(c) The amount of credit for the investment in the plan or practice described in subsection (e), section two of this article is equal to twenty-five percent of the purchase price of the poultry litter certified in writing to the tax commissioner by the commissioner of agriculture as having been applied in the established procedure described in legislative rules promulgated by the commissioner of agriculture in accordance with the provisions of article three, chapter twenty-nine-a of this code.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.


(a) It is the policy of the state of West Virginia that, to the maximum extent possible, all agencies and instrumentalities of the state purchase recycled products. The goal of the state is to achieve a recycled product mix on future purchases of:

(b) In furtherance of the aforesaid goal, the secretary of the department of administration in consultation with the director of the division of natural resources shall develop a comprehensive procurement program for recycled products. The program shall include, but not be limited to:

(1) A review, and subsequent revision, of existing procurement procedures and bid specifications to remove language that discriminates against recycled products;

(2) A review, and subsequent revision, of existing procurement procedures and bid specifications to ensure that, to the maximum extent possible, all agencies and instrumentalities of the state purchase recycled products: Provided, That recycled paper products shall be given a price preference of ten percent: Provided, however, That priority shall be given to paper products with the highest postconsumer content;

(3) A plan to eliminate, to the maximum extent possible, the use of disposable and single-use products; and
(4) A requirement that all agencies and instrumentalities of the state use compost in all land maintenance and landscaping activities: Provided, That the use of composted or deep stacked poultry litter products, certified by the commissioner of agriculture as being free from organisms that are not found in poultry litter produced in this state, have priority unless determined to be economically unfeasible by the agency or instrumentality.

(c) The secretary shall prepare and submit an annual report on the thirty-first day of January of each year summarizing the program’s accomplishments, prospects for the future, and any recommendations. The report shall be submitted to the governor, speaker of the House of Delegates and president of the Senate.

CHAPTER 5

(H. B. 4782 — By Delegates Douglas, Butcher, Perdue, Marshall, Flanigan, Stalnaker and Willison)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, authorizing the commissioner of agriculture to administer the state rural development council.

Be it enacted by the Legislature of West Virginia:

That section four, article one, 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 1. DEPARTMENT OF AGRICULTURE.

§19-1-4. Duties of commissioner.

1 The commissioner of agriculture shall perform the following duties:
(a) Devise means of advancing the agricultural interests of the state, and, in the performance of such duty, he or she shall have authority to call upon any state department, or officer of the state or county, to cooperate in promoting the agricultural interests of the state. It shall be the duty of any such department, or officer, upon request of the commissioner to render the assistance desired;

(b) Promote and encourage the organization of such societies and associations as have for their object the improvement and development of the state's agricultural, horticultural and kindred interests, especially in production, processing for market and distribution;

(c) Conduct cooperative work with the United States department of agriculture in inspecting and determining the grade and condition of farm produce at collecting centers, receiving centers and shipping points;

(d) Induce the investment of capital in, and immigration into, this state by the dissemination of information relative to the soil, climate, health, natural resources, market opportunities and advantages of the state;

(e) Investigate and report upon the kinds, conditions and extent of the mineral products of the state and their value;

(f) Take charge of the museum of the department of agriculture, collect, preserve and exhibit therein specimens of agricultural, horticultural and kindred products, products of the forests, minerals, flora and fauna of the state;

(g) Administer the state rural development council through the marketing and development division established in section three-a of this article, in accordance with the memorandum of understanding between the United States department of Agriculture and the state concerning the president's initiative on rural development;

(h) Publish and distribute from time to time such reports and bulletins concerning agriculture, horticulture and kindred subjects as may be of value to the farmers of the state, and, as
condition may demand, publish a handbook giving the
resources of the several counties of the state, the varieties of
soil and products, both mineral and vegetable, and the adapt-
ability of the different sections of the state to the different
branches of agriculture, horticulture and kindred interests;

(i) Submit a biennial report to the governor and Legislature
containing such information as to the operations of the depart-
ment as may be helpful to the agricultural interests of the state,
together with an itemized statement of all receipts and disburse-
ments during the biennial period covered thereby, and giving
the name of every person employed during such period, the
time employed, and the amount paid each employee;

(j) Perform such other duties and exercise such other
powers as are provided in this chapter and by general law; and

(k) Propose rules, including regulatory standards, for
legislative approval in accordance with the provisions of article
three, chapter twenty-nine of this code for the purpose of
carrying out the requirements of this chapter.

CHAPTER 6

(Com. Sub. for H. B. 4074 — By Delegates Kelley,
Yeager, Boggs, Ennis, Willis, Campbell and Williams)

[Passed February 16, 2000; in effect ninety days from passage. Approved by the Governor.]
cies; commercial value; misbranding; adulteration; publications; rules; short weight; cancellation of registrations; embargo orders; seizure, condemnation and sale of product; violations and criminal penalties; and exchanges between manufacturers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. WEST VIRGINIA FERTILIZER LAW.

§19-15-10. Adulteration.


1 (a) “Brand” means a term, design or trademark used in connection with one or several grades of regulated product.

2 (b) “Bulk fertilizer” means fertilizer delivered to the purchaser either in solid or liquid state in a nonpackage form to which a label cannot be attached.

3 (c) “Commissioner” means the commissioner of agriculture of the state of West Virginia or his or her duly authorized agent.

4 (d) “Compost” means a biologically stable material derived from the composting process.
(e) "Custom media" means a horticultural growing medium prepared to exact specifications of the person who will be planting in the medium.

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

(g) "Distribute" means to import, consign, to offer for sale, sell, barter, warehouse or otherwise supply a regulated product in this state.

(h) "Distributor" means any person who distributes a regulated product in this state.

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

(j) "Fertilizer" means any substance containing one or more recognized plant nutrients, including natural organic fertilizer, which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes and gypsum, and other products exempted by rule of the commissioner.

(k) "Fertilizer material" means a fertilizer which either:

1. Contains important quantities of no more than one of the primary plant nutrients: (nitrogen (N), available phosphate (P205) and soluble potash (K20), or

2. Has eighty-five percent or more of its plant nutrient content present in the form of a single chemical compound, or

3. Is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

(l) "Grade" means the percentage of total nitrogen, available phosphate and soluble potash stated in whole numbers in
the same terms, order and percentages as in the guaranteed analysis: Provided, That specialty fertilizers may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphate and soluble potash: Provided, however, That fertilizer materials, bone meal, manures and similar raw materials may be guaranteed in fractional units.

(m) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

(1) Total nitrogen (N) ................. percent
Available phosphate (P205) ............. percent
Soluble potash (K20) ................... percent

(2) For unacidulated mineral phosphatic materials and basic slag, bone, tankage and other organic phosphatic materials, the total available phosphate or degree of fineness may also be guaranteed.

(3) Guarantees for other plant nutrients may be permitted or required by rule of the commissioner and shall be expressed in the form of the element. The sources of such other nutrients (oxides, salt, chelates, etc.) may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the commissioner. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and rules prescribed by the commissioner.

(n) "Horticultural growing medium" means any substance or mixture of substances promoted as or intended to function as a commercial or consumer growing medium for the managed growth of horticultural crops in containers.

(o) "Investigational allowance" means an allowance for variations inherent in the collection, preparation and analysis of an official sample of regulated product.
(p) "Label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a regulated product.

(q) "Labeling" means all written, printed or graphic matter, upon or accompanying any regulated product, or advertisements, brochures, posters or electronic announcements used in promoting the sale of regulated products.

(r) "Manufacture" means to produce, compound, mix, blend, or in any way alter the chemical or physical characteristics of a regulated product.

(s) "Manufacturer" means any person who manufactures a regulated product.

(t) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials.

(u) "Natural organic fertilizer" means materials derived from either plant or animal products containing one or more elements other than carbon, hydrogen, and oxygen which are essential for plant growth. These materials may be subjected to biological degradation processes under normal conditions of aging, rainfall, sun-curing, air drying, composting, rotting, enzymatic, or anaerobic/aerobic bacterial action, or any combination of these. These materials may not be mixed with synthetic materials or changed in any physical or chemical manner from their initial state except by manipulations such as drying, cooking, chopping, grinding, shredding, hydrolysis or pelleting.

(v) "Official sample" means any sample of regulated product collected by the commissioner or his or her agent and designated as "official" by the commissioner.

(w) "Percent" or "percentage" means the percentage by weight.

(x) "Person" means an individual, partnership, association, firm or corporation.
(y) "Primary nutrients" means nitrogen (N), available phosphate (P2O5) and soluble potash (K2O).

(z) "Registrant" means the person who registers regulated products under the provisions of this article.

(aa) "Regulated product" means any product governed by this article, including any fertilizer, specialty fertilizer, soil amendment and horticultural growing medium.

(bb) "Soil amendment" means any substance or mixture of substances, imported, manufactured, prepared or sold for manurial, soil enriching or soil corrective purposes, or intended to be used for promoting or stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops or producing any chemical or physical change in the soil. The following are exempt from the definition of "soil amendment": Fertilizer, unmanipulated animal manures, horticultural growing medium, agricultural liming materials, unmixed mulch and unmixed peat.

(cc) "Specialty fertilizer" means a fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, house plants, golf courses, municipal parks, cemeteries, greenhouses and nurseries.

(dd) "Synthetic" means any substance generated from another material or materials by means of a chemical reaction.

(ee) "Ton" means a net weight of two thousand pounds avoirdupois.

(ff) "Unmanipulated manure" means substances composed of the excreta of domestic animals, or domestic fowls, which has not been processed or conditioned in any manner, including, but not limited to, processing or conditioning by drying, grinding, pelleting, shredding, addition of plant food, mixing artificially with any material or materials, other than those which have been used for bedding, sanitary or feeding purposes for animals or fowls, or by any other means.

(a) Any person or persons whose name appears upon the label of any regulated product as manufacturer or distributor shall obtain a permit to distribute in the state prior to distributing the regulated product. The application for registration shall be submitted to the commissioner on forms furnished or approved by the commissioner, and shall be accompanied by a fee established by legislative rule.

(b) Each brand or grade of regulated product shall be registered before being distributed in this state. The application for registration shall be submitted to the commissioner on forms furnished or approved by the commissioner, and shall be accompanied by a fee established by legislative rule. Upon approval by the commissioner a copy of the registration shall be furnished to the applicant. All registrations expire on the thirtieth day of June of the following year.

The application for fertilizer, soil amendment or horticultural growing medium shall include the following information:

(1) The net weight;

(2) The brand and, in the case of fertilizer when primary nutrients are claimed, the grade;

(3) The guaranteed analysis, or other information related to ingredients, guaranteed analysis of ingredients, percentages of ingredients, source of ingredients, physical components, physical properties or nutrient analysis as the commissioner may require;

(4) The purpose of the product;

(5) Directions for application; and

(6) The name and address of the registrant.

(c) A distributor is not required to register any regulated product which is already registered under this article by another person, providing the label does not differ in any respect.
(d) A distributor is not required to register each grade of regulated product formulated according to specifications which are furnished by a consumer prior to mixing, but is required to register his or her firm in a manner and at a fee established by legislative rule, and to label the regulated product as provided in subsection (c), section three of this article.

(e) Any person applying for registration of a fertilizer or specialty fertilizer, soil amendment or horticultural growing medium shall include with the application a label and any advertising literature.

(f) The commissioner may require proof of any claims made for any regulated product. If no claims are made, he or she may require proof of the usefulness and value of the regulated product. For evidence of proof the commissioner may rely on experimental data, evaluations or advice supplied from such sources as the director of the agricultural experiment station. The experimental design shall be related to state conditions for which the product is intended. The commissioner may accept or reject other sources of proof as additional evidence in evaluating regulated products.

(g) If the commissioner identifies any unregistered regulated product in commerce or any regulated product from any nonregistered manufacturer or distributor during the registration year, the commissioner shall give the grantor a grace period of fifteen working days from issuance of notification within which to register the regulated product or distributor. Any person required to register regulated products or as a distributor, who fails to register within the grace period shall pay to the commissioner a penalty fee as established by legislative rule in addition to the registration fee. The commissioner may issue an embargo order on any regulated product until the registration is issued.

(h) Exemptions for horticultural growing medium:

(1) Distribution of horticultural growing media planted with live plant material is exempt from the labeling and registration requirements of this article.
(2) Distribution of custom media is exempt from the registration requirements of this article, if it is prepared for a single end user.

(3) Distribution of horticultural growing media containing plant nutrients of three percent or less are exempt from the requirements of this article.


(a) Any regulated product distributed in this state in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the information required by subdivisions (1), (2), (3), (4), (5) and (6), subsection (b), section two of this article. When compost is used as an ingredient, the label shall identify the source of the compost. A label may be in multiple languages, but one language must be English.

(b) In case of bulk shipments, the same information required on a label, in written or printed form, shall accompany delivery and be supplied to the purchaser at time of delivery.

(c) A regulated product formulated according to specifications which are furnished by a consumer prior to mixing shall be labeled to show the net weight, guaranteed analysis of each ingredient, guaranteed analysis of the finished product and the name and address of the distributor.


(a) There shall be paid to the commissioner for all fertilizers distributed in this state an inspection fee established by legislative rule: Provided, That sales to manufacturers or exchanges between them are hereby exempted. Fees collected shall be used for the payment of the costs of inspection, sampling and analysis, and other expenses necessary for the administration of this article.

On individual packages of fertilizer containing ten pounds or less, there shall be paid in lieu of a per ton inspection fee, an inspection fee established by legislative rule for each brand and
grade sold or distributed. Where a person sells fertilizer in packages over ten pounds the inspection fee for each brand or grade shall apply only to that portion sold in packages of ten pounds or less, and that portion sold in packages over ten pounds shall be subject to the same per ton inspection fee provided by rule.

(b) Every person who distributes a fertilizer in this state shall:

File with the commissioner on forms furnished or approved by the commissioner a quarterly statement for the periods ending on the thirtieth day of September, the thirty-first day of December, the thirty-first day of March and the thirtieth day of June, setting forth the number of net tons of each fertilizer distributed in this state during such quarter. The report shall be due on or before the thirtieth day of the month following the close of each quarter and upon such statement shall pay the inspection fee at the rate stated in subsection (a) of this section.

If the tonnage report is not filed and the payment of inspection fee is not made within thirty days after the end of the quarter, a collection fee established by legislative rule shall be assessed against the registrant, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant.

(c) When more than one person is involved in the distribution of a fertilizer, the last person who has the fertilizer registered or distributes to a nonregistrant (dealer or consumer) is responsible for reporting the tonnage and paying the inspection fee, unless the report and payment is made by a prior distributor of a fertilizer.


The person transacting, distributing or selling fertilizer to a nonregistrant shall furnish the commissioner a report showing the county of the consignee, the amounts (tons) of each grade of fertilizer, and the form in which the fertilizer was distributed (bags, bulk, liquid, etc.). This information shall be reported by
one of the following methods: (a) Submitting a summary report approved by the commissioner on or before the fifteenth day of each month covering shipments made during the preceding month; or (b) by electronic transfer using the UFTRS system or other electronic system approved by the commissioner. No information furnished to the commissioner under this section may be disclosed in such a way as to divulge the operation of any person. The commissioner shall assess a late fee established by legislative rule against the registrant who is responsible for reporting if the monthly report is not filed by the due date.


(a) It is the duty of the commissioner, who may act through his or her authorized agent, to sample, inspect, make analyses of, and test regulated products distributed within this state at any time and place and to such an extent as he or she may consider necessary to determine whether such regulated products are in compliance with the provisions of this article. The commissioner individually or through his or her agent is authorized to enter upon any public or private premises or carriers during operating hours in order to have access to regulated products subject to the provisions of this article and the rules pertaining thereto, and to the records relating to their distribution.

(b) The methods of sampling and analysis to determine plant food deficiencies in fertilizer or deficiencies in other regulated products shall be those established by the Association of American Plant Food Control Officials and AOAC International or other methods approved by the commissioner by legislative rule.

(c) The commissioner, in determining for administrative purposes whether any fertilizer is deficient in plant food, or whether any other regulated product in compliance with this article shall be guided solely by the official sample as defined in subsection (v), section one of this article, and obtained and analyzed as provided for in subsection (b) of this section.
The results of official analysis of regulated products and portions of official samples, shall be distributed by the commissioner as provided by legislative rule. The results of official analysis of fertilizers and portions of official samples shall be distributed by the commissioner as provided by legislative rule. Official samples establishing a penalty for nutrient deficiency shall be retained for a minimum of thirty days from issuance of a deficiency report.


(a) **Penalty for nitrogen, available phosphate and soluble potash.** — If the analysis shall show that a fertilizer is deficient in one or more of its guaranteed primary plant nutrients (N-P-K) beyond the “investigational allowances” established by rule, or if the overall index value of the fertilizer is below the level established by rule, a penalty of three times the commercial value of such deficiency shall be assessed.

(b) **Penalty for soil amendment.** — If the analysis shows that any soil amendment falls short of the guaranteed analysis in any one soil amending ingredient or in total soil amending ingredients, a penalty shall be assessed in favor of the commissioner. A penalty of three times the value of the total soil amending ingredient deficiency shall be assessed when the total deficiency is more than two percent under the calculated total soil amending ingredient guarantee.

(c) **Penalty for other deficiencies.** — Deficiencies beyond the investigational allowances established by rule in any other constituent which the registrant is required to or may guarantee shall be evaluated and penalties prescribed by the commissioner.

(d) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction praying for judgment as to the justification of such penalties.

(e) All penalties assessed under this section shall be paid to the consumer of the lot of regulated product represented by the sample analyzed. Within three months after the date of notice
from the commissioner to the registrant, the penalty shall be collected and promptly forwarded to the commissioner. If the consumers cannot be found, the amount of penalty shall be paid to the commissioner and deposited in the department of agriculture’s fees account.

(f) A deficiency in an official sample of mixed fertilizer resulting from nonuniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is properly subject to official action.

(g) If, upon evidence satisfactory to the commissioner, a person is found to have: (1) Altered the content of any regulated product shipped to him by a registrant; or (2) mixed or commingled regulated product from two or more suppliers so that the result of either alteration changes the analysis of the regulated product as originally guaranteed, then the person who has altered, mixed or commingled shall become responsible for obtaining a registration, as the case may be; shall be held liable for all assessments; and shall be subject to other provisions of this article, including, by way of example, but not by way of limitation, seizure, condemnation and embargo.


For the purpose of determining the commercial values to be applied under the provisions of section seven of this article, the commissioner shall determine and publish annually the values per unit of nitrogen, available phosphate and soluble potash in fertilizers in this state. The commissioner shall determine from the registrant’s sales invoice the values charged for the soil amending ingredients. If no invoice is available or if the invoice fails to provide sufficient information the commissioner may use other methods to determine values. The value so determined and published shall be used in determining and assessing penalty payments.

No person shall distribute misbranded regulated products. A regulated product is considered to be misbranded:

(a) If its label is false or misleading in any particular;

(b) If it is distributed under the name of another regulated product;

(c) If it is not labeled as required in section three of this article and in accordance with rules prescribed under this article; or

(d) If it purports to be, to contain or is represented as a fertilizer, plant nutrient, soil amendment, or horticultural growing medium, but is not according to the definition prescribed by rule of the commissioner. In the adopting of legislative rules defining these terms the commissioner shall give regard to commonly accepted definitions and official terms such as those issued by the Association of American Plant Food Control Officials (AAPFCO).

§19-15-10. Adulteration.

No person may distribute an adulterated regulated product. A regulated product is considered to be adulterated:

(a) If it contains any deleterious or harmful ingredient in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil or water when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use, which may be necessary to protect plant life, animals, humans, aquatic life, soil or water are not shown upon the label;

(b) If its composition falls below or differs from that which it is purported to possess by its labeling; or

(c) If it contains unwanted crop seed, weed seed or noxious weed seed, as defined in article 16, chapter 19 of the West Virginia Seed Law.
(d) If adulteration levels of one or more metals in regulated products are in excess of those officially adopted by the Association of American Plant Food Control Officials.


The commissioner shall publish at least annually and in such forms as he or she may consider proper: (a) Information concerning the distribution of regulated products; and (b) results of analysis based on official samples of regulated products distributed within the state as compared with the analysis guaranteed under sections two and three of this article.


The commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. The commissioner may enforce such rules relating to investigational allowances, definitions, records, fees and the distribution of regulated products as may be necessary to carry into effect the full intent and meaning of this article, including protection of the environment.


If any regulated product in the possession of the distributor or retailer is found by the commissioner to be short in weight, the registrant of the regulated product shall, within thirty days after official notice from the commissioner, pay to the consumer a penalty established by legislative rule.


The commissioner is authorized and empowered to cancel the registration of any brand of regulated product or to refuse to register any brand of regulated product upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in evading or attempting to evade the provisions of this article or any rule promulgated thereunder: Provided, That no registration may be revoked or refused until the registrant is

The commissioner may issue and enforce a written or printed embargo order requiring the owner or custodian of any lot of regulated product to hold it at a designated place, when the commissioner finds the regulated product is being offered or exposed for sale in violation of any of the provisions of this article, until the law has been complied with and the regulated product is released in writing by the commissioner, or until the violation has been otherwise legally disposed of by written authority. The commissioner shall release the regulated product embargoed when the requirements of the provisions of this article have been complied with and all costs and expenses incurred in connection with the embargo have been paid.


Any lot of regulated product not in compliance with the provisions of this article is subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the county or judicial circuit where the product is located. In the event the court finds that the regulated product is in violation of this article and orders its condemnation, the product may be disposed of in any manner consistent with its quality and the laws of the state: Provided, That in no instance may the disposition of the regulated product be ordered by the court without first giving the claimant an opportunity to apply to the court for its release or for permission to process or relabel the regulated product to bring it into compliance with this article.


(a) If it appears from the examination of any regulated product that any of the provisions of this article or the rules issued thereunder have been violated, the commissioner shall cause notice of the violation to be given to the registrant, distributor or possessor from whom the sample was collected. Any person so notified shall be given an opportunity to be heard under legislative rules proposed and promulgated by the
commissioner. If it appears after the hearing, either in the
presence or absence of the person so notified, that any of the
provisions of this article or rules issued thereunder have been
violated, the commissioner may prosecute in any court of
competent jurisdiction any person violating the provisions of
this article.

(b) Any person convicted of violating any provisions of this
article or rules issued thereunder is guilty of a misdemeanor
and, upon conviction thereof, shall be fined not less than one
hundred dollars nor more than two hundred dollars for the first
offense and not less than two hundred dollars nor more than
five hundred dollars for each subsequent offense.

(c) Nothing in this article may be construed as requiring the
commissioner or his or her agent to report for prosecution or for
the institution of seizure proceedings as a result of minor
violations of the article when he or she believes that the public
interest will be best served by a suitable notice of warning in
writing.

(d) It is the duty of each prosecuting attorney to whom any
violation is reported to cause appropriate proceedings to be
instituted and prosecuted in a court of competent jurisdiction
without delay.

(e) The commissioner is hereby authorized to apply for and
the court to grant a temporary or permanent injunction, to be
issued without bond, restraining any person from violating or
continuing to violate any provision of this article or rule
promulgated thereunder notwithstanding the existence of other
remedies at law.


Nothing in this article may be construed to restrict or avoid
sales or exchanges of regulated products between importers,
manufacturers or manipulators who mix regulated materials for
sale, or to prevent the free and unrestricted shipment of
regulated products to manufacturers or manipulators who have
registered their brands as required by the provisions of this
article.
AN ACT to amend article twenty-seven, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to administration of the West Virginia State Farm Museum by the commissioner of agriculture upon the transfer of the assets of the corporation known as the West Virginia State Farm Museum to the state of West Virginia.

Be it enacted by the Legislature of West Virginia:

That article twenty-seven, 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 one-a, to read as follows:

ARTICLE 27. WEST VIRGINIA STATE FARM MUSEUM.

§19-27-1a. West Virginia State Farm Museum; ex officio members of the board of directors; rules.

1 Upon dissolution of the corporation known as "the West Virginia State Farm Museum" and the transfer of the corporation's assets to the state of West Virginia, the commissioner of agriculture shall administer the museum and the assets. The West Virginia State Farm Museum shall be located at Point Pleasant in the county of Mason.

7 The commissioner of agriculture may propose rules for legislative approval in accordance with the provisions of chapter twenty-nine-a of this code to carry out the provisions of this section.
AN ACT to amend and reenact section two, article one, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to defining the term "planting and harvesting season" for the purpose of administering rules applicable to drivers transporting agricultural commodities or farm supplies for agricultural purposes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.


1 As used in this chapter:

2 (1) "Commission" means the public service commission of West Virginia;

4 (2) "Common carrier by motor vehicle" means any person who undertakes, whether directly or by lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public over the highways of this state by motor vehicles for hire, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail, water or air and of express or forwarding
agencies, and leased or rented motor vehicles, with or without drivers;

(3) "Contract carrier by motor vehicle" means any person not included in subdivision (2) of this section, who under special and individual contracts or agreements, and whether directly or by lease or any other arrangement, transports passengers or property over the highways in this state by motor vehicles for hire;

(4) "Driveaway operation" means an operation in which any vehicle or vehicles, operated singly or in lawful combinations, new or used, not owned by the transporting motor carrier, constitute the commodity being transported;

(5) "Exempt carrier" means any person operating a motor vehicle exempt from the provisions of this chapter under section three thereof;

(6) "I.C.C." means the interstate commerce commission;

(7) "Motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle;

(8) "Motor vehicle" means, and includes, any automobile, truck, tractor, truck-tractor, trailer, semitrailer, motorbus, taxicab, any self-propelling motor-driven motor vehicle or any combination thereof, used upon any public highway in this state for the purpose of transporting persons or property;

(9) "NARUC" means the national association of regulatory utility commissioners;

(10) "Operations within the borders of this state" means interstate or foreign operations to, from, within or traversing this state;

(11) "Person" means and includes any individual, firm, copartnership, corporation, company, association or joint-stock association, and includes any trustee, receiver, assignee or personal representative thereof;
(12) "Planting and harvesting season" means the first day of January through the thirty-first day of December of each calendar year only as it relates to the administration of rules promulgated pursuant to subsection (j), section five, article five of this chapter;

(13) "Private commercial carrier" means and includes any person who undertakes, whether directly or by lease or other arrangement, to transport property, including hazardous materials as defined in rules and regulations promulgated by the commission, for himself over the public highways of this state, in interstate or intrastate commerce, for any commercial purpose, by motor vehicle with a gross vehicle weight rating of ten thousand one pounds or more, by motor vehicle designed to transport more than fifteen passengers, including the driver; or by any motor vehicle used to transport hazardous materials in a quantity requiring placarding under federal hazardous material regulations as adopted by the commission;

(14) "Power unit" means any vehicle which contains within itself the engine, motor or other source of power by which said vehicle is propelled; and

(15) "Public highway" means any public street, alley, road or highway, or thoroughfare of any kind in this state, used by the public.

CHAPTER 9

(H. B. 4587 — By Delegates Staton, Johnson, Spencer, Capito, Amores, Rowe and Smirl)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That article nineteen, 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 19. ANATOMICAL GIFT ACT.

§ 16-19-1. Definitions.


§ 16-19-3. Making, revoking, and objecting to anatomical gifts, by others.

§ 16-19-4. Authorization by coroner, medical examiner or local public health official.

§ 16-19-5. Information regarding anatomical donation; requests for anatomical gifts; search and notification.

§ 16-19-6. Persons who may become donees; purposes for which anatomical gifts may be made.


§ 16-19-9. Coordination of procurement and use; facilitation of communication.

§ 16-19-10. Sale or purchase of parts prohibited.

§ 16-19-11. Examination; autopsy.


§ 16-19-1. Definitions.

1 As used in this article:

2 (1) “Anatomical gift” means a donation of all or part of a human body to take effect upon or after certification of death.

3 (2) “Certification of death” means a written pronouncement of death by the attending physician. Certification is required before the attending physician may allow removal of any bodily organs of the decedent for transplant purposes.

4 (3) “Death” has the meaning provided in section one, article ten, chapter sixteen of this code.
(4) “Decedent” means a deceased individual and includes a stillborn infant or fetus.

(5) “Designated requester” means an individual employed or trained by a procurement organization to discuss the option of donation with families of deceased individuals.

(6) “Document of gift” means a card, a statement attached to or imprinted on a motor vehicle operator’s or chauffeur’s license, a will, or other writing used to make an anatomical gift.

(7) “Donor” means an individual who makes an anatomical gift of all or part of his or her body.

(8) “Hospital” means a facility licensed, accredited, or approved as a hospital under the law of any state or a facility operated as a hospital by the United States government, a state or a subdivision of a state.

(9) “Part” means an organ, tissue, eye, bone, artery, blood, fluid or other portion of a human body.

(10) “Person” means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, government, governmental subdivision or agency, or any other legal or commercial entity.

(11) “Physician” or “surgeon” means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

(12) “Physician assistant” has the meaning provided in section sixteen, article three, chapter thirty of this code.

(13) “Procurement organization” or “bank” means a person licensed, accredited, or approved under the laws of any state or federal agency for procurement, distribution or storage of human bodies or parts.

(14) “State” means any state, district, commonwealth, territory, insular possession and any other area subject to the legislative authority of the United States of America.
(15) "Technician" means a qualified individual who is certified or authorized by an accredited procurement organization to remove or process a part.


(a) An individual who is at least eighteen years of age may:

(1) Make an anatomical gift for any of the purposes stated in subsection (a), section six of this article;

(2) Limit an anatomical gift to one or more of those purposes; or

(3) Refuse to make an anatomical gift.

(b) An anatomical gift may be made only by a document of gift signed by the donor. If the donor is unable to sign a document of gift and intends to make an anatomical gift, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and state that it has been so signed.

(c) If a document of gift is attached to a donor's motor vehicle operator's or chauffeur's license, the document of gift must comply with subsection (b) of this section. If a donor's intent to make an anatomical gift is imprinted on the donor's motor vehicle operator's or chauffeur's license, it is a valid indication of the donor's intent to make an anatomical gift. Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(d) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon or technician to carry out the appropriate procedures.
(e) An anatomical gift by will takes effect upon certification of death of the testator, whether or not the will is probated. If, after certification of death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(f) A donor may amend or revoke an anatomical gift, not made by will, only by:

1. A signed statement;
2. An oral statement made in the presence of two individuals;
3. Any form of communication during a terminal illness or injury addressed to a physician, surgeon or physician assistant; or
4. The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(g) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (f) of this section.

(h) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor’s death.

(i) An individual may refuse to make an anatomical gift of the individual’s body or part by:

1. A writing signed in the same manner as a document of gift;
2. Any other writing used to identify the individual as refusing to make an anatomical gift; or
3. If the individual is suffering from a terminal illness or injury, the refusal may be an oral statement or other form of communication.
(j) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under section three of this article or on a removal or release of other parts under section four of this article.

(k) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (i) of this section.

§16-19-3. Making, revoking, and objecting to anatomical gifts, by others.

(a) Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent’s body for an authorized purpose, unless the decedent, at the time of certification of death, has made an unrevoked refusal to make an anatomical gift:

(1) The medical power of attorney representative, if available;

(2) The spouse of the decedent, unless in the six months prior to the decedent’s death the spouse has lived separate and apart from the decedent in separate places of abode without cohabitation;

(3) An adult son or daughter of the decedent;

(4) Either parent of the decedent;

(5) An adult brother or sister of the decedent;

(6) A grandparent of the decedent;

(7) A guardian of the decedent at the time of certification of death; and

(8) The health care surrogate.
(b) An anatomical gift may not be made by a person listed in subsection (a) of this section if:

(1) A person in a prior class is available at the time of certification of death to make an anatomical gift;

(2) The person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or

(3) The person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(c) An anatomical gift by a person authorized under subsection (a) of this section must be made by:

(1) A document of gift signed by the person; or

(2) The person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

(d) An anatomical gift by a person authorized under subsection (a) of this section may not be revoked by any member of the same or a prior class if procedures have begun for the removal of a part from the body of the decedent and the physician, surgeon or technician removing the part does not know or has not been notified of the revocation.

(e) An individual's failure to make an anatomical gift under subsection (a) of this section does not indicate an individual's objection to the making of an anatomical gift.

§16-19-4. Authorization by coroner, medical examiner or local public health official.

(a) The coroner or chief medical examiner may release and permit the removal of a part from a body within his or her custody, for transplantation or therapy, if:

(1) He or she has received a request for the part from a hospital, physician, surgeon or procurement organization;
(2) He or she has made a reasonable effort, taking into account the useful life of the part, to locate and examine the decedent's medical records and inform persons listed in subsection (a), section three of this article of their option to make, or object to making, an anatomical gift;

(3) He or she does not know of a refusal or contrary indication by the decedent or objection by a person having priority to make an anatomical gift as provided in subsection (a), section three of this article;

(4) The removal will be performed by a physician, surgeon or technician;

(5) The removal will not interfere with any autopsy or investigation; but in the instance that the coroner or chief medical examiner refuses the request of an anatomical donation due to interference with an autopsy or investigation, the coroner or chief medical examiner shall document in writing to the hospital, physician, surgeon or procurement organization the specific circumstances which result in the interference;

(6) The removal will be in accordance with accepted medical standards; and

(7) Cosmetic restoration will be done, if appropriate.

(b) If the body is not within the custody of the coroner or chief medical examiner, the local public health officer may release and permit the removal of any part from a body in his or her custody for transplantation or therapy if the requirements of subsection (a) of this section are met.

(c) The coroner, chief medical examiner or local public health officer releasing and permitting the removal of a part shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the request, the part requested, and the person to whom it was released.

§16-19-5. Information regarding anatomical donation; requests for anatomical gifts; search and notification.
(a) All hospitals in this state shall provide general information available to the public regarding anatomical donation in the patient admission area of each facility.

(b) At the time of admission to a hospital, every patient who is at least eighteen years of age shall receive, as part of the hospital admission packet, information regarding anatomical donation, including, but not limited to, (1) general facts about anatomical donation, (2) an explanation of their rights to make an anatomical gift, (3) a document of gift card for making an anatomical gift and (4) a card for acknowledging an existing document of gift. If the patient completes a document of gift card making an anatomical gift at the time of admission or at any time thereafter, or if the patient completes a card acknowledging an existing document of gift, the appropriate notation is to be prominently placed in the patient’s medical record.

(c) On or near the occurrence of each death in a hospital, the hospital shall contact the regional organ procurement organization by telephone to determine the suitability for organ, tissue and eye donation for any purpose specified under this chapter. The person designated by the hospital to contact the organ procurement organization shall have (1) the patient’s name and identifier number, (2) the patient’s age, (3) the cause of death and (4) any available current and past medical history available prior to making the contact. The organ procurement organization shall collaborate with the hospital’s designated tissue or eye bank when there are tissue or eye donations. The organ procurement organization, in consultation with the patient’s attending physician or hospital designee, shall determine suitability for donation.

(d) If it is determined that donation is not appropriate based on medical criteria, hospital personnel shall note this fact in the patient’s record and no further action is necessary.

(e) If it is determined that the patient is a suitable candidate for anatomical donation, and there is no document of gift or other information evidencing a refusal to make an anatomical gift, a designated requestor shall immediately contact the
appropriate persons who are authorized to make an anatomical gift of a patient’s body, as provided in section three of this article, and inquire as to whether the patient was an anatomical donor. If those persons contacted by the designated requestor are unaware of the patient’s intent regarding anatomical donation, and if no document of gift satisfying the requirements of subsection (b) or (c), section two of this article is found, the designated requestor shall inform those individuals authorized to make an anatomical gift that they have the option of making an anatomical gift of all or part of the patient’s body. The designated requestor shall use discretion and be sensitive to family circumstances, cultural background and religious beliefs of the patient.

(f) The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

(1) A law-enforcement officer, fireman, paramedic or other emergency rescuer finding an individual who the searcher believes is dead or near death;

(2) A hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information; and

(3) The coroner or chief medical examiner as provided in subdivision (2), subsection (a), section four of this article when a body is placed in that official’s custody.

(g) If a law-enforcement officer, fireman, paramedic or other emergency rescuer finds a document of gift or evidence of refusal to make an anatomical gift by the search required by subsection (f) of this section, he or she shall notify the hospital where the individual or body is taken of the contents and send the document or other evidence to the hospital.

(h) If at or near the time of death of a patient, a hospital knows that (1) an anatomical gift has been made pursuant to subsection (a), section three of this article, (2) a release and
removal of a part has been permitted pursuant to section four of this article, or (3) that the patient or an individual in transit to the hospital is a donor, the hospital shall notify the appropriate donee or procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

(i) Any person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions.

§16-19-6. Persons who may become donees; purposes for which anatomical gifts may be made.

(a) The following persons may become donees of anatomical gifts for the purposes stated:

(1) The university of West Virginia system board of trustees for the scientific purposes of educational institutions for which it may receive or requisition bodies;

(2) A hospital, physician, surgeon or procurement organization, for transplantation, therapy, medical or dental education, research or advancement of medical or dental science;

(3) An accredited medical or dental school, college or university for education, research, advancement of medical or dental science; or

(4) A designated individual for transplantation or therapy needed by that individual.

(b) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital.

(c) If the donee knows of the decedent’s refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under subsection (a),
section three of this article the donee may not accept the anatomical gift.


(a) Delivery of a document of gift during the donor’s lifetime is not required for the validity of an anatomical gift.

(b) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after certification of death. The document of gift, or a copy, may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after certification of death. On request of any person, upon or after the donor’s certification of death, the person in possession shall allow any person to examine or copy the document of gift.


(a) Rights of a donee created by an anatomical gift are superior to rights of others, except with respect to autopsies under subsection (b), section eleven of this article. A donee may accept or reject an anatomical gift. If a donee accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift, may allow embalming and use of the body in funeral services. If the gift is of a part of a body, the donee, upon the certification of death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the person under obligation to dispose of the body.

(b) The time of death must be determined by a physician, surgeon or physician assistant who attends the donor at death or, if none, the physician or surgeon who certifies the death. Neither the physician, surgeon or physician assistant who attends the donor at death nor the physician or surgeon who certifies the death may participate in the procedures for removing or transplanting a part, unless the document of gift
designates the physician or surgeon as provided in subsection (d), section two of this article.

(c) If there has been an anatomical gift, a technician may remove any donated parts after certification of death by a physician or surgeon.

§16-19-9. Coordination of procurement and use; facilitation of communication.

(a) Each hospital in this state, after consultation with other hospitals and procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts.

(b) The organ procurement organization involved in any transplant pursuant to this article shall facilitate, on the recipient's behalf, a request by the recipient to contact the donor's family, in the priority order provided in subsection (a), section three of this article.

(c) The organ procurement organization may not provide the name, address or any other confidential information regarding the donor or the donor's family to the recipient, except upon a specific request by the member of the donor's family contacted as provided in subsection (b) of this section.

§16-19-10. Sale or purchase of parts prohibited.

(a) It is unlawful for any person to knowingly acquire, receive, or otherwise transfer for valuable consideration any human organ for use in human transplantation. For purposes of this section, "human organ" means the human kidney, liver, heart, lung, bone marrow or any other human organ or tissue designated by the director of health other than blood.

(b) For purposes of this section, valuable consideration does not include reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ; or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ; or
expenses incurred by nonprofit agencies or corporations to recover expenses incurred while offering services related to the location, maintenance and distribution of human organs.

(c) A person who violates this section is guilty of a felony and, upon conviction thereof, shall be fined not more than fifty thousand dollars, or confined in a state correctional facility not more than five years, or both.

§16-19-11. Examination; autopsy.

(a) An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.

(b) The provisions of this article are subject to the laws of this state governing autopsies.


This article applies to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to making an anatomical gift before, on, or after the effective date of this article.


(a) Any person who acts in good faith in accord with the terms of this article or with the anatomical gift laws of another state or a foreign country is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his or her act.

(b) Any individual who makes an anatomical gift pursuant to section two or three of this article and the individual’s estate are not liable for any injury or damage that may result from the making or the use of the anatomical gift.


This article may be cited as the “Anatomical Gift Act.”
AN ACT making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the constitution.

Be it enacted by the Legislature of West Virginia:

Title
  I. General Provisions.
  II. Appropriations.
  III. Administration.

TITLE I—GENERAL PROVISIONS.

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

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

“Governor” shall mean the governor of the state of West Virginia.

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

“Spending unit” shall mean the department, bureau, division, office, board, commission, agency or institution to which an appropriation is made.
The "fiscal year two thousand one" shall mean the period from the first day of July, two thousand, through the thirtieth day of June, two thousand one.

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

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

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

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

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

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

"Annual increment" shall mean funds appropriated for "eligible employees" and shall be disbursed only in accordance with article five, chapter five of the code.
Funds appropriated for “annual increment” shall be transferred to “personal services” or other designated items only as required.

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

“BRIM Premiums” shall mean the amount charged as consideration for insurance protection and includes the present value of projected losses and administrative expenses. Premiums are assessed for coverages, as defined in the applicable policies, for claims arising from, inter alia, general liability, wrongful acts, property, professional liability and automobile exposures.

Should the appropriation for “BRIM Premiums” be insufficient to cover such cost, the remainder of such costs shall be transferred by each spending unit from its “personal services” line item, its “employee benefit” line item, its “unclassified” line item or any other appropriate line item to “BRIM Premiums” for payment to the Board of Risk and Insurance Management. Each spending unit is hereby authorized and required to make such payments.
Each spending unit shall be responsible for all contributions, payments or other costs related to coverage and claims of its employees for unemployment compensation. Such expenditures shall be considered an employee benefit.

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

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

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

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

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

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

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

From appropriations made to the spending units of state government, upon approval of the governor there may be transferred to a special account an amount sufficient to match federal funds under any federal act.
Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: Provided, That the secretary of each department shall have the authority to transfer within the department those general revenue funds appropriated to the various agencies of the department: Provided, however, That no more than five percent of the general revenue funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: Provided further, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by chapter five-f of the code shall have the authority to transfer funds appropriated to "personal services" and "employee benefits" to other lines within the same account and no funds from other lines shall be transferred to the "personal services" line: And provided further, That upon written request of the speaker of the house of delegates, the auditor shall transfer within the general revenue fund amounts from the total appropriations of the house of delegates to other agencies, boards or departments: And provided further, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the secretary may transfer the funds formerly appropriated to such agency, board or function in order to implement such consolidation. No funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other account or fund specifically exempted by the Legislature from transfer, except that the use of the appropriations from the state road fund for the office of the secretary of the department of transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

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

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

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

Sec. 5. Maximum expenditures.—No authority or
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§11. Appropriations for refunding erroneous payment.
§12. Sinking fund deficiencies.
§14. Total appropriations.
§15. General school fund.

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

LEGISLATIVE

1—Senate

Fund 0165 FY 2001 Org 2100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Compensation of Members (R) ........ 003 $ 816,200</td>
</tr>
<tr>
<td>2</td>
<td>Compensation and Per Diem of Officers and Employees (R) ........ 005 2,860,200</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits (R) ............... 010 543,375</td>
</tr>
<tr>
<td>4</td>
<td>BRIM Premium ....................... 913 16,212</td>
</tr>
<tr>
<td>5</td>
<td>Current Expenses and Contingent Fund (R) ............... 021 700,000</td>
</tr>
<tr>
<td>6</td>
<td>Repairs and Alterations (R) .......... 064 450,000</td>
</tr>
<tr>
<td>7</td>
<td>Computer Supplies (R) ............... 101 40,000</td>
</tr>
<tr>
<td>8</td>
<td>Computer Systems (R) ............... 102 250,000</td>
</tr>
</tbody>
</table>
The appropriations for the senate for the fiscal year 2000 are to remain in full force and effect and are hereby reappropriated to June 30, 2001. Any balances so reappropriated may be transferred and credited to the fiscal year 2001 accounts.

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

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

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

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

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

2—House of Delegates

Fund 0170 FY 2001 Org 2200

1 Compensation of Members (R) ........ 003 $ 2,200,000

2 Compensation and Per Diem of
3 Officers and Employees (R) ........ 005 521,162

4 Current Expenses and
5 Contingent Fund (R) ............... 021 3,500,000

6 BRIM Premium ...................... 913 13,889

7 Expenses of Members (R) .......... 399 1,120,000

8 Total ............................... $ 7,355,051

The appropriations for the house of delegates for the fiscal
year 2000 are to remain in full force and effect and are hereby
reappropriated to June 30, 2001. Any balances so
reappropriated may be transferred and credited to the fiscal year
2001 accounts.

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

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

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

#### 3—Joint Expenses

(WV Code Chapter 4)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2000</th>
<th>Org 2300</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Joint Committee on Government and Finance (R)</td>
<td>104</td>
<td>$6,030,776</td>
</tr>
<tr>
<td>2 Legislative Printing (R)</td>
<td>105</td>
<td>940,000</td>
</tr>
<tr>
<td>3 Legislative Rule-Making Review Committee (R)</td>
<td>106</td>
<td>226,050</td>
</tr>
<tr>
<td>4 Legislative Computer System (R)</td>
<td>107</td>
<td>1,138,121</td>
</tr>
<tr>
<td>5 Joint Standing Committee on Education (R)</td>
<td>108</td>
<td>68,000</td>
</tr>
<tr>
<td>6 Tax Reduction and Federal Funding Increased Compliance (TRAFFIC) (R)</td>
<td>642</td>
<td>0</td>
</tr>
<tr>
<td>7 BRIM Premium</td>
<td>913</td>
<td>12,927</td>
</tr>
<tr>
<td>8 Total</td>
<td></td>
<td>$8,415,874</td>
</tr>
</tbody>
</table>

The appropriations for the joint expenses for the fiscal year 2000 are to remain in full force and effect and are hereby reappropriated to June 30, 2001. Any balances so reappropriated may be transferred and credited to the fiscal year 2001 accounts.

Upon the written request of the clerk of the senate, with the approval of the president of the senate, and the clerk of the house of delegates, with the approval of the speaker of the house of delegates, and a copy to the legislative auditor, the auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.
The appropriation for the Tax Reduction and Federal Funding Increased Compliance (TRAFFIC) (fund 0175, activity 642) is intended for possible general state tax reductions or the offsetting of any reductions in federal funding for state programs. It is not intended as a general appropriation for expenditure by the Legislature.

**JUDICIAL**

4—*Supreme Court—*

*General Judicial*

Fund 0180 FY 2001 Org 2400

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services (R)</td>
<td>001</td>
<td>$36,000,000</td>
</tr>
<tr>
<td>Annual Increment (R)</td>
<td>004</td>
<td>500,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>208,998</td>
</tr>
<tr>
<td>Social Security Matching (R)</td>
<td>011</td>
<td>2,792,250</td>
</tr>
<tr>
<td>Public Employees’ Insurance Matching (R)</td>
<td>012</td>
<td>4,054,755</td>
</tr>
<tr>
<td>Public Employees’ Retirement Matching (R)</td>
<td>016</td>
<td>3,467,500</td>
</tr>
<tr>
<td>Other Expenses (R)</td>
<td>029</td>
<td>5,984,000</td>
</tr>
<tr>
<td>Judges’ Retirement System (R)</td>
<td>110</td>
<td>6,000,000</td>
</tr>
<tr>
<td>Other Court Costs (R)</td>
<td>111</td>
<td>2,600,000</td>
</tr>
<tr>
<td>Judicial Training Program (R)</td>
<td>112</td>
<td>500,000</td>
</tr>
<tr>
<td>Mental Hygiene Fund (R)</td>
<td>113</td>
<td>990,000</td>
</tr>
<tr>
<td>Guardianship Attorney Fees (R)</td>
<td>588</td>
<td>175,000</td>
</tr>
<tr>
<td>Family Court Fund (R)</td>
<td>912</td>
<td>4,003,469</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$67,275,972</td>
</tr>
</tbody>
</table>
The appropriations to the supreme court of appeals for the fiscal years 1999 and 2000 are to remain in full force and effect and are hereby reappropriated to June 30, 2001. Any balances so reappropriated may be transferred and credited to the fiscal year 2001 accounts.

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

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

**EXECUTIVE**

*5—Governor’s Office*

(WV Code Chapter 5)

Fund 0101 FY 2001 Org 0100

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,765,123</td>
</tr>
<tr>
<td>2</td>
<td>Salary of Governor</td>
<td>002</td>
<td>90,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>17,250</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>465,203</td>
</tr>
<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>913</td>
<td>134,901</td>
</tr>
<tr>
<td>6</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>951,932</td>
</tr>
<tr>
<td>7</td>
<td>National Governors’ Association</td>
<td>123</td>
<td>66,200</td>
</tr>
<tr>
<td>8</td>
<td>Southern States Energy Board</td>
<td>124</td>
<td>28,732</td>
</tr>
<tr>
<td>9</td>
<td>WV Human Resource Investment Council</td>
<td>294</td>
<td>262,662</td>
</tr>
</tbody>
</table>
11 Southern Growth Policies Board ........ 299 24,339
12 Southern Technology Council .......... 308 10,000
13 Southern Governors’ Association ...... 314 5,740
14 National Governors’ Association
   for State Budget Officers ........... 315 11,500
16 Total ................................ $ 3,833,582

17 Any unexpended balances remaining in the appropriation
18 for Publication of Papers and Transition Expenses (fund 0101,
19 activity 465) and Unclassified (fund 0101, activity 099) at the
20 close of the fiscal year 2000 are hereby reappropriated for
21 expenditure during the fiscal year 2001.

6—Governor’s Office—

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2001 Org 0100

1 Unclassified—Total .................... 096 $ 534,643

2 To be used for current general expenses, including compen-
3 sation of employees, household maintenance, cost of official
4 functions and additional household expenses occasioned by
5 such official functions.

7—Governor’s Office—

Governor’s Cabinet on Children and Families

(WV Code Chapter 5)

Fund 0104 FY 2001 Org 0100

1 Unclassified (R) ....................... 099 $ 309,295
2 Family Resource Networks (R) ........ 274 1,505,000
3 Starting Points Centers and Parent Education Services (R) .......... 316 1,244,500
4 Educare ......................... 895 1,000,000
5 Total ............................. $ 4,058,795

Any unexpended balances remaining in the appropriations for Unclassified (fund 0104, activity 099), Starting Points Centers and Parent Education Services (fund 0104, activity 316) and Family Resource Networks (fund 0104, activity 274) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001.

**Civil Contingent Fund**

(WV Code Chapter 5)

Fund 0105 FY 2001 Org 0100

1 Civil Contingent Fund—Total (R) .... 114 $ 3,650,000

Any unexpended balances remaining in the appropriations for Civil Contingent Fund—Total (fund 0105, activity 114), Civil Contingent Fund—Surplus (fund 0105, activity 263), Unclassified—Surplus—Total (fund 0105, activity 098) and Civil Contingent Fund—Total—Surplus (fund 0105, activity 238) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0105, fiscal year 2000, activity 114 ($328,063) which will expire on June 30, 2000.

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

The above appropriation is intended to provide contingency funding for accidental, unanticipated, emergency or unplanned
17 events which may occur during the fiscal year and is not to be
18 expended for the normal day-to-day operations of the gover-
19 nor's office.

9—Auditor's Office—

General Administration

(WV Code Chapter 12)

Fund 0116 FY 2001 Org 1200

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Activity</th>
<th>FY 2001 Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$2,062,231</td>
</tr>
<tr>
<td>Salary of Auditor</td>
<td>002</td>
<td>70,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>50,523</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>734,990</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>1,876</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>542,075</td>
</tr>
<tr>
<td>Office Automation (R)</td>
<td>117</td>
<td>790,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$4,251,695</td>
</tr>
</tbody>
</table>

9 Any unexpended balances remaining in the appropriations
10 for Unclassified (fund 0116, activity 099), Office Automation
11 (fund 0116, activity 117) and Payroll System Acquisition (fund
12 0116, activity 594) at the close of the fiscal year 2000 are
13 hereby reappropriated for expenditure during the fiscal year
14 2001, with the exception of fund 0116, fiscal year 2000, activity
15 099 ($69,245) which will expire on June 30, 2000.

10—Auditor's Office—

Family Law Masters

Administration Fund

(WV Code Chapter 48A)

Fund 0117 FY 2001 Org 1200
The above appropriation shall be expended for the administrative expenses of the family law masters program, excluding personal services and employee benefits.

11—Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 2001 Org 1300

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,880,036</td>
</tr>
<tr>
<td>Salary of Treasurer</td>
<td>002</td>
<td>70,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>34,856</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>573,578</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>12,335</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>1,680,369</td>
</tr>
<tr>
<td>Abandoned Property Program</td>
<td>118</td>
<td>287,068</td>
</tr>
<tr>
<td>Tuition Trust Fund (R)</td>
<td>692</td>
<td>155,313</td>
</tr>
<tr>
<td>School Building Sinking</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fund Debt Service (R)</td>
<td>770</td>
<td>4,683,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$9,376,555</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0126, activity 099), School Building Sinking Fund Debt Service (fund 0126, activity 770), Tuition Trust Fund (fund 0126, activity 692) and Tuition Trust Fund—Surplus (fund 0126, activity 837) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0126, fiscal year 2000, activity 099 ($69,009) which will expire on June 30, 2000.
### 12—Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2001 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$3,507,311</td>
</tr>
<tr>
<td>2</td>
<td>Salary of Commissioner</td>
<td>002</td>
<td>70,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>73,000</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,343,747</td>
</tr>
<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>913</td>
<td>77,862</td>
</tr>
<tr>
<td>6</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>986,561</td>
</tr>
<tr>
<td>7</td>
<td>Gypsy Moth Program (R)</td>
<td>119</td>
<td>907,177</td>
</tr>
<tr>
<td>8</td>
<td>Black Fly Control</td>
<td>137</td>
<td>381,005</td>
</tr>
<tr>
<td>9</td>
<td>Mingo County Surface Mine Project (R)</td>
<td>296</td>
<td>150,000</td>
</tr>
<tr>
<td>10</td>
<td>Tri-County Fair Association</td>
<td>343</td>
<td>100,000</td>
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<tr>
<td>11</td>
<td>Predator Control</td>
<td>470</td>
<td>90,000</td>
</tr>
<tr>
<td>12</td>
<td>Charleston Farmers Market (R)</td>
<td>476</td>
<td>128,767</td>
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<tr>
<td>13</td>
<td>Bee Research</td>
<td>691</td>
<td>70,000</td>
</tr>
<tr>
<td>14</td>
<td>Microbiology Program</td>
<td>785</td>
<td>150,000</td>
</tr>
<tr>
<td>15</td>
<td>Moorefield Agriculture Center (R)</td>
<td>786</td>
<td>413,477</td>
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<tr>
<td>16</td>
<td>Fire Ants Eradication Program</td>
<td>129</td>
<td>25,000</td>
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<tr>
<td>17</td>
<td>Huntington Farmers Market</td>
<td>128</td>
<td>25,000</td>
</tr>
<tr>
<td>18</td>
<td>State Farm Museum</td>
<td>055</td>
<td>110,000</td>
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<tr>
<td>19</td>
<td>WV State Fair—WV Building</td>
<td>130</td>
<td>30,000</td>
</tr>
<tr>
<td>20</td>
<td>Total</td>
<td></td>
<td>$8,638,907</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Unclassified (fund 0131, activity 099), Gypsy Moth Program (fund 0131, activity 119), Mingo County Surface Mine Project (fund 0131, activity 296), Charleston Farmers Market (fund 0131, activity 476), Moorefield Agriculture Center (fund 0131, activity 786) and Capital Improvements—Total—Surplus (fund 0131, activity 672) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0131, fiscal year 2000, activity 099 ($21,496); fund 0131, fiscal year 2000, activity 119 ($33,518); fund 0131, fiscal year 2000, activity 296 ($25,000); fund 0131, fiscal year 2000, activity 476 ($6,000) and fund 0131, fiscal year 2000, activity 786 ($18,485) which shall expire on June 30, 2000.

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

13—Department of Agriculture—

State Soil Conservation Committee

(WV Code Chapter 19)

Fund 0132 FY 2001 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$441,280</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>7,900</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>166,458</td>
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<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>354,455</td>
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<tr>
<td>5</td>
<td>Soil Conservation Projects (R)</td>
<td>120</td>
<td>3,500,000</td>
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<tr>
<td>6</td>
<td>Maintenance of Flood Control Projects (R)</td>
<td>522</td>
<td>1,775,000</td>
</tr>
<tr>
<td>8</td>
<td>Conservation Reserve</td>
<td>141</td>
<td>250,000</td>
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</table>
Any unexpended balances remaining in the appropriations for Unclassified (fund 0132, activity 099), Maintenance of Flood Control Projects (fund 0132, activity 522), Soil Conservation Projects (fund 0132, activity 120) and Soil Conservation Projects—Surplus (fund 0132, activity 269) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0132, fiscal year 2000, activity 120 ($155,588) which shall expire on June 30, 2000.

14—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

Fund 0135 FY 2001 Org 1400

1 Personal Services ..................... 001 $ 379,089
2 Annual Increment ..................... 004 8,403
3 Employee Benefits ................... 010 145,849
4 Unclassified .......................... 099 64,503
5 Total ................................. $ 597,844

Any part or all of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.

15—Department of Agriculture—

Agricultural Awards

(WV Code Chapter 19)

Fund 0136 FY 2001 Org 1400

1 Fairs and Festivals .................... 122 $ 425,000
<table>
<thead>
<tr>
<th>Item</th>
<th>Activity</th>
<th>FY 2001</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioner’s Awards and Programs</td>
<td></td>
<td></td>
<td></td>
<td>737 90,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
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<td></td>
<td>$ 515,000</td>
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</table>

**16—Attorney General**

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

Fund 0150 FY 2001 Org 1500

<table>
<thead>
<tr>
<th>Item</th>
<th>Activity</th>
<th>FY 2001</th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services (R)</td>
<td>001</td>
<td></td>
<td></td>
<td>$ 2,304,636</td>
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<tr>
<td>Salary of Attorney General</td>
<td>002</td>
<td></td>
<td></td>
<td>75,000</td>
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<tr>
<td>Annual Increment (R)</td>
<td>004</td>
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<td>Employee Benefits (R)</td>
<td>010</td>
<td></td>
<td></td>
<td>710,563</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td></td>
<td></td>
<td>75,267</td>
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<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td></td>
<td></td>
<td>507,310</td>
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<tr>
<td>Better Government Bureau (R)</td>
<td>740</td>
<td></td>
<td></td>
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<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>$ 3,968,526</td>
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</tbody>
</table>

Any unexpended balance remaining in the above appropriation at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0150, fiscal year 2000, activity 001 ($80,000); fund 0150, fiscal year 2000, activity 010 ($14,592) and fund 0150, fiscal year 2000, activity 099 ($19,681) which shall expire on June 30, 2000.

When legal counsel or secretarial help is appointed by the attorney general for any state spending unit, this account shall be reimbursed from such spending unit’s specifically appropriated account or from accounts appropriated by general language contained within this bill: Provided, That the spending unit shall reimburse at a rate and upon terms agreed to by the state spending unit and the attorney general: Provided, however, That if the spending unit and the attorney general are unable to agree on the amount and terms of the reimbursement, the spending
unit and the attorney general shall submit their proposed reimbursement rates and terms to the joint committee on government and finance for final determination.

17—Secretary of State

(WV Code Chapters 3, 5 and 59)

<table>
<thead>
<tr>
<th>Fund 0155 FY 2001 Org 1600</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001 $605,515</td>
</tr>
<tr>
<td>2 Salary of Secretary of State .... 002 65,000</td>
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<tr>
<td>3 Annual Increment ............. 004 14,255</td>
</tr>
<tr>
<td>4 Employee Benefits ............ 010 229,330</td>
</tr>
<tr>
<td>5 BRIM Premium ................. 913 17,140</td>
</tr>
<tr>
<td>6 Unclassified (R) ............. 099 361,023</td>
</tr>
<tr>
<td>7 Administrative Law</td>
</tr>
<tr>
<td>8 Division Improvements (R) ...... 880 58,801</td>
</tr>
<tr>
<td>9 Total ........................ $1,351,064</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0155, activity 099), Technology Improvements (fund 0155, activity 599) and Administrative Law Division Improvements (fund 0155, activity 880) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0155, fiscal year 2000, activity 099 ($35,580) and fund 0155, fiscal year 2000, activity 880 ($1,764) which shall expire on June 30, 2000.

18—State Election Commission

(WV Code Chapter 3)

<table>
<thead>
<tr>
<th>Fund 0160 FY 2001 Org 1601</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total .......... 096 $12,000</td>
</tr>
</tbody>
</table>
### DEPARTMENT OF ADMINISTRATION

19—Department of Administration—  

**Office of the Secretary**  

(WV Code Chapter 5F)

**Fund 0186 FY 2001 Org 0201**

<table>
<thead>
<tr>
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<th>Description</th>
<th>Amount</th>
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<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096 $0</td>
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<tr>
<td>2</td>
<td>Unclassified</td>
<td>099 290,512</td>
</tr>
<tr>
<td>3</td>
<td>BRIM Premium</td>
<td>913 7,524</td>
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<tr>
<td>4</td>
<td>Total</td>
<td>$298,036</td>
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</tbody>
</table>

20—Consolidated Public Retirement Board  

(WV Code Chapter 5)

**Fund 0195 FY 2001 Org 0205**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Supplemental Benefits for Annuitants</td>
<td>892 $5,019,000</td>
</tr>
</tbody>
</table>

The above appropriation may be transferred to the appropriate special revenue fund of the Consolidated Public Retirement Board for expenditure as determined by the Executive Secretary.

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

21—Division of Finance  

(WV Code Chapter 5A)
## APPROPRIATIONS

### Fund 0203 FY 2001 Org 0209

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$506,370</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>11,090</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>138,496</td>
</tr>
<tr>
<td>4</td>
<td>BRIM Premium</td>
<td>913</td>
<td>52,889</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>561,178</td>
</tr>
<tr>
<td>6</td>
<td>GAAP Project (R)</td>
<td>125</td>
<td>1,276,734</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$2,546,757</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, activity 125) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0203, fiscal year 2000, activity 125 ($74,721) which shall expire on June 30, 2000.

### 22—Division of General Services

(WV Code Chapter 5A)

### Fund 0230 FY 2001 Org 0211

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$536,648</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>20,300</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>220,397</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>913,832</td>
</tr>
<tr>
<td>5</td>
<td>Fire Service Fee</td>
<td>126</td>
<td>13,440</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$1,704,617</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Capitol Building Preservation (fund 0230, activity 503), Capitol Building Preservation—Surplus (fund 0230, activity 675), Capital Improvements—Capitol Complex—Surplus (fund
11 0230, activity 676), Capitol Complex—Capital Outlay (fund
12 0230, activity 417), Capitol Complex Master
13 Plan—Total—Surplus (fund 0230, activity 606) and Capitol
14 Building Roof—Total—Surplus (fund 0230, activity 820) at the
15 close of the fiscal year 2000 are hereby reappropriated for
16 expenditure during the fiscal year 2001.

23—Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2001 Org 0213

1 Personal Services ....................... 001 $ 627,695
2 Annual Increment ....................... 004 16,435
3 Employee Benefits ..................... 010 195,846
4 BRIM Premium .......................... 913 2,394
5 Unclassified ............................ 099 129,711
6 Purchasing Card Program ............ 711 87,809
7 Total ................................. $ 1,059,890

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

24—Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2001 Org 0217

1 Unclassified—Total ..................... 096 $ 25,000
2 To pay expenses of members of the commission on uniform
3 state laws.


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

(WV Code Chapter 29)

Fund 0217 FY 2001 Org 0218

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>Personal Services</td>
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<td>Annual Increment</td>
<td>004</td>
<td>6,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>172,088</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>80,000</td>
</tr>
<tr>
<td>Premium Enhancement</td>
<td>346</td>
<td>200,000</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,088,088</strong></td>
</tr>
</tbody>
</table>

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

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

**26—Education and State Employees’ Grievance Board**

(WV Code Chapter 18)

Fund 0220 FY 2001 Org 0219

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$673,122</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>7,683</td>
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* Language deleted by the Governor.
<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>202,917</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>1,376</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>169,678</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$ 1,054,776</strong></td>
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</table>

**27—Ethics Commission**

(WV Code Chapter 6B)

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 213,985</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>2,008</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>62,851</td>
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<td>BRIM Premium</td>
<td>913</td>
<td>1,262</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>95,758</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 375,864</strong></td>
</tr>
</tbody>
</table>

**28—Public Defender Services**

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 459,200</td>
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<td>Annual Increment</td>
<td>004</td>
<td>5,650</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>197,318</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>30,930</td>
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<td>Unclassified (R)</td>
<td>099</td>
<td>357,831</td>
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<tr>
<td>Appointed Counsel Fees and Public Defender Corporations</td>
<td>127</td>
<td>$24,432,877</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$25,483,806</strong></td>
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</table>
Any unexpended balances remaining in the above appropriations for Unclassified (fund 0226, activity 099), Appointed Counsel Fees (fund 0226, activity 788) and Public Defender Corporations (fund 0226, activity 352) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0226, fiscal year 2000, activity 352 ($826,712) which shall expire on June 30, 2000.

Notwithstanding the provisions of Title I, section three of this bill, the executive director, with the approval of the secretary of the department of administration, shall have the authority to transfer funds between appointed counsel fees and public defender corporations: Provided, That no more than ten percent of the funds appropriated to one line item may be transferred to the other line item.

29—Committee for the Purchase of Commodities and Services from the Handicapped

(WV Code Chapter 5A)

Fund 0233 FY 2001 Org 0224

<p>| | | | | | |</p>
<table>
<thead>
<tr>
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<th></th>
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</thead>
<tbody>
<tr>
<td>Unclassified—Total 096</td>
<td>$ 4,656</td>
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</table>

30—Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2001 Org 0225

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

31—West Virginia Prosecuting Attorneys’ Institute
Fund 0557 FY 2001 Org 0228

1 Unclassified .................. 099 $ 0
2 Forensic Medical Examinations .... 683 203,802
3 Federal Funds/Grant Match ........ 749 130,143
4 Total ........................ $ 333,945

Any unexpended balance remaining in the appropriation for federal funds/grant match (fund 0557, activity 749) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.

32—Children’s Health Insurance Agency

(WV Code Chapter 5)

Fund 0588 FY 2001 Org 0230

1 Unclassified—Total ............... 096 $ 2,000,088

DEPARTMENT OF EDUCATION

33—State Department of Education—

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2001 Org 0402

1 Personal Services ................. 001 $ 182,000
2 Annual Increment .................. 004 2,654
3 Employee Benefits ................. 010 75,293
4 Unclassified ...................... 099 1,764,623
5 Total ............................ $ 2,024,570

34—State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)
### Fund 0306 FY 2001 Org 0402

<table>
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<th>Item</th>
<th>Code</th>
<th>Description</th>
<th>Amount</th>
</tr>
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<tr>
<td>1</td>
<td>001</td>
<td>Personal Services</td>
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<td>Annual Increment</td>
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<td>3</td>
<td>010</td>
<td>Employee Benefits</td>
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<td>4</td>
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<td>BRIM Premium</td>
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</table>

**35—State Department of Education**

(WV Code Chapters 18 and 18A)

### Fund 0313 FY 2001 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>001</td>
<td>Personal Services</td>
<td>$2,556,000</td>
</tr>
<tr>
<td>2</td>
<td>004</td>
<td>Annual Increment</td>
<td>$30,415</td>
</tr>
<tr>
<td>3</td>
<td>010</td>
<td>Employee Benefits</td>
<td>$946,129</td>
</tr>
<tr>
<td>4</td>
<td>913</td>
<td>BRIM Premium</td>
<td>$132,756</td>
</tr>
<tr>
<td>5</td>
<td>099</td>
<td>Unclassified</td>
<td>$4,450,000</td>
</tr>
<tr>
<td>6</td>
<td>138</td>
<td>WV Education Information System (WVEIS)</td>
<td>$3,836,117</td>
</tr>
<tr>
<td>7</td>
<td>139</td>
<td>34/1000 Waiver</td>
<td>$300,000</td>
</tr>
<tr>
<td>8</td>
<td>140</td>
<td>Increased Enrollment</td>
<td>$1,121,840</td>
</tr>
<tr>
<td>9</td>
<td>142</td>
<td>National Science Foundation Match</td>
<td>$139,500</td>
</tr>
<tr>
<td>10</td>
<td>143</td>
<td>Safe Schools</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>11</td>
<td>297</td>
<td>Implementation of Norm Reference</td>
<td>$2,100,070</td>
</tr>
<tr>
<td>12</td>
<td>300</td>
<td>Curriculum Technology Resource</td>
<td>$253,823</td>
</tr>
</tbody>
</table>


<p>| 16 | Tax Assessment Errors | 353 | 353,457 |
| 17 | HVAC Technicians      | 355 | 378,433 |
| 18 | Pendleton County Allowance for Transfer | 356 | 85,000 |
| 20 | READS Program         | 365 | 300,000 |
| 21 | MATH Program          | 368 | 300,000 |
| 22 | End of Course Exams   | 369 | 435,600 |
| 23 | Employment Programs Rate Relief | 401 | 948,353 |
| 24 | Three Tier Funding    | 411 | 1,000,000 |
| 25 | Governor's Honors Academy | 478 | 190,000 |
| 26 | Micro Computer Network | 506 | 150,000 |
| 27 | Adult Advisory Council | 621 | 279,110 |
| 28 | Foreign Student Education (R) | 636 | 175,756 |
| 29 | Teacher Mentor        | 158 | 500,000 |
| 30 | State Teacher of the Year | 640 | 35,899 |
| 31 | National Teacher Certification | 161 | 208,000 |
| 32 | Principals Mentorship | 649 | 50,000 |
| 33 | Educational Enhancements | 695 | 2,427,000 |
| 34 | Allowance for Work Based Learning | 744 | 68,985 |
| 35 | Pickens School Support | 758 | 150,000 |
| 36 | Marshall University Graduate College Writing Project | 807 | 25,000 |
| 38 | Webster County Board of Education/Hacker Valley | 809 | 100,000 |
| 40 | Virtual School on Internet | 178 | 89,840 |</p>
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>41</td>
<td>Partnership Development/Staff</td>
<td></td>
<td>171</td>
</tr>
<tr>
<td>42</td>
<td>Total</td>
<td></td>
<td>26,367,083</td>
</tr>
<tr>
<td>43</td>
<td>The above appropriation includes the state board of education and their executive office.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>45</td>
<td>Any unexpended balances remaining in the appropriations for Technology and Telecommunications Initiative (fund 0313, activity 596), Foreign Student Education (fund 0313, activity 636), Increased Enrollment (fund 0313, activity 140), at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>From the above appropriation for Safe Schools, an amount of $100,000 may be used for the removal of chemicals from schools throughout the state.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**36—State Department of Education—**

**Aid for Exceptional Children**

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th></th>
<th>Fund 0314 FY 2001 Org 0402</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Special Education—Counties</td>
</tr>
<tr>
<td>2</td>
<td>Special Education—Institutions</td>
</tr>
<tr>
<td>3</td>
<td>Education of Juveniles Held in</td>
</tr>
<tr>
<td>4</td>
<td>Predispositional Juvenile</td>
</tr>
<tr>
<td>5</td>
<td>Detention Centers</td>
</tr>
<tr>
<td>6</td>
<td>Educational Services/Upshur County,</td>
</tr>
<tr>
<td>7</td>
<td>Potomac Highlands,</td>
</tr>
<tr>
<td>8</td>
<td>and Lory Julian</td>
</tr>
<tr>
<td>9</td>
<td>Education of Institutionalized</td>
</tr>
<tr>
<td>10</td>
<td>Juveniles and Adults</td>
</tr>
<tr>
<td>11</td>
<td>Potomac Center</td>
</tr>
</tbody>
</table>
12 Educational Programs at Beckley Center .............. 192 $350,738
14 Total ........................................ $18,174,327

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

37—State Department of Education—

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2001 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>022</td>
<td>$115,215,859</td>
</tr>
<tr>
<td>2</td>
<td>151</td>
<td>717,168,249</td>
</tr>
<tr>
<td>3</td>
<td>152</td>
<td>232,407,752</td>
</tr>
<tr>
<td>4</td>
<td>153</td>
<td>84,287,118</td>
</tr>
<tr>
<td>5</td>
<td>154</td>
<td>33,120,667</td>
</tr>
<tr>
<td>6</td>
<td>155</td>
<td>7,719,025</td>
</tr>
<tr>
<td>7</td>
<td>156</td>
<td>$33,000,000</td>
</tr>
<tr>
<td>8</td>
<td></td>
<td>1,222,918,670</td>
</tr>
<tr>
<td>9</td>
<td></td>
<td>(268,275,135)</td>
</tr>
<tr>
<td>10</td>
<td></td>
<td>954,643,535</td>
</tr>
<tr>
<td>11</td>
<td>012</td>
<td>145,435,010</td>
</tr>
<tr>
<td>12</td>
<td>019</td>
<td>225,645,313</td>
</tr>
<tr>
<td>13</td>
<td>453</td>
<td>$20,573,905</td>
</tr>
<tr>
<td>14</td>
<td></td>
<td>$1,346,297,763</td>
</tr>
</tbody>
</table>
### 38—State Board of Education—

**Vocational Division**

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2001 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$850,000</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>$12,051</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>$336,162</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>$1,052,447</td>
</tr>
<tr>
<td>5 Wood Products—Forestry</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 Vocational Program</td>
<td>146</td>
<td>$63,024</td>
</tr>
<tr>
<td>7 Albert Yanni Vocational Program</td>
<td>147</td>
<td>$139,300</td>
</tr>
<tr>
<td>8 Vocational Aid</td>
<td>148</td>
<td>$13,033,974</td>
</tr>
<tr>
<td>9 Adult Basic Education</td>
<td>149</td>
<td>$2,887,437</td>
</tr>
<tr>
<td>10 Equipment Replacement</td>
<td>150</td>
<td>$1,019,750</td>
</tr>
<tr>
<td>11 Program Modernization</td>
<td>305</td>
<td>$700,000</td>
</tr>
<tr>
<td>12 Aquaculture Support</td>
<td>769</td>
<td>$205,948</td>
</tr>
<tr>
<td>13 Total</td>
<td></td>
<td>$20,300,093</td>
</tr>
</tbody>
</table>

### 39—State Board of Education—

**Division of Educational Performance Audits**

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2001 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$460,200</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>$3,000</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>$161,274</td>
</tr>
</tbody>
</table>
### 40—West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

**Fund 0320 FY 2001 Org 0403**

<table>
<thead>
<tr>
<th>Item</th>
<th>Account</th>
<th>Description</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>001</td>
<td>Personal Services</td>
<td>$6,121,895</td>
</tr>
<tr>
<td>2</td>
<td>004</td>
<td>Annual Increment</td>
<td>4,000</td>
</tr>
<tr>
<td>3</td>
<td>010</td>
<td>Employee Benefits</td>
<td>2,377,466</td>
</tr>
<tr>
<td>4</td>
<td>913</td>
<td>BRIM Premium</td>
<td>42,812</td>
</tr>
<tr>
<td>5</td>
<td>099</td>
<td>Unclassified</td>
<td>1,533,656</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>Total</td>
<td>$10,079,829</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for Capital Outlay, Repairs and Equipment—Surplus (fund 0320, activity 677) and FM Auditory Equipment (fund 0320, activity 395) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001.

### DEPARTMENT OF EDUCATION AND THE ARTS

41—Department of Education and the Arts—

*Office of the Secretary*

(WV Code Chapter 5F)

**Fund 0294 FY 2001 Org 0431**

<table>
<thead>
<tr>
<th>Item</th>
<th>Account</th>
<th>Description</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>099</td>
<td>Unclassified (R)</td>
<td>$3,115,455</td>
</tr>
<tr>
<td>2</td>
<td>913</td>
<td>BRIM Premium</td>
<td>1,515</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td>Joint Commission on Vocational—</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>109</td>
<td>Technical—Occupational Education</td>
<td>30,000</td>
</tr>
<tr>
<td></td>
<td>Appropriations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>-------------------------------------</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Center for Professional Development (R)</td>
<td>115</td>
<td>1,808,477</td>
</tr>
<tr>
<td>7</td>
<td>Center for Professional Development—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Principals’ Academy (R) ............. 415</td>
<td>500,018</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Technical Preparation Program (R) .... 440</td>
<td>932,397</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Community Schools/Mini Grants (R) .. 530</td>
<td>200,971</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Commission for National and Community Service .......... 193</td>
<td>165,000</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Hospitality Training .................. 600</td>
<td>550,000</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Operation Safe Schools/Hotline Grants . 194</td>
<td>300,000</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Jobs for West Virginia Graduates ...... 863</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Total ..................................</td>
<td>$ 7,603,833</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0294, activity 099), Center for Professional Development (fund 0294, activity 115), Center for Professional Development—Principals’ Academy (fund 0294, activity 415), Workforce Program Continuation (fund 0294, activity 405), Technical Preparation Program (fund 0294, activity 440) and Community Schools/Mini Grants (fund 0294, activity 530) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0294, fiscal year 2000, activity 099 ($117,811) and fund 0294, fiscal year 2000, activity 115 ($54,223) which shall expire on June 30, 2000.

42—Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2001 Org 0432

<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services .................... 001</td>
<td>$ 1,804,581</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment ..................... 004</td>
<td>34,350</td>
</tr>
<tr>
<td>Item</td>
<td>Fund</td>
<td>Amount</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------</td>
<td>--------------</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>637,689</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>27,937</td>
</tr>
<tr>
<td>Martin Luther King, Jr. Holiday Celebration</td>
<td>031</td>
<td>15,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>589,120</td>
</tr>
<tr>
<td>Grants for Competitive Arts Programs</td>
<td>624</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Culture and History Programming</td>
<td>732</td>
<td>300,014</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$ 4,408,691</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Capital Outlay, Repairs and Equipment (fund 0293, activity 589) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.

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

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

43—Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2001 Org 0433

<table>
<thead>
<tr>
<th>Item</th>
<th>Fund</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,115,752</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>33,300</td>
</tr>
<tr>
<td></td>
<td>Appropriations</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---------------------------</td>
<td>---</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
<td>BRIM Premium</td>
<td>913</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>6</td>
<td>Books and Films</td>
<td>179</td>
</tr>
<tr>
<td>7</td>
<td>Services to State Institutions</td>
<td>180</td>
</tr>
<tr>
<td>8</td>
<td>Services to Blind and Handicapped</td>
<td>181</td>
</tr>
<tr>
<td>9</td>
<td>Libraries—Special Projects</td>
<td>625</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Capital Outlay—HVAC System (fund 0296, activity 889) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.

44—Educational Broadcasting Authority
(WV Code Chapter 10)

Fund 0300 FY 2001 Org 0439

<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$3,282,591</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>70,400</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,087,194</td>
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<td>4</td>
<td>BRIM Premium</td>
<td>913</td>
<td>32,547</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>1,107,457</td>
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<td>6</td>
<td>Lease Purchase Digital</td>
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<tr>
<td>7</td>
<td>Conversion Equipment</td>
<td>893</td>
<td>0</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$5,580,189</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Equipment—Surplus (fund 0300, activity 341) at the close of
the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.

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

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

Control Account

(WV Code Chapters 18B and 18C)

Fund 0333 FY 2001 Org 0452

1 Public Employees’
2 Insurance Matching ............... 012 $ 925,648
3 Unclassified ...................... 099 1,466,543
4 BRIM Premium ..................... 913 2,644,011
5 Tuition Contract Program (R) ...... 165 749,552
6 WVNET .............................. 169 2,594,574
7 Community and Technical College
8 Pupil Support Adjustment ....... 858 2,000,000
9 Total ............................... $10,380,328

Any unexpended balances remaining in the appropriations for Higher Education Grant Program (fund 0333, activity 164), Tuition Contract Program (fund 0333, activity 165), Higher Education Technology Initiative—Surplus (fund 0333, activity 508) and Asynchronous Transfer Mode (ATM) Program (fund 0333, activity 199) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0333, fiscal year 2000, activity 165 ($21,107) which shall expire on June 30, 2000.
The appropriation for Minority Doctoral Fellowship (fund 0333, activity 166) may be transferred to special revenue accounts for matching college, university, city, county, federal, and/or other generated revenues.

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

Control Account

(WV Code Chapter 18B)

Fund 0578 FY 2001 Org 0452

1 Strategic Planning and Compliance—
2 Institutions—Total .................. 772 $ 11,434,390

47—Board of Trustees of the University System of West Virginia

Control Account

(WV Code Chapter 18B)

Fund 0327 FY 2001 Org 0461

1 Unclassified ............................ 099 $185,289,087

2 Marshall University—Southern WV
3 Community and Technical College
4 2+2 Program (R) ..................... 170 362,009

5 Marshall University—
6 Autism Training Center ............ 548 594,691

7 Marshall and West Virginia University
8 Faculty and Course Development
9 International Study Project (R) .... 549 35,000

10 Marshall University—Forensic Lab (R) 572 465,576
### Appropriations

<table>
<thead>
<tr>
<th>Fund</th>
<th>Description</th>
<th>Activity</th>
<th>Appropriation Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>745</td>
<td>WVU Law School—Skills Program</td>
<td></td>
<td>225,000</td>
</tr>
<tr>
<td>852</td>
<td>WVU College of Engineering and Mineral Resources—Diesel Training—Transfer (R)</td>
<td></td>
<td>20,000</td>
</tr>
<tr>
<td>827</td>
<td>Coal and Energy Research Bureau</td>
<td></td>
<td>150,000</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>$187,141,363</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Marshall University—Southern WV Community and Technical College 2+2 Program (fund 0327, activity 170), Marshall University—Forensic Lab (fund 0327, activity 572), WVU College of Engineering and Mineral Resources—Diesel Training—Transfer (fund 0327, activity 852), Marshall and West Virginia University Faculty and Course Development International Study Project (fund 0327, activity 549), Jackson’s Mill—Surplus (fund 0344, activity 842) and Jackson’s Mill (fund 0327, activity 461) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0327, fiscal year 2000, activity 170 ($110,860); fund 0327, fiscal year 2000, activity 549 ($1,084) and fund 0327, fiscal year 2000, activity 572 ($13,967) which shall expire on June 30, 2000.

**48—Board of Trustees of the University**

System of West Virginia—University of West Virginia Health Sciences Account

(WV Code Chapter 18B)

Fund 0323 FY 2001 Org 0478

<table>
<thead>
<tr>
<th>Fund</th>
<th>Description</th>
<th>Activity</th>
<th>Appropriation Amount</th>
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<tbody>
<tr>
<td>175</td>
<td>WVU—School of Health Sciences—Charleston Division</td>
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<td>4,041,728</td>
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<tr>
<td>177</td>
<td>Primary Health Education Program Support (R)</td>
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<td>4,754,611</td>
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<td>Line</td>
<td>Description</td>
<td>Appropriation</td>
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<td>5</td>
<td>Graduate Medical Education</td>
<td>197</td>
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<td>6</td>
<td>Medical Education</td>
<td>178</td>
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<td>7</td>
<td>School of Osteopathic Medicine</td>
<td>172</td>
<td>6,710,904</td>
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<td>Marshall Medical School</td>
<td>173</td>
<td>11,716,104</td>
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<td>9</td>
<td>Marshall University - Center for Rural Health</td>
<td>198</td>
<td>200,000</td>
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<td>11</td>
<td>WVU—School of Health Sciences</td>
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<td>42,198,873</td>
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<td>Vice Chancellor for Health Sciences</td>
<td>473</td>
<td>287,183</td>
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<td>13</td>
<td>WVU Charleston Division—</td>
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<td>14</td>
<td>Poison Control Hot Line (R)</td>
<td>510</td>
<td>501,565</td>
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<td>15</td>
<td>Rural Health Initiative Site</td>
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<td>16</td>
<td>Support Program (R)</td>
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<td>17</td>
<td>School of Osteopathic Medicine—</td>
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<tr>
<td>18</td>
<td>Capital Improvement</td>
<td>204</td>
<td>600,000</td>
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<tr>
<td>19</td>
<td>Total</td>
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<td>$75,387,968</td>
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</table>

Any unexpended balances remaining in the appropriations for Primary Health Education Program Support (fund 0323, activity 177), Correctional Telemedicine Project (fund 0323, activity 406), Capital Outlay and Equipment (fund 0323, activity 542), WVU Charleston Division—Poison Control Hot Line (fund 0323, activity 510) and Rural Health Initiative Site Support Program (fund 0323, activity 853) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0323, fiscal year 2000, activity 177 ($67,008); fund 0323, fiscal year 2000, activity 853 ($262,727) and fund 0323, fiscal year 2000, activity 510 ($14,630) which shall expire on June 30, 2000.

The amount in the Graduate Medical Education line-item above may be transferred to the Department of Health and Human Resources’ Consolidated Medical Service Fund for the
35 purpose of matching federal or other funds to be used in support
36 of graduate medical education, subject to the approval of the
37 Vice-Chancellor for Health Sciences and the Secretary of the
38 Department of Health and Human Resources. If approval is
39 denied, the funds may be utilized by the respective institutions
40 for expenditure.

49—Board of Directors of the State College System

Control Account

(WV Code Chapter 18B)

Fund 0330 FY 2001 Org 0481

1 Unclassified—Total ...................... 096 $ 88,057,058

50—State Board of Rehabilitation—

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2001 Org 0932

1 Personal Services ...................... 001 $ 4,421,291
2 Annual Increment ...................... 004 124,961
3 Employee Benefits ..................... 010 1,693,488
4 BRIM Premium ......................... 913 35,263
5 Unclassified ........................... 099 150,000
6 Case Services ......................... 162 2,499,267
7 Workshop Development ............... 163 1,799,000
8 Ron Yost Personal Assistance Fund ... 407 300,000
9 Traumatic Brain and Spinal Cord Injury 813 250,000
10 Supported Employment
11 Extended Services .................... 206 125,000
Any unexpended balance remaining in the appropriation for Technology—Related Assistance Revolving Loan Fund for Individuals with Disabilities (fund 0310, activity 766) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001 and may be transferred to a special account for the purpose of disbursement or loan.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

51—Department of Health and Human Resources—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2001 Org 0501

1 Unclassified—Total .................. 096 $ 133,049

52—Division of Health—

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2001 Org 0506

1 Personal Services ...................... 001 $ 7,196,742
2 Annual Increment ...................... 004 131,907
3 Employee Benefits .................... 010 3,062,865
4 BRIM Premium ......................... 913 107,791
5 Unclassified ......................... 099 4,313,563
6 Appalachian State Low Level Radioactive Waste Commission ... 185 48,000
8 Safe Drinking Water Program ........ 187 494,441
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<tr>
<th></th>
<th>APPROPRIATIONS</th>
<th>[Ch. 10]</th>
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<tbody>
<tr>
<td>9</td>
<td>Women, Infants and Children</td>
<td>210</td>
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<td>10</td>
<td>Early Intervention</td>
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<td>Cancer Registry</td>
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<td>Primary Care Centers—</td>
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<td>Mortgage Finance</td>
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<td>14</td>
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<td>15</td>
<td>Black Lung Clinics</td>
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<td>16</td>
<td>Pediatric Dental Services</td>
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<td>17</td>
<td>Vaccine for Children</td>
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<td>18</td>
<td>Adult Influenza Vaccine</td>
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<td>19</td>
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<td>20</td>
<td>Regional EMS Entities</td>
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<td>21</td>
<td>Maternal and Child Health Clinics,</td>
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<td>Clinicians and Medical</td>
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<td>Contracts and Fees (R)</td>
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<td>Epidemiology Support</td>
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<td>25</td>
<td>Rural EMS Equipment and Training</td>
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<td>26</td>
<td>Primary Care Support</td>
<td>628</td>
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<td>27</td>
<td>State Aid to Local Health Departments</td>
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<td>28</td>
<td>Transitional Funding for</td>
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<td>29</td>
<td>Local Health Departments</td>
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<td>30</td>
<td>Basic Public Health Services Support</td>
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<td>31</td>
<td>Health Right Free Clinics</td>
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<td>32</td>
<td>Osteoporosis Prevention Fund</td>
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<td>33</td>
<td>State EMS Coordinator</td>
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</table>
34 EMS Training for Children .......... 739  50,000
35 Emergency Response
36 Entities—Special Projects ........ 822  1,250,000
37 Emergency Response Entities Support . 213  250,000
38 Financial Assistance for
39 Primary Health Care Facilities .... 215  350,000
40 Educare .......................... 895  0
41 County Wellness Institute Programs . 216  200,000
42 Total ............................ $ 51,356,025
43 Any unexpended balances remaining in the appropriations
44 for Unclassified (fund 0407, activity 099, fiscal year 1997) and
45 Maternal and Child Health Clinics, Clinicians and Medical
46 Contracts and Fees (fund 0407, activity 575) at the close of the
47 fiscal year 2000 are hereby reappropriated for expenditure
48 during the fiscal year 2001.
49 From the Maternal and Child Health Clinics, Clinicians,
50 and Medical Contracts and Fees line item, $400,000 shall be
51 transferred to the Breast and Cervical Cancer Diagnostic
52 Treatment Fund.

53—Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2001 Org 0506

1 Personal Services ...................... 001 $ 531,371
2 Annual Increment ........................ 004  10,300
3 Employee Benefits ...................... 010  226,322
4 BRIM Premium ........................... 913  582,653
5 Special Olympics ........................ 208  26,074
6 Behavioral Health Program—

7 Unclassified (R) ................ 219 22,650,590

8 Family Support Act ................. 221 1,090,622

9 Institutional Facilities Operations ..... 335 0

10 Colin Anderson Community Placement (R) ................ 803 3,433,963

12 Renaissance Program ................. 804 200,000

13 Total .............................. $ 28,751,895

14 Any unexpended balances remaining in the appropriations for Behavioral Health Program—Unclassified (fund 0525, activity 219) and Colin Anderson Community Placement (fund 0525, activity 803) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001.

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

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

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2001 Org 0506

1 West Virginia Drinking Water Treatment
2 Revolving Fund—Transfer ....... 689 $  700,000
3 The above appropriation for Drinking Water Treatment
4 Revolving Fund—Transfer shall be transferred to the West
5 Virginia Drinking Water Treatment Revolving Fund or appro-
6 priate bank depository and the Drinking Water Treatment
7 Revolving—Administrative Expense Fund as provided by
8 Chapter 16, of the Code.

55—Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2001 Org 0510

1 Personal Services ............... 001 $  594,191
2 Annual Increment ............... 004  12,400
3 Employee Benefits ............. 010  207,056
4 BRIM Premium ................. 913  15,384
5 Unclassified .................. 099  184,121
6 Anti-Hate Program and
7 Human Rights Summit .......... 815  18,000
8 Total ......................... $ 1,031,152

56—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2001 Org 0511
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th>[Ch. 10</th>
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<tr>
<td></td>
<td>Personal Services</td>
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<td>$20,713,316</td>
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<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
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<td>8,156,213</td>
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<td>4</td>
<td>BRIM Premium</td>
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<td>1,014,751</td>
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<td>5</td>
<td>Unclassified</td>
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<td>6</td>
<td>Child Care Development</td>
<td>144</td>
<td>1,438,120</td>
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<tr>
<td>7</td>
<td>Medical Services Contracts and Office of Managed Care</td>
<td>183</td>
<td>2,323,860</td>
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<td>8</td>
<td>Medical Services</td>
<td>189</td>
<td>$183,521,000 $182,883,000*</td>
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<tr>
<td>9</td>
<td>Women’s Commission</td>
<td>191</td>
<td>131,262</td>
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<td>10</td>
<td>Social Services</td>
<td>195</td>
<td>44,040,138</td>
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<td>11</td>
<td>Family Preservation Program</td>
<td>196</td>
<td>1,565,000</td>
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<tr>
<td>12</td>
<td>James “Tiger” Morton</td>
<td>455</td>
<td>1,000,000</td>
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<tr>
<td>13</td>
<td>Catastrophic Illness Fund</td>
<td>468</td>
<td>7,709,104</td>
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<td>14</td>
<td>Medical Services Trust Fund Transfer</td>
<td>512</td>
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<td>15</td>
<td>OSCAR and RAPIDS</td>
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<td>16</td>
<td>Child Welfare System</td>
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<td>2,552,496</td>
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<tr>
<td>17</td>
<td>Commission for the Deaf and Hard of Hearing</td>
<td>704</td>
<td>157,838</td>
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<td>18</td>
<td>Child Support Enforcement</td>
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<td>19</td>
<td>Medicaid Auditing</td>
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<td>20</td>
<td>Temporary Assistance for Needy Families/Maintenance of Effort</td>
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<td>24,908,382</td>
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<td>21</td>
<td>Child Care—Maintenance of</td>
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*Line item reduced by the Governor.
27 Effort and Match ...................... 708 4,409,643
28 WV Childrens’ Health Fund—
29 Transfer (R) ...................... 714 0
30 Grants for Licensed Domestic
31 Violence Programs
32 and Statewide Prevention ........ 750 1,000,000
33 Indigent Burials (R) ............... 851 680,000
34 Total ............................... $336,796,120
35 Any unexpended balances remaining in the appropriations
36 for Indigent Burials (fund 0403, activity 851) and West Virginia
37 Childrens’ Health Fund—Transfer (fund 0403, activity 714) at
38 the close of fiscal year 2000 are hereby reappropriated for
40 The above appropriation for James “Tiger” Morton
41 Catastrophic Illness Fund (activity 455) shall be transferred to
42 the James “Tiger” Morton Catastrophic Illness Fund (fund
43 5454) as provided by Chapter 16, Article 5Q, of the Code.
44 Notwithstanding the provisions of Title I, section three of
45 this bill, the secretary of the department of health and human
46 resources shall have the authority to transfer funds within the
47 above account: Provided, That no more than ten percent of the
48 funds appropriated to one line item may be transferred to other
49 line items: Provided, however, That no funds from other line
50 items shall be transferred to the personal services line item.
51 The secretary shall have authority to expend funds for the
52 educational costs of those children residing in out-of-state
53 placements, excluding the costs of special education programs.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

57—Department of Military Affairs and Public Safety—
### Office of the Secretary
(WV Code Chapter 5F)

**Fund 0430 FY 2001 Org 0601**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>Unclassified—Total</td>
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<td>$0</td>
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<tr>
<td>Unclassified</td>
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<td><strong>Total</strong></td>
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<td><strong>$336,273</strong></td>
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Any unexpended balance remaining in the appropriation for Bland Memorial Fund (fund 0430, activity 332) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.

### 58—Adjutant General—

**State Militia**
(WV Code Chapter 15)

**Fund 0433 FY 2001 Org 0603**

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<td>Personal Services</td>
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<td>Employee Benefits</td>
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<td>4,842</td>
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<td><strong>10,807,618</strong></td>
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<tr>
<td><strong>Total</strong></td>
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Any unexpended balance remaining in the appropriation for Unclassified (fund 0433, activity 099) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.
From the above appropriation an amount approved by the adjutant general and the secretary of military affairs and public safety may be transferred to the State Armory Board for operation and maintenance of National Guard Armories.

59—West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2001 Org 0605

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<td>Annual Increment</td>
<td>004</td>
<td>1,100</td>
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<td>Employee Benefits</td>
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<td>114,504</td>
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<td>BRIM Premium</td>
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<td>20,189</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>60,735</td>
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<td>Salaries of Members of West Virginia Parole Board</td>
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<td>Total</td>
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<td>$512,423</td>
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60—Office of Emergency Services

(WV Code Chapter 15)

Fund 0443 FY 2001 Org 0606

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<th>Item Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>Personal Services</td>
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<td>Annual Increment</td>
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<td>Employee Benefits</td>
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<td>Unclassified</td>
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<td>Federal Emergency Management Agency Match (R)</td>
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<td>237,610</td>
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<tr>
<td>Community Emergency Response</td>
<td>220</td>
<td>500,000</td>
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9 Early Warning Flood System ........... 877 $324,000
10 Total .................................. $1,389,155

Any unexpended balance remaining in the appropriations for Federal Emergency Management Agency Match (fund 0443, activity 188) and Unclassified—Surplus (fund 0443, activity 097) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001.

61—Division of Corrections—

Central Office

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

Fund 0446 FY 2001 Org 0608

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<th>Description</th>
<th>Code</th>
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<td>010</td>
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<td>$98,162</td>
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<td>$617,681</td>
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62—Division of Corrections—

Correctional Units

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

Fund 0450 FY 2001 Org 0608

<table>
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<th>Item</th>
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<td>Unclassified</td>
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<td>2</td>
<td>BRIM Premium</td>
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<td>502,496</td>
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<td>3</td>
<td>Charleston Work Release</td>
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<td>4</td>
<td>Beckley Correctional Center</td>
<td>490</td>
<td>885,813</td>
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<td>5</td>
<td>Huntington Work Release</td>
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<td>669,908</td>
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<td>Appropriations</td>
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<td>----</td>
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</tr>
<tr>
<td>6</td>
<td>Anthony Center</td>
<td>504</td>
<td>4,345,666</td>
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<td>7</td>
<td>Huttonsville Correctional Center</td>
<td>514</td>
<td>13,667,004</td>
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<td>8</td>
<td>Northern Correctional Facility</td>
<td>534</td>
<td>5,595,278</td>
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<td>9</td>
<td>Pruntytown Correctional Center</td>
<td>543</td>
<td>6,052,953</td>
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<tr>
<td>10</td>
<td>Corrections Academy</td>
<td>569</td>
<td>757,768</td>
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<tr>
<td>11</td>
<td>Parole Services</td>
<td>686</td>
<td>1,889,015</td>
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<tr>
<td>12</td>
<td>Special Services</td>
<td>687</td>
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<td>13</td>
<td>St. Mary’s Correctional Facility</td>
<td>881</td>
<td>8,184,885</td>
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<td>14</td>
<td>Denmar Correctional Facility</td>
<td>882</td>
<td>3,613,926</td>
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<td>15</td>
<td>Ohio County Correctional Facility</td>
<td>883</td>
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<td>Mt. Olive Correctional Facility</td>
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<td>18</td>
<td>Capital Outlay</td>
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<tr>
<td>19</td>
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<td></td>
<td>$74,889,232</td>
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</tbody>
</table>

The commissioner of corrections shall within fifteen days after the close of each six-month period of said fiscal year, file with the legislative auditor and the department of administration an itemized report of expenditures made during the preceding six-month period. Such report shall include the total of expenditures made for personal services, annual increment, current expenses (inmate medical expenses and other), repairs and alterations and equipment. The commissioner of corrections shall also have the authority to transfer between line items appropriated to the individual correctional units above.

From the above appropriation to Unclassified, on July 1, 2000, the sum of two hundred thousand dollars shall be transferred to the department of agriculture—land division as advance payment for the purchase of food products; actual
payments for such purchases shall not be required until such
credits have been completely expended.

63—West Virginia State Police
(WV Code Chapter 15)
Fund 0453 FY 2001 Org 0612

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$26,114,109</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>151,850</td>
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<td>010</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>1,039,973</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>4,902,276</td>
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<tr>
<td>COPS Program Federal Match</td>
<td>327</td>
<td>873,889</td>
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<tr>
<td>Vehicle Purchase</td>
<td>451</td>
<td>1,000,000</td>
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<tr>
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<td>113,947</td>
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<td>Communications and Other</td>
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<tr>
<td>Equipment (R)</td>
<td>558</td>
<td>2,415,000</td>
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<tr>
<td>Trooper Retirement Fund</td>
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<td>18,328,152</td>
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<td>Trooper Class/Grant Match</td>
<td>733</td>
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<td>Handgun Administration Expense</td>
<td>747</td>
<td>67,260</td>
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<td>Debt Payment/Capital Outlay, Renovations, Repair</td>
<td>751</td>
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<td>COPS—Telecommunicators Match</td>
<td>816</td>
<td>267,595</td>
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<td>Trooper Overtime</td>
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<td>Automated Fingerprint</td>
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<tr>
<td>Identification System</td>
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<tr>
<td>Total</td>
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<td>$63,251,941</td>
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</table>
Any unexpended balances remaining in the appropriations for Barracks Maintenance and Construction (fund 0453, activity 494), Communications and Other Equipment (fund 0453, activity 558), Trooper Class/Grant Match (fund 0453, activity 733) and Debt Payment/Capital Outlay, Renovations, Repairs to Barracks (fund 0453, activity 751) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0453, fiscal year 2000, activity 558 ($457,992); fund 0453, fiscal year 2000, activity 733 ($688,375) \* and fund 0453, fiscal year 2000, activity 747 ($40,697) \* which shall expire on June 30, 2000.

From the amount reappropriated for Trooper Class/Grant Match, (fund 0453, activity 733) $100,000 is redesignated as Unclassified, fund 0453, activity 099, fiscal year 1999.

64—Division of Veterans’ Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2001 Org 0613

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<th>Code</th>
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<tr>
<td>Unclassified</td>
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<td>16,570</td>
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<td>Veterans’ Field Offices</td>
<td>228</td>
<td>129,692</td>
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<tr>
<td>Veterans’ Toll Free Assistance Line</td>
<td>328</td>
<td>5,000</td>
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<td>Veterans’ Reeducation Assistance (R)</td>
<td>329</td>
<td>270,000</td>
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<td>Veterans’ Field Office</td>
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<td>Improvements (R)</td>
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<td>56,443</td>
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<tr>
<td>Veterans’ Grant Program</td>
<td>342</td>
<td>150,000</td>
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</table>

* Language deleted by the Governor.
Any unexpended balances remaining in the appropriations for Veterans’ Reeducation Assistance (fund 0456, activity 329), Barboursville Veterans’ Home Improvements (fund 0456, activity 466), Veterans’ Field Office Improvements (fund 0456, activity 331), and Veterans’ Monuments (fund 0456, activity 817) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001.

65—Division of Veterans’ Affairs—

Veterans’ Home

(WV Code Chapter 9A)

Fund 0460 FY 2001 Org 0618

<table>
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<tr>
<td>1</td>
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<td>Annual Increment</td>
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<td>13,800</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>Unclassified</td>
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66—Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2001 Org 0619

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<th>Amount</th>
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<tr>
<td>1</td>
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<td>$581,619</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<td>4</td>
<td>BRIM Premium</td>
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<td>20,940</td>
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<td>5</td>
<td>Unclassified</td>
<td>099</td>
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<td>Appropriations</td>
<td>Amount</td>
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<td>6</td>
<td>Total</td>
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### 67—Division of Criminal Justice Services

(Executive Order)

**Fund 0546 FY 2001 Org 0620**

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<td>001</td>
<td>Personal Services</td>
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<td>004</td>
<td>Annual Increment</td>
<td>$2,885</td>
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<td>010</td>
<td>Employee Benefits</td>
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<td>913</td>
<td>BRIM Premium</td>
<td>$57</td>
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<td>099</td>
<td>Unclassified</td>
<td>$145,608</td>
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<tr>
<td>597</td>
<td>Statistical Analysis Program</td>
<td>$51,640</td>
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<td><strong>Total</strong></td>
<td><strong>$432,852</strong></td>
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</table>

### 68—Division of Juvenile Services

(WV Code Chapter 49)

**Fund 0570 FY 2001 Org 0621**

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<thead>
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<th>Code</th>
<th>Description</th>
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<tr>
<td>001</td>
<td>Personal Services</td>
<td>$10,867,700</td>
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<td>004</td>
<td>Annual Increment</td>
<td>$58,150</td>
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<td>010</td>
<td>Employee Benefits</td>
<td>$4,127,684</td>
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<td>913</td>
<td>BRIM Premium</td>
<td>$17,587</td>
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<tr>
<td>099</td>
<td>Unclassified</td>
<td>$4,331,176</td>
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<tr>
<td>701</td>
<td>Central Office</td>
<td>$0</td>
</tr>
<tr>
<td>730</td>
<td>Juvenile Transportation</td>
<td>$0</td>
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<tr>
<td>7</td>
<td><strong>Total</strong></td>
<td><strong>$19,402,297</strong></td>
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</table>

### 69—Division of Protective Services

(WV Code Chapter 15)
Any unexpended balance remaining in the appropriation for Equipment (fund 0585, activity 070) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.

DEPARTMENT OF TAX AND REVENUE

70—Department of Tax and Revenue—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0465 FY 2001 Org 0701

1 Unclassified—Total ...................... 096 $ 0
2 Unclassified ............................. 099 430,764
3 BRIM Premium .......................... 913 6,084
4 Total .................................. $ 436,848

71—Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2001 Org 0702

1 Personal Services ...................... 001 $ 10,755,598
2 Annual Increment ...................... 004 222,650
3 Employee Benefits .................... 010 3,578,826
4 BRIM Premium ......................... 913 3,973
5 Unclassified ......................... 099 6,175,625
6 Supplemental Assistance for Counties
7 with Reduced Managed Timberland
8 Tax Collections ....................... 222 423,000
9 Remittance Processor ................... 570 297,800
10 Total .......................... $ 21,457,472

Any unexpended balances remaining in the appropriations for Automation Project (fund 0470, activity 442), Automation Project—Total—Surplus (fund 0470, activity 673), Property Tax Valuation and Assessment System (fund 0470, activity 477), Administrative Hearing Examiner Program (fund 0470, activity 713) and Property Tax and Coal Reserve Valuation Automation Project (fund 0470, activity 831) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001.

72—Division of Professional and Occupational Licenses—

State Athletic Commission

(WV Code Chapter 29)

Fund 0523 FY 2001 Org 0933

1 Unclassified—Total ...................... 096 $ 0
2 Unclassified ........................... 099 4,719
3 BRIM Premium .......................... 913 1,262
4 Total ................................. $ 5,981

DEPARTMENT OF TRANSPORTATION

73—Department of Transportation—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0500 FY 2001 Org 0801
138 APPROPRIATIONS [Ch. 10

1  Unclassified (R) .......................... 099  $  0
2  Civil Air Patrol ............................. 234  0
3  Potomac Highlands Airport Authority .. 444  0
4  Total ...................................... $  0

Any unexpended balance remaining in the appropriation for
Unclassified (fund 0500, activity 099) at the close of the fiscal
year 2000 is hereby reappropriated for expenditure during the
fiscal year 2001, with the exception of fund 0500, fiscal year
2000, activity 099 ($6,047) which shall expire on June 30,
2000.

74—State Rail Authority
(WV Code Chapter 29)
Fund 0506 FY 2001 Org 0804

1  Unclassified—Total ..................... 096  $  0
2  Unclassified ............................. 099  2,719,978
3  BRIM Premium ............................ 913  8,172
4  Total ...................................... $  2,728,150

75—Division of Public Transit
(WV Code Chapter 17)
Fund 0510 FY 2001 Org 0805

1  Unclassified—Total (R) ............... 096  $  0
2  Unclassified (R) .......................... 099  932,680
3  Federal Funds/Grant Match (R) ....... 749  1,100,000
4  BRIM Premium ............................ 913  216
5  Total ...................................... $  2,032,896
Any unexpended balances remaining in the appropriations for Unclassified—Total (fund 0510, activity 096), Unclassified (fund 0510, activity 099), Federal Funds/Grant Match (fund 0510, activity 749) and Federal Funds/Grant Match—Surplus (fund 0510, activity 857) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0510, fiscal year 2000, activity 099 ($27,980) and fund 0510, fiscal year 2000, activity 749 ($33,000) which shall expire on June 30, 2000.

76—Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2001 Org 0806

1 Unclassified—Total (R) ............... 096 $ 595,532

Any unexpended balances remaining in the appropriation for Unclassified—Total (fund 0581, activity 096) and Port Authority (fund 0581, activity 443) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0581, fiscal year 2000, activity 096 ($14,852) which shall expire on June 30, 2000.

From the above appropriation for unclassified—total (fund 0581, activity 096) an amount up to $100,000 may be spent to employ an expert on riverfront development.

77—Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2001 Org 0807

1 Unclassified—Total (R) ............... 096 $ 0

2 Unclassified ......................... 099 901,254

3 Civil Air Patrol ....................... 234 86,952
4 Potomac Highlands Airport Authority . . 444 200,000
5 Total .......................... $ 1,188,206

Any unexpended balances remaining in the appropriation
for Unclassified—Total (fund 0582, activity 096) and Aeronautics Commission (fund 0582, activity 818) at the close of the
fiscal year 2000 are hereby reappropriated for expenditure
during the fiscal year 2001, with the exception of fund 0582,
fiscal year 2000, activity 096 ($27,023) which shall expire on

**BUREAU OF COMMERCE**

78—*Division of Forestry*

(WV Code Chapter 19)

**Fund 0250 FY 2001 Org 0305**

<table>
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<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ 1,408,748</td>
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<tr>
<td>2 Annual Increment</td>
<td>32,700</td>
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<tr>
<td>3 Employee Benefits</td>
<td>542,835</td>
</tr>
<tr>
<td>4 BRIM Premium</td>
<td>40,313</td>
</tr>
<tr>
<td>5 Unclassified</td>
<td>361,816</td>
</tr>
<tr>
<td>6 Aerial Tanker Airplanes</td>
<td>200,000</td>
</tr>
</tbody>
</table>

Total $ 2,586,412

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

79—*Geological and Economic Survey*

(WV Code Chapter 29)

**Fund 0253 FY 2001 Org 0306**

<table>
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<th>Amount</th>
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<tbody>
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Ch. 10] APPROPRIATIONS

<table>
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<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
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<td>28,139</td>
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<td>3</td>
<td>Employee Benefits</td>
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<td>4</td>
<td>BRIM Premium</td>
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<td>12,257</td>
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<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>406,836</td>
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<td>Mineral Mapping System (R)</td>
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<td>1,211,276</td>
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<td>7</td>
<td>Geographic Information System (R)</td>
<td>214</td>
<td>312,500</td>
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<td>8</td>
<td>Computer Upgrade</td>
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<td>6,125</td>
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<td>9</td>
<td>Total</td>
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Any unexpended balances remaining in the appropriations for Mineral Mapping System (fund 0253, activity 207), Geographic Information System (fund 0253, activity 214) and Computer Upgrade—Surplus (fund 0253, activity 874) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0253, fiscal year 2000, activity 207 ($61,838) and fund 0253, fiscal year 2000, activity 214 ($45,000) which shall expire on June 30, 2000.

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

80—West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2001 Org 0307

<table>
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<th>Code</th>
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<tr>
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<tr>
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<td>Annual Increment</td>
<td>004</td>
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<td>Employee Benefits</td>
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<td>[Ch. 10</td>
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<td>5</td>
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<td>National Youth Science Camp .......... 132</td>
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<td>9</td>
<td>Local Economic Development partnerships (R) .......... 133</td>
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<td>10</td>
<td>ARC Assessment .......................... 136</td>
<td>167,308</td>
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<td>Institute for Software Research .......... 217</td>
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<tr>
<td>18</td>
<td>International Offices (R) ............... 593</td>
<td>926,966</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>WV Manufacturing Extension Partnership .......... 731</td>
<td>200,000</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Small Business Work Force (R) .......... 735</td>
<td>374,078</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Polymer Alliance .......................... 754</td>
<td>100,000</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>National Institute of Chemical Studies . 805</td>
<td>100,000</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Local Economic Development Assistance .......... 819</td>
<td>7,000,000</td>
<td></td>
</tr>
</tbody>
</table>
32 Community College
33 Workforce Development ........ 878 750,000
34 Revolving Fund - Loan -
35 Fire Truck Purchases ........... 899 0
36 Economic Development Assistance ... 900 800,000
37 Technology Initiatives ............ 901 1,000,000
38 Mid-Atlantic Aerospace Complex ... 231 225,000
39 Total .......................... $ 31,405,167

Any unexpended balances remaining in the appropriations for Partnership Grants (fund 0256, activity 131), Guaranteed Work Force Grant (fund 0256, activity 242), Local Economic Development Partnerships (fund 0256, activity 133), European Trade and Tourism Office (fund 0256, activity 763), Local Economic Development Assistance (fund 0256, activity 819), Small Business Financial Assistance (fund 0256, activity 360), Industrial Park Assistance (fund 0256, activity 480), Leverage Technology and Small Business Development Program (fund 0256, activity 525), Small Business Work Force (fund 0256, activity 735), International Offices (fund 0256, activity 593) and Office of Coalfield Community Development (fund 0256, activity 326) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0256, fiscal year 2000, activity 131 ($159,000); fund 0256, fiscal year 2000, activity 133 ($151,612); fund 0256, fiscal year 2000, activity 360 ($9,568); fund 0256, fiscal year 2000, activity 480 ($42,000); fund 0256, fiscal year 2000, activity 525 ($180,000); fund 0256, fiscal year 2000, activity 735 ($11,216) which shall expire on June 30, 2000.

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

81—Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2001 Org 0308

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>001</td>
<td>Personal Services</td>
<td>$1,694,706</td>
</tr>
<tr>
<td>2</td>
<td>004</td>
<td>Annual Increment</td>
<td>$22,605</td>
</tr>
<tr>
<td>3</td>
<td>010</td>
<td>Employee Benefits</td>
<td>$628,146</td>
</tr>
<tr>
<td>4</td>
<td>913</td>
<td>BRIM Premium</td>
<td>$29,149</td>
</tr>
<tr>
<td>5</td>
<td>099</td>
<td>Unclassified</td>
<td>$1,072,709</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>$3,447,315</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Computer/Technology Upgrades (fund 0260, activity 322) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.

82—Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2001 Org 0310

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>001</td>
<td>Personal Services</td>
<td>$8,707,692</td>
</tr>
<tr>
<td>2</td>
<td>004</td>
<td>Annual Increment</td>
<td>$250,844</td>
</tr>
<tr>
<td>3</td>
<td>010</td>
<td>Employee Benefits</td>
<td>$3,590,106</td>
</tr>
</tbody>
</table>
## APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>Org</th>
<th>FY</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>BRIM Premium</td>
<td>913</td>
<td></td>
<td></td>
<td>259,032</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td></td>
<td></td>
<td>107,883</td>
</tr>
<tr>
<td>6</td>
<td>Nongame Wildlife</td>
<td>527</td>
<td></td>
<td></td>
<td>550,000</td>
</tr>
<tr>
<td>7</td>
<td>Litter Control Conservation Officers</td>
<td>564</td>
<td></td>
<td></td>
<td>200,619</td>
</tr>
<tr>
<td>8</td>
<td>West Virginia Stream Partners Program</td>
<td>637</td>
<td></td>
<td></td>
<td>100,000</td>
</tr>
<tr>
<td>9</td>
<td>Upper Mud River Flood Control</td>
<td>654</td>
<td></td>
<td></td>
<td>203,867</td>
</tr>
<tr>
<td>10</td>
<td>Law Enforcement</td>
<td>806</td>
<td></td>
<td></td>
<td>300,000</td>
</tr>
</tbody>
</table>

**Total** $14,270,043

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

### 83—Division of Miners’ Health, Safety and Training

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>Org</th>
<th>FY</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td></td>
<td></td>
<td>$3,668,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td></td>
<td></td>
<td>64,700</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td></td>
<td></td>
<td>1,312,955</td>
</tr>
<tr>
<td>4</td>
<td>BRIM Premium</td>
<td>913</td>
<td></td>
<td></td>
<td>36,539</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td></td>
<td></td>
<td>916,158</td>
</tr>
<tr>
<td>6</td>
<td>West Virginia Diesel</td>
<td>712</td>
<td></td>
<td></td>
<td>30,000</td>
</tr>
</tbody>
</table>

**Total** $6,028,352

### 84—Board of Coal Mine Health and Safety

(WV Code Chapter 22)
<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$</th>
<th>97,162</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td></td>
<td>400</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td></td>
<td>24,673</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td></td>
<td>38,792</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>5</td>
<td>Total</td>
<td></td>
<td></td>
<td>$161,027</td>
</tr>
</tbody>
</table>

85—Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>1</th>
<th>Unclassified—Total</th>
<th>096</th>
<th>$</th>
<th>73,410</th>
</tr>
</thead>
</table>

BUREAU OF ENVIRONMENT

86—Environmental Quality Board

(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$</th>
<th>68,977</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td></td>
<td>612</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td></td>
<td>19,863</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td></td>
<td>30,106</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>5</td>
<td>Total</td>
<td></td>
<td></td>
<td>$119,558</td>
</tr>
</tbody>
</table>

87—Interstate Commission on Potomac River Basin

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>1</th>
<th>West Virginia’s Contribution to the Interstate Commission on Potomac River Basin—Total</th>
<th>134</th>
<th>$</th>
<th>45,300</th>
</tr>
</thead>
</table>
88—Ohio River Valley Water Sanitation Commission

(WV Code Chapter 29)

Fund 0264 FY 2001 Org 0313

1 West Virginia’s Contribution to the Ohio River Valley Water Sanitation Commission—Total . . . . 135 $ 129,100

89—Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2001 Org 0313

1 Unclassified—Total . . . . . . . . . . . . . . . . 096 $ 0
2 Personal Services . . . . . . . . . . . . . . . . 004 4,332,200
3 Annual Increment . . . . . . . . . . . . . . . . 004 74,563
4 Employee Benefits . . . . . . . . . . . . . . . . 010 1,324,022
5 BRIM Premium . . . . . . . . . . . . . . . . . . 913 12,642
6 Unclassified . . . . . . . . . . . . . . . . . . . . 099 1,064,079
7 Dam Safety . . . . . . . . . . . . . . . . . . . . 607 128,109
8 Office of Water Resources
9 Non-Enforcement . . . . . . . . . . . . . . 855 1,200,000
10 Total . . . . . . . . . . . . . . . . . . . . . . $ 8,135,615

Any unexpended balance remaining in the appropriation for Office of Water Resources—Equipment—Surplus (fund 0273, activity 875) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.

90—Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2001 Org 0325
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Unclassified</td>
<td>099</td>
<td>$80,009</td>
</tr>
<tr>
<td>3</td>
<td>BRIM Premium</td>
<td>913</td>
<td>$4,368</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>$84,377</td>
</tr>
</tbody>
</table>

**BUREAU OF SENIOR SERVICES**

*91—Bureau of Senior Services*

(WV Code Chapter 29)

Fund 0420 FY 2001 Org 0508

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$119,932</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$1,906</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$62,490</td>
</tr>
<tr>
<td>4</td>
<td>BRIM Premium</td>
<td>913</td>
<td>$2,075</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>$536,890</td>
</tr>
<tr>
<td>6</td>
<td>Area Agencies Administration</td>
<td>203</td>
<td>$87,428</td>
</tr>
<tr>
<td>7</td>
<td>Silver Haired Legislature</td>
<td>202</td>
<td>$14,400</td>
</tr>
<tr>
<td>8</td>
<td>Foster Grandparents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Stipends and Travel</td>
<td>205</td>
<td>$57,734</td>
</tr>
<tr>
<td>10</td>
<td>In-Home Services for Senior Citizens</td>
<td>224</td>
<td>$700,000</td>
</tr>
<tr>
<td>11</td>
<td>Total</td>
<td></td>
<td>$1,582,855</td>
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</tbody>
</table>

**BUREAU OF EMPLOYMENT PROGRAMS**

*92—Bureau of Employment Programs*

(WV Code Chapter 23)

Fund 0572 FY 2001 Org 0323

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Welfare-to-Work—Total (R)</td>
<td>416</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation for Welfare-to-Work—Total (fund 0572, activity 416) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0572, fiscal year 2000, activity 416 ($30,000) which shall expire on June 30, 2000.

Total TITLE II, Section 1—
General Revenue .......... $2,710,787,686

Sec. 2. Appropriations from state road fund.—From the state road fund there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure during the fiscal year two thousand one.

DEPARTMENT OF TRANSPORTATION
93—Division of Motor Vehicles
(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Fund 9007 FY 2001 Org 0802

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fund</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$11,346,447</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>115,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>4,288,570</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>76,025</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>18,066,627</td>
</tr>
<tr>
<td>International Fuel Tax Agreement</td>
<td>536</td>
<td>560,644</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$34,453,313</td>
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</tbody>
</table>
### 94—Division of Highways

(WV Code Chapters 17 and 17C)

**Fund 9017 FY 2001 Org 0803**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service</td>
<td>040</td>
<td>$50,000,000</td>
</tr>
<tr>
<td>2</td>
<td>ARC Assessment</td>
<td>136</td>
<td>344,000</td>
</tr>
<tr>
<td>3</td>
<td>Maintenance, Expressway, Trunkline and Feeder</td>
<td>270</td>
<td>0</td>
</tr>
<tr>
<td>4</td>
<td>Maintenance, State Local Services</td>
<td>271</td>
<td>0</td>
</tr>
<tr>
<td>5</td>
<td>Maintenance</td>
<td>237</td>
<td>229,000,000</td>
</tr>
<tr>
<td>6</td>
<td>Maintenance, Contract Paving and Secondary Road Maintenance</td>
<td>272</td>
<td>50,000,000</td>
</tr>
<tr>
<td>7</td>
<td>Bridge Repair and Replacement</td>
<td>273</td>
<td>36,000,000</td>
</tr>
<tr>
<td>8</td>
<td>Inventory Revolving</td>
<td>275</td>
<td>2,000,000</td>
</tr>
<tr>
<td>9</td>
<td>Equipment Revolving</td>
<td>276</td>
<td>15,000,000</td>
</tr>
<tr>
<td>10</td>
<td>General Operations</td>
<td>277</td>
<td>41,711,995</td>
</tr>
<tr>
<td>11</td>
<td>Interstate Construction</td>
<td>278</td>
<td>35,000,000</td>
</tr>
<tr>
<td>12</td>
<td>Other Federal Aid Programs</td>
<td>279</td>
<td>137,000,000</td>
</tr>
<tr>
<td>13</td>
<td>Appalachian Programs</td>
<td>280</td>
<td>60,000,000</td>
</tr>
<tr>
<td>14</td>
<td>Nonfederal Aid Construction</td>
<td>281</td>
<td>30,000,000</td>
</tr>
<tr>
<td>15</td>
<td>Highway Litter Control</td>
<td>282</td>
<td>1,380,000</td>
</tr>
<tr>
<td>16</td>
<td>BRIM Premium</td>
<td>913</td>
<td>4,737,674</td>
</tr>
<tr>
<td>17</td>
<td>Total</td>
<td></td>
<td>$692,173,669</td>
</tr>
</tbody>
</table>

The above appropriations are to be expended in accordance with the provisions of chapters seventeen and seventeen-c of the code.
The commissioner of highways shall have the authority to operate revolving funds within the state road fund for the operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories and materials and supplies.

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

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

95—Division of Highways—

Federal Aid Highway Matching Fund

(WV Code Chapters 17 and 17C)

Fund 9018 FY 2001 Org 0803

1 Interstate Construction .................. 278 $ 35,000,000
2 Other Federal Aid Programs ............ 279 163,000,000
3 Appalachian Programs .................. 280 90,000,000
4 Total ................................. $ 288,000,000
96—Claims Against the State Road Fund

1 Claims Against the State ...................... 319 $________ 0
2 Total TITLE II, Section 2—
3 State Road Fund ...................... $ 1,014,912,544

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

LEGISLATIVE

97—Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2001 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ....................... 001 $ 200,000</td>
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</tr>
<tr>
<td>2 Annual Increment ........................ 004 4,500</td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits ...................... 010 59,580</td>
<td></td>
</tr>
<tr>
<td>4 BRIM Premium ............................. 913 1,262</td>
<td></td>
</tr>
<tr>
<td>5 Unclassified ............................. 099 40,000</td>
<td></td>
</tr>
<tr>
<td>6 Economic Loss Claim Payment Fund (R) .... 334 2,500,000</td>
<td></td>
</tr>
<tr>
<td>8 Total .................................... $ 2,805,342</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Economic Loss Claim Payment Fund (fund 1731, activity 334) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.
### EXECUTIVE

**98—Chief Technology Officer Administration Fund**

(WV Code Chapter 5)

Fund 1028 FY 2001 Org 0100

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>$1,856,345</td>
</tr>
<tr>
<td>2</td>
<td>EPSCOR Undergraduate Scientific Instrumentation Program</td>
<td>829</td>
<td>$150,000</td>
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<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>$2,006,345</td>
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**99—Auditor’s Office—**

**Land Operating Fund**

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2001 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$137,082</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,400</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>41,450</td>
</tr>
<tr>
<td>4</td>
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<td>099</td>
<td>195,416</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>378,348</td>
</tr>
</tbody>
</table>

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the expenditure of funds other than personal services or employee benefits to enable the division to pay the direct expenses relating to land sales as provided in Chapter eleven-a of the West Virginia Code.

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

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2001 Org 1200

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$538,724</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>4,722</td>
</tr>
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<td>3 Employee Benefits</td>
<td>010</td>
<td>148,604</td>
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<tr>
<td>4 Unclassified</td>
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<td>497,227</td>
</tr>
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<td>5 Total</td>
<td></td>
<td>$1,189,277</td>
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</tbody>
</table>

101—Auditor’s Office—

Technology Support and Acquisition

(WV Code Chapter 12)

Fund 1233 FY 2001 Org 1200

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>096</td>
<td>$570,200</td>
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</tbody>
</table>

102—Auditor’s Office—

Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2001 Org 1200

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>096</td>
<td>$129,606</td>
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</tbody>
</table>

103—Auditor’s Office—

Office of the Chief Inspector

(WV Code Chapter 6)

Fund 1235 FY 2001 Org 1200

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$1,422,490</td>
</tr>
</tbody>
</table>
## APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>22,900</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>456,936</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>430,261</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
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<td>$2,332,587</td>
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</tbody>
</table>

104—Treasurer's Office—

Technology Support and Acquisition

(WV Code Chapter 12)

Fund 1329 FY 2001 Org 1300

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$100,000</td>
</tr>
</tbody>
</table>

105—Department of Agriculture

(WV Code Chapter 19)

Fund 1401 FY 2001 Org 1400

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$800,228</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>7,268</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>210,784</td>
</tr>
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<td>4</td>
<td>Unclassified</td>
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<td>598,094</td>
</tr>
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<td>5</td>
<td>Total</td>
<td></td>
<td>$1,616,374</td>
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</table>

106—Department of Agriculture—

West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2001 Org 1400

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Student and Farm Loans—Total</td>
<td>235</td>
<td>$540,153</td>
</tr>
</tbody>
</table>

107—Department of Agriculture—

General John McCausland Memorial Farm
### Appropriations

(WV Code Chapter 19)

**Fund 1409 FY 2001 Org 1400**

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$23,708</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$16,425</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$40,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$80,133</strong></td>
</tr>
</tbody>
</table>

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

**108—Department of Agriculture—**

*Farm Operating Fund*

(WV Code Chapter 19)

**Fund 1412 FY 2001 Org 1400**

<table>
<thead>
<tr>
<th>Category</th>
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<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$1,026,133</td>
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</tbody>
</table>

**109—Attorney General—**

*Antitrust Enforcement*

(WV Code Chapter 47)

**Fund 1507 FY 2001 Org 1500**

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$217,204</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$935</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$69,628</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$174,316</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$462,083</strong></td>
</tr>
</tbody>
</table>

**110—Attorney General—**

*Preneed Funeral Regulation Fund*
Ch. 10] APPROPRIATIONS 157

(WV Code Chapter 47)

Fund 1513 FY 2001 Org 1500

1 Unclassified—Total ................ 096 $ 224,132

111—Attorney General—

Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

Fund 1514 FY 2001 Org 1500

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

112—Secretary of State—

Trademark Registration

(WV Code Chapters 3, 5, and 59)

Fund 1610 FY 2001 Org 1600

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

DEPARTMENT OF ADMINISTRATION

113—Office of the Secretary—

Tobacco Settlement Fund

(WV Code Chapter 4)

Fund 2041 FY 2001 Org 0201

1 Tobacco Settlement Fund—Transfer ... 902 $52,000,000

2 From the above appropriation for Tobacco Settlement Fund—Transfer, $52,000,000 shall be transferred to the Division of Health (fund 5124, org 0506) for expenditure.

114—Division of Finance—

Public Employees Insurance Reserve Fund

(WV Code Chapter 5A)
Fund 2207 FY 2001 Org 0209

1. Public Employees Insurance
   Reserve Fund—Transfer .................. 903 $10,000,000

   The above appropriation for Public Employees Insurance Reserve Fund—Transfer shall be transferred to the Public Employees Insurance Agency (fund 2185, org 0225) for expenditure.

115—Division of Information Services and Communications (WV Code Chapter 5A)

Fund 2220 FY 2001 Org 0210

1. Personal Services ....................... 001 $ 5,967,372
2. Annual Increment ....................... 004 83,915
3. Employee Benefits ..................... 010 1,755,835
4. BRIM Premium .......................... 913 7,733
5. Unclassified .......................... 099 1,794,731
6. Total ...................................... $ 9,609,586

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

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

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

116—Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2001 Org 0222

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>2,424,507</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>48,200</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>729,132</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>5,328</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>641,013</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$3,848,180</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Human Resource Information System (fund 2440, activity 641) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.

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

117—Public Employees Insurance Agency—

Public Employees Insurance Reserve Fund

(WV Code Chapter 5A)

Fund 2185 FY 2001 Org 0225

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$10,000,000</td>
</tr>
</tbody>
</table>

The above appropriation shall be expended only for the support of the programs provided by the public employees insurance agency.

118—WV Prosecuting Attorneys' Institute
### APPROPRIATIONS

(WV Code Chapter 7)

Fund 2521 FY 2001 Org 0228

<table>
<thead>
<tr>
<th>1. Unclassified—Total</th>
<th>096</th>
<th>$ 0</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Unclassified</td>
<td>099</td>
<td>629,613</td>
</tr>
<tr>
<td>3. BRIM Premium</td>
<td>913</td>
<td>1,262</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 630,875</strong></td>
</tr>
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</table>

### DEPARTMENT OF EDUCATION

119—State Board of Education—

**Strategic Staff Development**

(WV Code Chapter 18)

Fund 3937 FY 2001 Org 0402

<table>
<thead>
<tr>
<th>1. Unclassified—Total (R)</th>
<th>096</th>
<th>$ 500,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Any unexpended balance remaining in the appropriation for Unclassified—Total (fund 3937, activity 096) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

120—State Department of Education—

**School Building Authority**

(WV Code Chapter 18)

Fund 3959 FY 2001 Org 0402

<table>
<thead>
<tr>
<th>1. Personal Services</th>
<th>001</th>
<th>$ 511,838</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Annual Increment</td>
<td>004</td>
<td>5,450</td>
</tr>
<tr>
<td>3. Employee Benefits</td>
<td>010</td>
<td>179,386</td>
</tr>
<tr>
<td>4. BRIM Premium</td>
<td>913</td>
<td>1,450</td>
</tr>
<tr>
<td>5. Unclassified</td>
<td>099</td>
<td><strong>263,099</strong></td>
</tr>
</tbody>
</table>
The above appropriation for the administrative expenses of the school building authority shall be paid from the interest earnings on debt service reserve accounts maintained on behalf of said authority.

121—State Department of Education—

FFA-FHA Camp and Conference Center

(WV Code Chapter 18)

Fund 3960 FY 2001 Org 0402

| 1 | Personal Services .......... 001 | $750,600 |
| 2 | Annual Increment .......... 004 | 12,400 |
| 3 | Employee Benefits .......... 010 | 342,913 |
| 4 | Unclassified .............. 099 | 1,051,522 |
| 5 | Total ..................... | $2,157,435 |

DEPARTMENT OF EDUCATION AND THE ARTS

122—Office of the Secretary—

Lottery Education Fund Interest Earnings

Control Account

(WV Code Chapter 18B)

Fund 4010 FY 2001 Org 0431

| 1 | Unclassified—Total .......... 096 | $1,300,000 |

123—State College and University Systems—

State Systems Registration Fee—

Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)
Any unexpended balance remaining in the appropriation for Capital Outlay (fund 4033, activity 511) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.

The appropriation shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Board of Trustees of the University System and the Board of Directors of the State College System and the funds may be allocated to any institution within the system.

The total amount of this appropriation shall be paid from unexpended proceeds of revenue bonds previously issued pursuant to section eight, article ten, chapter eighteen-b of the code, which have since been refunded.

124—State College and University Systems—

State Systems Tuition Fee—

Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4041 FY 2001 Org 0453

Capital Outlay (R) . . . . . . . . . . . . . . . . . 511 $ 500,000

Any unexpended balance remaining in the above appropriation at the close of fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001 except for fund 4041, activity 734 (fiscal year 1999), and activity 757 (fiscal year 1998) which shall expire on June 30, 2000.

The appropriation shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Board of Trustees of the University System and the Board of Directors
of the State College System and the funds may be allocated to any institution within the systems.

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

125—State University System—

State System Registration Fee

Special Capital Improvement Fund—

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Fund 4007 FY 2001 Org 0461

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service (R)</td>
<td>040</td>
<td>$3,956,652</td>
</tr>
<tr>
<td>Capital Repairs and Alterations (R)</td>
<td>251</td>
<td>3,090,400</td>
</tr>
<tr>
<td>Computer and Telecommunications</td>
<td>438</td>
<td>692,959</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$7,740,011</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations are hereby reappropriated for expenditure during the fiscal year 2001.

The total amount of this appropriation shall be paid from the special capital improvement fund created in section eight, article ten, chapter eighteen-b of the code. Projects are to be paid on a cash basis and made available from date of passage.

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

126—State University System—

State System Tuition Fee

Special Capital Improvement Fund—

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Fund 4008 FY 2001 Org 0461

<table>
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<tr>
<th></th>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Debt Service (R)</td>
<td>040</td>
<td>$10,904,193</td>
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<tr>
<td>2</td>
<td>Building and Campus Renewal (R)</td>
<td>258</td>
<td>$9,263,300</td>
</tr>
<tr>
<td>3</td>
<td>Facilities Planning and Administration</td>
<td>386</td>
<td>$190,645</td>
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<tr>
<td>4</td>
<td>Computer and Telecommunications Technology (R)</td>
<td>438</td>
<td>$692,960</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$21,051,098</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations (except fiscal year 1997, activity 040) are hereby reappropriated for expenditure during the fiscal year 2001.

The total amount of this appropriation shall be paid from the special capital improvement fund created in section eight, article ten, chapter eighteen-b of the code. Projects are to be paid on a cash basis and made available from date of passage.

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

127—State University System—

West Virginia University Health Sciences Center

Spending Authority
APPROPRIATIONS

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2001 Org 0463

1 Unclassified—Total (R) .................. 096 $ 15,031,000

2 Any unexpended balance remaining in the appropriation for
3 the West Virginia University Health Sciences Center is hereby
4 reappropriated for expenditure during the fiscal year 2001.

128—State College System—

State System Registration Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Fund 4289 FY 2001 Org 0481

1 Debt Service (R) ......................... 040 $ 1,670,670

2 Capital Repairs and Alterations (R) .... 251 1,547,000

3 Total .................................... $ 3,217,670

4 Any unexpended balances remaining in the appropriations
5 are hereby reappropriated for expenditure during the fiscal year

7 The total amount of this appropriation shall be paid from
8 the special capital improvement fund created in section eight,
9 article ten, chapter eighteen-b of the code. Projects are to be
10 paid on a cash basis and made available from the date of
11 passage.

12 The above appropriations, except for debt service, may be
13 transferred to special revenue funds for capital improvement
14 projects at college system institutions.
### 129—State College System—

**State System Tuition Fee—**

**Special Capital Improvement Fund**

*(Capital Improvement and Bond Retirement Fund)*

**Control Account**

(WV Code Chapters 18 and 18B)

Fund **4290 FY 2001 Org 0481**

<table>
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<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service (R)</td>
<td>040</td>
<td>$3,409,265</td>
</tr>
<tr>
<td>2</td>
<td>Capital Improvements (New) (R)</td>
<td>259</td>
<td>5,557,200</td>
</tr>
</tbody>
</table>
| 3    | Facilities Planning and  
 | Administration (R) | 386 | 190,645 |
| 4    | Capital Contingencies and  
 | Emergencies (R) | 537 | 250,000 |
| 5    | Building and Campus Renewal and  
 | Facilities Planning and  
 | Administration (R) | 538 | 2,214,700 |
| 6    | Total | | $11,621,810 |

Any unexpended balances remaining in the appropriations are hereby reappropriated for expenditure during the fiscal year 2001.

The total amount of this appropriation shall be paid from the special capital improvement fund created in article twelve-b, chapter eighteen of the code. Projects are to be paid on a cash basis and made available from the date of passage.

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

Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4011 FY 2001 Org 0461

1 Marshall University Medical School—

2 Capital Improvements .............. 814 $12,000,000

The total amount of this appropriation shall be paid from unexpended proceeds of revenue bonds to be issued subject to the approval of the University System Board of Trustees for the purpose of exercising a purchase option, and paying costs associated therewith, on a portion of the Marshall University Medical Center. The above appropriation shall be available from passage and any unexpended balance remaining in the appropriation at the close of fiscal year 2000 is hereby reappropriated for expenditure during fiscal year 2001.

131—State Board of Rehabilitation—

Division of Rehabilitation Services—

West Virginia Rehabilitation Center

Special Account

(WV Code Chapter 18)

Fund 8664 FY 2001 Org 0932

1 Unclassified ......................... 099 $ 2,700,000

2 BRIM Premium ....................... 913 102,182

3 Workshop Development .............. 163 450,000

4 Workshop-Supported Employment .... 484 50,000

5 Total ............................... $ 3,302,182
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

132—Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

Fund 5425 FY 2001 Org 0505

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$217,076</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,861</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>76,163</td>
</tr>
<tr>
<td>4</td>
<td>BRIM Premium</td>
<td>913</td>
<td>1,262</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>123,476</td>
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<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$422,838</td>
</tr>
</tbody>
</table>

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

133—Division of Health—

Tobacco Settlement Fund

(WV Code Chapter 4)

Fund 5124 FY 2001 Org 0506

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Tobacco Education Program—Total</td>
<td>906</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Institutional Facilities Operations</td>
<td>335</td>
<td>46,149,408</td>
</tr>
<tr>
<td>3</td>
<td>Colin Anderson Community Placement</td>
<td>803</td>
<td>0</td>
</tr>
<tr>
<td>4</td>
<td>Tobacco Education Program</td>
<td>906</td>
<td>5,650,592</td>
</tr>
<tr>
<td>5</td>
<td>ABCA Tobacco Retailer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Education Program—Transfer</td>
<td>239</td>
<td>200,000</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$52,000,000</td>
</tr>
</tbody>
</table>
*From the above appropriation for Tobacco Education Program an amount of $2,000,000 shall be spent for "Counter Marketing."*

From the above appropriation for ABCA Tobacco Retailer Education Program — Transfer, $200,000 shall be transferred to the Alcohol Beverage Control Administration (fund 7352, org 0708) for expenditure.

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

Additional funds have been appropriated in fund 5156, fiscal year 2001, organization 0506, for the operation of the institutional facilities. The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations line item to facilitate cost effective and cost saving services at the community level.

From the above appropriation to Institutional Facilities Operations, together with available funds from the division of health—hospital services revenue account (fund 5156, activity 335), on July 1, 2000, the sum of one hundred fifty thousand dollars shall be transferred to the department of agriculture—land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

* Language deleted by the Governor.
170 APPROPRIATIONS [Ch. 10

134—Division of Health—

Vital Statistics

(WV Code Chapter 16)

Fund 5144 FY 2001 Org 0506

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$241,572</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>8,203</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>109,972</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>99,950</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$459,697</td>
</tr>
</tbody>
</table>

135—Division of Health—

Hospital Services Revenue Account

(Special Fund)

(Capital Improvement, Renovation and Operations)

(WV Code Chapter 16)

Fund 5156 FY 2001 Org 0506

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service (R)</td>
<td>040</td>
<td>$2,420,000</td>
</tr>
<tr>
<td>Institutional Facilities Operations (R)</td>
<td>335</td>
<td>34,246,188</td>
</tr>
<tr>
<td>Medical Services Trust Fund—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer (R)</td>
<td>512</td>
<td>$23,300,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$59,966,188</td>
</tr>
</tbody>
</table>

6 Any unexpended balances remaining in the appropriations for hospital services revenue account at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001, except for fund 5156, activity 040, and activity 512 (fiscal year 1999) which shall expire on June 30, 2000.
The total amount of this appropriation shall be paid from the hospital services revenue account special fund created by section fifteen-a, article one, chapter sixteen of the code, and shall be used for operating expenses and for improvements in connection with existing facilities and bond payments.

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

Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this account or in connection with the line item designated Institutional Facilities Operations in the consolidated medical service fund (fund 0525, fiscal year 2001, organization 0506).

From the above appropriation to Institutional Facilities Operations, together with available funds from the consolidated medical services fund (fund 0525, activity 335), on July 1, 2000, the sum of one hundred fifty thousand dollars shall be transferred to the department of agriculture—land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

136—Division of Health—

Laboratory Services

(WV Code Chapter 16)

Fund 5163 FY 2001 Org 0506

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$468,526</td>
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<td>Annual Increment</td>
<td>004</td>
<td>9,450</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>176,851</td>
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### Appropriations

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>099</td>
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<td><strong>Total</strong></td>
<td><strong>872,303</strong></td>
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</table>

#### 137—Division of Health—

*Health Facility Licensing*

(WV Code Chapter 16)

**Fund 5172 FY 2001 Org 0506**

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td>190,234</td>
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<tr>
<td>004</td>
<td>Annual Increment</td>
<td>2,800</td>
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<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>76,970</td>
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<tr>
<td>099</td>
<td>Unclassified</td>
<td>89,585</td>
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<td></td>
<td><strong>Total</strong></td>
<td><strong>359,589</strong></td>
</tr>
</tbody>
</table>

#### 138—Division of Health—

*Hepatitis B Vaccine*

(WV Code Chapter 16)

**Fund 5183 FY 2001 Org 0506**

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td>53,334</td>
</tr>
<tr>
<td>004</td>
<td>Annual Increment</td>
<td>1,150</td>
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<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>20,242</td>
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<td>099</td>
<td>Unclassified</td>
<td>2,996,821</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>3,071,547</strong></td>
</tr>
</tbody>
</table>

#### 139—Division of Health—

*Lead Abatement Fund*

(WV Code Chapter 16)

**Fund 5204 FY 2001 Org 0506**
1 Unclassified—Total .................. 096 $ 65,408

140—West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 5375 FY 2001 Org 0507

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,542,720</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>14,450</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>450,355</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>1,893,940</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$3,901,465</td>
</tr>
</tbody>
</table>

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

141—Division of Human Services—

Health Care Provider Tax

(WV Code Chapter 11)

Fund 5090 FY 2001 Org 0511

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$139,012,983</td>
</tr>
</tbody>
</table>

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

142—Division of Human Services—

Child Support Enforcement

(WV Code Chapter 48A)
Fund 5094 FY 2001 Org 0511

1 Unclassified—Total (R) .................. 096 $27,556,260

Any unexpended balance remaining in the appropriation for
Unclassified—Total (fund 5094, activity 096) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during fiscal year 2001, except for fund 5094, activity 096 (fiscal year 1999) which shall expire on June 30, 2000.

143—Division of Human Services—

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2001 Org 0511

1 Eligibility Expansion .................. 582 $ 5,461,714
2 State Institutions DPSH Payments .... 583 6,566,355
3 Hospice Services ....................... 584 340,115
4 Match Drop ........................... 585 10,472,000
5 Total .................................. $22,840,184

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

144—Division of Human Services—

Tobacco Settlement Fund

(WV Code Chapter 4)

Fund 5364 FY 2001 Org 0511

1 Medical Services—Total ............... 907 $ 0
145—Division of Human Services—

James “Tiger” Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2001 Org 0511

1 Unclassified—Total .................. 096 $1,250,000

146—Family Protection Services Board—

Domestic Violence Legal Services Fund

(WV Code Chapter 48)

Fund 5455 FY 2001 Org 0511

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

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

147—State Armory Board—

General Armory Fund

(WV Code Chapter 15)

Fund 6057 FY 2001 Org 0603

1 Unclassified—Total .................. 096 $ 0

2 Unclassified .......................... 099 401,899

3 BRIM Premium ....................... 913 121,809

4 Total ............................... $ 523,708

148—West Virginia Division of Corrections—

Parolee Supervision Fees

(WV Code Chapter 62)

Fund 6362 FY 2001 Org 0608
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$91,924</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>1,200</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>41,971</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>110,516</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$245,611</td>
</tr>
</tbody>
</table>

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

(WV Code Chapter 17C)

**Fund 6501 FY 2001 Org 0612**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$968,902</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>3,400</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>280,559</td>
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<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>599,459</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$1,852,320</td>
</tr>
</tbody>
</table>

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

Any unexpended balance remaining in the appropriation for Unclassified (fund 6501, activity 099) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.

**150—West Virginia State Police—
Drunk Driving Prevention Fund**

(WV Code Chapter 15)

**Fund 6513 FY 2001 Org 0612**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from the special revenue fund out of receipts collected pursuant to sections nine-a and sixteen, article fifteen, chapter eleven of the code and paid into a revolving fund account in the state treasury.

151—West Virginia State Police—

Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Fund 6516 FY 2001 Org 0612

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

152—West Virginia State Police—

Surplus Transfer Account

(WV Code Chapter 15)

Fund 6519 FY 2001 Org 0612

1 Unclassified—Total (R) ............. 096 $ 350,000

2 Any unexpended balance remaining in the appropriation for Unclassified—Total (fund 6519, activity 096) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.

153—WV State Police—

Central Abuse Registry Fund

(WV Code Chapter 15)

Fund 6527 FY 2001 Org 0612

1 Unclassified—Total .................. 096 $ 69,005

154—Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)
### APPROPRIATIONS

#### Fund 6675 FY 2001 Org 0615

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$978,034</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>7,950</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>297,529</td>
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<tr>
<td>4 BRIM Premium</td>
<td>913</td>
<td>198,412</td>
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<tr>
<td>5 Debt Service</td>
<td>040</td>
<td>9,000,000</td>
</tr>
<tr>
<td>6 Unclassified</td>
<td>099</td>
<td>284,021</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$10,765,946</strong></td>
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</tbody>
</table>

#### Veterans Home

(WV Code Chapter 19A)

#### Fund 6754 FY 2001 Org 0618

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>096</td>
<td>$216,000</td>
</tr>
</tbody>
</table>

#### Fire Commission

(WV Code Chapter 29)

#### Fund 6152 FY 2001 Org 0619

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$429,611</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>7,200</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>144,375</td>
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<tr>
<td>4 BRIM Premium</td>
<td>913</td>
<td>5,787</td>
</tr>
<tr>
<td>5 Unclassified</td>
<td>099</td>
<td>407,920</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$994,893</strong></td>
</tr>
</tbody>
</table>
Any unexpended cash balance remaining in fund 6152 at the close of the fiscal year 2000 is hereby available for expenditure as part of the fiscal year 2001 appropriation.

### 157—Criminal Justice Services—

*Court Security Fund*  
(Executive Order)

**Fund 6804 FY 2001 Org 0620**

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

### DEPARTMENT OF TAX AND REVENUE

#### 158—Division of Banking—

*Lending and Credit Rate Board*  
(WV Code Chapter 47A)

**Fund 3040 FY 2001 Org 0303**

1. Personal Services ......................... 001 $5,000
2. Employee Benefits ......................... 010 1,002
3. Unclassified ............................... 099 5,000
4. Total ........................................ $11,002

#### 159—Division of Banking

(WV Code Chapter 31A)

**Fund 3041 FY 2001 Org 0303**

1. Personal Services ......................... 001 $1,449,832
2. Annual Increment ........................... 004 11,350
3. Employee Benefits ......................... 010 436,696
4. BRIM Premium .............................. 913 1,634
5. Unclassified ............................... 099 749,598
### 160—Tax Division—

**Cemetery Company Account**

(WV Code Chapter 35)

<table>
<thead>
<tr>
<th>Fund 7071 FY 2001 Org 0702</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong> Personal Services</td>
</tr>
<tr>
<td><strong>2</strong> Employee Benefits</td>
</tr>
<tr>
<td><strong>3</strong> Unclassified</td>
</tr>
<tr>
<td><strong>4</strong> Total</td>
</tr>
</tbody>
</table>

### 161—Tax Division—

**Special Audit and Investigative Unit**

(WV Code Chapter 11)

<table>
<thead>
<tr>
<th>Fund 7073 FY 2001 Org 0702</th>
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</thead>
<tbody>
<tr>
<td><strong>1</strong> Personal Services</td>
</tr>
<tr>
<td><strong>2</strong> Annual Increment</td>
</tr>
<tr>
<td><strong>3</strong> Employee Benefits</td>
</tr>
<tr>
<td><strong>4</strong> BRIM Premium</td>
</tr>
<tr>
<td><strong>5</strong> Unclassified</td>
</tr>
<tr>
<td><strong>6</strong> Total</td>
</tr>
</tbody>
</table>

### 162—Insurance Commissioner—

**Examination Revolving Fund**

(WV Code Chapter 33)

<table>
<thead>
<tr>
<th>Fund 7150 FY 2001 Org 0704</th>
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</thead>
<tbody>
<tr>
<td><strong>1</strong> Personal Services</td>
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</tbody>
</table>
### Ch. 10] APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>1,500</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>109,315</td>
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<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>241,000</td>
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<tr>
<td>5 Total</td>
<td></td>
<td>$ 765,265</td>
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</table>

**163—Insurance Commissioner—**

*Consumer Advocate*

(WV Code Chapter 33)

Fund 7151 FY 2001 Org 0704

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$ 179,276</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>750</td>
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<td>3 Employee Benefits</td>
<td>010</td>
<td>63,487</td>
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<td>115,908</td>
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<tr>
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<td></td>
<td>$ 359,421</td>
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</table>

**164—Insurance Commissioner**

(WV Code Chapter 33)

Fund 7152 FY 2001 Org 0704

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
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<td>$ 1,719,856</td>
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<td>2 Annual Increment</td>
<td>004</td>
<td>29,950</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>555,834</td>
</tr>
<tr>
<td>4 BRIM Premium</td>
<td>913</td>
<td>36,880</td>
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<td>5 Unclassified</td>
<td>099</td>
<td>1,071,842</td>
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<td></td>
<td>$ 3,414,362</td>
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</table>

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

Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2001 Org 0707

1 Medical Expenses—Total ........... 245 $57,000

2 The total amount of this appropriation shall be paid from
3 the special revenue fund out of collections of license fees and
4 fines as provided by law.
5
6 No expenditures shall be made from this account except for
7 hospitalization, medical care and/or funeral expenses for
8 persons contributing to this fund.

166—Racing Commission—

Administration and Promotion

(WV Code Chapter 19)

Fund 7304 FY 2001 Org 0707

1 Personal Services ....................... 001 $53,700
2 Annual Increment ....................... 004 1,000
3 Employee Benefits ..................... 010 23,676
4 Unclassified ............................ 099 47,358
5 Total ................................... $125,734

167—Racing Commission—

General Administration

(WV Code Chapter 19)

Fund 7305 FY 2001 Org 0707

1 Personal Services ....................... 001 $1,256,757
<table>
<thead>
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<th></th>
<th>APPROPRIATIONS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

168—Racing Commission—  
Administration, Promotion and Education Fund  
(WV Code Chapter 19)  
Fund 7307 FY 2001 Org 0707  
1 Unclassified—Total | 096 | $35,000 |

169—Alcohol Beverage Control Administration—  
Wine License Special Fund  
(WV Code Chapter 60)  
Fund 7351 FY 2001 Org 0708  
1 Personal Services | 001 | $215,528 |
| 2 | Annual Increment | 004 | 3,600 |
| 3 | Employee Benefits | 010 | 77,345 |
| 4 | Unclassified | 099 | 156,016 |
| 5 | Total |   | $452,489 |

170—Alcohol Beverage Control Administration  
(WV Code Chapter 60)  
Fund 7352 FY 2001 Org 0708  
1 Personal Services | 001 | $3,351,398 |
| 2 | Annual Increment | 004 | 73,251 |
| 3 | Employee Benefits | 010 | 1,362,674 |
From the above appropriation an amount of $500,000 shall be used to establish the Tobacco/Alcohol Education Program. To the extent permitted by law, eight classified exempt positions shall be provided from Personal Services line item for the educator-inspector positions to be used in the education and enforcement activities relating to underage tobacco and alcohol use and sales.

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

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

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

DEPARTMENT OF TRANSPORTATION

171—Division of Motor Vehicles

Driver's License Reinstatement Fund

(WV Code Chapter 17B)

Fund 8213 FY 2001 Org 0802

1 Unclassified—Total ....................... 096 $ 693,408

172—Division of Motor Vehicles

Driver Rehabilitation

(WV Code Chapter 17C)

Fund 8214 FY 2001 Org 0802
1 Unclassified—Total .......................... 096 $ 1,154,370

173—Division of Motor Vehicles

Insurance Certificate Fees

(WV Code Chapter 20)

Fund 8215 FY 2001 Org 0802

1 Personal Services .......................... 001 $ 599,244
2 Annual Increment .......................... 004 15,700
3 Employee Benefits ......................... 010 236,200
4 Unclassified ............................... 099 53,879
5 Total ................................. $ 905,023

174—Division of Motor Vehicles

Motorboat Licenses

(WV Code Chapter 20)

Fund 8216 FY 2001 Org 0802

1 Unclassified—Total .......................... 096 $ 161,279

175—Division of Motor Vehicles

Returned Check Fees

(WV Code Chapter 17)

Fund 8217 FY 2001 Org 0802

1 Unclassified—Total .......................... 096 $ 16,000

176—Division of Highways—

Environmental/Tire Refuse Clean-Up Fund

(WV Code Chapter 17A)

Fund 8319 FY 2001 Org 0803
186 APPROPRIATIONS [Ch. 10

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**BUREAU OF COMMERCE**

*177—Division of Forestry*

(WV Code Chapter 19)

<table>
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<td>4 BRIM Premium</td>
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*178—Division of Forestry*

*Timberland Enforcement Operations*

(WV Code Chapter 19)

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*179—Division of Forestry*

*Severance Tax Operations*

(WV Code Chapter 11)

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*180—Geological and Economic Survey*

(WV Code Chapter 29)

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1 Personal Services ..................... 001 $ 41,845
2 Annual Increment ..................... 004 540
3 Employee Benefits .................... 010 7,822
4 Unclassified ......................... 099 176,936
5 Total ................................. $ 227,143

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

181—West Virginia Development Office—

Energy Assistance

(WV Code Chapter 5B)

Fund 3144 FY 2001 Org 0307

Any unexpended balance remaining in the appropriation for Energy Assistance—Total (fund 3144, activity 647) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.

182—West Virginia Development Office—

Office of Coal Field Community Development

(WV Code Chapter 5B)

Fund 3162 FY 2001 Org 0307

1 Unclassified—Total .................... 096 $ 200,000

183—Division of Labor

Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2001 Org 0308

1 Personal Services ..................... 001 $ 853,365
2 Annual Increment ...................... 004 12,028
3 Employee Benefits .................... 010 303,589
4 Unclassified .......................... 099 676,811
5 Total .................................. $ 1,845,793

184—Division of Labor

Elevator Safety Act

(WV Code Chapter 21)

Fund 3188 FY 2001 Org 0308

1 Personal Services ..................... 001 $ 174,028
2 Annual Increment ........................ 004 $ 1,384
3 Employee Benefits ................... 010 60,829
4 Unclassified .......................... 099 $ 72,003
5 Total .................................. $ 308,244

185—Division of Labor—

Crane Operator Certification Fund

(WV Code Chapter 21)

Fund 3191 FY 2001 Org 0308

1 Unclassified—Total ..................... 096 $ 60,000

186—Division of Labor—

Amusement Rides/Amusement Attraction Safety Fund

(WV Code Chapter 21)

Fund 3192 FY 2001 Org 0308

1 Unclassified—Total ..................... 096 $ 75,208

187—Division of Natural Resources
### Appropriations

(WV Code Chapter 20)

Fund **3200 FY 2001 Org 0310**

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

Any unexpended balance remaining in the appropriation for Capital Improvements and Land Purchase (fund 3200, activity 248) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.

188—Division of Natural Resources—

Game, Fish and Aquatic Life Fund

(WV Code Chapter 20)

Fund **3202 FY 2001 Org 0310**

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189—Division of Natural Resources—

Nongame Fund

(WV Code Chapter 20)

Fund **3203 FY 2001 Org 0310**
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190—Division of Natural Resources—
Planning and Development Division
(WV Code Chapter 20)

Fund 3205 FY 2001 Org 0310

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191—Division of Natural Resources—
Whitewater Study and Improvement Fund
(WV Code Chapter 20)

Fund 3253 FY 2001 Org 0310

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192—Division of Natural Resources—
Recycling Assistance Fund
(WV Code Chapter 20)

Fund 3254 FY 2001 Org 0310

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### APPROPRIATIONS

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Any unexpended balance remaining in the appropriation for Unclassified (fund 3254, activity 099) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.

### 193—Division of Natural Resources—

**Whitewater Advertising and Promotion Fund**

(WV Code Chapter 20)

Fund 3256 FY 2001 Org 0310

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

### BUREAU OF EMPLOYMENT PROGRAMS

### 194—Bureau of Employment Programs—

**Workers' Compensation Fund**

(WV Code Chapter 23)

Fund 3440 FY 2001 Org 0322

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<th>1</th>
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<td>4</td>
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Any unexpended balance remaining in the appropriation for Unclassified (fund 3440, activity 099) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.

**BUREAU OF ENVIRONMENT**

*195—Solid Waste Management Board*

(WV Code Chapter 20)

Fund 3288 FY 2001 Org 0312

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*196—Division of Environmental Protection—*

**Special Reclamation Fund**

(WV Code Chapter 22A)

Fund 3321 FY 2001 Org 0313

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*197—Division of Environmental Protection—*

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

Oil and Gas Operating Permits

(WV Code Chapter 22B)

Fund 3322 FY 2001 Org 0313

1 Unclassified—Total .................. 096 $ 465,000

199—Division of Environmental Protection—

Mines and Minerals Operations Fund

(WV Code Chapter 22)

Fund 3323 FY 2001 Org 0313

1 Personal Services ................. 001 $ 214,922
2 Annual Increment ................. 004 3,025
3 Employee Benefits ............... 010 69,387
4 Unclassified ...................... 099 469,876
5 Total ................................ $ 757,210

200—Division of Environmental Protection—

Underground Storage Tanks—

Administrative Fund
### 201—Division of Environmental Protection—

**Hazardous Waste Emergency and Response Fund**

(WV Code Chapter 20)

<table>
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### 202—Division of Environmental Protection—

**Solid Waste Reclamation and Environmental Response Fund**

(WV Code Chapter 20)

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### 202—Division of Environmental Protection—

**Solid Waste Reclamation and Environmental Response Fund**

(WV Code Chapter 20)

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203—Division of Environmental Protection—

Solid Waste Enforcement Fund

(WV Code Chapter 20)

Fund 3333 FY 2001 Org 0313

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204—Division of Environmental Protection—

Fees and Operating Expenses

(WV Code Chapter 16)

Fund 3336 FY 2001 Org 0313

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205—Division of Environmental Protection—

Environmental Laboratory Certification Fund

(WV Code Chapter 22)
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*206—Division of Environmental Protection—
Stream Restoration Fund*

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*207—Division of Environmental Protection—
Mountaintop Removal Fund*

(WV Code Chapter 22)

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*208—Division of Environmental Protection—
Office of Explosives and Blasting*

(WV Code Chapter 22)

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*209—Oil and Gas Conservation Commission*

(WV Code Chapter 22)

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<th>FY</th>
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<th>Description</th>
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<td>Personal Services</td>
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### MISCELLANEOUS BOARDS AND COMMISSIONS

#### 210—Hospital Finance Authority

(WV Code Chapter 16)

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</tr>
<tr>
<td>5 Unclassified</td>
<td>099 24,370</td>
</tr>
<tr>
<td>6 Total</td>
<td>$69,169</td>
</tr>
</tbody>
</table>

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

#### 211—Municipal Bond Commission

(WV Code Chapter 13)

<table>
<thead>
<tr>
<th>Fund 7253 FY 2001 Org 0706</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001 $155,774</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004 2,600</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010 57,913</td>
</tr>
<tr>
<td>4 BRIM Premium</td>
<td>913 1,262</td>
</tr>
<tr>
<td>5 Unclassified</td>
<td>099 76,728</td>
</tr>
<tr>
<td></td>
<td>Description</td>
</tr>
<tr>
<td>---</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
</tr>
</tbody>
</table>

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

(WV Code Chapter 30)

Fund 8517 FY 2001 Org 0906

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Unclassified</td>
<td>099</td>
<td>340,399</td>
</tr>
<tr>
<td>3</td>
<td>BRIM Premium</td>
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<td>1,262</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>$341,661</td>
</tr>
</tbody>
</table>

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

(WV Code Chapter 30)

Fund 8520 FY 2001 Org 0907

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Unclassified</td>
<td>099</td>
<td>832,018</td>
</tr>
<tr>
<td>3</td>
<td>BRIM Premium</td>
<td>913</td>
<td>1,710</td>
</tr>
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<td>4</td>
<td>Total</td>
<td></td>
<td>$833,728</td>
</tr>
</tbody>
</table>

### 214—Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2001 Org 0926

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$7,218,422</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>120,000</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>2,269,288</td>
</tr>
<tr>
<td>4</td>
<td>BRIM Premium</td>
<td>913</td>
<td>42,283</td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from a special revenue fund out of collections for special license fees from public service corporations as provided by law.

The Public Service Commission is authorized to spend up to $250,000, from surplus funds in this account, to meet the expected deficiencies in the Motor Carrier Division account due to passage of enrolled house bill no. 2715, regular session, 1997.

215—Public Service Commission—

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8624 FY 2001 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$142,293</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$5,556</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$44,655</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$93,742</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$286,246</strong></td>
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</tbody>
</table>

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

216—Public Service Commission—

Motor Carrier Division

(WV Code Chapter 24A)
Fund 8625 FY 2001 Org 0926

1 Personal Services ...................... 001 $ 1,528,190
2 Annual Increment ...................... 004  34,723
3 Employee Benefits .................... 010  503,347
4 Unclassified ......................... 099  615,301
5 Total ................................. $ 2,681,561

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

217—Public Service Commission—

Consumer Advocate

(WV Code Chapter 24)

Fund 8627 FY 2001 Org 0926

1 Personal Services ...................... 001  445,983
2 Annual Increment ...................... 004   4,700
3 Employee Benefits .................... 010  124,946
4 BRIM Premium ......................... 913   1,262
5 Unclassified ......................... 099  291,587
6 Total ................................. $ 868,478

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

218—Real Estate Commission

(WV Code Chapter 47)

Fund 8635 FY 2001 Org 0927
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$302,740</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,600</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>103,159</td>
</tr>
<tr>
<td>4</td>
<td>BRIM Premium</td>
<td>913</td>
<td>1,262</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>264,664</td>
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<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$676,425</td>
</tr>
</tbody>
</table>

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

219—WV Board of Examiners for Speech-Language—Pathology and Audiology

(WV Code Chapter 30)

Fund 8646 FY 2001 Org 0930

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$46,205</td>
</tr>
</tbody>
</table>

220—WV Board of Respiratory Care

(WV Code Chapter 30)

Fund 8676 FY 2001 Org 0935

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$114,155</td>
</tr>
</tbody>
</table>

221—WV Board of Licensed Dietitians

Fund 8680 FY 2001 Org 0936

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$20,000</td>
</tr>
</tbody>
</table>

222—Massage Therapy Licensure Board

(WV Code Chapter 30)

Fund 8671 FY 2001 Org 0938

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$31,000</td>
</tr>
</tbody>
</table>
Sec. 4. Appropriations from lottery net profits.—Net profits of the lottery, not to exceed one hundred thirty-one million nine hundred eighty-six thousand seven hundred eleven dollars, are to be deposited by the lottery director to the following accounts in the amounts indicated. The lottery director shall prorate each deposit of net profits among fund numbers 2252, 3067, 3267, 3951, 3963, 3508, 3534, 3587, 3559, 4057 and 5405 in the proportion the appropriation for each account bears to the total of the appropriations for the eleven accounts.

223—Education, Arts, Sciences and Tourism—

**Debt Service Fund**

(WV Code Chapter 5)

Fund 2252 FY 2001 Org 0211

<table>
<thead>
<tr>
<th>Lottery Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service—Total</td>
<td>310 $ 10,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Debt Service—Total (fund 2252, activity 310) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.

224—West Virginia Development Office—

**Division of Tourism**

(WV Code Chapter 5B)

Fund 3067 FY 2001 Org 0304

<table>
<thead>
<tr>
<th>Tourism Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tourism—Telemarketing Center</td>
<td>463 $ 100,000</td>
</tr>
<tr>
<td>Tourism—Advertising (R)</td>
<td>618 3,125,000</td>
</tr>
</tbody>
</table>
Ch. 10] APPROPRIATIONS

3 State Parks and Recreation
4 Advertising (R) ..................... 619  760,000
5 Tourism—Unclassified (R) .............. 662  3,034,818
6 Celebration 2000  ..................... 909  500,000
7 Total  ................................. $ 7,519,818

8 The above appropriation for Celebration 2000 may be used for tourism and recreation activities.

9 Any unexpended balances remaining in the appropriations for Tourism—Advertising (fund 3067, activity 618), State Parks and Recreation Advertising (fund 3067, activity 619), Tourism—Unclassified (fund 3067, activity 662), Tourism—Unclassified—Lottery Surplus (fund 3067, activity 773) and Tourism—Special Projects (fund 3067, activity 859) are hereby reappropriated for expenditure during the fiscal year 2001.

225—Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2001 Org 0310

1 Unclassified .......................... 099  $ 1,498,592
2 Pricketts Fort State Park ............... 324  120,000
3 Canaan Valley—Land Acquisition .... 710  200,000
4 State Parks Repairs, Renovations,
   Maintenance and
   Life Safety Repairs ................... 911  1,000,000
5 Computerized Lodging
6 Reservation System ................... 910  450,000
7 Total  ................................. $ 3,268,592
Any unexpended balances remaining in the appropriations for Parks Operations—Unclassified (fund 3267, activity 645), Capital Outlay—Parks (fund 3267, activity 288) and State Parks—Special Projects (fund 3267, activity 860) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001.

226—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2001 Org 0402

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Computer Basic Skills (R)</td>
<td>$7,510,101</td>
</tr>
<tr>
<td>S.U.C.C.E.S.S</td>
<td>$8,800,000</td>
</tr>
<tr>
<td>Technology Repair and Modernization (R)</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Technology and Telecommunications Initiative (R)</td>
<td>$2,006,785</td>
</tr>
<tr>
<td>Technology Demonstration Project (R)</td>
<td>$150,000</td>
</tr>
<tr>
<td>Educational Development (R)</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Total</td>
<td>$20,966,886</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for Computer Basic Skills (fund 3951, activity 145), S.U.C.C.E.S.S. (fund 3951, activity 255), Technology Repair and Modernization (fund 3951, activity 298), Computer Basic Skills—Total (fund 3951, activity 567), Technology and Telecommunications Initiative (fund 3951, activity 596), Technology Demonstration Project (fund 3951, activity 639) and Educational Development (fund 3951, activity 823) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001.

227—State Department of Education—

* Language deleted by the Governor.
### School Building Authority—Debt Service Fund

(WV Code Chapter 18)

**Fund 3963 FY 2001 Org 0402**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>FY 2001 Org 0402</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service—Total</td>
<td>$18,000,000</td>
<td></td>
</tr>
</tbody>
</table>

### 228—Department of Education and the Arts—

**Office of the Secretary**

**Control Account—**

**Lottery Education Fund**

(WV Code Chapter 5F)

**Fund 3508 FY 2001 Org 0431**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>FY 2001 Org 0431</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$2,100,000</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>WVU University Affiliated Center</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>for Developmental Disabilities</td>
<td>80,000</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>WV Humanities Council (R)</td>
<td>300,000</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Arts Programs (R)</td>
<td>40,000</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>WV2001 Project (R)</td>
<td>1,500,000</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Energy Express (R)</td>
<td>425,000</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Challenger Learning Center (R)</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Incentives for Recruitment of Teachers in Subject Areas of Need</td>
<td>500,000</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Jobs for West Virginia Graduates (R)</td>
<td>500,000</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Total</td>
<td>$5,505,000</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations at the close of fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001.
Effective upon passage, from fund 4292, org 0481, the balance of the account shall be transferred to fund 4801, org 0492.

229—Division of Culture and History—

Lottery Education Fund

(WV Code Chapter 10)

Fund 3534 FY 2001 Org 0432

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Huntington Symphony</td>
<td>027</td>
<td>$75,000</td>
</tr>
<tr>
<td>Fairs and Festivals</td>
<td>122</td>
<td>$1,900,000</td>
</tr>
<tr>
<td>Historic Preservation Grants</td>
<td>311</td>
<td>$200,000</td>
</tr>
<tr>
<td>West Virginia Public Theater</td>
<td>312</td>
<td>$0</td>
</tr>
<tr>
<td>Theater Arts of West Virginia</td>
<td>464</td>
<td>$360,000</td>
</tr>
<tr>
<td>Capital Outlay, Repairs, and Equipment (R)</td>
<td>589</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Contemporary American</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Theater Festival</td>
<td>811</td>
<td>$100,000</td>
</tr>
<tr>
<td>Independence Hall</td>
<td>812</td>
<td>$50,000</td>
</tr>
<tr>
<td>Mountain State Forest Festival</td>
<td>864</td>
<td>$75,000</td>
</tr>
<tr>
<td>Archeological Curation/</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital Improvements</td>
<td>246</td>
<td>$500,000</td>
</tr>
<tr>
<td>Project ACCESS (R)</td>
<td>865</td>
<td>$300,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$5,060,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Capital Outlay, Repairs, and Equipment (fund 3534, activity 589) and Project ACCESS (fund 3534, activity 865) at the close of the fiscal year 2000 is hereby reappropriated for expenditure during the fiscal year 2001.
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Mountain Stage</td>
<td>249</td>
<td>200,000</td>
</tr>
<tr>
<td>3</td>
<td>Digital Conversion</td>
<td>247</td>
<td>1,400,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>1,600,000</td>
</tr>
</tbody>
</table>

231—Library Commission—

*Lottery Education Fund*

(WV Code Chapter 10)

Fund 3559 FY 2001 Org 0433

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Infomine Network</td>
<td>884</td>
<td>$1,000,924</td>
</tr>
<tr>
<td>2</td>
<td>Grants to Public Libraries</td>
<td>182</td>
<td>7,198,884</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>8,199,808</td>
</tr>
</tbody>
</table>

232—Department of Education and the Arts—

*Board of Trustees of the University System of West Virginia and*

*Board of Directors of the State College Systems—*

*Central Office*

*Control Account—*

*Lottery Education Fund*

(WV Code Chapters 18B and 18C)

Fund 4057 FY 2001 Org 0452

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Public Employees Insurance Matching</td>
<td>012</td>
<td>$0</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>Code</td>
<td>Amount</td>
</tr>
<tr>
<td>---</td>
<td>------------------------------------------------------------------------------</td>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>2</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>3,521,857</td>
</tr>
<tr>
<td>3</td>
<td>Higher Education Grant Program (R)</td>
<td>164</td>
<td>15,575,000</td>
</tr>
<tr>
<td>4</td>
<td>Minority Doctoral Fellowship (R)</td>
<td>166</td>
<td>100,000</td>
</tr>
<tr>
<td>5</td>
<td>Underwood-Smith Scholarship Program—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Student Awards(R)</td>
<td>167</td>
<td>150,000</td>
</tr>
<tr>
<td>7</td>
<td>Health Sciences Scholarship Fund(R)</td>
<td>176</td>
<td>148,500</td>
</tr>
<tr>
<td>8</td>
<td>MA Public Health Program and Health Science Technology (R)</td>
<td>623</td>
<td>75,000</td>
</tr>
<tr>
<td>9</td>
<td>HEAPS Grant Program (R)</td>
<td>867</td>
<td>1,000,000</td>
</tr>
<tr>
<td>10</td>
<td>WV Engineering, Science, and Technology Scholarship Program (R)</td>
<td>868</td>
<td>500,000</td>
</tr>
<tr>
<td>11</td>
<td>Health Sciences Career</td>
<td></td>
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</tr>
<tr>
<td>12</td>
<td>Opportunities Program (R)</td>
<td>869</td>
<td>75,000</td>
</tr>
<tr>
<td>13</td>
<td>HSTA Program (R)</td>
<td>870</td>
<td>750,000</td>
</tr>
<tr>
<td>14</td>
<td>Total</td>
<td></td>
<td>$21,895,357</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001.

233—Bureau of Senior Services

(WV Code Chapter 29)

Fund 5405 FY 2001 Org 0508

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Local Programs Service Delivery Costs</td>
<td>200</td>
<td>$2,475,250</td>
</tr>
<tr>
<td>2</td>
<td>Silver Haired Legislature</td>
<td>202</td>
<td>0</td>
</tr>
<tr>
<td>3</td>
<td>Foster Grandparents Stipends and Travel</td>
<td>205</td>
<td>0</td>
</tr>
<tr>
<td>4</td>
<td>In-Home Services for Senior Citizens</td>
<td>224</td>
<td>0</td>
</tr>
<tr>
<td>5</td>
<td>Senior Citizen Centers</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
6 and Programs (R) 462 2,900,000
7 Direct Services 481 2,800,000
8 Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens 539 13,000,000
9 Senior Services Medicaid Transfer 871 6,500,000
10 Legislative Initiatives for the Elderly 904 2,200,000
11 Long Term Care Ombudsmen 905 96,000
12 Total 209 $29,971,250

Any unexpended balances remaining in the appropriations for Senior Citizens Centers and Programs—Lottery Surplus (fund 5405, activity 782), Holly Grove Mansion Restoration (fund 5405, activity 685), Senior Citizens Centers, Maintenance and Repairs (fund 5405, activity 848) and Senior Citizen Centers and Programs (fund 5405, activity 462) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001.

The above appropriation for Health Care and Title XIX Waiver for Senior Citizens along with the federal moneys generated thereby shall be used for reimbursement for services provided under the program. Further, the program shall be preserved within the aggregate of these funds.

Total TITLE II, Section 4—Lottery Funds $131,986,711

Sec. 5. Appropriations of federal funds.—In accordance with article eleven, chapter four of the code, from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure during the fiscal year two thousand one.
LEGISLATIVE

234—Crime Victims Compensation Fund
(WV Code Chapter 14)
Fund 8738 FY 2001 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$920,019</td>
</tr>
</tbody>
</table>

JUDICIAL

235—Supreme Court—
General Judicial
Fund 8805 FY 2001 Org 2400

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$119,626</td>
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</tbody>
</table>

EXECUTIVE

236—Governor’s Office—
Governor’s Cabinet on Children and Families
(WV Code Chapter 5)
Fund 8792 FY 2001 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$842,071</td>
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</tbody>
</table>

237—Governor’s Office—
Office of Economic Opportunity
(WV Code Chapter 5)
Fund 8797 FY 2001 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
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<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$5,342,615</td>
</tr>
</tbody>
</table>

238—Governor’s Office—
Commission for National and Community Service

(WV Code Chapter 5)

Fund 8800 FY 2001 Org 0100

1 Unclassified—Total .................... 096 $ 3,501,413

239—Auditor’s Office—

National White Collar Crime Center

(WV Code Chapter 12)

Fund 8807 FY 2001 Org 1200

1 Unclassified—Total .................... 096 $ 9,742,182

240—Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2001 Org 1400

1 Unclassified—Total .................... 096 $ 2,283,323

241—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

Fund 8737 FY 2001 Org 1400

1 Unclassified—Total .................... 096 $ 796,062

242—Department of Agriculture—

State Soil Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2001 Org 1400

1 Unclassified—Total .................... 096 $ 168,348
DEPARTMENT OF ADMINISTRATION

243—West Virginia Prosecuting Attorney’s Institute
(WV Code Chapter 7)
Fund 8834 FY 2001 Org 0028
1 Unclassified—Total ....................... 096 $ 220,106

244—Children’s Health Insurance Agency
(WV Code Chapter 5)
Fund 8838 FY 2001 Org 0230
1 Title XXI—Children’s Health Insurance Program ............. 254 $23,000,000

DEPARTMENT OF EDUCATION

245—State Department of Education
(WV Code Chapters 18 and 18A)
Fund 8712 FY 2001 Org 0402
1 Unclassified—Total ....................... 096 $38,000,000

246—State Department of Education—
School Lunch Program
(WV Code Chapters 18 and 18A)
Fund 8713 FY 2001 Org 0402
1 Unclassified—Total ....................... 096 $75,001,900

247—State Board of Education—
Vocational Division
(WV Code Chapters 18 and 18A)
Fund 8714 FY 2001 Org 0402
<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2001 Organizational Code</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>8715</td>
<td>0402</td>
<td>$40,000,000</td>
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</tbody>
</table>

**DEPARTMENT OF EDUCATION AND THE ARTS**

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2001 Organizational Code</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>8718</td>
<td>0432</td>
<td>$949,564</td>
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</table>

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>8721</td>
<td>0439</td>
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<table>
<thead>
<tr>
<th>Fund</th>
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<tbody>
<tr>
<td>8734</td>
<td>0932</td>
<td>$46,058,358</td>
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</table>
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

253—Consolidated Medical Service Fund
(WV Code Chapter 16)
Fund 8723 FY 2001 Org 0506
1 Unclassified—Total .................... 096 $ 2,803,258

254—Division of Health—
Central Office
(WV Code Chapter 16)
Fund 8802 FY 2001 Org 0506
1 Unclassified—Total .................... 096 $ 55,745,473

255—Division of Health—
West Virginia Safe Drinking Water Treatment
(WV Code Chapter 16)
Fund 8824 FY 2001 Org 0506
1 Unclassified—Total .................... 096 $ 16,000,000

256—Human Rights Commission
(WV Code Chapter 5)
Fund 8725 FY 2001 Org 0510
1 Unclassified—Total .................... 096 $ 500,774

257—Division of Human Services
(WV Code Chapters 9, 48 and 49)
Fund 8722 FY 2001 Org 0511
1 Unclassified—Total .................... 096 $ 1,237,556,147
### DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

**258—Adjutant General—State Militia**

(WV Code Chapter 15)

Fund 8726 FY 2001 Org 0603

| Unclassified—Total | 096 | $29,240,013 |

**259—Office of Emergency Services**

(WV Code Chapter 15)

Fund 8727 FY 2001 Org 0606

| Unclassified—Total | 096 | $1,592,467 |

**260—Division of Corrections**

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

Fund 8836 FY 2001 Org 0608

| Unclassified—Total | 096 | $50,000 |

**261—West Virginia State Police**

(WV Code Chapter 15)

Fund 8741 FY 2001 Org 0612

| Unclassified—Total | 096 | $3,786,559 |

**262—Division of Veterans Affairs—Veterans Home**

(WV Code Chapter 9A)

Fund 8728 FY 2001 Org 0618

| Unclassified—Total | 096 | $520,648 |

**263—Division of Criminal Justice Services**
APPROPRIATIONS

(Executive Order)

Fund 8803 FY 2001 Org 0620

1 Unclassified—Total ...................... 096 $14,562,053

DEPARTMENT OF TAX AND REVENUE

264—Tax Division

(WV Code Chapter 11)

Fund 7069 FY 2001 Org 0702

1 Unclassified—Total ...................... 096 $ 75,000

DEPARTMENT OF TRANSPORTATION

265—State Rail Authority

(WV Code Chapter 29)

Fund 8733 FY 2001 Org 0804

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

266—Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2001 Org 0805

1 Unclassified—Total ...................... 096 $11,558,437

267—Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2001 Org 0802

1 Unclassified—Total ...................... 096 $ 2,337,931

268—Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2001 Org 0806
<table>
<thead>
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<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Appropriation</th>
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</thead>
<tbody>
<tr>
<td>8831</td>
<td>2001</td>
<td>0807</td>
<td>$2,430,000</td>
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<tr>
<td>8703</td>
<td>2001</td>
<td>0305</td>
<td>$1,150,000</td>
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<tr>
<td>8704</td>
<td>2001</td>
<td>0306</td>
<td>$1,230,205</td>
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<tr>
<td>8705</td>
<td>2001</td>
<td>0307</td>
<td>$6,291,288</td>
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<tr>
<td>8706</td>
<td>2001</td>
<td>0308</td>
<td>$437,305</td>
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</tbody>
</table>
Fund 8707 FY 2001 Org 0310

1 Unclassified—Total ...................... 096  $ 7,676,906

275—Division of Miners’ Health,

Safety and Training

(WV Code Chapter 22)

Fund 8709 FY 2001 Org 0314

1 Unclassified—Total ...................... 096  $ 578,303

BUREAU OF ENVIRONMENT

276—Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2001 Org 0313

1 Unclassified—Total ...................... 096  $104,586,621

BUREAU OF SENIOR SERVICES

277—Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2001 Org 0508

1 Unclassified—Total ...................... 096  $13,120,543

BUREAU OF EMPLOYMENT PROGRAMS

278—Bureau of Employment Programs—

(WV Code Chapter 21A)

Fund 8835 FY 2001 Org 0323

1 Unclassified—Total ...................... 096  $ 512,657

1 Pursuant to the requirements of 42 U.S.C. 1103, Section
2 903 of the Social Security Act, as amended, and the provisions
3 of section nine, article nine, chapter twenty-one-a of the code
of West Virginia, one thousand nine hundred thirty-one, as amended, the above appropriation to Unclassified shall be used by the bureau of employment programs for the specific purpose of administration of the state’s unemployment insurance program or job service activities, subject to each and every restriction, limitation or obligation imposed on the use of the funds by those federal and state statutes.

MISCELLANEOUS BOARDS AND COMMISSIONS

279—Public Service Commission—

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 2001 Org 0926

1 Unclassified—Total ................ 096 $ 912,958

280—Public Service Commission—

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8744 FY 2001 Org 0926

1 Unclassified—Total ................ 096 $ 262,509

Total TITLE II, Section 5—

Federal Funds .................. $ 1,793,855,184

Sec. 6. Appropriations from federal block grants.—The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 2001.

281—Governor’s Office—

Office of Economic Opportunity

Fund 8799 FY 2001 Org 0100
1 Unclassified—Total .......................... 096 $ 7,148,623

282—West Virginia Development Office—
Community Development
Fund 8746 FY 2001 Org 0307

1 Unclassified—Total .......................... 096 $ 25,315,667

283—Bureau of Employment Programs—
Job Training Partnership Act
Fund 8749 FY 2001 Org 0323

1 Unclassified—Total .......................... 096 $ 57,628,409

284—State Department of Education—
Education Grant
Fund 8748 FY 2001 Org 0402

1 Unclassified—Total .......................... 096 $ 112,002,460

285—Division of Health—
Maternal and Child Health
Fund 8750 FY 2001 Org 0506

1 Unclassified—Total .......................... 096 $ 7,815,862

286—Division of Health—
Preventive Health
Fund 8753 FY 2001 Org 0506

1 Unclassified—Total .......................... 096 $ 2,224,554

287—Division of Health—
Substance Abuse Prevention and Treatment
Fund 8793 FY 2001 Org 0506
1 Unclassified—Total . . . . . . . . . . . . . . . . 096 $11,543,457

288—Division of Health—
Community Mental Health Services
Fund 8794 FY 2001 Org 0506

1 Unclassified—Total . . . . . . . . . . . . . . . . 096 $ 2,843,787

289—Division of Health—
Abstinence Education Program
Fund 8825 FY 2001 Org 0506

1 Unclassified—Total . . . . . . . . . . . . . . . . 096 $ 975,452

290—Division of Human Services—
Energy Assistance
Fund 8755 FY 2001 Org 0511

1 Unclassified—Total . . . . . . . . . . . . . . . . 096 $12,785,447

291—Division of Human Services—
Social Services
Fund 8757 FY 2001 Org 0511

1 Unclassified—Total . . . . . . . . . . . . . . . . 096 $ 17,894,898

292—Division of Human Services—
Temporary Assistance Needy Families
Fund 8816 FY 2001 Org 0511

1 Unclassified—Total . . . . . . . . . . . . . . . . 096 $225,035,836

293—Division of Human Services—
Child Care and Development
Fund 8817 FY 2001 Org 0511
Sec. 7. Awards for claims against the state.—There are hereby appropriated for expenditure during fiscal year 2000-2001, from the fund as designated, in the amounts as specified and for the claimants named in enrolled house bill no. 4529, regular session, 2000, and enrolled senate bill no. 492, regular session, 2000, general revenue funds of $5,893,752.91 for payment of claims against the state.

The total general revenue funds above do not include payment for claims in the amount of $8,908.00 from the supreme court-general judicial, fund 0180, specifically made payable from the appropriation for the current fiscal year 2000.

There are hereby appropriated for the remainder of the fiscal year 1999-2000 and to remain in effect until June 30,
2001, from the funds as designated, in the amounts as specified
and for the claimants named in enrolled senate bill no. 492,
regular session, 2000, special revenue funds of $7,928.59 and
state road funds of $285,561.87 for payment of claims against
the state.

Sec. 8. Special revenue appropriations.—There are
hereby appropriated for expenditure during the fiscal year two
thousand one appropriations made by general law from special
revenue which are not paid into the state fund as general
revenue under the provisions of section two, article two, chapter
twelve of the code: Provided, That none of the money so
appropriated by this section shall be available for expenditure
except in compliance with and in conformity to the provisions
of articles two and three, chapter twelve and article two, chapter
five-a of the code, with due consideration to the digest of
legislative intent of the budget bill prepared pursuant to article
one, chapter four, unless the spending unit has filed with the
director of the budget and the legislative auditor prior to the
beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues
accruing to such fund;

(b) A detailed expenditure schedule showing for what
purposes the fund is to be expended.

Sec. 9. State improvement fund appropriations.—Bequests or donations of nonpublic funds, received by
the governor on behalf of the state during the fiscal year two
thousand one, for the purpose of making studies and recommen-
dations relative to improvements of the administration and
management of spending units in the executive branch of state
government, shall be deposited in the state treasury in a
separate account therein designated state improvement fund.

There are hereby appropriated all moneys so deposited
during the fiscal year two thousand one to be expended as
authorized by the governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 10. Specific funds and collection accounts.—A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of article three, chapter twelve of the code.

Sec. 11. Appropriations for refunding erroneous payment.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he or she shall issue his or her requisition upon the auditor for the refunding of the proper amount. The auditor shall issue his or her warrant to the treasurer and the treasurer shall pay the warrant out of the fund into which the amount was originally paid.

Sec. 12. Sinking fund deficiencies.—There is hereby appropriated to the governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by section twenty-b, article eighteen, chapter thirty-one of the code, or in the funds of the municipal bond commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The governor is authorized to transfer from time to time...
such amounts to the municipal bond commission as may be necessary for these purposes.

The municipal bond commission shall reimburse the state of West Virginia through the governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

Sec. 13. Appropriations for local governments.—There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts and municipal corporations and which have been paid into the treasury:

(a) For redemption of lands;
(b) By public service corporations;
(c) For tax forfeitures.

Sec. 14. Total appropriations.—Where only a total sum is appropriated to a spending unit, the total sum shall include personal services, annual increment, employee benefits, current expenses, repairs and alterations, equipment and capital outlay, where not otherwise specifically provided and except as otherwise provided in TITLE I—GENERAL PROVISIONS, Sec. 3.

Sec. 15. General school fund.—The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with section sixteen, article nine-a, chapter eighteen of the code.

TITLE III—ADMINISTRATION.

§1. Appropriations conditional.
§2. Constitutionality.

Section 1. Appropriations conditional.—The expenditure of the appropriations made by this act, except those appropria-
Where spending units or parts of spending units have been absorbed by or combined with other spending units, it is the intent of this act that reappropriations shall be to the succeeding or later spending unit created, unless otherwise indicated.

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

CHAPTER 11

(S. B. 642—By Senators Craigo, Sharpe, Prezioso, Plymale, Love, Bowman, Helmick, Anderson, Unger, Edgell, Boley, Minear and Sprouse)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]
cash balance and investments as of July 1, 1999, and further included
the estimate of revenues for the fiscal year 2000, less net appropriation balances forwarded and regular appropriations for the fiscal year
2000; and

WHEREAS, It appears from the governor’s executive budget
document there now remains an unappropriated surplus balance in the
state treasury which is available for appropriation during the fiscal
year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth
day of June, two thousand, to fund 0104, fiscal year 2000, organization 0100, be supplemented and amended by increasing the total
appropriation by twenty-nine thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.
2
3 Section 1. Appropriations from general revenue.
4
5 EXECUTIVE
6
7—Governor’s Office—
8 Governor’s Cabinet on Children and Families
9 (WV Code Chapter 5)
10 Fund 0104 FY 2000 Org 0100
11
12 | Activity | General Revenue Funds |
13 | Unclassified (R) | 099 | $29,000 |
14
The purpose of this bill is to supplement this account in the
budget act for the fiscal year ending the thirtieth day of June,
two thousand, by adding twenty-nine thousand dollars to
unclassified for expenditure during the fiscal year two thou-
sand.
CHAPTER 12
(S. B. 668 — Originating in the Committee on Finance)

[Passed March 11, 2000; 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, two thousand, in the amount of one million sixty-six thousand seven hundred ninety-nine dollars from the treasurer's office - jury fees fund, fund 1314, 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, two thousand, to the supreme court - general judicial, fund 0180, fiscal year 2000, organization 2400.

WHEREAS, The Legislature finds that the account balance in the treasurer's office - jury fees fund, fund 1314, fiscal year 2000, organization 1300, 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 the appropriation during the fiscal year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the treasurer's office - jury fees fund, fund 1314, organization 1300, be decreased by expiring the amount of one million sixty-six thousand seven hundred ninety-nine 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, two thousand, to fund 0180, fiscal year 2000, organization 2400, be supplemented and amended by increasing the total appropriation by one million sixty-six thousand seven hundred ninety-nine dollars as follows:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

4—Supreme Court—

General Judicial

(WV Code Chapter 5)

Fund 0180 FY 2000 Org 2400

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surplus(R)</td>
<td>$1,066,799</td>
</tr>
</tbody>
</table>

The purpose of this bill is to expire the sum of one million sixty-six thousand seven hundred ninety-nine dollars from the treasurer's office - jury fees fund, fund 1314, organization 1300, and to supplement the supreme court - general judicial, fund 0180, fiscal year 2000, organization 2400, in the budget act for the fiscal year ending the thirtieth day of June, two thousand, by adding one million sixty-six thousand seven hundred ninety-nine dollars to the appropriation for other court costs - surplus.

CHAPTER 13

(S. B. 649 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso Plymale, Love, Bowman, Helmick, Anderson, Unger, Edgel, Sprouse and Minear)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]
tary, fund 0294, fiscal year 2000, organization 0431, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 12, 2000, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1999, and further included the estimate of revenues for the fiscal year 2000, less net appropriation balances forwarded and regular appropriations for the fiscal year 2000; and

WHEREAS, It appears from the governor’s executive budget document there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 0294, fiscal year 2000, organization 0431, be supplemented and amended by increasing the total appropriation by one hundred eighteen thousand six hundred twenty-four dollars in a new item of appropriation as follows:

<table>
<thead>
<tr>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1. Appropriations from general revenue.</td>
</tr>
<tr>
<td>DEPARTMENT OF EDUCATION AND THE ARTS</td>
</tr>
<tr>
<td>41—Department of Education and the Arts—</td>
</tr>
<tr>
<td>Office of the Secretary</td>
</tr>
<tr>
<td>(WV Code Chapter 5F)</td>
</tr>
<tr>
<td>Fund 0294 FY 2000 Org 0431</td>
</tr>
<tr>
<td>General Revenue Funds</td>
</tr>
<tr>
<td>Activity</td>
</tr>
<tr>
<td>14a Operation Safe Schools ........... 890 $ 118,624</td>
</tr>
</tbody>
</table>
12 The purpose of this bill is to supplement this account in the
13 budget act for the fiscal year ending the thirtieth day of June,
14 two thousand, by providing for a new item of appropriation to
15 be established therein to appropriate one hundred eighteen
16 thousand six hundred twenty-four dollars to the department of
17 education and the arts — office of the secretary, fund 0294,
18 fiscal year 2000, organization 0431, to be expended during the
19 fiscal year two thousand.

CHAPTER 14
(S. B. 456 — Originating in the Committee on Finance)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state fund,
general revenue, to the department of administration—West
Virginia prosecuting attorneys institute, fund 0557, fiscal year
2000, organization 0228, all supplementing and amending the
appropriation for the fiscal year ending the thirtieth day of June,
two thousand.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth
day of June, two thousand, to fund 0557, fiscal year 2000, organiza-
tion 0228, be supplemented and amended to read as follows:

1 TITLE II—APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 DEPARTMENT OF ADMINISTRATION
4 32—West Virginia Prosecuting Attorneys Institute
5 Fund 0557 FY 2000 Org 0228
The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand, by reducing the appropriation for forensic medical examinations by fifty thousand dollars and by adding fifty thousand dollars to the Federal/Funds Grant Match line-item with no new money being appropriated.

CHAPTER 15

(S. B. 367 — Originating in the Committee on Finance)

[Passed February 10, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state fund, general revenue, from the department of administration—division of information services and communications, fund 0583, fiscal year 2000, organization 0210, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 0583, fiscal year 2000, organization 0210, be supplemented and amended to read as follows:

1 TITLE II—APPROPRIATIONS.
Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

Division of Information Services and Communications

Fund 0583 FY 2000 Org 0210

<table>
<thead>
<tr>
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<th>General Revenue Fund</th>
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<tbody>
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<td>$0</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Asynchronous Transfer Mode (ATM) Program (fund 0583, activity 199) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000 and redesignated to the Board of Trustees of the University System of West Virginia and Board of Directors of the State College System - Central Office - Control Account, fund 0333, organization 0452, activity 169.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand, by amending language with no new money being appropriated.

CHAPTER 16

(S. B. 646 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Bowman, Helmick, Anderson, Unger, Edgell, Sprouse and Minear)

[Passed March 11, 2000; 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, two thousand, in the amount of one hundred fifty thousand dollars from the auditor’s office - public service corporation taxes fund, fund 1201, fiscal year 2000, organization 1200.

WHEREAS, The Legislature finds that the account balance in the auditor’s office - public service corporation taxes fund, fund 1201, fiscal year 2000, organization 1200, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1. That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand, to the auditor’s office - public service corporation taxes fund, fund 1201, fiscal year 2000, organization 1200, be decreased by expiring the amount of one hundred fifty thousand dollars to the unappropriated surplus balance of the state fund, general revenue, to be available for appropriation during the fiscal year two thousand.

The purpose of this bill is to expire the sum of one hundred fifty thousand dollars from the auditor’s office - public service corporation taxes fund, fund 1201, fiscal year 2000, organization 1200, to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand, to be available for appropriation during the fiscal year two thousand.

CHAPTER 17

(S. B. 647 — By Senators Craig, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Bowman, Helmick, Anderson, Unger, Edgell, Sprouse and Minear)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the balance of the auditor’s office, chief inspector’s fund, fund 1235, fiscal year 2000, organization 1200,
for the fiscal year ending the thirtieth day of June, two thousand,
in an amount of four hundred thousand dollars from the auditor’s
office, securities regulation fund, fund 1225, fiscal year 2000,
organization 1200.

WHEREAS, The Legislature finds that the account balance in the
auditor’s office, securities regulation fund, fund 1225, fiscal year
2000, organization 1200, will exceed that which is necessary for the
purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds available for expenditure in the
fiscal year ending the thirtieth day of June, two thousand, to the
auditor’s office, securities regulation fund, fund 1225, fiscal
year 2000, organization 1200, be decreased by expiring the
amount of four hundred thousand dollars to the balance to the
auditor’s office, chief inspector’s fund, fund 1235, fiscal year
2000, organization 1200, to be available for appropriation
during the fiscal year two thousand.

CHAPTER 18
(S. B. 455 — Originating in the Committee on Finance)

[Passed February 29, 2000; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the balance of the department of adminis-
tration – division of general services – capitol complex – mainte-
nance, fund 2251, fiscal year 2000, organization 0211, for the
fiscal year ending the thirtieth day of June, two thousand, in the
amount of two hundred seventy-seven thousand fifty-eight dollars
and twelve cents from the department of administration – office
of the secretary – natural gas contract refund fund, fund 2040,
fiscal year 2000, organization 0201.
WHEREAS, The Legislature finds that the account balance in the department of administration – office of the secretary – natural gas contract refund fund, fund 2040, fiscal year 2000, organization 0201, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand, to the department of administration – office of the secretary – natural gas contract refund fund, fund 2040, fiscal year 2000, organization 0201, be decreased by expiring the amount of two hundred seventy-seven thousand fifty-eight dollars and twelve cents to the balance of the department of administration – division of general services – capitol complex – maintenance, fund 2251, fiscal year 2000, organization 0211 during the fiscal year two thousand.

The purpose of this bill is to expire the sum of two hundred seventy-seven thousand fifty-eight dollars and twelve cents from the department of administration – office of the secretary – natural gas contract refund fund, fund 2040, fiscal year 2000, organization 0201, to the balance of the department of administration – division of general services – capitol complex – maintenance, fund 2251, fiscal year 2000, organization 0211, for the fiscal year ending the thirtieth day of June, two thousand, to be available for expenditure during the fiscal year two thousand.

CHAPTER 19

(S. B. 650 —By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Bowman, Helmick, Anderson, Unger, Edgell, Sprouse and Minear)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, in the department of health and human resources, West Virginia health care authority, fund 5375, fiscal year 2000, organization 0507, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources, West Virginia health care authority, fund 5375, fiscal year 2000, organization 0507, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, fund 5375, fiscal year 2000, organization 0507, be supplemented and amended by increasing the total appropriation by five hundred thousand dollars in the line item as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$500,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this fund in the budget act for the fiscal year ending the thirtieth day of June, two thousand, by adding five hundred thousand dollars to the existing appropriation for unclassified for expenditure during the fiscal year two thousand.
AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand one, in the amount of seven hundred fifty thousand dollars from the insurance commission - insurance commission fund, fund 7152, fiscal year 2001, organization 0704.

WHEREAS, The Legislature finds that the account balance in the insurance commission - insurance commission fund, fund 7152, fiscal year 2001, organization 0704, will exceed that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1. That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand one, to the insurance commission - insurance commission fund, fund 7152, fiscal year 2001, organization 0704, be decreased by expiring the amount of seven hundred fifty thousand dollars to the unappropriated balance of the state fund, general revenue, to be available for appropriation during the fiscal year two thousand one.

9. The purpose of this bill is to expire the sum of seven hundred fifty thousand dollars from the insurance commission - insurance commission fund, fund 7152, fiscal year 2001, organization 0704, to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand one, to be available for appropriation during the fiscal year two thousand one.
CHAPTER 21

(S. B. 453 — Originating in the Committee on Finance)

[Passed February 18, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, in the department of transportation, division of motor vehicles—driver rehabilitation, fund 8214, fiscal year 2000, organization 0802, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of transportation, division of motor vehicles—driver rehabilitation, fund 8214, fiscal year 2000, organization 0802, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, fund 8214, fiscal year 2000, organization 0802, be supplemented and amended by increasing the total appropriation by two hundred fifty thousand dollars in the line items as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF TRANSPORTATION
The purpose of this supplementary appropriation bill is to supplement this fund in the budget act for the fiscal year ending the thirtieth day of June, two thousand, by adding two hundred fifty thousand dollars to the existing appropriation for unclassified—total for expenditure during the fiscal year two thousand.

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, in miscellaneous boards and commissions, West Virginia state board of examiners for licensed practical nurses, fund 8517, fiscal year 2000, organization 0906, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.
WHEREAS, The governor has established that there now remains an unappropriated balance in the miscellaneous boards and commissions, West Virginia state board of examiners for licensed practical nurses, fund 8517, fiscal year 2000, organization 0906, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand; therefore

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

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, fund 8517, fiscal year 2000, organization 0906, be supplemented and amended by increasing the total appropriation by fifteen thousand dollars in the line item as follows:

1  TITLE II—APPROPRIATIONS.

2  Sec. 3. Appropriations from other funds.

3  MISCELLANEOUS BOARDS AND COMMISSIONS

4  205-WV State Board of Examiners

5  for Licensed Practical Nurses

6  (WV Code Chapter 30)

7  Fund 8517 FY 2000 Org 0906

8  Activity Other

9  Unclassified—Total . . . . . . . . . . . . 096 $ 15,000

10 The purpose of this supplementary appropriation bill is to supplement this fund in the budget act for the fiscal year ending the thirtieth day of June, two thousand, by adding fifteen thousand dollars to the existing appropriation for unclassified—total for expenditure during the fiscal year two thousand.
AN ACT supplementing, amending and reducing items of the existing appropriation to the public service commission, fund 8623, fiscal year 2000, organization 0926, as originally appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred ninety-nine, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation to the public service commission, fund 8623, fiscal year 2000, organization 0926, be amended and reduced in the line item as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Act-</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>ivity</td>
<td>Funds</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$ 456,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend and reduce existing items in the aforesaid account for the designated spending unit. The item for unclassified is reduced by four hundred fifty-six thousand dollars.
AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand one, in the amount of seven hundred fifty thousand dollars from the public service commission, fund 8623, fiscal year 2001, organization 0926.

WHEREAS, The Legislature finds that the account balance in the public service commission, fund 8623, fiscal year 2001, organization 0926, will exceed that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand one, to the public service commission, fund 8623, fiscal year 2001, organization 0926, be decreased by expiring the amount of seven hundred fifty thousand dollars to the unappropriated balance of the state fund, general revenue, to be available for appropriation during the fiscal year two thousand one.

8 The purpose of this bill is to expire the sum of seven hundred fifty thousand dollars from the public service commission, fund 8623, fiscal year 2001, organization 0926, to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand one, to be available for appropriation during the fiscal year two thousand one.
CHAPTER 25

(H. B. 4765 — By Delegates Michael, Doyle, Kominar, Frederick, Pettit and Leggett)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, to the bureau of commerce - West Virginia development office, fund 8705, fiscal year 2000, organization 0307, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 8705, fiscal year 2000, organization 0307, be supplemented and amended by increasing the total appropriation by one million, four hundred thousand dollars in the line item as follows:

1  TITLE II— APPROPRIATIONS.

2  Section 5. Appropriations of federal funds.

3  BUREAU OF COMMERCE

4  265—West Virginia Development Office

5  (WV Code Chapter 5B)

6  Fund 8705 FY 2000 Org 0307
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, two thousand, by adding one million four hundred thousand dollars to the existing appropriation for Unclassified—Total for expenditure during fiscal year two thousand.

CHAPTER 26

(H. B. 4767 — By Delegates Michael, Campbell, Compton, Frederick, Kelley, Proudfoot and Facemyer)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, to the department of agriculture, fund 8736, fiscal year 2000, organization 1400, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 8736, fiscal year 2000, organization 1400, be supplemented and amended by increasing the total
appropriation by six hundred sixty-four thousand, five hundred three dollars in the line item as follows:

1  TITLE II-APPROPRIATIONS.
2  Section 5. Appropriations of federal funds.
3  EXECUTIVE
4  236-Department of Agriculture
5  (WV Code Chapter 19)
6  Fund 8736 FY 2000 Org 1400

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, two thousand, by adding six hundred sixty-four thousand, five hundred three dollars to the existing appropriation for Unclassified-Total for expenditure during fiscal year two thousand.

CHAPTER 27

(H. B. 4812 — By Delegates Michael, Leach, Campbell, Proudfoot, Compton, Kelley and Anderson)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, to the department of agriculture, fund 8736, fiscal year 2000, organization 1400, supplementing and amending the
appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 8736, fiscal year 2000, organization 1400, be supplemented and amended by increasing the total appropriation by three hundred sixty-two thousand dollars in the line item as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096 $362,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, two thousand, by adding three hundred sixty-two thousand dollars to the existing appropriation for Unclassified-Total for expenditure during fiscal year two thousand.
AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, to the division of human services - child care and development, fund 8817, fiscal year 2000, organization 0511, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 8817, fiscal year 2000, organization 0511, be supplemented and amended by increasing the total appropriation by fourteen million, seven hundred seven thousand, nine hundred forty-seven dollars in the line item as follows:

1 TITLE II - APPROPRIATIONS.

2 Section 6. Appropriations from federal block grants.

3 288-Division of Human Services-

4 Child Care and Development

5 Fund 8817 FY 2000 Org 0511
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, two thousand, by adding fourteen million seven hundred seven thousand nine hundred forty-seven dollars to the existing appropriation for Unclassified-Total for expenditure during fiscal year two thousand.
supplemented and amended by adding to Title II, section five thereof the following:

1 TITLE II—APPROPRIATIONS.
2
3 Section 5. Appropriations of federal funds.
4
5 DEPARTMENT OF MILITARY AFFAIRS
6 AND PUBLIC SAFETY
7
8 253a—Division of Corrections—
9 Correctional Units
10 (WV Code Chapters 25, 28, 49 and 62)
11
12 Fund 8836 FY 2000 Org 0608
13
14 Activity                      Federal Funds
15
16 1 Unclassified—Total .......... 096  $ 100,000
17
18 The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, two thousand, by providing for a new item of appropriation to be established therein to appropriate federal funds in the amount of one hundred thousand dollars to Unclassified—Total for expenditure during fiscal year two thousand.

CHAPTER 30

(H. B. 4786 — By Delegates Warner, Cann, Thompson, Anderson and Border)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state road fund to the department of transportation, division of motor vehicles, fund
9007, fiscal year 2000, organization 0802, as originally appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred ninety-nine, known as the budget bill.

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

That the items of the total appropriations from the state road fund, fund 9007, fiscal year 2000, organization 0802, be amended and reduced in the line item as follows:

<table>
<thead>
<tr>
<th>Title II – Appropriations.</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 2. Appropriations from state road fund.</td>
<td></td>
</tr>
<tr>
<td>DEPARTMENT OF TRANSPORTATION</td>
<td></td>
</tr>
<tr>
<td>95 – Division of Motor Vehicles</td>
<td></td>
</tr>
<tr>
<td>(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20, and 24A)</td>
<td></td>
</tr>
<tr>
<td>Fund 9007 FY 2000 Org 0802</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$ 357,000</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriations from the state road fund, fund 9007, fiscal year 2000, organization 0802, be amended and increased in the line items as follows:

<table>
<thead>
<tr>
<th>Title II – Appropriations.</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 2. Appropriations from state road fund.</td>
<td></td>
</tr>
<tr>
<td>DEPARTMENT OF TRANSPORTATION</td>
<td></td>
</tr>
<tr>
<td>95 – Division of Motor Vehicles</td>
<td></td>
</tr>
<tr>
<td>(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)</td>
<td></td>
</tr>
<tr>
<td>Fund 9007 FY 2000 Org 0802</td>
<td></td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement, amend, reduce, and increase existing items in the department of transportation, division of motor vehicles, fund 9007, fiscal year 2000, organization 0802. The line item for unclassified is reduced by three hundred fifty-seven thousand dollars. The line item for personal services is increased by three hundred thousand dollars and the line item for employee benefits is increased by fifty-seven thousand dollars. The amounts as itemized for expenditure in fiscal year ending the thirtieth day of June, two thousand, shall be available for expenditure immediately upon the effective date of this bill.

AN ACT supplementing, amending, reducing, and increasing items of the existing appropriations from the state road fund to the department of transportation, division of highways, fund 9017, fiscal year 2000, organization 0803, as originally appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred ninety-nine, known as the budget bill.
WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 12, 2000, which included the statement of the state road fund setting forth therein the cash balances and investments as of July 1, 1999, and further included the estimate of revenues for the fiscal year 1999-2000, less net appropriation balances forwarded and regular appropriations for fiscal year 1999-2000.

WHEREAS, It appears from the governor’s executive budget document that there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund, fund 9017, fiscal year 2000, organization 0803, be amended and reduced in the line items as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 2. Appropriations from state road fund.

3 DEPARTMENT OF TRANSPORTATION

4 96 – Division of Highways

5 (WV Code Chapters 17 and 17C)

6 Fund 9017 FY 2000 Org 0803

7

8

9

10 Debt Service .......................... 040 $2,450,000

11 And, that the items of the total appropriations from the state road fund, fund 9017, fiscal year 2000, organization 0803, be amended and increased in the line items as follows:
TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

96 – Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2000 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance, Contract Paving and</td>
<td>$3,000,000</td>
</tr>
<tr>
<td>Secondary Road Maintenance</td>
<td></td>
</tr>
<tr>
<td>Equipment Revolving</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Interstate Construction</td>
<td>25,000,000</td>
</tr>
<tr>
<td>Other Federal Aid Programs</td>
<td>76,000,000</td>
</tr>
<tr>
<td>Appalachian Programs</td>
<td>20,000,000</td>
</tr>
<tr>
<td>Nonfederal Aid Construction</td>
<td>22,000,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce, and increase existing items in the aforesaid account for the designated spending unit. The item for Debt Service is reduced by two million four hundred fifty thousand dollars. The item Maintenance, Contract Paving and Secondary Road Maintenance is increased by three million dollars, Equipment Revolving is increased by one million dollars, Interstate Construction is increased by twenty-five million dollars, Other Federal Aid Programs is increased by seventy-six million dollars, Appalachian Programs is increased by twenty million dollars, and Nonfederal Aid Construction is
increased by twenty-two million dollars. The amounts as itemized for expenditure in the fiscal year ending the thirtieth day of June, two thousand, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 32

(H. B. 4809 — By Delegates Michael, Warner, Pettit, Proudfoot, Cann, Frederick and Border)

[Passed March 10, 2000; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state road fund to the department of transportation, division of highways, fund 9017, fiscal year 2000, organization 0803, as originally appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred ninety-nine, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund, fund 9017, fiscal year 2000, organization 0803, be amended and reduced in the line items as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 2. Appropriations from state road fund.

3 DEPARTMENT OF TRANSPORTATION

4 96 – Division of Highways

5 (WV Code Chapters 17 and 17C)
And, that the items of the total appropriations from the state road fund, fund 9017, fiscal year 2000, organization 0803, be amended and increased in the line items as follows:

### TITLE II – APPROPRIATIONS

#### Sec. 2. Appropriations from state road fund.

#### DEPARTMENT OF TRANSPORTATION

96 – *Division of Highways*

(WV Code Chapters 17 and 17C)

<table>
<thead>
<tr>
<th>Fund 9017 FY 2000 Org 0803</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Road Activity Fund</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Line Item Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bridge Repair and Replacement</td>
<td>273</td>
<td>$4,400,000</td>
</tr>
<tr>
<td>Other Federal Aid Programs</td>
<td>279</td>
<td>2,700,000</td>
</tr>
<tr>
<td>Nonfederal Aid Construction</td>
<td>281</td>
<td>8,000,000</td>
</tr>
<tr>
<td>Maintenance, Expressway, Trunkline and Feeder</td>
<td>270</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Maintenance, State Local Services</td>
<td>271</td>
<td>10,000,000</td>
</tr>
<tr>
<td>Maintenance, Contract Paving and Secondary Road Maintenance</td>
<td>272</td>
<td>1,400,000</td>
</tr>
<tr>
<td>Appalachian Programs</td>
<td>280</td>
<td>2,700,000</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase existing items in the department of transportation, division of highways, fund 9017, fiscal year 2000, organization 0803. The item bridge repair and replacement is reduced by four million four hundred thousand dollars, other federal aid programs is reduced by two million seven hundred thousand dollars, and nonfederal aid construction is reduced by eight million dollars. The item maintenance, expressway, trunkline and feeder is increased by one million dollars; maintenance, state local services is increased by ten million dollars; maintenance, contract paving and secondary road maintenance is increased by one million four hundred thousand dollars, and appalachian programs is increased by two million seven hundred thousand dollars. The amounts as itemized for expenditure in fiscal year ending the thirtieth day of June, two thousand, shall be available for expenditure upon the effective date of this bill.

AN ACT to amend and reenact section seventeen, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing, as an administrative allowance, the remuneration of the command administrative officers of the Army National Guard and the Air National Guard.

Be it enacted by the Legislature of West Virginia:
That section seventeen, article one-b, 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 1B. NATIONAL GUARD.

§15-1B-17. Command pay; inspections; compensation for clerical services and care of property.

(a) There may be paid to each commander of a brigade, regiment, air wing, army group or other corresponding type organization, one hundred dollars per month and to each commander of a battalion, army squadron, air group or other equivalent type organization, fifty dollars per month, and to each commander of a company, air squadron or other equivalent type organization, twenty-five dollars per month, payable quarterly, to be known as command pay.

(b) There shall be allowed to each headquarters of a brigade, regiment, air wing, army group or equivalent type organization the sum of one hundred dollars per month and each headquarters of a battalion, army squadron, air group or corresponding type organization, the sum of fifty dollars per month for clerical services; and to each company air squadron or corresponding type unit, the sum of twenty-five dollars per month for like services, payable quarterly. The commandant of the West Virginia military academy shall be allowed the sum of twenty-five dollars a month, payable quarterly, for like services.

(c) At the discretion of the adjutant general, there may be paid to the enlisted man or woman who is directly responsible for the care and custody of the federal and state property of each organization or unit, the sum of ten dollars per month, payable quarterly, upon the certificate of his or her commanding officer, that he or she has faithfully and satisfactorily performed the duties assigned him or her and accounted for all property entrusted to his or her care.
(d) The adjutant general shall determine the amount of entitlement to command pay and clerical pay, not to exceed the amounts set forth in subsections (a) and (b) of this section, using organizational charts showing chain of command and authorized strengths and defining other equivalent type organizations.

(e) Notwithstanding any other provision of this code, there shall be paid to the command administrative officer of the headquarters of the West Virginia Army National Guard and to the executive staff support officer of the headquarters of the West Virginia Air National Guard, or to the officer occupying a similar position, regardless of title, one hundred dollars per month, payable quarterly, to be known as an administrative allowance.

CHAPTER 34

(S. B. 359 — By Senators Bailey, Unger, Dawson, Minard, Hunter, Love, Kessler, Sprouse and Wooton)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing payment for tuition and fees to members of the national guard who attend accredited colleges, universities, business or trade schools or aviation schools in this state while serving in the national guard; and providing that national guard members enrolled in a course of postgraduate study, attending an accredited school located in West Virginia and receiving payments under the army continuing
education system may be entitled to payment for tuition and fees while serving in the national guard.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article one-b, 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 1B. NATIONAL GUARD.

§15-1B-21. Tuition and fees for guard members at institutions of higher education.

(a) Any member of the national guard who is enrolled in a course of undergraduate study and is attending any accredited college, university, business or trade school located in West Virginia or is attending any aviation school located in West Virginia for the purpose of taking college-credit courses, may be entitled to payment of tuitions and fees at that college, university, business or trade school or aviation school during the period of his or her service in the national guard: Provided, that the adjutant general may prescribe criteria of eligibility for payment of tuition and fees at the college, university, business or trade school or aviation school: Provided, however, That such payment is contingent upon appropriations being made by the Legislature for this express purpose.

(b) The amount of the payment for members attending a state-supported school shall be determined by the adjutant general and may not exceed the actual amount of tuition and fees at the school. The amount of such payment for members attending a private school shall be determined by the adjutant general, but in no event may exceed the highest amounts payable at any state-supported school.

(c) Any member of the national guard who is enrolled in a course of postgraduate study and is attending any accredited college or university located in West Virginia, and is receiving
payments under the army continuing education system, may be
entitled to payment of tuition and fees at that college or
university during his or her period of service in the national
guard: Provided, That the sum of payments received under this
subsection and the army continuing education system may not
exceed the actual amount of tuition and fees at the school and
in no event may exceed the highest amounts payable at any
state-supported school. Such payments are contingent upon
appropriations being made by the Legislature for this express
purpose.

(d) The adjutant general shall administer the tuition and fee
payments authorized under this section and shall propose
policies to implement the provisions of this section.

CHAPTER 35

(Com. Sub. for H. B. 4078 — By Mr. Speaker, Mr. Kiss, and Delegates Louisos,
Martin, Givens, Michael, Williams and Willison)

[Passed March 6, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section thirty-four,
relating to providing high school diplomas to certain World War
I, World War II, Korean Conflict and Vietnam Conflict veterans
that did not graduate from high school; and rules.

Be it enacted by the Legislature of West Virginia:

That article two, chapter eighteen of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, be amended by
ARTICLE 2. STATE BOARD OF EDUCATION.


(a) Notwithstanding any provision of this code to the contrary, the state board shall provide for the awarding of high school diplomas, either by the county board in the county in which the veteran resides or the county in which the veteran would have received his or her diplomas, whichever location the veteran chooses, to any surviving World War I veteran and any World War II, Korean Conflict or Vietnam Conflict veteran who:

(1) Left high school prior to graduation and served in the armed forces of the United States;

(2) Did not receive a high school diploma;

(3) Was discharged from the armed services under honorable conditions; and

(4) Completes the application process as provided by the joint rules of the state board and the veterans’ council.

(b) The state board and the veterans’ council, created in article one, chapter nine-a of this code, shall jointly promulgate rules for the identification of eligible veterans and for the awarding of high school diplomas. The rules shall provide for an application process and the credentials required to receive the high school diplomas.

(c) For purposes of this section:

(1) “World War I veteran” means any veteran who:
(A) Performed wartime service between April sixth, one thousand nine hundred seventeen, and November eleventh, one thousand nine hundred eighteen; or

(B) Has been awarded the World War I Victory Medal;

(2) "World War II veteran" means any veteran who performed wartime service between September sixteenth, one thousand nine hundred forty, and December thirty-first, one thousand nine hundred forty-six;

(3) "Korean Conflict veteran" means any veteran who performed military service between June twenty-seventh, one thousand nine hundred fifty, and January thirty-first, one thousand nine hundred fifty-five; and

(4) "Vietnam Conflict veteran" means any veteran who performed military service between February twenty-eighth, one thousand nine hundred sixty-one, and May seventh, one thousand nine hundred seventy-five.

CHAPTER 36

(H. B. 4080 — By Delegates Thompson, H. White, Cann, Harrison, Capito, L. White and Angotti)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen, relating to authorizing the state treasurer to conduct a program in the public schools on banking.
Be it enacted by the Legislature of West Virginia:

That article four, 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 fifteen, to read as follows:

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-15. Bank at school.

(a) The state treasurer may conduct a program in West Virginia public schools to educate students about banking activities and to encourage savings. Banking institutions under the jurisdiction of the West Virginia commissioner of banking may participate in the program by assisting the treasurer in developing and producing materials for use in the schools, opening savings accounts for students at the schools and receiving and accepting deposits at the schools.

(b) The state treasurer may not implement the banking program in any school in a county unless he or she obtains permission from the county board of education and the principal of the school; and

(c) Nothing in this section shall be construed to require any professional or service employee to perform additional duties as a result of the establishment of the banking program.

CHAPTER 37

(Com. Sub. for H. B. 4293 — By Delegates Hunt, Linch, Compton, Jenkins Faircloth and Riggs)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section eighteen, article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to market-based banking and trading; modifying state banking and trading requirements to comply with federal program changes.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article five, 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:

§22-5-18. Market-based banking and trading programs, emissions credits; director to promulgate rules.

(a) The director shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code, to the full extent allowed by federal and state law, one or more rules establishing a voluntary emissions trading and banking program that provides incentives to make progress toward the attainment or maintenance of the national ambient air quality standards, the reduction or prevention of hazardous air contaminants or the protection of human health and welfare and the environment from air pollution.

(b) The director shall establish a system by legislative rule for quantifying, verifying, determining eligibility, registering, trading and using all emissions reduction credits, for banking and trading if achieved after the first day of January, one thousand nine hundred ninety-one, to the extent permitted by federal law. Credits also shall be available for permanent shutdowns. Ten percent of any emission reduction credits registered with the director shall be retired from future use: Provided, That fifty percent of any emission reduction credits generated from permanent shutdowns prior to the effective date of the legislative rule or rules promulgated pursuant to this section shall be retired from future use. All other emissions reduction credits registered shall remain in effect until used and
debited or retired. Credits not used within ten years shall be
retired from future use. The director may charge a reasonable
transaction fee at the time any credits are registered and shall
deposit the fees in the air pollution control fund.

The division may establish the emissions trading program
as a state, multistate or regional program as long as the program
contributes to the goal of improving the air quality in West
Virginia and in the air quality region where the source is
located.

CHAPTER 38

(S. B. 207 — By Senators Helmick, Kessler, Ross and Sprouse)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]
examination costs and expenses in the same manner as other financial institutions; and providing civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Division of Banking.
4. Banking Institutions and Services Generally.
8E. Interstate Branching by De Novo Entry and Acquisition of Branches.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§31A-1-6. Deposit insurance required for banking and other depository institutions.

1. All credit unions established pursuant to article ten, chapter thirty-one of this code and all banking institutions governed by the provisions of this chapter except banks that do not accept deposits and offer only trust or other nondepository services must qualify for and obtain federal deposit insurance.

ARTICLE 2. DIVISION OF BANKING.

§31A-2-8. Commissioner’s assessments and examination fund; assessments, costs and expenses of examinations; collection.
(a) All moneys collected by the commissioner from financial institutions and bank holding companies for assessments, examination fees, investigation fees or other necessary expenses incurred by the commissioner in administering such duties shall be paid to the commissioner and paid by the commissioner to the treasurer of the state to the credit of a special revenue account to be known as the "commissioner's assessment and examination fund" which is hereby established. The assessments and fees paid into this account shall be appropriated by law and used to pay the costs and expenses of the division of banking and all incidental costs and expenses necessary for its operations. At the end of each fiscal year, if the fund contains a sum of money in excess of twenty percent of the appropriated budget of the division of banking, the amount of the excess shall be transferred to the general revenue fund of the state. The Legislature may appropriate money to start the special revenue account.

(b) The commissioner of banking shall charge and collect from each state banking institution or other financial institution or bank holding company and pay into a special revenue account in the state treasury for the division of banking assessments as follows:

(1) For each state banking institution, a semiannual assessment payable on the first day of January and the first day of July, each year, computed upon the total assets of the banking institution shown on the report of condition of the banking institution filed as of the preceding thirtieth day of June and the thirty-first day of December, respectively, as follows:

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<thead>
<tr>
<th>Total Assets</th>
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<th>Of Excess</th>
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(2) For each regulated consumer lender, an annual assessment payable on the first day of July, each year, computed upon the total outstanding gross loan balances and installment sales contract balances net of unearned interest of the regulated consumer lender shown on the report of condition of the regulated consumer lender as of the preceding thirty-first day of December, respectively, as follows:

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<th>Total Outstanding Balances</th>
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<tr>
<td>5,000,000</td>
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<td>10,000,000</td>
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If a regulated consumer lender's records or documents are maintained in more than one location in this state, then eight hundred dollars may be added to the assessment for each additional location.

(3) For each credit union, an annual assessment as provided for in section eight, article one, chapter thirty-one-c of this code as follows:

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<tr>
<th>Total Assets</th>
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<td>But Not Over</td>
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<tr>
<td>$ 0</td>
</tr>
<tr>
<td>100,000</td>
</tr>
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</table>
(4) For each bank holding company, an annual assessment as provided for in section eight, article eight-a of this chapter. The annual assessment may not exceed ten dollars per million dollars in deposits rounded off to the nearest million dollars.

(c) The commissioner shall each December and each June prepare and send to each state banking institution a statement of the amount of the assessment due. The commissioner shall, further, each June, prepare and send to each regulated consumer lender and each state credit union a statement of the amount of the assessment due. The commissioner shall, annually, during the month of January, prepare and send to each bank holding company a statement of the amount of the assessment due.

Assessments shall be prescribed annually, not later than the fifteenth day of June, by written order of the commissioner, but shall not exceed the maximums as set forth in subsection (b) of this section. In setting the assessments the primary consideration shall be the amount appropriated by the Legislature for the division of banking for the corresponding annual period. Reasonable notice of the assessments shall be made to all interested parties. All orders of the commissioner for the purpose of setting assessments are not subject to the provisions of the West Virginia administrative procedures act, under chapter twenty-nine-a of this code.

(d) For making an examination within the state of any other financial institution for which assessments are not provided by this code, the commissioner of banking shall charge and collect from such other financial institution and pay into the special revenue account for the division of banking the actual and necessary costs and expenses incurred in connection therewith, as fixed and determined by the commissioner. Banks that
provide only trust or other nondepository services, nonbanking subsidiaries of bank holding companies that provide trust services, nonbanking subsidiaries of banks that provide trust services and any trust entity that is jointly owned by federally insured depository institutions may be assessed for necessary costs and expenses associated with an examination pursuant to this subsection.

(e) If the records of an institution are located outside this state, the institution at its option shall make them available to the commissioner at a convenient location within the state, or pay the reasonable and necessary expenses for the commissioner or his or her representatives to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his or her behalf.

(f) The commissioner of banking may maintain an action for the recovery of all assessments, costs and expenses in any court of competent jurisdiction.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-2. Use of terms; unlawfully engaging in banking business; penalties: enforcement.
§31A-4-13. Powers of state banking institutions generally.
§31A-4-14. Trust powers of banking institutions.
§31A-4-14a. Transfer of fiduciary accounts or relationships between affiliated subsidiary banks of a bank holding company or affiliated nonbanking entities or entities jointly owned by federally insured depository institutions.
§31A-4-14b. Delegation and fiduciary responsibility.
§31A-4-15. Required annual filings before exercising trust powers; penalties; notice of failure to comply.
§31A-4-16. Trust funds to be kept separate; bookkeeping and management.
§31A-4-17. Oath as fiduciary.
§31A-4-18. Capital as fiduciary security; additional security.
§31A-4-42. Unlawful for persons other than banking institutions to engage in the banking business; penalties.
§31A-4-2. Use of terms; unlawfully engaging in banking business; penalties; enforcement.

(a) No person doing business in this state, except a banking institution or a person authorized by the commissioner under the terms of this section, may use or advertise in connection with such business, or as a designation or title thereof, the term "bank", "banker", "banking", "banking company", "industrial bank", "savings bank", or "trust company", or engage in the banking or trust business in this state. A nonbanking subsidiary of a bank holding company or a nonbanking subsidiary of a banking institution having a bank branch or bank main office in this state that provides trust services pursuant to section fourteen of this article may use the term "trust company" in its title and advertising. A trust entity owned jointly by federally insured depository institutions located within this state and authorized by the commissioner to operate in this state may use the term "trust company" in its title and advertising.

(b) It is unlawful for any such person other than banking institutions as herein excepted, to advertise or hold himself, itself, or themselves, as the case may be, out to the public in any manner indicating, directly, indirectly or by implication, that any of them is engaged in the banking or trust business or is authorized and approved to engage therein in this state. A nonbanking subsidiary of a bank holding company or nonbanking subsidiary of a banking institution having a bank branch or bank main office in this state that provides trust services pursuant to section fourteen of this article may hold itself out to the public as engaged in the trust business. A trust entity owned jointly by federally insured depository institutions located within this state and authorized by the commissioner to operate in this state may hold itself out to the public as engaged in the trust business.

(c) The commissioner may authorize a person to utilize the term "bank" or "banc" in connection with nonprofit organiza-
tions or medical businesses where the term would have a
common meaning separate and apart from a financial institution
and would not result in confusion to the public (e.g., food bank;
medical databank); and in connection with bank holding
companies or their nonbanking affiliates where the term denotes
the entities' common affiliation and would not result in
confusion to the public.

(d) Any violation of the provisions of this section consti-
tutes a misdemeanor offense, punishable as provided in section
fifteen, article eight of this chapter.

(e) The commissioner of banking or any one or more
banking institutions, acting individually or jointly, may petition
the circuit court of the county in which any violation of the
provisions of this section occur or are threatened to occur for
injunction or other appropriate judicial remedies for enforce-
ment of the provisions hereof and the prevention of further or
continued violations thereof.

§31A-4-13. Powers of state banking institutions generally.

(a) Any state-chartered banking institution has and may
exercise all of the powers necessary for, or incidental to, the
business of banking and without limiting or restricting such
general powers, it shall have the right to buy or discount
promissory notes and bonds; negotiate drafts, bills of exchange
and other evidences of indebtedness; borrow money; receive
deposits on such terms and conditions as its officers may
prescribe; buy, sell or exchange bank notes, bullion or coin;
loan money on personal or other security; rent safe-deposit
boxes and receive on deposit for safekeeping jewelry, plate,
stocks, bonds and personal property of whatsoever description;
and provide customer services incidental to the business of
banking, including, but not limited to, the issuance and servic-
ing of and lending money by means of credit cards as letters of
credit or otherwise. Any state-chartered banking institution may
accept, for payment at a future date not to exceed one year, drafts drawn upon it by its customers. Any state-chartered banking institution may issue letters of credit, with a specified expiration date or for a definite term, authorizing the holders thereof to draw drafts upon it or its correspondents, at sight or on time. Any such banking institution may organize, acquire, own, operate, dispose of and otherwise manage wholly owned subsidiary corporations or entities that are jointly owned with other insured depository institutions for purposes incident to the banking powers and services authorized by this chapter provided any wholly owned or jointly owned entities are subject to federal and state examination and supervision as if the activities are conducted by the bank.

(b) Any state-chartered banking institution may acquire, own, hold, use and dispose of real estate which may not be carried on its books at a value greater than the actual cost: Provided, That the property must be necessary for the convenient transaction of its business, including any buildings, office space or other facilities to rent as a source of income: Provided, however, That the investment hereafter made may not exceed sixty-five percent of the amount of its capital stock and surplus, unless the consent in writing of the commissioner of banking is first secured.

(c) Any state-chartered banking institution may acquire, own, hold, use and dispose of real estate which shall be carried on its books at the lower of fair value or cost as defined in rules promulgated by the commissioner of banking, subject to the following limitations:

(1) Such as may be mortgaged to it in good faith as security for debts in its favor;

(2) Such as may be conveyed to it in satisfaction of debts previously contracted in the course of its business dealings; and
(3) Such as it may purchase at sales under judgments, decrees, trust deeds or mortgages in its favor, or may purchase at private sale, to secure and effectuate the payment of debts due to it.

(d) The value at which any real estate is held may not be increased by the addition thereto of taxes, insurance, interest, ordinary repairs or other charges which do not materially enhance the value of the property.

(e) Any real estate acquired by any such banking institution under subdivisions (2) and (3), subsection (c) of this section shall be disposed of by the banking institution at the earliest practicable date, but the officers thereof shall have a reasonable discretion in the matter of the time to dispose of such property in order to save the banking institution from unnecessary losses: Provided, That in every case such property shall be disposed of within ten years from the time it is acquired by the banking institution, unless an extension of time is given in writing by the commissioner of banking.

(f) The sale of insurance by state-chartered banking institutions is subject to the following:

Any state-chartered banking institution having its main or a branch office in any place the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census, through its employees or agents, may, from that place or office, directly or through a controlled subsidiary, act as agent for any fire, life, casualty, liability or other insurance company authorized by the authorities of the state to do business in this state, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered all permissible fees or commissions as may be agreed upon between the bank and the insurance company for which it may act as agent: Provided, That no bank may in any case assume or guarantee
the payment on insurance policies issued through its agency by its principal: Provided, however, That the bank may not guarantee the truth of any statement made by an insured in filing his, her or its application for insurance. For purposes of this section, a "controlled subsidiary" is one in which the state-chartered banking institution owns at least eighty percent of all classes of stock. This provision is intended to give state-chartered banking institutions parity with national banks operating in this state with regard to the marketing and sale of insurance, notwithstanding the prohibitions and limitations contained in article eight-c or elsewhere in this chapter, and shall be construed consistently with interpretations of 12 U.S.C. §92, the regulations promulgated thereunder, and any successor legislation or regulations.

(g) Any state-chartered banking institution may, through its employees or agents, market and sell, as agent, annuities, either at its main office or at any of its branches. The marketing and sale of annuities may be made by the bank, through its employees or agents, directly, or through a controlled subsidiary, as defined in subsection (f) of this section. This provision is intended to give state-chartered banks parity with national banks operating in this state with regard to the sale of annuities, notwithstanding the prohibitions and limitations contained in article eight-c or elsewhere in this chapter.

(h) Unless waived in writing by the commissioner, a state-chartered bank may not invest or otherwise expend in excess of ten percent of its capital and surplus calculated at the end of the previous calendar year on the activities permitted by subsections (f) and (g) of this section on an aggregate basis together with any of its approved financially related products and services. For purposes of this section, approved financially related products and services means those products and services offered by a state-chartered bank pursuant to an approved application submitted under article eight-c of this chapter.
(i) The commissioner shall promulgate rules in accordance with chapter twenty-nine-a of this code relating to the sale of insurance or annuities, including, but not limited to, rules requiring notice of the intention to engage in such activities and relating to the policies and procedures state-chartered banking institutions should adopt in connection with these activities.

(j) Any state-chartered banking institution and its employees or agents engaged in the sale of insurance or annuities permitted hereby must also comply with all applicable requirements for the sale of such products imposed by the West Virginia commissioner of insurance and by any state or federal securities regulator.

(k) No state-chartered banking institution may hereafter invest more than twenty percent of the amount of its capital and surplus in furniture and fixtures, whether the same be installed in a building owned by the banking institution, or in quarters leased by it, unless the consent in writing of the commissioner of banking is first secured.

§31A-4-14. Trust powers of banking institutions.

(a) Every state banking institution which files the reports required in section fifteen of this article and which is not otherwise prohibited by the commissioner or federal bank regulators from doing so, has and may exercise the following powers:

(1) All the powers, rights and privileges of any state banking institution;

(2) To act as trustee, assignee, special commissioner, general or special receiver, guardian, executor, administrator, committee, agent, curator or in any other fiduciary capacity, and to take, assume, accept and execute trusts of every description not inconsistent with the constitution and laws of the United States of America or of this state; and to receive, hold, manage
and apply any sinking fund on the terms and for the purposes specified in the instrument creating the fund;

(3) To act as registrar, transfer agent or dividend or coupon paying agent for any corporation;

(4) To make, hold and dispose of investments and establish common trust funds, and account therefor, pursuant to the provisions of chapter forty-four of this code;

(5) To purchase and sell and take charge of and receive the rents, issues and profits of any real estate for other persons or corporations;

(6) To act as trustee or agent in any collateral trust and in order to secure the payment of any obligations of any person, firm, private corporation, public corporation, public body or public agency to receive and hold in trust any items of personal property (including, without limitation, notes, bonds, debentures, obligations and certificates for shares of stock) with the right in case of default to sell and dispose of such personal property and to collect, settle and adjust any obligations for the payment of money, and at any sale of personal property held by it, to purchase the same for the benefit of all or any of the holders of the obligations, to secure the payment of which the items of personal property were pledged and delivered to the trustee or agent. Any such sale may be made without any proceedings in any court, and at such times and upon such terms as may be specified in the instrument or instruments creating the trust, or, in the absence of any specification of terms, at the time and upon the terms as the trustee considers reasonable; and

(7) To do and perform any act or thing requisite or necessary in, or incidental to, the exercise of the general powers herein set forth.
(b) All national banks having their main office in this state which have been, or hereafter may be, authorized under the laws of the United States to act as trustee and in other fiduciary capacities in the state of West Virginia shall have all the rights, powers, privileges and immunities conferred hereunder, provided they comply with the requirements hereof.

(c) Banks having their main office in another state which lawfully have a branch in this state pursuant to the provisions of federal law or articles eight-d or eight-e of this chapter which have been, or hereafter may be, authorized under the laws of the United States or the laws of the state in which the bank is chartered to act as trustee and in other fiduciary capacities in the state in which their main office is located have all the rights, powers, privileges and immunities conferred hereunder, provided they comply with the requirements hereof.

(d) Any bank having its main office or a branch located in this state pursuant to subsection (c) of this section may offer trust services, but not deposit taking services, as described, permitted and authorized in this section or other applicable sections of this code through an affiliated nonbanking subsidiary of a bank holding company, a nonbanking entity in which the bank owns an interest along with other insured depository institutions, or its own nonbanking subsidiary if the nonbanking affiliate, subsidiary or jointly owned entity:

(1) Maintains a fidelity bond in the same form and amount as would be required of a banking institution providing trust services;

(2) Maintains unimpaired tangible capital and surplus of at least two million dollars, or more if determined necessary by the commissioner;

(3) Is subject to examination and supervision by the bank’s federal or state chartering authority, the federal deposit insur-
ance corporation or by the board of governors of the federal
reserve system or both the federal deposit insurance corporation
and the board of governors of the federal reserve system to the
same extent and in the same manner as if the trust services were
offered directly by the bank or banks;

(4) Has as its primary purpose the provision of trust
services; and

(5) Registers with the commissioner of banking, on a form
prescribed by him or her, at least sixty days prior to providing
or offering to provide those services in this state.

§31A-4-14a. Transfer of fiduciary accounts or relationships
between affiliated subsidiary banks of a bank
holding company or affiliated nonbanking
entities or entities jointly owned by federally
insured depository institutions.

(a) Notwithstanding any other provision of this code and
unless the will, deed or other instrument creating a trust or
fiduciary account or relationship specifically provides other-
wise, any affiliated banking institution, nonbanking subsidiary
of a bank, nonbanking subsidiary of a bank holding company,
or entity jointly owned by federally insured depository institu-
tions which is empowered with and authorized to exercise trust
powers within this state, or otherwise performs fiduciary
services for a fee, may, without any order or other action on the
part of any court or otherwise, transfer to any other affiliate
banking institution or nonbanking subsidiary of a bank or
affiliate or entity jointly owned by federally insured depository
institutions exercising or authorized to exercise trust powers
within this state pursuant to the provisions of section fourteen
of this article any or all rights, franchises and interests in its
fiduciary accounts or relationships, including, but not limited
to, any or all appointments, designations and nominations and
any other rights, franchises and interests, as trustee, executor,
administrator, guardian, committee, escrow agent, transfer and paying agent of stocks and bonds and every other fiduciary capacity; and the transferee or receiving affiliate or jointly owned entity shall hold and enjoy all rights of property, franchises and interests in the same manner and to the same extent as such rights, franchises and interests were held or enjoyed by the transferor affiliate. As to transfers to an affiliate or jointly owned entity pursuant to this section, the receiving affiliate or jointly owned entity shall take, receive, accept, hold, administer and discharge any grants, gifts, bequests, devises, conveyances, trusts, powers and appointments made by deed, deed of trust, will, agreement, order of court or otherwise to, in favor of, or in the name of, the transferor affiliate or jointly owned entity, whether made, executed or entered before or after such transfer and whether to vest or become effective before or after such transfer, as fully and to the same effect as if the receiving affiliate or jointly owned entity had been named in such deed, deed of trust, will, agreement, order or other instrument instead of such transferor affiliate or jointly owned entity. All acts taken or performed in its own name or in the name of or on behalf of the transferor affiliate or jointly owned entity by any receiving affiliate or jointly owned entity as trustee, agent, executor, administrator, guardian, depository, registrar, transfer agent or other fiduciary with respect to fiduciary accounts or relationships transferred pursuant to this section are as good, valid and effective as if made by the transferor entity.

(b) For purposes of this section, the term “affiliate” means:

(1) Any two or more subsidiaries (as the term “subsidiary” is defined in section one, article eight-a of this chapter) which are “banks” or “banking institutions” (as those terms are defined in section two, article one of this chapter) or nonbanking institutions providing trust services pursuant to subsection (d), section fourteen of this article and which have a common bank holding company; (2) any “bank” or “banking institution” (as those
terms are defined in section two, article one of this chapter) and
its nonbanking subsidiary providing trust services pursuant to
the provisions of subsection (d), section fourteen of this article;
or (3) any entity created to offer trust services that is jointly
owned by federally insured depository institutions authorized
to do banking business in this state. For purposes of this
section, the term “bank holding company” shall have the
meaning set forth in section one, article eight-a of this chapter.

(c) At least thirty days before any transfer authorized by
this section, the transferor shall send a statement of intent to
transfer together with the name and address of the transferee or
receiving entity by regular United States mail to the most recent
known address of all persons who appear in the records of the
transferor as having a vested present interest in the trust,
fiduciary account or relationship to be transferred.

(d) This section shall be applicable to both domestic and
foreign bank holding company affiliates.

§31A-4-14b. Delegation and fiduciary responsibility.

(a) Any bank, nonbanking subsidiary of a bank holding
company, nonbanking subsidiary of a banking institution or
trust entity jointly owned by federally insured depository
institutions located in this state and authorized by the commis-
ssioner to operate in this state that acts as a trustee pursuant to
this chapter may delegate any investment, management or
administrative function if it exercises reasonable care, judgment
and caution in:

(1) Selecting the delegate, taking into account the dele-
gate’s financial standing and reputation;

(2) Establishing the scope and other terms of any delega-
tion; and
(3) Reviewing periodically the delegate's actions in order to monitor overall performance and compliance with the scope and other terms of any delegation.

(b) Notwithstanding any delegation permitted by subsection (a) of this section, any bank, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a banking institution or trust entity jointly owned by federally insured depository institutions located in this state and authorized by the commissioner to operate in this state that acts as a trustee pursuant to this chapter shall retain at all times responsibility for the due performance of any delegated fiduciary function.

§31A-4-15. Required annual filings before exercising trust powers; penalties; notice of failure to comply.

No banking institution, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a bank, or entity jointly owned by federally insured depository institutions authorized to conduct banking business in this state shall exercise any of the trust powers mentioned in this article until it shall have filed with the commissioner of banking an annual report of trust assets each calendar year. To meet the requirements of this section, the commissioner may accept a report similar to the report filed by banking institutions with federal regulators. If any such banking institution or its nonbanking subsidiary or the nonbanking subsidiary of a bank holding company or entity jointly owned by federally insured depository institutions authorized to do banking business in this state shall exercise, or attempt to exercise, any such powers or rights without having complied with the requirements of this section as to the filing of such report, it is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars; and in every such case, whether or not there has been a prosecution or conviction of the company so offending, the commissioner of banking, being satisfied of the facts, may publish a notice of the fact that it has failed to
comply with the requirements of this section and is therefore not entitled to exercise the trust powers and rights mentioned in the preceding section. In the event a notice is published as aforesaid, it shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county or counties in which such entity is offering such trust services. The cost of publication shall be paid by the person failing to comply with this section.

§31A-4-16. Trust funds to be kept separate; bookkeeping and management.

Every banking institution, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a bank or entity jointly owned by federally insured depository institutions authorized to engage in the trust business pursuant to the provisions of section fourteen of this article, shall keep all trust funds and investments separate and distinct from the assets owned by the corporation; and shall keep a separate set of books and records showing in proper detail all transactions so engaged in; and all investments made by such institution as fiduciary shall be so designated that the trust to which such investments shall appertain or belong shall be clearly and distinctly shown on the books of the institution; and such funds shall be held for the uses of the trust designated and for the beneficiaries thereof, and shall not be liable for any other obligations of the institution.

§31A-4-17. Oath as fiduciary.

Whenever any court, or the clerk thereof, shall appoint any banking institution, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a bank or entity jointly owned by federally insured depository institutions exercising trust powers under section fourteen of this article, as trustee, receiver, assignee, guardian, executor, administrator, special
commissioner, curator, committee, or in any other fiduciary capacity to perform any duty or execute any trust, the chairman of the board, the president, vice president, secretary, treasurer, trust officer or assistant trust officer of such appointee shall take the oath and make the affirmation required by law of any such fiduciary, before the court or the clerk thereof, or before any other officer authorized to administer oaths.

§31A-4-18. Capital as fiduciary security; additional security.

Whenever any banking institution, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a bank or entity jointly owned by federally insured depository institutions authorized to exercise trust powers pursuant to the provisions of section fourteen of this article, and having complied with the requirements of this article, shall be appointed trustee, assignee, receiver, guardian, executor, administrator, special commissioner, curator, committee, or in any other fiduciary capacity, or shall be directed by the order or decree of any court to execute any trust whatsoever, the capital and other assets of the fiduciary corporation shall constitute the security required by law for the faithful performance of its duties and shall be absolutely liable in case of any default whatsoever but, where the liability under any such appointment as trustee, assignee, receiver, guardian, executor, administrator, special commissioner, curator or committee, or in the execution of any trust by order or decree of any court, shall be equal to, or shall exceed the capital and surplus of such fiduciary corporation, the court making such appointment or entering such order or decree may require, and the fiduciary shall give, additional security. No bond shall be required of any banking institution, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a bank or entity jointly owned by federally insured depository institutions unless such additional security is required.

§31A-4-42. Unlawful for persons other than banking institutions to engage in the banking business; penalties.
No person, except banking institutions chartered under the laws of this state, or authorized to conduct a banking business in this state under the laws of the United States of America or those chartered under the laws of another state or the United States of America with branch offices in this state under the provisions of articles eight-d and eight-e of this chapter, may engage in the business of banking or the trust business in the state of West Virginia, or shall receive or accept deposits of money, or borrow money by receiving and giving credits for deposits, or by issuing certificates of deposits or certificates of indebtedness, or by making and negotiating any writing purporting to be a bond, contract or other obligation, the performance of which requires the holder or other party to make deposits of money with the issuer or receive or accept deposits by means of any other plan, pretext, scheme, shift or device: Provided, That a nonbanking subsidiary of a bank holding company, a nonbanking subsidiary of a banking institution or an entity jointly owned by federally insured depository institutions may provide trust services pursuant to subsection (d), section fourteen of this article.

Nothing contained in this section may affect the rights, privileges, objects or purposes delegated to other corporations by the general corporation law or other laws of this state.

Any corporation or individual who violates any of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five thousand dollars and, in addition to penalty, every corporation so offending shall forfeit its corporate franchise and every individual so offending is subject to a further penalty by confinement in the county or regional jail for not more than one year.

ARTICLE 6. NOMINEE REGISTRATION OF FIDUCIARY SECURITIES.

§31A-6-1. Procedures for nominee registration of securities.
§31A-6-2. Duties of trust institutions making use of nominee registration.
§31A-6-3. Civil liabilities and criminal penalties.
§31A-6-4. Limitations on liability in transfers and changes of registration.
§31A-6-5. Registration of property to evade taxes prohibited.

§31A-6-1. Procedures for nominee registration of securities.

Any bank, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a banking institution, or entity jointly owned by federally insured depository institutions authorized to exercise trust powers under section fourteen, article four of this chapter, which holds in a fiduciary capacity any stock, bond, debenture, note, warrant, certificate or other security evidencing ownership or interest, either whole or fractional, in fully paid and nonassessable intangible personal property, may cause the security or evidence of ownership, to be registered and held in the name of a nominee or nominees of the trust institution, or in its own name, without disclosing the fiduciary relationship, but, where the trust institution is acting jointly with some other individual or individuals, it must first secure the written consent of the individual fiduciary or fiduciaries thereto, which consent the individual fiduciary or fiduciaries are hereby authorized to give.

The placing of property in the name of a nominee, nominees or in the name of the trust institution, without disclosure of the fiduciary capacity, shall be deemed to be nominee registration under this article and every such registration shall ipso facto constitute a declaration of trust upon the part of the registered owner so far as the fiduciary and the beneficiaries of the fiduciary status are concerned.

For purposes of this article, the term "trust institution" means a bank, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a banking institution or entity jointly owned by federally insured depository institutions authorized to exercise trust powers under section fourteen, article four of this chapter.
§31A-6-2. Duties of trust institutions making use of nominee registration.

Every trust institution making use of nominee registration as provided in this article shall:

(a) At all times maintain such records as may be necessary to show the actual beneficial ownership of the property so held;

(b) At all times retain possession and control of securities or other evidences of ownership which must be kept separate and apart from the assets of such trust institution and assets held in other fiduciary capacities;

(c) Secure from the nominee or nominees the endorsements, assignments or other writings as may be necessary to effect retransfer of the securities or other evidences of ownership without notice and such endorsements, assignments or other writings shall be valid and effective as of the date of delivery thereof whether the nominee die before transfer is perfected, or not;

(d) Enter into such contracts or agreements with its nominee or nominees as may be necessary to afford full protection to the ownership of its fiduciary account and the beneficiaries thereof;

(e) Clearly show in all of its reports and accounts the form of registration under which such securities or evidences of ownership are held.

§31A-6-3. Civil liabilities and criminal penalties.

Any trust institution which places property in nominee registration under this article is absolutely liable in civil actions or suits for any or all loss or damage to its fiduciary account or the beneficiaries thereof occasioned by the acts of any of its nominees, or any of its agents, employees, or other persons
acting for it with respect to such property, including reasonable attorney fees.

Any trust institution or its officers, employees, nominees or agents placing property in nominee registration in violation of any of the provisions of this article is guilty of a misdemeanor and, in addition to civil liability for restitution, shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars.

§31A-6-4. Limitations on liability in transfers and changes of registration.

No liability for any loss caused by the acts of the nominee of a trust institution may attach to any transfer agent, registrar, corporation, officer or agent of a corporation, or other person, who, in compliance with the directions of any trust institution acting under the provisions of this article, transfers or changes the registration of any property. The certification of the trust institution that it has complied with the provisions of this article is prima facie evidence of its compliance so far as any transfer agent, registrar, corporation, officer or agent of a corporation, or other person, is concerned.

§31A-6-5. Registration of property to evade taxes prohibited.

No trust institution acting under the provisions of this article may cause or permit the use of its name or the name of its nominee or nominees for the purpose of registering property to evade, avoid or relieve itself or any other person, firm or corporation, or the property, from taxation.

ARTICLE 8E. INTERSTATE BRANCHING BY DE NOVO ENTRY AND ACQUISITION OF BRANCHES.

§31A-8E-2. Definitions.

As used in this article, unless a different meaning is required by the context, the following words and phrases shall have the following meanings:
(a) "Acquisition of a branch" means the acquisition of a branch located in a host state, without either engaging in an "interstate merger transaction" as defined in article eight-d of this chapter or acquiring all or substantially all of the assets of another bank by merger or purchase.

(b) "Bank" has the meaning set forth in 12 U.S.C. §1813(h): Provided, That the term "bank" does not include any "foreign bank" as defined in 12 U.S.C. §3101(7), except that the term includes any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the federal deposit insurance corporation.

(c) "Bank holding company" has the meaning set forth in 12 U.S.C. §1841(a)(1).

(d) "Bank supervisory agency" means:

(1) Any agency of another state with primary responsibility for chartering and supervising banks; and

(2) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system and any successor to these agencies.

(e) "Board of banking and financial institutions" means the board created pursuant to the provisions of article three of this chapter and referred to herein as "board".

(f) "Branch" has the meaning set forth in subsection (f), section two, article one of this chapter. It includes an office of a bank that exercises only trust powers as described by subsection (a), section fourteen, article four of this chapter and a nonbanking subsidiary of a bank holding company or a bank that provides trust services pursuant to the provisions of subsection (d), section fourteen, article four of this chapter.
(g) "Commissioner" means the West Virginia commissioner of banking then in office and, where appropriate, all of his or her successors and predecessors in office.

(h) "Control" shall be construed consistently with the provisions of 12 U.S.C. §1841(a)(2).

(i) "De novo branch" means a branch of a bank located in a host state which: (i) Is originally established by the bank as a branch; and (ii) does not become a branch of the bank as a result of: (A) The acquisition of another bank or a branch of another bank; or (B) the merger, consolidation or conversion involving any such bank or branch.

(j) "Home state" means:

(1) With respect to a state bank, the state by which the bank is chartered;

(2) With respect to a national bank, the state in which the main office of the bank is located; or

(3) With respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. §3103(c).

(k) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which the bank is chartered.

(l) "Host state" means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain, a branch.

(m) "Out-of-state bank" means a bank whose home state is a state other than West Virginia.

(n) "Out-of-state state bank" means a bank chartered under the laws of any state other than West Virginia.
(o) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, the Virgin Islands and American Samoa.

(p) "West Virginia state bank" means a bank chartered under the laws of West Virginia.

CHAPTER 39

(Com. Sub. for H. B. 4581 — By Delegates Anderson, Border, Beane, Azinger and Modesitt)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article eight, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the Blennerhassett Island historical park; authorizing the natural resources commission to permit and regulate the hunting of white-tailed deer at the park; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

That section two, article eight, 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 8. BLENNERHASSETT ISLAND HISTORICAL STATE PARK COMMISSION.

§29-8-2. Blennerhassett Island historical state park commission established; members; terms; meeting; quorum; compensation; expenses.
There is continued within the bureau of commerce the Blennerhassett Island historical state park commission. All assets, real and personal property, debts, liabilities, duties, powers and authority previously transferred to the bureau of commerce from the Blennerhassett Island historical state park commission are continued in the bureau of commerce. The Blennerhassett Island historical state park commission is maintained as an advisory commission as hereinafter provided. The commission is composed of ten members who must be citizens and residents of this state, appointed by the governor for terms of four years, by and with the advice and consent of the Senate: Provided, That the terms of all members previously appointed to the Blennerhassett Island historical state park commission prior to any amendment and reenactment of this section shall continue for the periods originally specified, and no member serving as of the effective date of the amendment and reenactment need be reappointed.

Each member must be qualified to carry out the functions of the commission under this article by reason of his or her special interest, training, education or experience.

No person may be eligible to appointment as a member who is an officer or member of any political party executive committee; or the holder of any other public office or public employment under the United States government or the government of this state or a political subdivision of this state. Not more than six members may belong to the same political party.

The commission shall elect a chairman from among its members on the second Monday in September of each year.

All members are eligible for reappointment once by the governor. A member shall, unless sooner removed, continue to serve until his or her term expires and his or her successor has been appointed and has qualified. A vacancy caused by the
death, resignation or removal of a member prior to the expiration of his or her term shall be filled only for the remainder of term.

For the purpose of carrying out its powers, duties and responsibilities under this article, six members of the commission constitute a quorum for the transaction of business. Each member is entitled to one vote. The commission shall meet at a time and place designated by the chairman at least four times each fiscal year. Additional meetings may be held when called by the chairman or when requested by five members of the commission or by the governor. All meetings shall comply with the provisions of article nine-a, chapter six of this code. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his or her duties under this article.

The commission shall advise the bureau of commerce in all matters relating to the development, establishment and maintenance of the Blennerhassett Island historical state park.

All employee positions in the former Blennerhassett Island historical state park commission transferred to the division of commerce by a previous amendment and reenactment of this section are continued in the classified service of the civil service system pursuant to article six of this chapter. Any person included in the classified service by the provisions of this section who is employed in any of these positions as of the effective date of any amendment and reenactment of this section 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 included in the classified service by the provisions of this section who is employed in any of these positions as of the effective date of any amendment and reenactment of this section, be thereafter severed, removed or terminated from such 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.

Notwithstanding any provision of this code to the contrary, the bureau of commerce is vested with exclusive regulatory authority over watercraft transport of visitors to the Blennerhassett Island portion of the Blennerhassett Island historical state park, and the watercraft transport of these visitors is not subject to the provisions of article eighteen, chapter seventeen of this code.

Notwithstanding the provisions of section fifty-eight, article two, chapter twenty of this code, the natural resources commission shall promulgate rules pursuant to the provisions of section seventeen, article one, chapter twenty and section three, article one, chapter twenty-nine-a of this code to permit and regulate the hunting of white-tailed deer at Blennerhassett Island historical state park.

CHAPTER 40

(Com. Sub. for H. B. 4058 —By Delegates Modesitt, Azinger and Trump)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, twelve and twenty-four, article five-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to providing the state athletic commission authority over full contact boxing and other boxing events that also use elements of other fighting disciplines; authority to promulgate rules.

Be it enacted by the Legislature of West Virginia:
That sections three, twelve and twenty-four, article five-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 5A. STATE ATHLETIC COMMISSION.

§29-5A-3. Commission to have sole control of boxing, etc., matches; licenses; municipality not to tax boxing, etc., club.

§29-5A-12. Length of rounds; weight of gloves.


§29-5A-3. Commission to have sole control of boxing, etc., matches; licenses; municipality not to tax boxing, etc., club.

(a) The commission has sole direction, management and control of the jurisdiction over all amateur, professional and semiprofessional boxing, sparring matches and exhibitions, or any form thereof, to be conducted, held or given within the state by any club, individual, corporation or association. As used in this article, the term "boxing" includes any fighting event that includes or permits the striking of an opponent with a closed fist, even if wrestling moves, elements of martial arts, or striking an opponent with the feet are also permitted. No boxing, sparring or exhibition may be conducted, held or given within the state except pursuant to the commission's authority and held in accordance with this article. The commission may, in its discretion, issue and, at its pleasure, revoke the license to conduct, hold or give boxing or sparring matches or exhibitions to any club, corporation, association or individual. Every license is subject to rules the commission may prescribe. Every application for a license shall be on a blank form provided by the commission. No promoter's license may be granted to any club, corporation, association or individual, unless the signer of the application is a bona fide resident of the state of West Virginia. Upon application of the promoter's license, the promoter shall pay a state license fee of one hundred twenty-five dollars for one year. The fee shall be in the form of a
24 certified check or money order and shall be issued to the
treasurer of the state of West Virginia to be deposited in the
general fund. If the license is not granted, the treasurer shall
refund the full amount. Nonprofit chartered and charitable
organizations are exempt from this license fee for all amateur
events. No municipal corporation may impose any license tax
on boxing, sparring or exhibition clubs, notwithstanding the
provisions of any section of the code respecting municipal taxes
and licenses. The granting of a license to a club by the commis-
sion, or the holding of a license by a club, individual, corpora-
tion or association, does not prevent the commission from
canceling or revoking the license to conduct an event, as
provided in this section.

(b) In exercising its jurisdiction over professional,
semiprofessional and amateur boxing, sparring matches and
exhibitions, the commission shall follow the current United
States boxing authority rules and requirements to enable the
proper sanctioning of all participants, referees, judges and
matches or exhibitions conducted under the rules described in
subdivision (1), subsection (c), section twenty-four of this
article and shall cooperate fully with the boxing authority in
order that the sanctioning be extended to state boxers. For full
contact boxing events and other boxing events that follow
nontraditional rules, the commission may impose any limita-
tions or restrictions reasonably necessary to guarantee the
safety of the participants and the fair and honest conducting of
the matches or exhibitions and may refuse to license any event
that poses an unreasonable degree of risk to the participants.

§29-5A-12. Length of rounds; weight of gloves.

No boxing or sparring match or exhibition shall be more
than fifteen rounds of three minutes each in length with
intermission of one minute each between rounds; and the
contestants shall wear, during such contests, gloves weighing at
least ten ounces, unless the commission finds that for limited
categories or classes of fights a lesser weight is sufficient for
the protection of the participants and authorizes the lesser
weight by legislative rule.

§29-5A-24. Rules and regulations governing contestants and
matches.

(a) The commission shall promulgate its rules in compli-
ance with the provisions of article three of chapter twenty-nine-
a of this code.

(b) The commission shall promulgate such rules as it
determines to be necessary to regulate professional and
semiprofessional boxers, and professional and semiprofessional
boxing matches and exhibitions. For full contact boxing and
other boxing events that follow nontraditional rules, rules
guaranteeing the safety of the participants and the fair and
honest conducting of the matches or exhibitions are authorized.

(c) The commission shall promulgate separate rules for
amateur boxers and amateur boxing, sparring matches and
exhibitions as follows:

(1) Rules which comply with the requirements of the rules
of the current United States amateur boxing authority to the
extent that any boxer complying with them will be eligible to
participate in any state, national or international boxing match
sanctioned by the current United States amateur boxing
authority or the international amateur boxing association.

(2) Rules which may differ from the rules of the current
United States amateur boxing authority but which adequately
guarantee the safety of the participants and the fair and honest
conducting of the matches or exhibitions. As a part of these
rules, the commission shall include a requirement that all
boxers participating in matches or exhibitions conducted under
these rules be informed prior to such participation that such
participation will disqualify them from participating in state,
national or international matches and exhibitions sanctioned by
the current United States amateur boxing authority or the
international amateur boxing association.
AN ACT to amend and reenact sections six and eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the capital company act; requiring venture capital funds to be held in escrow until an applicant business provides proof of the creation of jobs to otherwise qualify for the provision of funding; providing for four million dollars in authorized credits for the fiscal year beginning on the first day of July, two thousand; and requiring two million dollars of that amount be allocated to small business investment companies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-6. Qualification of West Virginia capital companies.

§5E-1-8. Tax credits.

§5E-1-6. Qualification of West Virginia capital companies.

(a) The authority shall qualify West Virginia capital companies commencing after the effective date of this article. A company seeking to be qualified as a West Virginia capital company shall make written application to the authority on forms provided by the authority. The application shall contain the information required by section ten of this article. Further,
the application shall specify the level of capitalization of the company.

(b) The application shall set forth the applicant's purpose.

(c) The authority may certify West Virginia capital companies in existence after the first day of July, one thousand nine hundred eighty-six.

(d) An applicant shall establish an escrow account located in West Virginia, into which funds invested in the applicant shall be deposited and held for the period of time between their receipt by the applicant and the designation of the applicant as a qualified company. The funds shall not be invested by the applicant until it is designated by the authority as a qualified company: Provided, That, in addition to the minimum standards set forth in section seven of this article, no applicant may be designated a qualified company without providing sufficient proof to the authority that the proposed project will sufficiently promote the purpose of providing employment in accordance with the provisions of section three, article fifteen, chapter thirty-one of this code. In the event the authority does not designate the applicant a qualified company, such funds shall be returned to the investors, if requested by the investors.

(e) A West Virginia capital company may not qualify or be issued a certification under this article unless the company holds a valid business registration certificate issued pursuant to article twelve, chapter eleven of this code. A company exempt from registration under article twelve may qualify and be certified under this article upon proof of its exemption.

§5E-1-8. Tax credits.

(a) The total amount of tax credits authorized for a single qualified company may not exceed two million dollars. Capitalization of the company may be increased pursuant to rule of the authority.
The total credits authorized by the authority for all companies may not exceed a total of ten million dollars each fiscal year: Provided, That for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-nine, the total credits authorized for all companies may not exceed a total of six million dollars: Provided, however, That for the fiscal year beginning on the first day of July, two thousand, the total credits authorized for all companies may not exceed a total of four million dollars: Provided further, That the capital base of any such qualified company shall be invested in accordance with the provisions of this article. The authority shall allocate these credits to qualified companies in the order that the companies are qualified.

Not more than one million seven hundred fifty thousand dollars of the credits allowed under subdivision (1) of this subsection may be allocated by the authority during each fiscal year to one or more small business investment companies described in this subdivision: Provided, That for the fiscal year beginning on the first day of July, two thousand, two million dollars of the credits allowed under subdivision (1) of this subsection shall be allocated by the authority during that fiscal year to one or more small business investment companies described in this subdivision. The remainder of the tax credits allowed during the fiscal year shall be allocated to qualified companies other than those small business investment companies. The portion of the tax credits allowed for small business investment companies described in this subdivision shall be allowed only if allocated by the authority during the first ninety days of the fiscal year, and may only be allocated to companies that: (A) Were organized on or after the first day of January, one thousand nine hundred ninety-nine; (B) have registered for licensure by the small business administration as a small business investment company under the small business investment act; and (C) have certified in writing to the authority on the application for credits under this act that the company will diligently seek to obtain and thereafter diligently seek to invest leverage available to such small business investment companies
under the small business investment act. These credits shall be allocated by the authority in the order that the companies are qualified. Any credits which have not been allocated to qualified companies meeting the requirements of this subdivision relating to small business investment companies during the first ninety days of the fiscal year shall be made available and allocated to other qualified companies in the manner prescribed in this section for qualified companies generally.

(c) Any investor, including an individual, partnership or corporation who makes a capital investment in a qualified West Virginia capital company, is entitled to a tax credit equal to fifty percent of the investment, except as otherwise provided in this section or in this article. The credit allowed by this article shall be taken after all other credits allowed by chapter eleven of this code. It shall be taken against the same taxes and in the same order as set forth in subsections (c) through (i), inclusive, section five, article thirteen-c, chapter eleven of this code. The credit for investments by a partnership or by a corporation electing to be treated as a Subchapter S corporation may be divided pursuant to election of partners or shareholders.

(d) The tax credit allowed under this section is to be credited against the taxpayer’s tax liability for the taxable year in which the investment in a qualified West Virginia capital company is made. If the amount of the tax credit exceeds the taxpayer’s tax liability for the taxable year, the amount of the credit which exceeds the tax liability for the taxable year may be carried to succeeding taxable years until used in full, or until forfeited: Provided, That: (i) Tax credits may not be carried forward beyond fifteen years; and (ii) tax credits may not be carried back to prior taxable years. Any tax credit remaining after the fifteenth taxable year is forfeited.

(e) The tax credit provided for in this section is available only to those taxpayers whose investment in a qualified West Virginia capital company occurs after the first day of July, one thousand nine hundred eighty-six.
(f) The tax credit allowed under this section may not be used against any liability the taxpayer may have for interest, penalties or additions to tax.

(g) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the name and address of every taxpayer, and the amount, by category, of any credit asserted under this article. The categories by dollar amount of credit received are as follows:

1. More than $1.00, but not more than $50,000;
2. More than $50,000, but not more than $100,000;
3. More than $100,000, but not more than $250,000;
4. More than $250,000, but not more than $500,000;
5. More than $500,000, but not more than $1,000,000;
6. More than $1,000,000.

CHAPTER 42
(S. B. 216 — By Senator Ball)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen-a, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying to whom notice is to be given upon installation, repair or maintenance of a carbon monoxide detector.

Be it enacted by the Legislature of West Virginia:
That section sixteen-a, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units; penalty.

(a) On or before the first day of July, one thousand nine hundred ninety-one, an operational smoke detector shall be installed in the immediate vicinity of each sleeping area within all one- and two-family dwellings, including any "manufactured home" as that term is defined in subsection (j), section two, article nine, chapter twenty-one of this code. Such smoke detector shall be capable of sensing visible or invisible particles of combustion and shall meet the specifications and be installed as provided for in the National Fire Protection Association Standard 74, "Standard for the Installation, Maintenance and Use of Household Fire Warning Equipment", 1989 edition, and in the manufacturer's specifications. When activated, the smoke detector shall provide an alarm suitable to warn the occupants of the danger of fire.

(b) The owner of each dwelling described in subsection (a) of this section shall provide, install and replace the operational smoke detectors required by this section. So as to assure that the smoke detector continues to be operational, in each dwelling described in subsection (a) of this section which is not occupied by the owner thereof, the tenant in any such dwelling shall perform routine maintenance on the smoke detectors within such dwelling.

(c) Where a dwelling is not occupied by the owner and is occupied by an individual who is deaf or hearing impaired, the owner shall, upon written request by or on behalf of such individual, provide and install a smoke detector with a light signal sufficient to warn the deaf or hearing-impaired individual of the danger of fire.
(d) An automatic fire sprinkler system installed in accordance with the National Fire Protection Association Standard 13D, "Standard for the Installation of Sprinkler Systems in Residential Occupancies", 1989 edition, may be provided in lieu of smoke detectors.

(e) After investigating a fire in any dwelling described in subsection (a) of this section, the local investigating authority shall issue to the owner a smoke detector installation order in the absence of the required smoke detectors.

(f) After the first day of July, one thousand nine hundred ninety-eight, an operational carbon monoxide detector with a suitable alarm shall be installed in accordance with the manufacturer's direction:

(1) In any newly constructed residential unit which has a fuel-burning heating or cooking source, including, but not limited to, an oil or gas furnace or stove; and

(2) In any residential unit which is connected to a newly constructed building, including, but not limited to, a garage, storage shed or bar, which has a fuel-burning heating or cooking source, including, but not limited to, an oil or gas furnace or stove.

(g) Any person installing a carbon monoxide detector in a residential unit shall inform the owner, lessor or the occupant or occupants of the residential unit of the dangers of carbon monoxide poisoning and instructions on the operation of the carbon monoxide detector installed.

(h) When repair or maintenance work is undertaken on a fuel-burning heating or cooking source or a venting system in an existing residential unit, the person making the repair or performing the maintenance shall inform the owner, lessor or the occupant or occupants of the unit being served by the fuel-burning heating or cooking source or venting system of the dangers of carbon monoxide poisoning and recommend the installation of a carbon monoxide detector.
(i) Any person who violates any provision of this section is
guilty of a misdemeanor and, upon conviction thereof, shall be
fined not less than fifty dollars nor more than one hundred
dollars.

(j) A violation of this section shall not be deemed by virtue
of such violation to constitute evidence of negligence or
contributory negligence or comparative negligence in any civil
action or proceeding for damages.

(k) A violation of this section shall not constitute a defense
in any civil action or proceeding involving any insurance
policy.

(l) Nothing in this section shall be construed to limit the
rights of any political subdivision in this state to enact laws
imposing upon owners of any dwelling or other building
described in subsection (a) or (f) of this section a greater duty
with regard to the installation, repair and replacement of the
smoke detectors or carbon monoxide detectors than is required
by this section.

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CHAPTER 43

(Com. Sub. for S. B. 90 — By Senators Ross, Ball, Sharpe,
Anderson, Mitchell, Unger, Hunter and Love)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]
requiring the persons to act responsibly and making the persons liable to owners for damage; limiting the use of motor vehicles to access cemeteries and graves; creating a cause of action for injunctive relief; and application of the article.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-seven 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-a, to read as follows:

ARTICLE 13A. GRAVES LOCATED UPON PRIVATELY OWNED LANDS.

§37-13A-1. Access of certain persons to cemeteries and graves located on private land.

§37-13A-2. Purposes for which access is allowed.

§37-13A-3. Conduct of persons accessing cemeteries or grave sites; persons liable for damage.


§37-13A-6. Application of article.

§37-13A-1. Access of certain persons to cemeteries and graves located on private land.

1 For the purposes set forth in section two of this article, the state recognizes that the owners of private land on which a cemetery or graves are located have a duty to allow ingress and egress to the cemetery or graves by family members, close friends and descendants of deceased persons buried there, by any cemetery plot owner, or by any person engaging in genealogy research who has given reasonable notice to the owner of record or to the occupant of the property or to both the owner and occupant. The access route may be designated by the landowner if no traditional access route is obviously visible by a view of the property.

§37-13A-2. Purposes for which access is allowed.

1 The right of ingress and egress granted to persons specified in section one of this article shall be limited to the purposes of:
(1) Visiting graves; (2) maintaining the grave site or cemetery; (3) burying a deceased person in a cemetery plot by those granted rights of burial to that plot; and (4) conducting genealogy research.

§37-13A-3. Conduct of persons accessing cemeteries or grave sites; persons liable for damage.

All persons exercising access to a grave site or cemetery under the provisions of this article are responsible for conducting themselves in a manner that does not damage the private lands, the cemetery or grave sites and are liable to the owner of the private lands for any damage caused as a result of their access.


The access to a cemetery or grave site on private lands conferred by this article does not include the right to operate motor vehicles on the private lands, unless there is a road or adequate right-of-way that permits access by motor vehicle and the owner has given written permission to use the road or right-of-way or way of necessity.


Any person denied reasonable access under the provisions of this section, including the denial of permission to use vehicular access, may institute a proceeding in the circuit court of the county in which the cemetery or grave site is located to enjoin the owner of the private lands on which the cemetery or grave site is located, or his or her agent, from denying the person reasonable ingress and egress to the cemetery or grave site for the purposes set forth in section two of this article. In granting such relief, the court may set the frequency of access, hours and duration of the access.

§37-13A-6. Application of article.

The provisions of this article shall not apply to any deed or other written instrument executed prior to the effective date of this article which creates or reserves a cemetery or grave site on private property and which specifically sets forth terms of access.
AN ACT to repeal article ten, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said code by adding thereto a new chapter, designated chapter forty-eight-c, relating to adopting the uniform child custody jurisdiction and enforcement act.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated chapter forty-eight-c, to read as follows:

CHAPTER 48C. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT.

 ARTICLE 1. GENERAL PROVISIONS.

§48C-1-102. Definitions.
§48C-1-103. Proceedings governed by other law.
§48C-1-104. Application to Indian tribes.
§48C-1-105. International application of chapter.
§48C-1-106. Effect of child custody determination.
§48C-1-107. Priority.

This chapter may be cited as the "Uniform Child Custody Jurisdiction and Enforcement Act".

§48C-1-102. Definitions.

(a) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(b) "Child" means an individual who has not attained eighteen years of age.

(c) "Child custody determination" means a judgment, decree or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(d) "Child custody proceeding" means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under article three of this chapter.

(e) "Commencement" means the filing of the first pleading in a proceeding.
(f) "Court" means an entity authorized under the law of a state to establish, enforce or modify a child custody determination. Reference to a court of West Virginia means a court of record.

(g) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(h) "Initial determination" means the first child custody determination concerning a particular child.

(i) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

(j) "Issuing state" means the state in which a child custody determination is made.

(k) "Modification" means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(l) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government, governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

(m) "Person acting as a parent" means a person, other than a parent, who:
(1) Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

(2) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(n) "Physical custody" means the physical care and supervision of a child.

(o) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(p) "Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.

(q) "Warrant" means an order issued by a court authorizing law-enforcement officers to take physical custody of a child.

§48C-1-103. Proceedings governed by other law.

This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

§48C-1-104. Application to Indian tribes.

(a) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this state shall treat a tribe as if it were a state of the United States for purposes of applying articles one and two of this chapter.
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8 (c) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under article three of this chapter.

§48C-1-105. International application of chapter.

1 (a) A court of this state shall treat a foreign country as if it were a state of the United States for purpose of applying articles one and two of this chapter.

4 (b) Except as otherwise provided in subsection (c) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under article three of this chapter.

9 (c) A court of this state need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

§48C-1-106. Effect of child custody determination.

A child custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified in accordance with section one hundred eight of this article or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

§48C-1-107. Priority.

If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the ques-
tion, upon request of a party, must be given priority on the
calendar and handled expeditiously.

§48C-1-108. Notice to persons outside state.

(a) Notice required for the exercise of jurisdiction when a
person is outside this state may be given in a manner prescribed
by the law of this state for service of process or by the law of
the state in which the service is made. Notice must be given in
a manner reasonably calculated to give actual notice but may be
by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed
by the law of this state or by the law of the state in which the
service is made.

(c) Notice is not required for the exercise of jurisdiction
with respect to a person who submits to the jurisdiction of the
court.

§48C-1-109. Appearance and limited immunity.

(a) A party to a child custody proceeding, including a
modification proceeding, or a petitioner or respondent in a
proceeding to enforce or register a child custody determination
is not subject to personal jurisdiction in this state for another
proceeding or purpose solely by reason of having participated,
or having been physically present for the purpose of participat-
ing, in the proceeding.

(b) A person who is subject to personal jurisdiction in this
state on a basis other than physical presence is not immune
from service of process in this state. A party present in this state
who is subject to the jurisdiction of another state is not immune
from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) of this section
does not extend to civil litigation based on acts unrelated to the
participation in a proceeding under this chapter committed by an individual while present in this state.

§48C-1-110. Communication between courts.

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c) of this section, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§48C-1-111. Taking testimony in another state.

(a) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.
(b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

§48C-1-112. Cooperation between courts; preservation of records.

(a) A court of this state may request the appropriate court of another state to:

(1) Hold an evidentiary hearing;

(2) Order a person to produce or give evidence pursuant to procedures of that state;

(3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented and any evaluation prepared in compliance with the request; and

(5) Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (a) of this section.
18 (c) Travel and other necessary and reasonable expenses
19 incurred under subsections (a) and (b) of this section may be
20 assessed against the parties according to the law of this state.

21 (d) A court of this state shall preserve the pleadings, orders,
22 decrees, records of hearings, evaluations and other pertinent
23 records with respect to a child custody proceeding until the
24 child attains eighteen years of age. Upon appropriate request by
25 a court or law-enforcement official of another state, the court
26 shall forward a certified copy of those records.

ARTICLE 2. JURISDICTION.

§48C-2-201. Initial child custody jurisdiction.
§48C-2-203. Jurisdiction to modify determination.
§48C-2-204. Temporary emergency jurisdiction.
§48C-2-205. Notice; opportunity to be heard; joinder.
§48C-2-206. Simultaneous proceedings.
§48C-2-207. Inconvenient forum.
§48C-2-208. Jurisdiction declined by reason of conduct.
§48C-2-209. Information to be submitted to court.
§48C-2-210. Appearance of parties and child.

§48C-2-201. Initial child custody jurisdiction.

1 (a) Except as otherwise provided in section two hundred
2 four of this article, a court of this state has jurisdiction to make
3 an initial child custody determination only if:

4 (1) This state is the home state of the child on the date of
5 the commencement of the proceeding, or was the home state of
6 the child within six months before the commencement of the
7 proceeding, and the child is absent from this state but a parent
8 or person acting as a parent continues to live in this state;

9 (2) A court of another state does not have jurisdiction under
10 subdivision (1) of this subsection, or a court of the home state
11 of the child has declined to exercise jurisdiction on the ground
that this state is the more appropriate forum under section two
hundred seven or two hundred eight, and:

(A) The child and the child's parents, or the child and at
least one parent or a person acting as a parent, have a signifi-
cant connection with this state other than mere physical
presence; and

(B) Substantial evidence is available in this state concern-
ing the child's care, protection, training and personal relation-
ships;

(3) All courts having jurisdiction under subdivision (1) or
(2) of this subdivision have declined to exercise jurisdiction on
the ground that a court of this state is the more appropriate
forum to determine the custody of the child under section two
hundred seven or two hundred eight; or

(4) No court of any other state would have jurisdiction
under the criteria specified in subdivision (1), (2) or (3) of this
subsection.

(b) Subsection (a) of this section is the exclusive jurisdic-
tional basis for making a child custody determination by a court
of this state.

(c) Physical presence of, or personal jurisdiction over, a
party or a child is not necessary or sufficient to make a child
custody determination.


(a) Except as otherwise provided in section two hundred
four of this article, a court of this state which has made a child
custody determination consistent with section two hundred one
or two hundred three of this article has exclusive, continuing
jurisdiction over the determination until:
§48C-2-203. Jurisdiction to modify determination.

Except as otherwise provided in section two hundred four of this article, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under subdivision (1) or (2), subsection (a), section two hundred one of this article and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under section two hundred two of this article or that a court of this state would be a more convenient forum under section two hundred seven; or

(2) A court of this state or a court of the other state determines that the child, the child’s parents and any person acting as a parent do not presently reside in the other state.

§48C-2-204. Temporary emergency jurisdiction.
(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections two hundred one through two hundred three, inclusive, of this article, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections two hundred one through two hundred three, inclusive, of this article. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections two hundred one through two hundred three, inclusive, of this article, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections two hundred one through two hundred three, inclusive, of this article, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections two hundred one through two hundred three, inclusive, of this article. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced
in, or a child custody determination has been made by, a court of a state having jurisdiction under sections two hundred one through two hundred three, inclusive, of this article, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to sections two hundred one through two hundred three, inclusive, of this article, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

§48C-2-205. Notice; opportunity to be heard; joinder.

(a) Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of section one hundred eight, article one of this chapter must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated and any person having physical custody of the child.

(b) This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene, as a party in a child custody proceeding under this chapter are governed by the law of this state as in child custody proceedings between residents of this state.

§48C-2-206. Simultaneous proceedings.

(a) Except as otherwise provided in section two hundred four of this article, a court of this state may not exercise its
jurisdiction under this article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under section two hundred seven of this article.

(b) Except as otherwise provided in section two hundred four of this article, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section two hundred nine of this article. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

(1) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) Enjoin the parties from continuing with the proceeding for enforcement; or

(3) Proceed with the modification under conditions it considers appropriate.
§48C-2-207. Inconvenient forum.

(a) A court of this state which has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon the motion of a party, the court’s own motion or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) The length of time the child has resided outside this state;

(3) The distance between the court in this state and the court in the state that would assume jurisdiction;

(4) The relative financial circumstances of the parties;

(5) Any agreement of the parties as to which state should assume jurisdiction;

(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
§48C-2-208. Jurisdiction declined by reason of conduct.

(a) Except as otherwise provided in section two hundred four of this article or by other law of this state, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) A court of the state otherwise having jurisdiction under sections two hundred one through two hundred three, inclusive, of this article determines that this state is a more appropriate forum under section two hundred seven of this article; or

(3) No court of any other state would have jurisdiction under the criteria specified in sections two hundred one through two hundred three, inclusive, of this article.

(b) If a court of this state declines to exercise its jurisdiction pursuant to subsection (a) of this section, it may fashion an
appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under sections two hundred one through two hundred three, inclusive, of this article.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a) of this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney’s fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs or expenses against this state unless authorized by law other than this chapter.

§48C-2-209. Information to be submitted to court.

(a) Subject to local law providing for the confidentiality of procedures, addresses and other identifying information in a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child’s present address or whereabouts, the places where the child has lived during the last five years and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number and the date of the child custody determination, if any;

(2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and
proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions, and, if so, identify the court, the case number and the nature of the proceeding; and

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subdivision (1) through (3), inclusive, subsection (a) of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court’s jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or child and determines that the disclosure is in the interest of justice.

§48C-2-210. Appearance of parties and child.
(a) In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to section one hundred eight, article one of this chapter include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child custody proceeding who is outside this state is directed to appear under subsection (b) of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

ARTICLE 3. ENFORCEMENT.

§48C-3-301. Definitions.
§48C-3-302. Enforcement under Hague convention.
§48C-3-303. Duty to enforce.
§48C-3-304. Temporary visitation.
§48C-3-305. Registration of child custody determination.
§48C-3-306. Enforcement of registered determination.
§48C-3-307. Simultaneous proceedings.
§48C-3-308. Expedited enforcement of child custody determination.
§48C-3-309. Service of petition and order.
§48C-3-310. Hearing and order.
§48C-3-311. Warrant to take physical custody of child.
§48C-3-312. Costs, fees and expenses.

§48C-3-313. Recognition and enforcement.

§48C-3-314. Appeals.

§48C-3-315. Role of prosecutor or public official.

§48C-3-316. Role of law enforcement.

§48C-3-317. Costs and expenses.

§48C-3-301. Definitions.

(a) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

(b) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

§48C-3-302. Enforcement under Hague convention.

Under this article a court of this state may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

§48C-3-303. Duty to enforce.

(a) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

(b) A court of this state may utilize any remedy available under other law of this state to enforce a child custody determi-
nation made by a court of another state. The remedies provided in this article are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

§48C-3-304. Temporary visitation.

(a) A court of this state which does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

(1) A visitation schedule made by a court of another state; or

(2) The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this state makes an order under subdivision (2), subsection (a) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in article two of this chapter. The order remains in effect until an order is obtained from the other court or the period expires.

§48C-3-305. Registration of child custody determination.

(a) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate court in this state:

(1) A letter or other document requesting registration; or

(2) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief
of the person seeking registration the order has not been modified; and

(3) Except as otherwise provided in section two hundred nine, article two of this chapter, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a) of this section, the registering court shall:

(1) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) Serve notice upon the persons named pursuant to subdivision (3), subsection (a) of this section and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subdivision (2), subsection (b) of this section must state that:

(1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(2) A hearing to contest the validity of the registered determination must be requested in writing to the court within twenty days after service of notice; and

(3) Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within twenty days after service of
the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) The issuing court did not have jurisdiction under article two of this chapter;

(2) The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under article two of this chapter; or

(3) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section one hundred eight, article one of this chapter in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

§48C-3-306. Enforcement of registered determination.

(a) A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

(b) A court of this state shall recognize and enforce, but may not modify, except in accordance with article two of this chapter, a registered child custody determination of a court of another state.

§48C-3-307. Simultaneous proceedings.
If a proceeding for enforcement under this article is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under article two of this chapter, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

§48C-3-308. Expedited enforcement of child custody determination.

(a) A petition under this article must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child custody determination must state:

(1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) Whether the determination for which enforcement is sought has been vacated, stayed or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number and the nature of the proceeding;

(3) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number and the nature of the proceeding;
(4) The present physical address of the child and the respondent, if known;

(5) Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law-enforcement officials and, if so, the relief sought; and

(6) If the child custody determination has been registered and confirmed under section three hundred five of this article, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) of this section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs and expenses under section three hundred twelve of this article, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) The child custody determination has not been registered and confirmed under section three hundred five of this article, and that:

(A) The issuing court did not have jurisdiction under article two of this chapter;
(B) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court having jurisdiction to do so under article two of this chapter;

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of section one hundred eight, article one of this chapter, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child custody determination for which enforcement is sought was registered and confirmed under section three hundred four of this article, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under article two of this chapter; or

(3) There is credible evidence of abuse or neglect of the child or children who are the subject of the petition and the credible evidence has been reported to a child welfare agency, a law-enforcement officer, a licensed physician, a licensed social worker, or a licensed mental health professional and an investigation or other proceeding has not been concluded: Provided, That the court may continue the hearing to a day certain to monitor the investigation or proceedings or take any further action as the circumstances and the best interest of the child may warrant.

§48C-3-309. Service of petition and order.

Except as otherwise provided in section three hundred eleven of this article, the petition and order must be served, by any method authorized by the law of this state, upon respondent and any person who has physical custody of the child.

§48C-3-310. Hearing and order.

(a) Unless the court issues a temporary emergency order pursuant to section two hundred four, article two of this chapter,
upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) The child custody determination has not been registered and confirmed under section three hundred five of this article and that:

(A) The issuing court did not have jurisdiction under article two of this chapter;

(B) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a state having jurisdiction to do so under article two of this chapter; or

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of section one hundred eight, article one of this chapter, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child custody determination for which enforcement is sought was registered and confirmed under section three hundred five of this article, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under article two of this chapter; or

(3) There is credible evidence of abuse or neglect of the child or children who are the subject of the petition and the credible evidence has been reported to a child welfare agency, a law-enforcement officer, a licensed physician, a licensed social worker, or a licensed mental health professional and an investigation or other proceeding has not been concluded: Provided, That the court may continue the hearing to a day certain to monitor the investigation or proceedings or take any
further action as the circumstances and the best interest of the
child may warrant.

(b) The court shall award the fees, costs and expenses
authorized under section three hundred twelve of this article
and may grant additional relief, including a request for the
assistance of law-enforcement officials, and set a further
hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the
ground that the testimony may be self-incriminating, the court
may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications
between spouses and a defense of immunity based on the
relationship of husband and wife or parent and child may not be
invoked in a proceeding under this article.

§48C-3-311. Warrant to take physical custody of child.

(a) Upon the filing of a petition seeking enforcement of a
child custody determination, the petitioner may file a verified
application for the issuance of a warrant to take physical
custody of the child if the child is imminently likely to suffer
serious physical harm or be removed from this state.

(b) If the court, upon the testimony of the petitioner or other
witness, finds that the child is imminently likely to suffer
serious physical harm or be removed from this state, it may
issue a warrant to take physical custody of the child. The
petition must be heard on the next judicial day after the warrant
is executed unless that date is impossible. In that event, the
court shall hold the hearing on the first judicial day possible.
The application for the warrant must include the statements
required by subsection (b), section three hundred eight of this
article.

(c) A warrant to take physical custody of a child must:
(1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) Direct law-enforcement officers to take physical custody of the child immediately; and

(3) Provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law-enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law-enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child’s custodian.

§48C-3-312. Costs, fees and expenses.

(a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney’s fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs or expenses against a state unless authorized by law other than this chapter.

§48C-3-313. Recognition and enforcement.
A court of this state shall accord full faith and credit to an order issued by another state and consistent with this chapter which enforces a child custody determination by a court of another state unless the order has been vacated, stayed or modified by a court have jurisdiction to do so under article two of this chapter.

§48C-3-314. Appeals.

An appeal may be taken from a final order in a proceeding under this article in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under section two hundred four, article two of this chapter, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

§48C-3-315. Role of prosecutor or public official.

(a) In a case arising under this chapter or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resort to a proceeding under this article or any other available civil proceeding, to locate a child, obtain the return of a child or enforce a child custody determination if there is:

1. An existing child custody determination;
2. A request to do so from a court in a pending child custody proceeding;
3. A reasonable belief that a criminal statute has been violated; or
4. A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A prosecutor or appropriate public official acting under this section acts on behalf of the court and may not represent any party.
§48C-3-316. Role of law enforcement.
1 At the request of a prosecutor or other appropriate public
2 official acting under section three hundred fifteen of this article,
3 a law-enforcement officer may take any lawful action reason-
4 ably necessary to locate a child or a party and assist a prosecu-
5 tor or appropriate public official with responsibilities under said
6 section.

§48C-3-317. Costs and expenses.
1 If the respondent is not the prevailing party, the court may
2 assess against the respondent all direct expenses and costs
3 incurred by the prosecutor or other appropriate public official
4 and law-enforcement officers under section three hundred
5 fifteen or three hundred sixteen of this article.

ARTICLE 4. MISCELLANEOUS PROVISIONS.
§48C-4-401. Application and construction.
1 In applying and construing this uniform act, consideration
2 must be given to the need to promote uniformity of the law with
3 respect to its subject matter among states that enact it.

§48C-4-402. Severability clause.
1 If any provision of this chapter or its application to any
2 person or circumstance is held invalid, the invalidity does not
3 affect other provisions or applications of this chapter which can
4 be given effect without the invalid provision or application, and
5 to this end the provisions of this chapter are severable.

§48C-4-403. Effective date.
1 This chapter takes effect on the first day of July, two
2 thousand.

§48C-4-404. Transitional provision.
1 A motion or other request for relief made in a child custody
2 proceeding or to enforce a child custody determination which
was commenced before the effective date of this chapter is
governed by the law in effect at the time the motion or other
request was made.

CHAPTER 45

(Com. Sub. for S. B. 565 — By Senators Walker and Prezioso)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT to repeal section three, article four-a, chapter nine of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended; to amend and reenact sections one, two, three, four, five
and six, article sixteen-b, chapter five of said code; and to amend
and reenact section two-b, article four-a, chapter nine of said
code, all relating to the children's health insurance program;
creating the agency within the department of administration;
adding certain definitions; authority to transfer personnel,
equipment and funds; and expanding availability of insurance
coverage to certain eligible children.

Be it enacted by the Legislature of West Virginia:

That section three, article four-a, chapter nine of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, be
repealed; that sections one, two, three, four, five and six, article
sixteen-b, chapter five of said code be amended and reenacted; and
that section two-b, article four-a, chapter nine 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.

§5-16B-1. Expansion of health care coverage to children; creation of program; legislative directives.

(a) It is the intent of the Legislature to expand access to health services for eligible children and to pay for this coverage by using private, state and federal funds to purchase those services or purchase insurance coverage for those services. To achieve this intention, the West Virginia children's health insurance program is hereby created. The program shall be administered by the children's health insurance agency within the department of administration in accordance with the provisions of this article and the applicable provisions of Title XXI of the Social Security Act of 1997. Participation in the program may be made available to families of eligible children, subject to eligibility criteria and processes to be established, which shall not create an entitlement to coverage in any person. Nothing in this article may be construed to require any appropriation of state general revenue funds for the payment of any benefit provided for in this article. In the event that this article conflicts with the requirements of federal law, federal law governs.
(b) In developing a children's health insurance program that operates with the highest degree of simplicity and governmental efficiency, the board shall avoid duplicating functions available in existing agencies and may enter into interagency agreements for the performance of specific tasks or duties at a specific or maximum contract price.

(c) In developing benefit plans, the board may consider any cost savings, administrative efficiency or other benefit to be gained by considering existing contracts for services with state health plans and negotiating modifications of those contracts to meet the needs of the program.

(d) Upon the transfer of the functions of the children's health insurance program from the department of health and human resources to the children's health insurance agency within the department of administration, the secretary of the department of health and human resources and the secretary of the department of administration, acting jointly, are empowered to authorize and shall authorize such transfers of program funds including, but not limited to, the West Virginia children's health fund created in section seven of this article and associated investment accounts; and transfers of children's health insurance program personnel and equipment, as are necessary, to facilitate an orderly transfer of the functions of the children's health insurance program. Authority to make transfers pursuant to this subsection expires on the thirty-first day of December, two thousand.

(e) In order to enroll as many eligible children as possible in the program created by this article and to expedite the effective date of their health insurance coverage, the board shall develop and implement a plan whereby applications for enrollment may be taken at any primary care center or other health care provider, as determined by the director, and transmitted electronically to the program's offices for eligibility screening and other necessary processing. The board may use
any funds available to it in the development and implementa-
tion of the plan, including grant funds or other private or public
moneys.

§5-16B-2. Definitions.

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

(a) “Agency” means the children’s health insurance agency
within the department of administration;

(b) “Board” means the children’s health insurance program
board;

(c) “Director” means the director of the children’s health
insurance agency;

(d) “Essential community health service provider” means
a health care provider that:

(1) Has historically served medically needy or medically
indigent patients and demonstrates a commitment to serve low-
income and medically indigent populations which constitute a
significant portion of its patient population or, in the case of a
sole community provider, serves medically indigent patients
within its medical capability; and

(2) Either waives service fees or charges fees based on a
sliding scale and does not restrict access or services because of
a client’s financial limitations. Essential community health
service provider includes, but is not limited to, community
mental health centers, school health clinics, primary care
centers, pediatric health clinics or rural health clinics.

(e) “Program” means the West Virginia children’s health
insurance program.

§5-16B-3. Reporting requirements.
(a) Annually on the first day of January, the director shall report to the governor and the Legislature regarding the number of children enrolled in the program or programs; the average annual cost per child per program; the estimated number of remaining uninsured children; and the outreach activities for the previous year. The report shall include any information that can be obtained regarding the prior insurance and health status of the children enrolled in programs created pursuant to this article. The report shall include information regarding the cost, quality and effectiveness of the health care delivered to enrollees of this program; satisfaction surveys; and health status improvement indicators. The agency, in conjunction with other state health and insurance agencies, shall develop indicators designed to measure the quality and effectiveness of children’s health programs, which information shall be included in the annual report.

(b) On a quarterly basis, the director shall provide reports to the legislative oversight commission on health and human resources accountability on the number of children served, including the number of newly enrolled children for the reporting period and current projections for future enrollees; outreach efforts and programs; statistical profiles of the families served and health status indicators of covered children; the average annual cost of coverage per child; the total cost of children served by provider type, service type and contract type; outcome measures for children served; reductions in uncompensated care; performance with respect to the financial plan; and any other information as the legislative oversight commission on health and human resources accountability may require.

§5-16B-4. Children’s health policy board created; qualifications and removal of members; powers; duties; meetings; and compensation.

(a) There is hereby created the West Virginia children’s health insurance board, which shall consist of the director of the
public employees insurance agency, the secretary of the department of health and human resources, or his or her designee, and six citizen members appointed by the governor, one of whom shall represent children's interests and one of whom shall be a certified public accountant, to assume the duties of the office immediately upon appointment, pending the advice and consent of the Senate. A member of the Senate, as appointed by the Senate president and a member of the House of Delegates, as appointed by the speaker of the House of Delegates, shall serve as nonvoting members. Of the five citizen members first appointed, one shall serve one year, two shall serve two years and two shall serve three years. All subsequent appointments shall be for terms of three years, except that an appointment to fill a vacancy shall be for the unexpired term only: Provided, That the citizen member to be appointed upon the reenactment of this section during the regular session of the Legislature, two thousand, shall serve a term which corresponds to the term of the member initially appointed to serve one year. Three of the citizen members shall have at least a bachelor's degree and experience in the administration or design of public or private employee or group benefit programs and the children's representative shall have experience that demonstrates knowledge in the health, educational and social needs of children. No more than three citizen members may be members of the same political party and no board member shall represent or have a pecuniary interest in an entity reasonably expected to compete for contracts under this article. Members of the board shall assume the duties of the office immediately upon appointment. The director of the agency shall serve as the chairperson of the board. No member may be removed from office by the governor except for official misconduct, incompetence, neglect of duty, neglect of fiduciary duty or other specific responsibility imposed by this article or gross immorality. Vacancies in the board shall be filled in the same manner as the original appointment.
(b) The purpose of the board is to develop plans for health services or health insurance that are specific to the needs of children and to bring fiscal stability to this program through development of an annual financial plan designed in accordance with the provisions of this article.

(c) Notwithstanding any other provisions of this code to the contrary, any insurance benefits offered as a part of the programs designed by the board are exempt from the minimum benefits and coverage requirements of articles fifteen and sixteen, chapter thirty-three of this code.

(d) The board may consider adopting the maximum period of continuous eligibility permitted by applicable federal law, regardless of changes in a family's economic status, so long as other group insurance does not become available to a covered child.

(e) The board shall meet at the time and place as specified by the call of the chairperson or upon the written request to the chairperson by at least two members. Notice of each meeting shall be given in writing to each member by the chairperson at least three days in advance of the meeting. Four voting members shall constitute a quorum.

(f) For each day or portion of a day spent in the discharge of duties pursuant to this article, the board shall pay each of its citizen members the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties.

§5-16B-5. Director of the children's health insurance program; qualifications; powers and duties.

(a) An agency director shall be appointed by the governor, with the advice and consent of the Senate, and shall be responsible for the implementation, administration and management of the children's health insurance program created under this
article. The director shall have at least a bachelor’s degree and a minimum of three years’ experience in health insurance administration.

(b) The director shall employ any administrative, technical and clerical employees that are required for the proper administration of the program and for the work of the board. He or she shall present recommendations and alternatives for the design of the annual plans and other actions undertaken by the board in furtherance of this article.

(c) The director is responsible for the administration and management of the program and has the power and authority to make all rules necessary to effectuate the provisions of this article. Nothing in this article may be construed as limiting the director’s otherwise lawful authority to manage the program on a day-to-day basis.

(d) The director has exclusive authority to execute any contracts that are necessary to effectuate the provisions of this article: Provided, That the board shall approve all contracts for the provision of services or insurance coverage under the program. The provisions of article three, chapter five-a of this code, relating to the division of purchasing of the department of finance and administration, shall not apply to any contracts for any health insurance coverage, health services, or professional services authorized to be executed under the provisions of this article: Provided, however, That before entering into any contract the director shall invite competitive bids from all qualified entities and shall deal directly with those entities in presenting specifications and receiving quotations for bid purposes. The director shall award those contracts on a competitive basis taking into account the experience of the offering agency, corporation, insurance company or service organization. Before any proposal to provide benefits or coverage under the plan is selected, the offering agency, corporation, insurance company or service organization shall provide assurances of
utilization of essential community health service providers to
the greatest extent practicable. In evaluating these factors, the
director may employ the services of independent, professional
consultants. The director shall then award the contracts on a
competitive basis.

(e) The director shall issue requests for proposals on a
regional or statewide basis from essential community health
service providers for defined portions of services under the
children's health insurance plan and shall, to the greatest extent
practicable, either contract directly with, or require participating
providers to contract with, essential community health service
providers to provide the services under the plan.

(f) Subject to the advice and consent of the board, the
director may require reinsurance of primary contracts, as
contemplated in the provisions of sections fifteen and fifteen-a,
article four, chapter thirty-three of this code.

§5-16B-6. Financial plans requirements.

(a) Benefit plan design. — All financial plans required by
this section shall establish: (1) The design of a benefit plan or
plans; (2) the maximum levels of reimbursement to categories
of health care providers; (3) any cost containment measures for
implementation during the applicable fiscal year; and (4) the
types and levels of cost to families of covered children. To the
extent compatible with simplicity of administration, fiscal
stability and other goals of the program established in this
article, the financial plans may provide for different levels of
costs based on ability to pay.

(b) Actuary requirements. — Any financial plan, or modifi-
cations, approved or proposed by the board shall be submitted
to and reviewed by an actuary before final approval. The
financial plan shall be submitted to the governor and the
Legislature with the actuary’s written professional opinion that
all estimated program and administrative costs of the agency under the plan, including incurred but unreported claims, will not exceed ninety percent of the funding available to the program for the fiscal year for which the plan is proposed and that the financial plan allows for no more than thirty days of accounts payable to be carried over into the next fiscal year. This actuarial requirement is in addition to any requirement imposed by Title XXI of the Social Security Act of 1997.

(c) Annual plans. — The board shall review implementation of its current financial plan in light of actual experience and shall prepare an annual financial plan for each fiscal year during which the board remains in existence. For each fiscal year, the governor shall provide an estimate of requested appropriations and total funding available to the board no later than the fifteenth day of October preceding the fiscal year. The board shall afford interested and affected persons an opportunity to offer comment on the plan at a public meeting of the board and, in developing any proposed plan under this article, shall solicit comments in writing from interested and affected persons. The board shall submit its final, approved financial plan, subject to the actuarial requirements of this article, to the governor and to the Legislature no later than the first day of January preceding the fiscal year. The financial plan for a fiscal year becomes effective and shall be implemented by the director on the first day of July of that fiscal year. Annual plans developed pursuant to this subsection are subject to the provisions of subsections (a) and (b) of this section and the following guidelines:

(1) The aggregate actuarial value of the plan established as the benchmark plan should be considered as a targeted maximum or limitation in developing the benefits package;

(2) All estimated program and administrative costs, including incurred but not reported claims, shall not exceed ninety percent of the funding available to the program for the applicable fiscal year; and
(3) The state's interest in achieving health care services for all its children at less than two hundred percent of the federal poverty guideline shall take precedence over enhancing the benefits available under this program.

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

(e) The board shall meet no less than once each quarter to review implementation of its current financial plan and, using actuarial data, shall make those modifications to the plan that are necessary to ensure its fiscal stability and effectiveness of service. The board may not increase the types and levels of cost to families of covered children during its quarterly review except in the event of a true emergency. The board may not expand the population of children to whom the program is made available except in its annual plan: Provided, That upon the effective date of this article, the board may expand coverage to any child eligible under the provisions of Title XXI of the Social Security Act of 1997: Provided, however, That the board shall implement cost-sharing provisions for children who may qualify for such expanded coverage and whose family income exceeds one hundred fifty percent of the federal poverty guideline. Such cost-sharing provisions may be imposed through any one or a combination of the following: enrollment fees, premiums, copayments and deductibles.

(f) The board may develop and implement programs that provide for family coverage and/or employer subsidies within the limits authorized by the provisions of Title XXI of the Social Security Act of 1997 or the federal regulations promulgated thereunder: Provided, That any family health insurance coverage offered by or through the program shall be structured so that the board assumes no financial risk: Provided, however, That families covered by any insurance offered by or through the program shall be subject to cost-sharing provisions which
may include, without limitation, enrollment fees, premiums, copayments and/or deductibles, as determined by the board, which shall be based on ability to pay: Provided further, That enrollment fees or premiums, if imposed, may be paid, in whole or in part, through employer subsidies or other private funds or public funds, subject to availability, all as allowed by applicable state and federal law.

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

CHAPTER 9. HUMAN SERVICES.

ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.

§9-4A-2b. Expansion of coverage to children and terminally ill.

(a) It is the intent of the Legislature that steps be taken to expand coverage to children and the terminally ill and to pay for this coverage by fully utilizing federal funds. To achieve this intention, the department of health and human resources shall undertake the following:

(1) The department shall provide a streamlined application form, which shall be no longer than two pages, for all families applying for medical coverage for children under any of the programs set forth in this section; and

(2) The department shall provide the option of hospice care to terminally ill West Virginians who otherwise qualify for medicaid. The department shall provide quarterly reports to the legislative oversight commission on health and human resources accountability created pursuant to section four, article twenty-nine-e, chapter sixteen of this code regarding the
program provided for in this subdivision. The report shall include, but not be limited to, the total number, by age, of newly eligible clients served, the average annual cost of coverage per client and the total cost, by provider type, to serve all clients.

(3) The department shall accelerate the medicaid option for coverage of medicaid to all West Virginia children whose family income is below one hundred percent of the federal poverty guideline. The department shall provide quarterly reports to the legislative oversight commission on health and human resources accountability regarding the program acceleration provided for in this subdivision. The report shall include, but not be limited to, the number of newly eligible clients, by age, served as a result of the acceleration, the average annual cost of coverage per client and the total cost of all clients served by provider type.

(b) Notwithstanding the provisions of section two-a of this article, the accruing interest in the medical services trust fund may be utilized to pay for the programs specified in subsection (a) of this section: Provided, That to the extent the accrued interest is not sufficient to fully fund the specified programs, the disproportionate share hospital funds paid into the medical services trust fund after the thirtieth day of June, one thousand nine hundred ninety-four, may be applied to cover the cost of the specified programs.

(c) Annually on the first day of January, the department shall report to the governor and to the Legislature information regarding the number of children and elderly covered by the programs in subdivisions (2) and (3) of subsection (a), the cost of services by type of service provided, a cost-benefit analysis of the acceleration and expansion on other insurers and the reduction of uncompensated care in hospitals as a result of the programs.
AN ACT to repeal section seventeen, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article three, chapter nine of said code; to amend and reenact section twelve, article five, chapter sixteen of said code; to amend and reenact sections fifteen-a and fifteen-b, article two, chapter forty-eight of said code; to amend and reenact section six, article two-a of said chapter; to amend and reenact section three, article one, chapter forty-eight-a of said code; to amend article one-a of said chapter by adding thereto a new section, designated section thirty-three; to amend and reenact section eleven, article one-b of said chapter; to amend and reenact sections twenty-four, twenty-four-a, twenty-eight, thirty-three-a and forty-one, article two of said chapter; to amend and reenact section three, article three of said chapter; to amend and reenact sections two and three, article five of said chapter; to further amend said article by adding thereto a new section, designated section ten; to amend and reenact section four, article five-a of said chapter; and to amend and reenact sections one, three, four and six, article six of said chapter, all relating to the establishment and enforcement of support obligations generally; providing for the assignment of support and maintenance to the department of health and human resources; providing for the registration of births and acknowledgment of paternity; establishing procedure for recision of acknowledgment of
paternity; authorizing income withholding for purposes of medical support enforcement; requiring protective order to prohibit possessing a firearm or ammunition; establishing liens against personal and real property for child support arrearages pursuant to a protective order; authorizing payment plan for interest on child support arrearages in certain instances; defining "arrearages" and "past due support"; providing for service of notice of filing in procedure for expedited modification; authorizing income withholding for overpayment of child support and establishing limitations thereon; providing for the disbursement of support; permitting redirection of support based upon custodial parent's death certificate; providing for the distribution of state income tax interceptions; requiring payment to financial institutions for data matching services; precluding need for court order for release of certain information to the division; authorizing division to provide additional services for purposes of establishing paternity; making certain technical revisions; authorizing judgment liens against property owned by nonresidents; authorizing the division to institute income withholding without necessity of additional legal proceedings; providing for a review and contest of withholding; reducing percentages of disposable income which may be withheld from obligors; establishing effective date; establishing administrative enforcement of child support; clarifying the use of the word "application" with regard to licenses; clarifying terminology for purposes of paternity establishment; establishing right of father to request blood test; limiting reimbursement support under certain conditions; and providing for the establishment of child support based upon the execution of a voluntary paternity acknowledgment.

Be it enacted by the Legislature of West Virginia:

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

Chapter
48. Domestic Relations.
48A. Enforcement of Family Obligations.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.

§9-3-4. Assignment of support obligations.

1 Any recipient of financial assistance under the program of state and federal assistance established by Title IV of the federal Social Security Act of 1965, as amended, or any successor act thereto, shall, as a condition of receiving such assistance, assign to the department of health and human resources all rights, title and interest the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to the receipt of support and maintenance moneys
from any other person, not exceeding the total amount of assistance provided to the family, which accrue (or have accrued) before the date the family ceases to receive assistance under the program. The assignment, on and after the date the family ceases to receive assistance under the program, does not apply with respect to any support (other than support collected pursuant to 42 U.S.C. §664) which accrued before the family received such assistance and which the state has not collected by the date the family ceases to receive assistance under the program.

Persons responsible for support and maintenance shall include all persons who under the laws of the state of West Virginia owe obligations of support or maintenance to a child or to the caretaker of a child. The assignment contemplated herein shall include all amounts of support and maintenance which accrued to the recipient of assistance and was not received prior to the recipient’s receipt of assistance, and all amounts of support and maintenance which accrue during recipient’s receipt of assistance: Provided, That subject to applicable federal and state laws, the assignment may not exceed the total amount of assistance provided to the family.

Each applicant for assistance subject to the assignment established herein shall (during the application process) be informed in writing of the nature of the assignment.

Any payment of federal and state assistance made to or for the benefit of any child or children or the caretaker of a child or children creates a debt due and owing to the department of health and human resources by the person or persons responsible for the support and maintenance of such child, children or caretaker in an amount equal to the amount of assistance money paid: Provided, That the debt shall be limited by the amount established in any court order or final decree of divorce if the amount in such order or decree is less than the amount of assistance paid.
The assignment hereunder shall subrogate the department of health and human resources to the rights of the child, children or caretaker to the prosecution or maintenance of any action or procedure existing under law providing a remedy whereby the department of health and human resources may be reimbursed for moneys expended on behalf of the child, children or caretaker. The department of health and human resources shall further be subrogated to the debt created by any order or decree awarding support and maintenance to or for the benefit of any child, children or caretaker included within the assignment hereunder and shall be empowered to receive such money judgments and endorse any check, draft, note or other negotiable document in payment thereof.

The assignment created hereunder shall be released upon closure of the assistance case and the termination of assistance payments except for such support and maintenance obligations accrued and owing at the time of closure which shall be necessary to reimburse the department for any balance of assistance payments made.

The department of health and human resources may, at the election of the recipient, continue to receive support and maintenance moneys on behalf of the recipient following closure of the assistance case and shall distribute such moneys to the caretaker, child or children. The department of health and human resources shall notify in writing all appropriate persons of the terms of the release of assignment hereunder.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-12. Birth registration generally; acknowledgment of paternity.

(a) A certificate of birth for each live birth which occurs in this state shall be filed with the local registrar of the district in
which the birth occurs within seven days after such birth and
shall be registered by such registrar if it has been completed and
filed in accordance with this section. When a birth occurs in a
moving conveyance, a birth certificate shall be filed in the
district in which the child is first removed from the conveyance.
When a birth occurs in a district other than where the mother
resides, a birth certificate shall be filed in the district in which
the child is born and in the district in which the mother resides.

(b) When a birth occurs in an institution, the person in
charge of the institution or his designated representative shall
obtain the personal data, prepare the certificate, secure the
signatures required for the certificate and file it with the local
registrar. The physician in attendance shall certify to the facts
of birth and provide the medical information required for the
certificate within five days after the birth.

(c) When a birth occurs outside an institution, the certificate
shall be prepared and filed by one of the following in the
indicated order of priority:

(1) The physician in attendance at or immediately after the
birth, or in the absence of such a person;

(2) Any other person in attendance at or immediately after
the birth, or in the absence of such a person; or

(3) The father, the mother, or, in the absence of the father
and the inability of the mother, the person in charge of the
premises where the birth occurred.

(d) Either of the parents of the child shall sign the certifi-
cate of live birth to attest to the accuracy of the personal data
entered thereon, in time to permit its filing within the seven
days prescribed above.

(e) In order that each county may have a complete record of
the births occurring in said county, the local registrar shall
transmit each month to the county clerk of his or her county the
copies of the certificates of all births occurring in said county,
from which copies the clerk shall compile a record of such
births and shall enter the same in a systematic and orderly way
in a well-bound register of births, which said register shall be
a public record: Provided. That such copies and register shall
not state that any child was either legitimate or illegitimate. The
form of said register of births shall be prescribed by the state
registrar of vital statistics.

(f) On and after the first day of November, one thousand
nine hundred ninety, in addition to the personal data furnished
for the certificate of birth issued for a live birth in accordance
with the provisions of this section, a person whose name is to
appear on such certificate of birth as a parent shall contempora-
neously furnish to the person preparing and filing the certificate
of birth the social security account number (or numbers, if the
parent has more than one such number) issued to the parent. A
record of the social security number or numbers shall be filed
with the local registrar of the district in which the birth occurs
within seven days after such birth, and the local registrar shall
transmit such number or numbers to the state registrar of vital
statistics in the same manner as other personal data is transmit-
ted to the state registrar.

(g) If the mother was married either at the time of concep-
tion or birth, the name of the husband shall be entered on the
certificate as the father of the child unless paternity has been
determined otherwise by a court of competent jurisdiction
pursuant to the provisions of article six, chapter forty-eight-a of
this code or other applicable law, in which case the name of the
father as determined by the court shall be entered.

(h) If the mother was not married either at the time of
conception or birth, the name of the father shall not be entered
on the certificate of birth without the written consent of the
mother and of the person to be named as the father unless a
68 determination of paternity has been made by a court of compe-
69 tent jurisdiction pursuant to the provisions of article six, chapter
70 forty-eight-a of this code or other applicable law, in which case
71 the name of the father as determined by the court shall be
72 entered.

73 (i) A written, notarized acknowledgment of both the man
74 and the woman that the man is the father of a named child
75 legally establishes the man as the father of the child for all
76 purposes, and child support may be established pursuant to the
77 provisions of chapter forty-eight-a of this code.

78 (1) The written acknowledgment shall include filing
79 instructions, the parties’ social security number and addresses
80 and a statement, given orally and in writing, of the alternatives
81 to, the legal consequences of, and the rights and obligations of
82 acknowledging paternity, including, but not limited to, the duty
83 to support a child. If either of the parents is a minor, the
84 statement shall include an explanation of any rights that may be
85 afforded due to the minority status.

86 (2) The failure or refusal to include all information required
87 by subdivision (1) of this subsection shall not affect the validity
88 of the written acknowledgment, in the absence of a finding by
89 a court of competent jurisdiction that the acknowledgment was
90 obtained by fraud, duress or material mistake of fact, as
91 provided in subdivision (4) of this subsection.

92 (3) The original written acknowledgment should be filed
93 with the state registrar of vital statistics. Upon receipt of any
94 acknowledgment executed pursuant to this section, the registrar
95 shall forward the copy of the acknowledgment to the child
96 support enforcement division and the parents, if the address of
97 the parents is known to the registrar. If a birth certificate for the
98 child has been previously issued which is incorrect or incom-
99 plete, a new birth certificate shall be issued.
(4) An acknowledgment executed under the provisions of this subsection may be rescinded as follows:

(A) The parent wishing to rescind the acknowledgment shall file with the clerk of the circuit court of the county in which the child resides a verified complaint stating the name of the child, the name of the other parent, the date of the birth of the child, the date of the signing of the affidavit, and a statement that he or she wishes to rescind the acknowledgment of the paternity. If the complaint is filed more than sixty days from the date of execution or the date of an administrative or judicial proceeding relating to the child in which the signatory is a party, the complaint shall include specific allegations concerning the elements of fraud, duress or material mistake of fact.

(B) The complaint shall be served upon the other parent as provided in rule 4 of the West Virginia rules of civil procedure.

(C) The family law master shall hold a hearing within sixty days of the service of process upon the other parent. If the complaint was filed within sixty days of the date the acknowledgment of paternity was executed, the court shall order the acknowledgment to be rescinded without any requirement of a showing of fraud, duress, or material mistake of fact. If the complaint was filed more than sixty days from the date of execution or the date of an administrative or judicial proceeding relating to the child in which the signatory is a party, the court may only set aside the acknowledgment upon a finding, by clear and convincing evidence, that the acknowledgment was executed under circumstances of fraud, duress or material mistake of fact. The circuit clerk shall forward a copy of any order entered pursuant to this proceeding to the state registrar of vital statistics by certified mail.

CHAPTER 48. DOMESTIC RELATIONS.

Article

2. Divorce, Annulment and Separate Maintenance.

2A. Prevention and Treatment of Domestic and Family Violence.
ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-15a. Medical support enforcement.
§48-2-15b. Withholding from income.

§48-2-15a. Medical support enforcement.

1 (a) For the purposes of this section:

2 (1) "Custodian for the children" means a parent, legal
3 guardian, committee or other third party appointed by court
4 order as custodian of a child or children for whom child support
5 is ordered.

6 (2) "Obligated parent" means a natural or adoptive parent
7 who is required by agreement or order to pay for insurance
8 coverage and medical care, or some portion thereof, for his or
9 her child.

10 (3) "Insurance coverage" means coverage for medical,
11 dental, including orthodontic, optical, psychological, psychiat-
12 ric or other health care service.

13 (4) "Child" means a child to whom a duty of child support
14 is owed.

15 (5) "Medical care" means medical, dental, optical, psycho-
16 logical, psychiatric or other health care service for children in
17 need of child support.

18 (6) "Insurer" means any company, health maintenance
19 organization, self-funded group, multiple employer welfare
20 arrangement, hospital or medical services corporation, trust, 
21 group health plan, as defined in 29 U.S.C. §1167, Section
22 607(1) of the Employee Retirement Income Security Act of
23 1974 or other entity which provides insurance coverage or
24 offers a service benefit plan.

25 (b) In every action to establish or modify an order which
26 requires the payment of child support, the court shall ascertain
the ability of each parent to provide medical care for the
children of the parties. In any temporary or final order estab-
lishing an award of child support or any temporary or final
order modifying a prior order establishing an award of child
support, the court shall order one or more of the following:

(1) The court shall order either parent or both parents to
provide insurance coverage for a child, if such insurance
coverage is available to that parent on a group basis through an
employer or through an employee's union. If similar insurance
coverage is available to both parents, the court shall order the
child to be insured under the insurance coverage which provides
more comprehensive benefits. If such insurance coverage is not
available at the time of the entry of the order, the order shall
require that if such coverage thereafter becomes available to
either party, that party shall promptly notify the other party of
the availability of insurance coverage for the child.

(2) If the court finds that insurance coverage is not avail-
able to either parent on a group basis through an employer,
multiemployer trust or employees' union, or that the group
insurer is not accessible to the parties, the court may order
either parent or both parents to obtain insurance coverage which
is otherwise available at a reasonable cost.

(3) Based upon the respective ability of the parents to pay,
the court may order either parent or both parents to be liable for
reasonable and necessary medical care for a child. The court
shall specify the proportion of the medical care for which each
party shall be responsible.

(4) If insurance coverage is available, the court shall also
determine the amount of the annual deductible on insurance
coverage which is attributable to the children and designate the
proportion of the deductible which each party shall pay.
(5) The order shall require the obligor to continue to provide the child support enforcement division created by article two, chapter forty-eight-a of this code with information as to his or her employer's name and address and information as to the availability of employer-related insurance programs providing medical care coverage so long as the child continues to be eligible to receive support.

(c) The cost of insurance coverage shall be considered by the court in applying the child support guidelines provided for in article one-b, chapter forty-eight-a of this code.

(d) Within thirty days after the entry of an order requiring the obligated parent to provide insurance coverage for the children, that parent shall submit to the custodian for the child written proof that the insurance has been obtained or that an application for insurance has been made. Such proof of insurance coverage shall consist of, at a minimum:

(1) The name of the insurer;
(2) The policy number;
(3) An insurance card;
(4) The address to which all claims should be mailed;
(5) A description of any restrictions on usage, such as prior approval for hospital admission, and the manner in which to obtain such approval;
(6) A description of all deductibles; and
(7) Five copies of claim forms.

(e) The custodian for the child shall send the insurer or the obligated parent’s employer the children’s address and notice that the custodian will be submitting claims on behalf of the children. Upon receipt of such notice, or an order for insurance
coverage under this section, the obligated parent’s employer, multiemployer trust or union shall, upon the request of the custodian for the child, release information on the coverage for the children, including the name of the insurer.

(f) A copy of the court order for insurance coverage shall not be provided to the obligated parent’s employer or union or the insurer unless ordered by the court, or unless:

(1) The obligated parent, within thirty days of receiving effective notice of the court order, fails to provide to the custodian for the child written proof that the insurance has been obtained or that an application for insurance has been made;

(2) The custodian for the child serves written notice by mail at the obligated parent’s last known address of intention to enforce the order requiring insurance coverage for the child; and

(3) The obligated parent fails within fifteen days after the mailing of the notice to provide written proof to the custodian for the child that the child has insurance coverage.

(g) (1) Upon service of the order requiring insurance coverage for the children, the employer, multiemployer trust or union shall enroll the child as a beneficiary in the group insurance plan and withhold any required premium from the obligated parent’s income or wages.

(2) If more than one plan is offered by the employer, multiemployer trust or union, the child shall be enrolled in the same plan as the obligated parent at a reasonable cost.

(3) Insurance coverage for the child which is ordered pursuant to the provisions of this section shall not be terminated except as provided in subsection (k) of this section.
Where a parent is required by a court or administrative order to provide health coverage, which is available through an employer doing business in this state, the employer is required:

1. To permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any enrollment season restrictions;

2. If the parent is enrolled but fails to make application to obtain coverage of the child, to enroll the child under family coverage upon application by the child’s other parent, by the state agency administering the medicaid program or by the child support enforcement division;

3. Not to disenroll or eliminate coverage of any such child unless the employer is provided satisfactory written evidence that:

   A. The court or administrative order is no longer in effect; or

   B. The child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment; or

   C. The employer has eliminated family health coverage for all of its employees;

4. To withhold from the employee’s compensation the employee’s share, if any, of premiums for health coverage and to pay this amount to the insurer. Provided, That the amount so withheld may not exceed the maximum amount permitted to be withheld under 15 U.S.C. §1673, Section 303(b) of the Consumer Credit Protection Act.

(i) (1) The signature of the custodian for the child shall constitute a valid authorization to the insurer for the purposes
of processing an insurance payment to the provider of medical
care for the child.

(2) No insurer, employer or multiemployer trust in this state
may refuse to honor a claim for a covered service when the
custodian for the child or the obligated parent submits proof of
payment for medical bills for the child.

(3) The insurer shall reimburse the custodian for the child
or the obligated parent who submits copies of medical bills for
the child with proof of payment.

(4) All insurers in this state shall comply with the provi-
sions of section sixteen, article fifteen, chapter thirty-three of
this code and section eleven, article sixteen of said chapter and
shall provide insurance coverage for the child of a covered
employee notwithstanding the amount of support otherwise
ordered by the court and regardless of the fact that the child
may not be living in the home of the covered employee.

(j) Where an obligated parent changes employment, and the
new employer provides the obligated parent’s health care
coverage, the child support enforcement division shall transfer
to the new employer notice of the obligated parent’s duty to
provide health care coverage. Unless contested by the obligated
parent in writing and in accordance with section eight, article
five, chapter forty-eight-a of this code, the notice shall operate
to enroll the child in the new employer’s health care plan.

(k) When an order for insurance coverage for a child
pursuant to this section is in effect and the obligated parent’s
employment is terminated, or the insurance coverage for the
child is denied, modified or terminated, the insurer shall in
addition to complying with the requirements of article sixteen-
a, chapter thirty-three of this code, within ten days after the
notice of change in coverage is sent to the covered employee,
notify the custodian for the child and provide an explanation of any conversion privileges available from the insurer.

(1) A child of an obligated parent shall remain eligible for insurance coverage until the child is emancipated or until the insurer under the terms of the applicable insurance policy terminates said child from coverage, whichever is later in time, or until further order of the court.

(m) If the obligated parent fails to comply with the order to provide insurance coverage for the child, the court shall:

(1) Hold the obligated parent in contempt for failing or refusing to provide the insurance coverage or for failing or refusing to provide the information required in subsection (d) of this section;

(2) Enter an order for a sum certain against the obligated parent for the cost of medical care for the child and any insurance premiums paid or provided for the child by the child support enforcement division during any period in which the obligated parent failed to provide the required coverage, and directing that such judgment be collected through income withholding;

(3) In the alternative, other enforcement remedies available under sections two and three, article five, chapter forty-eight-a of this code, or otherwise available under law, may be used to recover from the obligated parent the cost of medical care or insurance coverage for the child;

(4) In addition to other remedies available under law, the child support enforcement division may initiate an income withholding against the wages, salary or other employment income of, and withhold amounts from state tax refunds to any person who:
(A) Is required by court or administrative order to provide coverage of the cost of health services to a child; and

(B) Has received payment from a third party for the costs of such services but has not used the payments to reimburse either the other parent or guardian of the child or the provider of the services, to the extent necessary to reimburse the state medicaid agency for its costs: Provided, That claims for current and past-due child support shall take priority over these claims.

(n) Proof of failure to maintain court-ordered insurance coverage for the child constitutes a showing of substantial change in circumstances or increased need pursuant to section fifteen of this article, and provides a basis for modification of the child support order.

§48-2-15b. Withholding from income.

(a) Every order entered or modified under the provisions of this article, not described in subsection (d) of this section, which requires the payment of child support or spousal support shall include a provision for automatic withholding from income of the obligor, in order to facilitate income withholding as a means of collecting support.

(b) Every such order as described in subsection (a) of this section shall contain language authorizing income withholding for both current support and for any arrearages to commence without further court action as follows:

(1) The order shall provide that income withholding will begin immediately, without regard to whether there is an arrearage:

(A) When a child for whom support is ordered is included or becomes included in a grant of assistance from the division of human services or a similar agency of a sister state for
temporary assistance for needy families benefits, medical assistance only benefits or foster care benefits; or

(B) When the support obligee has applied for services from the child support enforcement division created pursuant to article two, chapter forty-eight-a of this code, or the support enforcement agency of another state or is otherwise receiving services from the child support enforcement division as provided for in said chapter. In any case where one of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or in any case where there is filed with the court a written agreement between the parties which provides for an alternative arrangement, such order shall not provide for income withholding to begin immediately.

(2) The order shall also provide that income withholding will begin immediately upon the occurrence of any of the following:

(A) When the payments which the obligor has failed to make under the order are at least equal to the support payable for one month, if the order requires support to be paid in monthly installments;

(B) When the payments which the obligor has failed to make under the order are at least equal to the support payable for four weeks, if the order requires support to be paid in weekly or bi-weekly installments;

(C) When the obligor requests the child support enforcement division to commence income withholding; or

(D) When the obligee requests that such withholding begin, if the request is approved by the court in accordance with procedures and standards established by rules promulgated by the commission pursuant to this section and to chapter twenty-nine-a of this code.
(c) On and after the first day of January, one thousand nine hundred ninety-four, the wages of an obligor shall be subject to withholding, regardless of whether child support payments are in arrears, on the date the order for child support is entered: Provided, That where one of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or in any case where there is filed with the court a written agreement between the parties which provides for an alternative arrangement, such order shall not provide for income withholding to begin immediately.

(d) The supreme court of appeals shall make available to the circuit courts standard language to be included in all such orders, so as to conform such orders to the applicable requirements of state and federal law regarding the withholding from income of amounts payable as support.

(e) Every support order entered by a circuit court of this state prior to the effective date of this section shall be considered to provide for an order of income withholding, by operation of law, which complies with the provisions of this section, notwithstanding the fact that such support order does not in fact provide for such order of withholding.

(f) The court shall consider the best interests of the child in determining whether “good cause” exists under this section. The court may also consider the obligor’s payment record in determining whether “good cause” has been demonstrated.

(g) The West Virginia support enforcement commission shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code further defining the duties of the child support enforcement division and the employer in wage withholding.

ARTICLE 2A. PREVENTION AND TREATMENT OF DOMESTIC AND FAMILY VIOLENCE.

(a) At the conclusion of the hearing, if the petitioner has proven the allegations of domestic or family violence, or that he or she reported or witnessed domestic or family violence against another and has, as a result, been abused, threatened, harassed or has been the subject of other actions to attempt to intimidate him or her, by a preponderance of the evidence, the court shall issue a protective order directing the respondent to refrain from abusing, harassing, stalking, threatening or otherwise intimidating the petitioner, the person who reported or witnessed family or domestic violence or the minor children, or engaging in other conduct that would place the petitioner, the person who reported or witnessed family or domestic violence or the minor children in reasonable fear of bodily injury. The court's order shall inform the respondent that he or she is prohibited from possessing any firearm or ammunition, notwithstanding the fact that the respondent may have a valid license to possess a firearm, and that possession of a firearm or ammunition while subject to the court's protective order is a criminal offense under federal law. Where the respondent is present at the hearing and elects not to contest the allegations of domestic or family violence or does not contest the relief sought, the petitioner is not required to adduce evidence and prove the allegations of domestic or family violence and the court may directly address the issues of the relief requested.

(b) Where the petitioner is the victim of domestic or family violence, the terms of a protective order may include:

(1) Granting possession to the petitioner of the residence or household jointly resided in at the time the abuse occurred;

(2) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children named in the order;
(3) Establishing terms of temporary visitation with regard to the minor children named in the order including, but not limited to, requiring third party supervision of visitations if necessary to protect the petitioner and/or the minor children;

(4) Ordering the noncustodial parent to pay to the caretaker parent a sum for temporary support and maintenance of the petitioner and children, if any;

(5) Ordering the respondent to pay to the petitioner a sum for temporary support and maintenance of the petitioner, where appropriate;

(6) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household or family members for the purpose of violating the protective order;

(7) Ordering the respondent to participate in an intervention program for perpetrators;

(8) Ordering the respondent to refrain from contacting, telephoning, communicating, harassing or verbally abusing the petitioner;

(9) Providing for either party to obtain personal property or other items from a location, including granting temporary possession of motor vehicles owned by either or both of the parties, and providing for the safety of the parties while this occurs, including ordering a law-enforcement officer to accompany one or both of the parties;

(10) Ordering the respondent to reimburse the petitioner or other person for any expenses incurred as a result of the domestic or family violence, including, but not limited to, medical expenses, transportation and shelter; and
(11) Ordering the petitioner and respondent to refrain from transferring, conveying, alienating, encumbering, or otherwise dealing with property which could otherwise be subject to the jurisdiction of the court or another court in an action for divorce or support, partition or in any other action affecting their interests in property.

(c) Where the petitioner or other person to be protected reported or was a witness to the family or domestic violence, the terms of a protective order may include:

(1) Ordering the respondent to refrain from abusing, contacting, telephoning, communicating, harassing, verbally abusing or otherwise intimidating the petitioner or other person to be protected; and

(2) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or other person to be protected, for the purpose of violating the protective order.

(d) Except as otherwise provided by subsection (d), section three-a of this article, a protective order issued by a magistrate, family law master or circuit judge pursuant to this article or subsection (a), section thirteen, article two of this chapter, is effective for either ninety days or one hundred eighty days, in the discretion of the court. If the court enters an order for a period of ninety days, upon receipt of a written request from the petitioner prior to the expiration of the ninety-day period, the court shall extend its order for an additional ninety-day period.

(e) To be effective, a written request to extend an order from ninety days to one hundred eighty days must be submitted to the court prior to the expiration of the original ninety-day period. A notice of the extension shall be sent by the clerk of the court to the respondent by first class mail, addressed to the last known address of the respondent as indicated by the court’s
case filings. The extension of time is effective upon mailing of
the notice.

(f) The court may amend the terms of a protective order at
any time upon subsequent petition filed by either party. The
protective order shall be in full force and effect in every county
of this state and shall so state.

(g) No order entered pursuant to this article may in any
manner affect title to any real property, except as provided in
section four, article five, chapter forty-eight-a of this code for
past-due child support. The personal property of any person
ordered to pay child support pursuant to the provisions of this
article is subject to a lien for past-due child support as provided
in section two, article five, chapter forty-eight-a of this code.

(h) Certified copies of any order or extension notice made
under the provisions of this section shall be issued to the
petitioner, the respondent and any law-enforcement agency
having jurisdiction to enforce the order, including the city
police, the county sheriff’s office or local office of the West
Virginia state police within twenty-four hours of the entry of
the order.

(i) Mutual protective orders are prohibited unless both
parties have filed a petition under section four of this article and
have proven the allegations of domestic or family violence by
a preponderance of the evidence. This shall not prevent other
persons, including the respondent, from filing a separate
petition. The court may consolidate two or more petitions if he
or she determines that consolidation will further the interest of
justice and judicial economy. The court shall enter a separate
order for each petition filed.

(j) Any protective order issued pursuant to this article shall
contain on its face the following statement, printed in bold-
faced type or in capital letters:
“VIOLATION OF THIS ORDER MAY BE PUNISHED BY CONFINEMENT IN A REGIONAL OR COUNTY JAIL FOR AS LONG AS ONE YEAR AND BY A FINE OF AS MUCH AS TWO THOUSAND DOLLARS”.

(k) Any person against whom a protective order is issued after a full hearing pursuant to this section shall be assessed a fee of twenty-five dollars. Such fee shall be paid to the family court fund established pursuant to section twenty-three, article four, chapter forty-eight-a of this code.

(l) The supreme court of appeals shall promulgate a procedural rule to establish time-keeping requirements for magistrates, magistrate court clerks, and magistrate assistants so as to assure the maximum funding of incentive payments, grants and other funding sources available to the state for the processing of cases filed for the establishment of temporary orders of child support pursuant to the provisions of this section.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article
1A. Definitions.
1B. Guidelines for Child Support Awards.
2. West Virginia Support Enforcement Commission; Child Support Enforcement Division; Establishment and Organization.
3. Children’s Advocate.
5. Remedies for the Enforcement of Support Obligations and Visitation.
5A. Enforcement of Support Order through Action against License.

ARTICLE 1. GENERAL PROVISIONS.

§48A-1-3. Calculation of interest.

(a) If an obligation to pay interest arises under this chapter, the rate of interest is that specified in section thirty-one, article
six, chapter fifty-six of this code. Interest shall accrue only upon the outstanding principal of such obligation. On and after the ninth day of June, one thousand nine hundred ninety-five, this section shall be construed to permit the accumulation of simple interest and may not be construed to permit the compounding of interest. Interest which accrued on unpaid installments accruing before the ninth day of June, one thousand nine hundred ninety-five, may not be modified by any court, irrespective of whether such installment accrued simple or compound interest: Provided, That unpaid installments upon which interest was compounded before the effective date of this section shall accrue only simple interest thereon on and after the ninth day of June, one thousand nine hundred ninety-five.

(b) Except as otherwise provided in this subsection, prejudgment interest shall not be awarded in a domestic relations action. The circuit court may only award prejudgment interest in a domestic relations action against a party if the court finds, in writing, that the party engaged in conduct that would violate subsection (b), rule 11 of the West Virginia rules of civil procedure. If prejudgment interest is awarded, the court shall calculate prejudgment interest from the date the offending representation was presented to the court.

(c) Upon written agreement by both parties, an obligor may petition the court to enter an order conditionally suspending the collection of all or part of the interest that has accrued on past-due child support prior to the date of the agreement: Provided, That said agreement shall also establish a reasonable payment plan which is calculated to fully discharge all arrearages within twenty-four months. Upon successful completion of the payment plan, the court shall enter an order which permanently relieves the obligor of the obligation to pay the accrued interest. If the obligor fails to comply with the terms of the written agreement, then the court shall enter an order which reinstates the accrued interest. Any proceeding commenced pursuant to
ARTICLE 1A. DEFINITIONS.

§48A-1A-33. Arrearages and past-due support.

“Arrearages” or “past-due support” means the total of any matured, unpaid installments of child support required to be paid by an order entered or modified by a court of competent jurisdiction, or by the order of a magistrate court of this state, and shall stand, by operation of law, as a decretal judgment against the obligor owing such support. The amount of unpaid support shall bear interest from the date it accrued, at a rate of ten dollars upon one hundred dollars per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time. Except as provided in rule 19 of rules of practice and procedure for family law and as provided in subsection (c), section three, article one of this chapter, a child support order may not be retroactively modified so as to cancel or alter accrued installments of support.

ARTICLE 1B. GUIDELINES FOR CHILD SUPPORT AWARDS.


(a) The provisions of a child support order may be modified if there is a substantial change of circumstances. For purposes of this section, if application of the guideline would result in a new order that is more than fifteen percent different, then the circumstances are considered to be a substantial change.

(b) An expedited process for modification of a child support order may be utilized if either parent experiences a substantial change of circumstances resulting in a decrease in income due to loss of employment or other involuntary cause or an increase in income due to promotion, change in employment,
reemployment, or other such change in employment status. The
party seeking the recalculation of support and modification of
the support order shall file a description of the decrease or
increase in income and an explanation of the cause of the
decrease or increase on a standardized form to be provided by
the secretary-clerk or other employee of the family court. The
standardized form shall be verified by the filing party. Any
available documentary evidence shall be filed with the stan-
dardized form. Based upon the filing and information available
in the case record, the amount of support shall be tentatively
recalculated. The secretary-clerk shall serve a notice of the
filing, a copy of the standardized form, and the support calcula-
tions upon the other party by certified mail, return receipt
requested, with delivery restricted to the addressee, in accor-
dance with rule 4(d)(1)(D) of the West Virginia rules of civil
procedure. The secretary-clerk shall also mail a copy, by first
class mail, to the local office of the child support enforcement
division for the county in which the circuit court is located in
the same manner as original process under rule 4(d) of the rules
of civil procedure. The notice shall fix a date fourteen days
from the date of mailing, and inform the party that unless the
recalculation is contested and a hearing request is made on or
before the date fixed, the proposed modification will be made
effective. If the filing is contested, the proposed modification
shall be set for hearing; otherwise, the family law master shall
prepare a recommended default order for entry by the circuit
judge. Either party may move to set aside a default entered by
the circuit clerk or a judgment by default entered by the clerk
or the court, pursuant to the provisions of rule 55 or rule 60(b)
of the rules of civil procedure. If an obligor uses the provisions
of this section to expeditiously reduce his or her child support
obligation, the order that effected the reduction shall also
require the obligor to notify the obligee of reemployment, new
employment or other such change in employment status that
results in an increase in income. If an obligee uses the provi-
sions of this section to expeditiously increase his or her child
support obligation, the order that effected the increase shall also
require the obligee to notify the obligor of reemployment, new
employment or other such change in employment status that
results in an increase in income of the obligee.

(c) The supreme court of appeals shall develop the stan-
dardized form required by subsection (b) of this section.

(d) In any proceeding filed after the first day of January,
two thousand one, where a petition to modify child support is
granted which results in a reduction of child support owed so
that the obligor has overpaid child support, the court shall grant
a decretal judgment to the obligor for the amount of the
overpayment. The court shall inquire as to whether a support
arrearage was owed by the obligor for support due prior to the
filing of the petition for modification. If an arrearage exists, the
court shall order an offset of the overpayment against the child
support arrearages. If no prior arrearage exists or if the arrear-
age is not sufficient to offset the overpayment, then the court
may direct the child support enforcement division to collect the
overpayment through income withholding, if the person has, in
the court’s opinion, sufficient income other than the child
support received. The income withholding shall be in all
respects as provided for in section three, article five of this
chapter, except that in no circumstances may the amount
withheld exceed thirty-five percent of the disposable earnings
for the period, regardless of the length of time that the overpay-
ment has been owed.

ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION;
CHILD SUPPORT ENFORCEMENT DIVISION; ESTAB-
LISHMENT AND ORGANIZATION.

§48A-2-24. Disbursements of amounts collected as support.
§48A-2-24a. Amounts collected as support to be disbursed to person having
custody; procedure for redirecting disbursement of payments
where physical custody transferred to a person other than the
custodial parent.

§48A-2-33a. Liability for financial institutions providing financial records to the child support enforcement division; agreements for data match system; encumbrance or surrender of assets.


§48A-2-24. Disbursements of amounts collected as support.

1 (a) Amounts collected as child or spousal support by the child support enforcement division shall be distributed within two business days after receipt from the employer or other source of periodic income. The amounts collected as child support shall be distributed by the child support enforcement division in accordance with the provisions for distribution set forth in 42 U.S.C. §657. The commission shall promulgate a legislative rule to establish the appropriate distribution as may be required by the federal law.

2 (b) Any payment required to be made under the provisions of this section to a family shall be made to the resident parent, legal guardian or caretaker relative having custody of or responsibility for the child or children.

3 (c) The commission shall establish bonding requirements for employees of the child support enforcement division who receive, disburse, handle or have access to cash.

4 (d) The director shall maintain methods of administration which are designed to assure that employees of the child support enforcement division or any persons employed pursuant to a contract who are responsible for handling cash receipts do not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts: Provided, That the director may provide for exceptions to this requirement in the case of sparsely populated areas in this state where the hiring of unreasonable additional staff in the local office would otherwise be necessary.
(e) No penalty or fee may be collected by or distributed to a recipient of child support enforcement division services from the state treasury or from the child support enforcement fund when child support is not distributed to the recipient in accordance with the time frames established herein.

(f) For purposes of this section, “business day” means a day on which state offices are open for regular business.

§48A-2-24a. Amounts collected as support to be disbursed to person having custody; procedure for redirecting disbursement of payments where physical custody transferred to a person other than the custodial parent.

(a) Any payment required to be made under the provisions of section twenty-four of this article to a family shall be made to the resident parent, legal guardian or caretaker relative having custody of or responsibility for the child or children.

(b) Where physical custody of the child has been transferred from the custodial parent to another person, the child support enforcement division may redirect disbursement of support payments to such other person, on behalf of the child, in the following circumstances:

(1) Where the noncustodial parent has physical custody of the child, excluding visitation, upon filing with the child support enforcement division:

(A) An affidavit attesting that the noncustodial parent has obtained physical custody of the child, describing the circumstances under which the transfer of physical custody took place, and stating that he or she anticipates that his or her physical custody of the child will continue for the foreseeable future; and

(B) Documentary proof that the noncustodial parent has instituted proceedings in the circuit court for a modification of
legal custody or a certified copy of the custodial parent’s death certificate.

(2) Where a person other than the custodial or noncustodial parent has physical custody of the child, excluding visitation, filing with the child support enforcement division:

(A) An affidavit attesting that the person has obtained physical custody of the child, describing the circumstances under which the transfer of physical custody took place, and stating that he or she anticipates that his or her physical custody of the child will continue for the foreseeable future; and

(B) Documentary proof that the person claiming physical custody is currently the person responsible for the child by producing at least one of the following:

(i) School records demonstrating that school authorities consider the person claiming physical custody the adult responsible for the child;

(ii) Medical records demonstrating that the person claiming physical custody is empowered to make medical decisions on behalf of the child;

(iii) Documents from another public assistance agency showing that the person claiming physical custody is currently receiving other public assistance on behalf of the child;

(iv) A notarized statement from the custodial parent attesting to the fact that he or she has transferred physical custody to the person;

(v) A verifiable order of a court of competent jurisdiction transferring physical or legal custody to the person;

(vi) Documentation that the person claiming physical custody has filed a petition in circuit court to be appointed the child’s guardian;
(vii) Documentation that the child, if over the age of fourteen, has instituted proceedings in circuit court to have the person claiming physical custody nominated as his or her guardian; or

(viii) Any other official documents of a federal, state or local agency or governing body demonstrating that the person currently has physical custody of the child and has taken action indicating that he or she anticipates such physical custody to continue in the foreseeable future.

(c) The child support enforcement division shall mail, by first class mail, a copy of the affidavit and supporting documentary evidence required under subsection (b) of this section, to the circuit court which issued the support order being enforced by child support enforcement division and to the parties to the order, at their last known addresses, together with a written notice stating that any party has ten days to object to the redirection of support payments by filing an affidavit and evidence showing that the person seeking redirection of the payments does not have physical custody of the child. If no objection is received by the child support enforcement division by the end of the ten-day period, the division may order payments redirected to the person claiming physical custody for the benefit of the child. If a responsive affidavit and supporting evidence is filed within the ten-day period and, in the opinion of the child support enforcement division, either disproves the claim of the person seeking redirection of support payments or raises a genuine issue of fact as to whether the person has actual physical custody of the child, the child support enforcement division shall continue to forward support payments to the custodial parent. Any person who disagrees with the determination of the child support enforcement division may petition the circuit court for modification of the child support order.
(d) Any person who files a false affidavit pursuant to this section shall be guilty of false swearing and, upon conviction thereof, shall be punished as provided by law for such offense.

**§48A-2-28. Obtaining support from state income tax refunds.**

(a) The tax commissioner shall establish procedures necessary for the child support enforcement division to obtain payment of past-due support from state income tax refunds from overpayment made to the tax commissioner pursuant to the provisions of article twenty-one, chapter eleven of this code.

(b) The commission shall, by legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish procedures necessary for the child support enforcement division to enforce a support order through a notice to the tax commissioner which will cause any refund of state income tax which would otherwise be payable to an obligor to be reduced by the amount of overdue support owed by such obligor.

(1) Such legislative rule shall, at a minimum, prescribe:

(A) The time or times at which the child support enforcement division shall serve on the obligor or submit to the tax commissioner notices of past-due support;

(B) The manner in which such notices shall be served on the obligor or submitted to the tax commissioner;

(C) The necessary information which shall be contained in or accompany the notices;

(D) The amount of the fee to be paid to the tax commissioner for the full cost of applying the procedure whereby past-due support is obtained from state income tax refunds; and

(E) Circumstances when the child support enforcement division may deduct a twenty-five dollar fee from the obligor’s state income tax refund. Such rule may not require that an
applicant who is a recipient of assistance from the department of human services in the form of temporary assistance for needy families.

(2) Withholding from state income tax refunds may not be pursued unless the child support enforcement division has examined the obligor's pattern of payment of support and the obligee's likelihood of successfully pursuing other enforcement actions, and has determined that the amount of past-due support which will be owed, at the time the withholding is to be made, will be one hundred dollars or more. In determining whether the amount of past-due support will be one hundred dollars or more, the child support enforcement division shall consider the amount of all unpaid past-due support, including that which may have accrued prior to the time that the child support enforcement division first agreed to enforce the support order.

(c) The director of the child support enforcement division shall enter into agreements with the secretary of the treasury and the tax commissioner, and other appropriate governmental agencies, to secure information relating to the social security number or numbers and the address or addresses of any obligor, in order to provide notice between such agencies to aid the child support enforcement division in requesting state income tax deductions and to aid the tax commissioner in enforcing such deductions. In each such case, the tax commissioner, in processing the state income tax deduction, shall notify the child support enforcement division of the obligor's home address and social security number or numbers. The child support enforcement division shall provide this information to any other state involved in processing the support order.

(d) For the purposes of this section, "past-due support" means the amount of unpaid past-due support owed under the terms of a support order to or on behalf of a child, or to or on behalf of a minor child and the parent with whom the child is
(e) The child support enforcement division may, under the provisions of this section, enforce the collection of past-due support on behalf of a child who has reached the age of majority.

(f) The legislative rule promulgated by the commission pursuant to the provisions of this section and pursuant to chapter twenty-nine-a of this code, shall, at a minimum, provide that prior to notifying the tax commissioner of past due support, a notice to the obligor as prescribed under subsection (a) of this section shall:

1. Notify the obligor that a withholding will be made from any refund otherwise payable to such obligor;

2. Instruct the obligor of the steps which may be taken to contest the determination of the child support enforcement division that past-due support is owed or the amount of the past-due support; and

3. Provide information with respect to the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(g) If the child support enforcement division is notified by the tax commissioner that the refund from which withholding is proposed to be made is based upon a joint return, and if the past-due support which is involved has not been assigned to the department of human services, the child support enforcement division may delay distribution of the amount withheld until such time as the tax commissioner notifies the child support enforcement division that the other person filing the joint return has received his or her proper share of the refund, but such delay shall not exceed six months.
(h) In any case in which an amount is withheld by the tax commissioner under the provisions of this section and paid to the child support enforcement division, if the child support enforcement division subsequently determines that the amount certified as past due was in excess of the amount actually owed at the time the amount withheld is to be distributed, the agency shall pay the excess amount withheld to the obligor thought to have owed the past-due support or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing such return.

(i) The amounts received by the child support enforcement division shall be distributed in accordance with the provisions for distribution set forth in 42 U.S.C. §657. The commission shall promulgate a legislative rule to establish the appropriate distribution as may be required by the federal law.

§48A-2-33a. Liability for financial institutions providing financial records to the child support enforcement division; agreements for data match system; encumbrance or surrender of assets.

(a) Notwithstanding any other provision of this code, a financial institution shall not be liable under the law of this state to any person for:

(1) Disclosing any financial record of an individual to the child support enforcement division in response to a subpoena issued by the division pursuant to section thirty-three of this article;

(2) Disclosing any financial record of an individual to the child support enforcement division pursuant to the terms of an agreement with such financial institution pursuant to subsection (f) of this section;

(3) Encumbering or surrendering assets held by such financial institution in response to a notice of lien or levy issued
by the child support enforcement division as provided in subsection (g) of this section; or

(4) For any other action taken in good faith to comply with the requirements of this section.

(b) The child support enforcement division, after obtaining a financial record of an individual from a financial institution, may disclose such financial record only for the purpose of, and to the extent necessary in, establishing, modifying or enforcing a child support obligation of such individual.

(c) The civil liability of a person who knowingly, or by reason of negligence, discloses a financial record of an individual in violation of subsection (b) of this section is governed by the provisions of federal law as set forth in 42 U.S.C. §669A.

(d) For purposes of this section, the term "financial institution" means:

(1) Any bank or savings association;

(2) A person who is an institution-affiliated party, as that term is defined in the Federal Deposit Insurance Act, 12 U.S.C. §1813(u);

(3) Any federal credit union or state-chartered credit union, including an institution-affiliated party of a credit union; and

(4) Any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity authorized to do business in this state.

(e) For purposes of this section, the term "financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

(a) All state, county and municipal agencies’ offices and employers, including profit, nonprofit and governmental employers, receiving a request for information and assistance from the child support enforcement division or any out-of-state agency administering a program under Title IV-D of the Social Security Act, shall cooperate with the division or with the out-of-state agency in the location of parents who have abandoned and deserted children and shall provide the division or the out-
of-state agency with all available pertinent information concerning the location, income and property of those parents.

(b) Notwithstanding any other provision of law to the contrary, any entity conducting business in this state or incorporated under the laws of this state shall, upon certification by the division or any out-of-state agency administering a program under Title IV-D of the Social Security Act that the information is needed to locate a parent for the purpose of collecting or distributing child support, provide the division or the out-of-state agency with the following information about the parent: Full name, social security number, date of birth, home address, wages and number of dependents listed for income tax purposes: Provided, That no entity may provide any information obtained in the course of providing legal services, medical treatment or medical services.

(c) (1) The child support enforcement division shall have access, subject to safeguards on privacy and information security, and to the nonliability of entities that afford such access under this subdivision, to information contained in the following records, including automated access, in the case of records maintained in automated data bases:

(A) Records of other state and local government agencies, including, but not limited to:

(i) Vital statistics, including records of marriage, birth and divorce;

(ii) State and local tax and revenue records, including information on residence address, employer, income and assets;

(iii) Records concerning real and titled personal property;

(iv) Records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships and other business entities;
(v) Employment security records;

(vi) Records of agencies administering public assistance programs;

(vii) Records of the division of motor vehicles; and

(viii) Corrections records.

(B) Certain records held by private entities with respect to individuals who owe or are owed support or certain individuals against, or with respect to, whom a support obligation is sought, consisting of:

(i) The names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in the customer records of public utilities and cable television companies, pursuant to an administrative subpoena authorized by section thirty-three, article two of this chapter; and

(ii) Information, including information on assets and liabilities, on such individuals held by financial institutions.

(2) Out-of-state agencies administering programs under Title IV-D of the Social Security Act shall, without the need for any court order, have the authority to access records in this state by making a request through the child support enforcement division.

(d) All federal and state agencies conducting activities under Title IV-D of the Social Security Act shall have access to any system used by this state to locate an individual for purposes relating to motor vehicles or law enforcement.

(e) Out-of-state agencies administering programs under Title IV-D of the Social Security Act shall have the authority and right to access and use, for the purpose of establishing or
enforcing a support order, the state law-enforcement and motor vehicle data bases.

(f) The child support enforcement division and out-of-state agencies administering programs under Title IV-D of the Social Security Act shall have the authority and right to access and use, for the purpose of establishing or enforcing a support order, interstate networks that state law-enforcement agencies and motor vehicle agencies subscribe to or participate in, such as the national law-enforcement telecommunications system (NLETS) and the American association of motor vehicle administrators (AAMVA) networks.

(g) No state, county or municipal agency or licensing board required to release information pursuant to the provisions of this section to the child support enforcement division or to any out-of-state agency administering programs under Title IV-D of the Social Security Act may require the child support enforcement division or any out-of-state agency to obtain a court order prior to the release of the information.

(h) Any information received pursuant to the provisions of this section is subject to the confidentiality provisions set forth in section forty, article two of this chapter.

ARTICLE 3. CHILDREN’S ADVOCATE.

§48A-3-3. Duties of the children’s advocate.

Subject to the control and supervision of the director:

(a) The children’s advocate shall supervise and direct the secretarial, clerical and other employees in his or her office in the performance of their duties as such performance affects the delivery of legal services. The children’s advocate will provide appropriate instruction and supervision to employees of his or her office who are nonlawyers, concerning matters of legal ethics and matters of law, in accordance with applicable state and federal statutes, rules and regulations.
(b) In accordance with the requirements of rule 5.4(c) of the rules of professional conduct as promulgated and adopted by the supreme court of appeals, the children’s advocate shall not permit a nonlawyer who is employed by the department of health and human resources in a supervisory position over the children’s advocate to direct or regulate the advocate’s professional judgment in rendering legal services to recipients of services in accordance with the provisions of this chapter; nor shall any nonlawyer employee of the department attempt to direct or regulate the advocate’s professional judgment.

(c) The children’s advocate shall make available to the public an informational pamphlet, designed in consultation with the director. The informational pamphlet shall explain the procedures of the court and the children’s advocate; the duties of the children’s advocate; the rights and responsibilities of the parties; and the availability of human services in the community. The informational pamphlet shall be provided as soon as possible after the filing of a complaint or other initiating pleading. Upon request, a party to a domestic relations proceeding shall receive an oral explanation of the informational pamphlet from the office of the children’s advocate.

(d) The children’s advocate shall act to establish the paternity of every child born out of wedlock for whom paternity has not been established, when such child’s primary caretaker is an applicant for or recipient of temporary assistance for needy families, and when such primary caretaker has assigned to the division of human services any rights to support for the child which might be forthcoming from the putative father: Provided, That if the children’s advocate is informed by the secretary of the department of health and human resources or his or her authorized employee that it has been determined that it is against the best interest of the child to establish paternity, the children’s advocate shall decline to so act. The children’s advocate, upon the request of the mother, alleged father or the primary caretaker of a child born out of wedlock, regardless of
whether the mother, alleged father or the primary caretaker is an applicant or recipient of temporary assistance for needy families, shall undertake to establish the paternity of such child.

(e) The children’s advocate shall undertake to secure support for any individual who is receiving temporary assistance for needy families when such individual has assigned to the division of human services any rights to support from any other person such individual may have: Provided, That if the children’s advocate is informed by the secretary of the department of health and human resources or his or her authorized employee that it has been determined that it is against the best interests of a child to secure support on the child’s behalf, the children’s advocate shall decline to so act. The children’s advocate, upon the request of any individual, regardless of whether such individual is an applicant or recipient of temporary assistance for needy families, shall undertake to secure support for the individual. If circumstances require, the children’s advocate shall utilize the provisions of chapter forty-eight-b of this code and any other reciprocal arrangements which may be adopted with other states for the establishment and enforcement of support obligations, and if such arrangements and other means have proven ineffective, the children’s advocate may utilize the federal courts to obtain and enforce court orders for support.

(f) The children’s advocate shall pursue the enforcement of support orders through the withholding from income of amounts payable as support:

(1) Without the necessity of an application from the obligee in the case of a support obligation owed to an obligee to whom services are already being provided under the provisions of this chapter; and
(2) On the basis of an application for services in the case of any other support obligation arising from a support order entered by a court of competent jurisdiction.

(g) The children’s advocate may decline to commence an action to obtain an order of support under the provisions of section one, article five of this chapter if an action for divorce, annulment or separate maintenance is pending, or the filing of such action is imminent, and such action will determine the issue of support for the child: Provided, That such action shall be deemed to be imminent if it is proposed by the obligee to be commenced within the twenty-eight days next following a decision by the children’s advocate that an action should properly be brought to obtain an order for support.

(h) If the child advocate office, through the children’s advocate, shall undertake paternity determination services, child support collection or support collection services for a spouse or former spouse upon the written request of an individual who is not an applicant or recipient of assistance from the division of human services, the office may impose an application fee for furnishing such services. Such application fee shall be in a reasonable amount, not to exceed twenty-five dollars, as determined by the director: Provided, That the director may fix such amount at a higher or lower rate which is uniform for this state and all other states if the secretary of the federal department of health and human services determines that a uniform rate is appropriate for any fiscal year to reflect increases or decreases in administrative costs. Any cost in excess of the application fee so imposed may be collected from the obligor who owes the child or spousal support obligation involved.

ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS AND VISITATION.

§48A-5-2. Arrearages; liens on personal property; enforcement through writ of execution, suggestion or suggestee execution.

§48A-5-3. Withholding from income of amounts payable as support.
§48A-5-10. High-volume automated administrative enforcement of child support in interstate cases.

§48A-5-2. Arrearages; liens on personal property; enforcement through writ of execution, suggestion or suggestee execution.

(a) When an obligor is in arrears in the payment of support which is required to be paid by the terms of an order for support of a child, an obligee or the child support enforcement division may file an abstract of the order giving rise to the support obligation and an "affidavit of accrued support", setting forth the particulars of such arrearage and requesting a writ of execution, suggestion or suggestee execution. The filing of the abstract and affidavit shall give rise, by operation of law, to a lien against personal property of an obligor who resides within this state or who owns property within this state for overdue support.

(b) If the duty of support is based upon an order from another jurisdiction, the obligee shall first register the order in accordance with the provisions of chapter forty-eight-b of this code: Provided. That nothing in this subsection shall prevent the child support enforcement division from enforcing foreign orders for support without registration of the order in accordance with the provisions of section five hundred seven, article five, chapter forty-eight-b of this code.

(c) The affidavit may be filed with the clerk of the circuit court in the county wherein the obligee or the obligor resides, or where the obligor's source of income is located.

(d) The affidavit may be filed when a payment required by such order has been delinquent, in whole or in part, for a period of fourteen days.

(e) The affidavit shall:
(1) Identify the obligee and obligor by name and address, and shall list the obligor's social security number or numbers, if known;

(2) Name the court which entered the support order and set forth the date of such entry;

(3) State the total amount of accrued support which has not been paid by the obligor;

(4) List the date or dates when support payments should have been paid but were not, and the amount of each such delinquent payment; and

(5) If known, the name and address of the obligor's source of income.

(f) Upon receipt of the affidavit, the clerk shall issue a writ of execution, suggestion or suggestee execution, and shall mail a copy of the affidavit and a notice of the filing of the affidavit to the obligor, at his last known address. If the child support enforcement division is not acting on behalf of the obligee in filing the affidavit, the clerk shall forward a copy of the affidavit and the notice of the filing to the child support enforcement division.

(g) The notice provided for in subsection (f) of this section shall inform the obligor that if he or she desires to contest the affidavit on the grounds that the amount claimed to be in arrears is incorrect or that a writ of execution, suggestion or suggestee execution is not proper because of mistakes of fact, he or she must, within fourteen days of the date of the notice: (1) Inform the child support enforcement division in writing of the reasons why the affidavit is contested and request a meeting with the child support enforcement division; or (2) where a court of this state has jurisdiction over the parties, obtain a date for a hearing before the circuit court or the family law master and mail written notice of such hearing to the obligee and to the child
support enforcement division on a form prescribed by the administrative office of the supreme court of appeals and made available through the office of the clerk of the circuit court.

(h) Upon being informed by an obligor that he or she desires to contest the affidavit, the child support enforcement division shall inform the circuit court of such fact, and the circuit court shall require the obligor to give security, post a bond, or give some other guarantee to secure payment of overdue support.

(i) The clerk of the circuit court shall make available form affidavits for use under the provisions of this section. Such form affidavits shall be provided to the clerk by the child support enforcement division. The notice of the filing of an affidavit shall be in a form prescribed by the child support enforcement division.

(j) Writs of execution, suggestions or suggestee executions issued pursuant to the provisions of this section shall have priority over any other legal process under the laws of this state against the same income, except for withholding from income of amounts payable as support in accordance with the provisions of section three of this article, and shall be effective notwithstanding any exemption that might otherwise be applicable to the same income.

(k) Notwithstanding any other provision of this code to the contrary, the amount to be withheld from the disposable earnings of an obligor pursuant to a suggestee execution in accordance with the provisions of this section shall be the same amount which could properly be withheld in the case of a withholding order under the provisions of subsection (e), section three of this article.

(l) Any person who files a false affidavit shall be guilty of false swearing and, upon conviction thereof, shall be punished as provided by law for such offense.
(m) The provisions of this section apply to support orders issued by an out-of-state court or tribunal, as defined in section one hundred one, article one, chapter forty-eight-b of this code, of any other state.

(n) The provisions of this section do not apply to income withholding, as provided in section three of this article.

§48A-5-3. Withholding from income of amounts payable as support.

(a) The withholding from an obligor’s income of amounts payable as spousal or child support shall be enforced by the child support enforcement division in accordance with the provisions of section fifteen-a or fifteen-b, article two, chapter forty-eight of this code. Every support order heretofore or hereafter entered by a circuit court or a magistrate of this state and every support order entered by a court of competent jurisdiction of another state shall be considered to provide for an order of income withholding in accordance with the provisions of said sections, notwithstanding the fact that such support order does not in fact provide for such an order of withholding. A withholding may be instituted under this section for any arrearage without the necessity of additional judicial or legal action.

(b) When immediate income withholding is not required due to the findings required by subsection (c), section fifteen-b, article two, chapter forty-eight of this code, the child support enforcement division shall mail a notice to the obligor pursuant to this section when the support payments required by the order are in arrears in an amount equal to:

(1) One month’s support, if the order requires support to be paid in monthly installments;

(2) Four weeks’ support, if the order requires support to be paid in weekly or biweekly installments; or
(3) Two biweekly installments, if biweekly payments are provided.

(c) When withholding is required by either subsection (a) or (b) of this section, the child support enforcement division shall send by first class mail or electronic means to the obligor notice that withholding has commenced. The notice shall inform the obligor of the following:

(1) The amount owed;

(2) That a withholding from the obligor’s income of amounts payable as support has commenced;

(3) That the amount withheld will be equal to the amount required under the terms of the current support order, plus amounts for any outstanding arrearage;

(4) The definition of “gross income” as defined in section nineteen, article one-a of this chapter;

(5) That the withholding will apply to the obligor’s present source of income, and to any future source of income and, therefore, no other notice of withholding will be sent to the obligor. A copy of any new or modified withholding notice will be sent to the obligor at approximately the same time the original is sent to the source of income;

(6) That any action by the obligor to purposefully minimize his or her income will result in the enforcement of support being based upon potential and not just actual earnings;

(7) That payment of the arrearage after the date of the notice is not a bar to such withholding;

(8) That the obligor may request a review of the withholding by written request to the child support enforcement division when the obligor has information showing an error in the
current or overdue support amount or a mistake as to the identity of the obligor;

(9) That a mistake of fact exists only when there is an error in the amount of current or overdue support claimed in the notice, or there is a mistake as to the identity of the obligor;

(10) That matters such as lack of visitation, inappropriate-ness of the support award, or changed financial circumstances of the obligee or the obligor will not be considered at any hearing held pursuant to the withholding, but may be raised by the filing of a separate petition in circuit court;

(11) That if the obligor desires to contest the withholding, the obligor may petition the circuit court for a resolution; and

(12) That while the withholding is being contested through the court, the income withholding may not be stayed, but may be modified.

(d) Withholding shall occur and the notice to withhold shall be sent to the source of income when the support order provides for immediate income withholding, or if immediate income withholding is not so provided, when the support payments are in arrears in the amount specified in subsection (b) of this section. The source of income shall withhold so much of the obligor’s income as is necessary to comply with the order authorizing such withholding, up to the maximum amount permitted under applicable law for both current support and for any arrearages which are due. Such withholding, unless otherwise terminated under the provisions of this section, shall apply to any subsequent source of income or any subsequent period of time during which income is received by the obligor.

(e) Notwithstanding any other provision of this code to the contrary which provides for a limitation upon the amount which
may be withheld from earnings through legal process, the
amount of an obligor's aggregate disposable earnings for any
given workweek which may be withheld as support payments
is to be determined in accordance with the provisions of this
subsection, as follows:

(1) After ascertaining the status of the payment record of
the obligor under the terms of the support order, the payment
record shall be examined to determine whether any arrearage is
due for amounts which should have been paid prior to a
twelve-week period which ends with the workweek for which
withholding is sought to be enforced.

(2) Prior to the first day of January, two thousand one,
when none of the withholding is for amounts which came due
prior to such twelve-week period, then:

(A) When the obligor is supporting another spouse or
dependent child other than the spouse or child for whom the
proposed withholding is being sought, the amount withheld may
not exceed fifty percent of the obligor's disposable earnings for
that week; and

(B) When the obligor is not supporting another spouse or
dependent child as described in paragraph (A) of this subdivi-
sion, the amount withheld may not exceed sixty percent of the
obligor's disposable earnings for that week.

(3) Prior to the first day of January, two thousand one,
when a part of the withholding is for amounts which came due
prior to such twelve-week period, then:

(A) Where the obligor is supporting another spouse or
dependent child other than the spouse or child for whom the
proposed withholding is being sought, the amount withheld may
not exceed fifty-five percent of the obligor's disposable
earnings for that week; and
(B) Where the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed sixty-five percent of the obligor's disposable earnings for that week.

(4) Beginning the first day of January, two thousand one, when none of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) When the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed forty percent of the obligor's disposable earnings for that week; and

(B) When the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed fifty percent of the obligor's disposable earnings for that week.

(5) Beginning the first day of January, two thousand one, when a part of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) When the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed forty-five percent of the obligor's disposable earnings for that week; and

(B) Where the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed fifty-five percent of the obligor's disposable earnings for that week.

(6) In addition to the percentage limitations set forth in subdivisions (2) and (3) of this subsection, it shall be a further limitation that when the current month's obligation plus
arrearages are being withheld from salaries or wages in no case
shall the total amounts withheld for the current month’s
obligation plus arrearage exceed the amounts withheld for the
current obligation by an amount greater than twenty-five
percent of the current monthly support obligation.

(7) The provisions of this subsection shall apply directly to
the withholding of disposable earnings of an obligor regardless
of whether the obligor is paid on a weekly, biweekly, monthly
or other basis.

(8) The child support enforcement division has the author-
ity to prorate the current support obligation in accordance with
the pay cycle of the source of income. This prorated current
support obligation shall be known as the “adjusted support
obligation”. The current support obligation or the adjusted
support obligation is the amount, if unpaid, on which interest
will be charged.

(9) When an obligor acts so as to purposefully minimize his
or her income and to thereby circumvent the provisions of this
section which provide for withholding from income of amounts
payable as support, the amount to be withheld as support
payments may be based upon the obligor’s potential earnings
rather than his or her actual earnings, and such obligor may not
rely upon the percentage limitations set forth in this subsection
which limit the amount to be withheld from disposable earn-
ings.

(f) The source of income of any obligor who is subject to
withholding, upon being given notice of withholding, shall
withhold from such obligor’s income the amount specified by
the notice and pay such amount to the child support enforce-
ment division for distribution. The notice given to the source of
income shall contain only such information as may be neces-
sary for the source of income to comply with the withholding
order and no source of income may require additional informa-
tion or documentation. Such notice to the source of income shall include, at a minimum, the following:

(1) The amount to be withheld from the obligor’s disposable earnings, and a statement that the amount to be withheld for support and other purposes, including the fee specified under subdivision (3) of this subsection, may not be in excess of the maximum amounts permitted under Section 303(b) of the federal Consumer Credit Protection Act or limitations imposed under the provisions of this code;

(2) That the source of income shall send the amount to be withheld from the obligor’s income to the child support enforcement division, along with such identifying information as may be required by the division, the same day that the obligor is paid;

(3) That, in addition to the amount withheld under the provisions of subdivision (1) of this subsection, the source of income may deduct a fee, not to exceed one dollar, for administrative costs incurred by the source of income, for each withholding;

(4) That withholding is binding on the source of income until further notice by the child support enforcement division or until the source of income notifies the child support enforcement division of a termination of the obligor’s employment in accordance with the provisions of subsection (1) of this section;

(5) That the source of income is subject to a fine for discharging an obligor from employment, refusing to employ, or taking disciplinary action against any obligor because of the withholding;

(6) That when the source of income fails to withhold income in accordance with the provisions of the notice, the source of income is liable for the accumulated amount the
source of income should have withheld from the obligor’s income;

(7) That the withholding under the provisions of this section shall have priority over any other legal process under the laws of this state against the same income, and shall be effective despite any exemption that might otherwise be applicable to the same income;

(8) That when an employer has more than one employee who is an obligor who is subject to wage withholding from income under the provisions of this code, the employer may combine all withheld payments to the child support enforcement division when the employer properly identifies each payment with the information listed in this section. A source of income is liable to an obligee, including the state of West Virginia or the department of health and human resources where appropriate, for any amount which the source of income fails to identify with the information required by this section and is therefore not received by the obligee;

(9) That the source of income shall implement withholding no later than the first pay period or first date for payment of income that occurs after fourteen days following the date the notice to the source of income was mailed; and

(10) That the source of income shall notify the child support enforcement division promptly when the obligor terminates his or her employment or otherwise ceases receiving income from the source of income, and shall provide the obligor’s last known address and the name and address of the obligor’s new source of income, if known.

(g) The commission shall, by administrative rule, establish procedures for promptly refunding to obligors amounts which have been improperly withheld under the provisions of this section.
(h) After implementation in accordance with the provisions of subsection (k) of this section, a source of income shall send the amount to be withheld from the obligor's income to the child support enforcement division and shall notify the child support enforcement division of the date of withholding, the same date that the obligor is paid.

(i) In addition to any amounts payable as support withheld from the obligor's income, the source of income may deduct a fee, not to exceed one dollar, for administrative costs incurred by the source of income, for each withholding.

(j) Withholding of amounts payable as support under the provisions of this section is binding on the source of income until further notice by the child support enforcement division or until the source of income notifies the child support enforcement division of a termination of the obligor's employment in accordance with the provisions of subsection (l) of this section.

(k) Every source of income who receives a notice of withholding under the provisions of this section shall implement withholding no later than the first pay period or first date for the payment of income which occurs after fourteen days following the date the notice to the source of income was mailed.

(l) A source of income who employs or otherwise pays income to an obligor who is subject to withholding under the provisions of this section shall notify the child support enforcement division promptly when the obligor terminates employment or otherwise ceases receiving income from the source of income, and shall provide the child support enforcement division with the obligor's last known address and the name and address of the obligor's new source of income, if known.

(m) When an employer has more than one employee who is an obligor who is subject to wage withholding from income for amounts payable as support, the employer may combine all
withheld payments to the child support enforcement division when the employer properly identifies each payment with the information listed in this section. A source of income is liable to an obligee, including the state of West Virginia or the department of health and human resources where appropriate, for any amount which the source of income fails to identify in accordance with this section and is therefore not received by the obligee.

(n) A source of income is liable to an obligee, including the state of West Virginia or the department of health and human resources where appropriate, for any amount which the source of income fails to withhold from income due an obligor following receipt by such source of income of proper notice under subsection (f) of this section: Provided, That a source of income shall not be required to vary the normal pay and disbursement cycles in order to comply with the provisions of this section.

(o) Any source of income who knowingly and willfully conceals the fact that the source of income is paying income to an obligor, with the intent to avoid withholding from the obligor's income of amounts payable as support, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars.

(p) When the child support enforcement division makes a written request to a source of income to provide information as to whether the source of income has paid income to a specific obligor, within the preceding sixty-day period, the source of income shall, within fourteen days thereafter, respond to such request, itemizing all such income, if any, paid to the obligor during such sixty-day period. A source of income shall not be liable, civilly or criminally, for providing such information in good faith.
(q) Support collection under the provisions of this section shall have priority over any other legal process under the laws of this state against the same income, and shall be effective despite any exemption that might otherwise be applicable to the same income.

(r) Any source of income who discharges from employment, refuses to employ, or takes disciplinary action against any obligor subject to income withholding required by this section because of the existence of such withholding and the obligations or additional obligations which it imposes on the source of income, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars.

§48A-5-10. High-volume automated administrative enforcement of child support in interstate cases.

(a) As used in this chapter:

(1) “High-volume automated administrative enforcement” in interstate cases shall mean at the request of another state, the identification by a state, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other states, and the seizure of such assets by the state, through levy or other appropriate processes.

(2) “Assisting state” shall mean a state which matches the requesting state’s delinquent obligors against the databases of financial institutions and other entities within its own state boundaries where assets may be found, and, if appropriate, seizing assets on behalf of the requesting state.

(3) “Requesting state” shall mean a state transmitting a request for administrative enforcement to another state.
(4) "State" shall mean a state of the United States, or the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" shall also include Indian tribes and a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support which are substantially similar to the procedures under this chapter or under the uniform reciprocal enforcement of support act, the revised uniform reciprocal enforcement of support act, or the uniform interstate family support act.

(b) The child support enforcement division shall use automated administrative enforcement to the same extent as used for intrastate cases in response to a request made by another state to enforce support orders, and shall promptly report the results of such enforcement procedures to the requesting state.

(c) The child support enforcement division may, by electronic or other means, transmit to, or receive from, another state a request for assistance in enforcing support orders through automated administrative enforcement. Such request shall include:

(1) Information as will enable the assisting state to compare the information about the cases to the information in the databases of the state;

(2) All supporting documentation necessary under the laws of this state to support an attachment of the asset or assets, should such assets be located; and

(3) Said transmittal shall constitute a certification by the requesting state:

(A) Of the amount of past-due support owed; and
(B) That the requesting state has complied with all procedural due process requirements applicable to each case.

(d) A requesting state may transmit to an assisting state either:

(1) A request to locate and seize assets; or

(2) A request to seize an asset already identified by the requesting state.

ARTICLE 5A. ENFORCEMENT OF SUPPORT ORDER THROUGH ACTION AGAINST LICENSE.

§48A-5A-4. Hearing on denial, nonrenewal, suspension or restriction of license.

(a) The court shall order a licensing authority to deny, refuse to renew, suspend or restrict a license if it finds that:

(1) All appropriate enforcement methods have been exhausted or are not available;

(2) The person is the holder of a license or has an application pending for a license;

(3) The requisite amount of child support or medical support arrearage exists or health insurance for the child has not been provided as ordered, or the person has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding;

(4) No motion to modify the child support order, filed prior to the date that the notice was sent by the child support enforcement division, is pending before the court; and

(5) There is no equitable reason, such as involuntary unemployment, disability, or compliance with a court-ordered plan for the periodic payment of the child support arrearage
amount, for the person’s noncompliance with the child support order.

(b) If the court is satisfied that the conditions described in subsection (a) of this section exist, it shall first consider suspending or restricting a driver’s license prior to professional license. If the person fails to appear at the hearing after being properly served with notice, the court shall order the suspension of all licenses held by the person.

c) If the court finds that a license suspension will result in a significant hardship to the person, to the person’s legal dependents under eighteen years of age living in the person’s household, to the person’s employees, or to persons, businesses or entities to whom the person provides goods or services, the court may allow the person to pay a percentage of the past-due child support amount as an initial payment, and establish a payment schedule to satisfy the remainder of the arrearage within one year, and require that the person comply with any current child support obligation. If the person agrees to this arrangement, no suspension or restriction of any licenses shall be ordered. Compliance with the payment agreement shall be monitored by the child support enforcement division.

d) If a person has good cause for not complying with the payment agreement within the time permitted, the person shall immediately file a motion with the court and the child support enforcement division requesting an extension of the payment plan. The court may extend the payment plan if it is satisfied that the person has made a good faith effort to comply with the plan and is unable to satisfy the full amount of past-due support within the time permitted due to circumstances beyond the person’s control. If the person fails to comply with the court-ordered payment schedule, the court shall, upon receipt of a certification of noncompliance from the child support enforcement division, and without further hearing, order the immediate suspension or restriction of all licenses held by the person.
(c) For purposes of this section, the term "application" means a request to have a license issued, a request for renewal of an existing license or a request to change the status of an existing license.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-1. Paternity proceedings.
§48A-6-3. Medical testing procedures to aid in the determination of paternity.
§48A-6-4. Establishment of paternity and duty of support.
§48A-6-6. Establishing paternity by acknowledgment of natural father.

§48A-6-1. Paternity proceedings.

(a) A civil action to establish the paternity of a child and to obtain an order of support for the child may be instituted, by verified complaint, in the circuit court of the county where the child resides: Provided, That if such venue creates a hardship for the parties, or either of them, or if judicial economy requires, the court may transfer the action to the county where either of the parties resides.

(b) A "paternity proceeding" is a summary proceeding, equitable in nature and within the domestic relations jurisdiction of the courts, wherein a circuit court upon the petition of the state or another proper party may intervene to determine and protect the respective personal rights of a child for whom paternity has not been lawfully established, of the mother of the child and of the putative father of the child. The parties to a paternity proceeding are not entitled to a trial by jury.

(c) The sufficiency of the statement of the material allegations in the complaint set forth as grounds for relief and the grant or denial of the relief prayed for in a particular case shall rest in the sound discretion of the court, to be exercised by the court according to the circumstances and exigencies of the case, having due regard for precedent and the provisions of the statutory law of this state.
(d) A decree or order made and entered by a court in a paternity proceeding shall include a determination of the filial relationship, if any, which exists between a child and his or her putative father, and, if such relationship is established, shall resolve dependent claims arising from family rights and obligations attendant to such filial relationship.

(e) A paternity proceeding may be brought by any of the following persons:

1. An unmarried woman with physical or legal custody of a child to whom she gave birth;

2. A married woman with physical or legal custody of a child to whom she gave birth, if the complaint alleges that:
   (A) The married woman lived separate and apart from her husband preceding the birth of the child;
   (B) The married woman did not cohabit with her husband at any time during such separation and that such separation has continued without interruption; and
   (C) The defendant, rather than her husband, is the father of the child;

3. The state of West Virginia, including the child support enforcement division defined in article two of this chapter;

4. Any person who is not the mother of the child, but who has physical or legal custody of the child;

5. The guardian or committee of the child;

6. The next friend of the child when the child is a minor;

7. By the child in his own right at any time after the child’s eighteenth birthday but prior to the child’s twenty-first birthday; or
(8) A man who believes he is the father of a child born out of wedlock, when there has been no prior judicial determination of paternity.

(f) Blood or tissue samples taken pursuant to the provisions of this article may be ordered to be taken in such locations as may be convenient for the parties so long as the integrity of the chain of custody of the samples can be preserved.

(g) A person who has sexual intercourse in this state submits to the jurisdiction of the courts of this state for a proceeding brought under this article with respect to a child who may have been conceived by that act of intercourse. Service of process may be perfected according to the rules of civil procedure.

(h) When the person against whom the proceeding is brought has failed to plead or otherwise defend the action after proper service has been obtained, judgment by default shall be issued by the court as provided by the rules of civil procedure.

§48A-6-3. Medical testing procedures to aid in the determination of paternity.

(a) Prior to the commencement of an action for the establishment of paternity, the child support enforcement division may order the mother, her child and the man to submit to genetic tests to aid in proving or disproving paternity. The division may order the tests upon the request, supported by a sworn statement, of any person entitled to petition the court for a determination of paternity as provided in section one of this article. If the request is made by a party alleging paternity, the statement shall set forth facts establishing a reasonable possibility or requisite sexual contact between the parties. If the request is made by a party denying paternity, the statement may set forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties or other facts supporting a denial of paternity. If genetic testing is not
performed pursuant to an order of the child support enforce-
ment division, the court may, on its own motion, or shall upon
the motion of any party, order such tests. A request or motion
may be made upon ten days' written notice to the mother and
alleged father, without the necessity of filing a complaint.
When the tests are ordered, the court or the division shall direct
that the inherited characteristics, including, but not limited to,
blood types be determined by appropriate testing procedures at
a hospital, independent medical institution or independent
medical laboratory duly licensed under the laws of this state, or
any other state, and an expert qualified as an examiner of
genetic markers shall analyze, interpret and report on the results
to the court or to the division of child support enforcement. The
results shall be considered as follows:

(1) Blood or tissue test results which exclude the man as the
father of the child are admissible and shall be clear and con-
vincing evidence of nonpaternity and, if a complaint has been
filed, the court shall, upon considering such evidence, dismiss
the action.

(2) Blood or tissue test results which show a statistical
probability of paternity of less than ninety-eight percent are
admissible and shall be weighed along with other evidence of
the defendant’s paternity.

(3) Undisputed blood or tissue test results which show a
statistical probability of paternity of more than ninety-eight
percent shall, when filed, legally establish the man as the father
of the child for all purposes and child support may be estab-
lished pursuant to the provisions of this chapter.

(4) When a party desires to challenge the results of the
blood or tissue tests or the expert’s analysis of inherited
characteristics, he or she shall file a written protest with the
family law master or circuit court or with the division of child
support enforcement, if appropriate, within thirty days of the
filing of such test results, and serve a copy of such protest upon the other party. The written protest shall be filed at least thirty days prior to any hearing involving the test results. The court or the child support enforcement division, upon reasonable request of a party, shall order that additional tests be made by the same laboratory or another laboratory within thirty days of the entry of the order, at the expense of the party requesting additional testing. Costs shall be paid in advance of the testing. When the results of the blood or tissue tests or the expert’s analysis which show a statistical probability of paternity of more than ninety-eight percent are confirmed by the additional testing, then the results are admissible evidence which is clear and convincing evidence of paternity. The admission of the evidence creates a presumption that the man tested is the father.

(b) Documentation of the chain of custody of the blood or tissue specimens is competent evidence to establish the chain of custody. A verified expert’s report shall be admitted at trial unless a challenge to the testing procedures or a challenge to the results of test analysis has been made before trial. The costs and expenses of making the tests shall be paid by the parties in proportions and at times determined by the court.

(c) Except as provided in subsection (d) of this section, when a blood test is ordered pursuant to this section, the moving party shall initially bear all costs associated with the blood test unless that party is determined by the court to be financially unable to pay those costs. This determination shall be made following the filing of an affidavit pursuant to section one, article two, chapter fifty-nine of this code. When the court finds that the moving party is unable to bear that cost, the cost shall be borne by the state of West Virginia. Following the finding that a person is the father based on the results of a blood test ordered pursuant to this section, the court shall order that the father be ordered to reimburse the moving party for the
costs of the blood tests unless the court determines, based upon the factors set forth in this section, that the father is financially unable to pay those costs.

(d) When a blood test is ordered by the child support enforcement division, the division shall initially bear all costs subject to recoupment from the alleged father if paternity is established.

§48A-6-4. Establishment of paternity and duty of support.

(a) When the defendant, by verified responsive pleading, admits that the man is the father of the child and owes a duty of support, or if after a hearing on the merits, the court shall find, by clear and convincing evidence that the man is the father of the child, the court shall, subject to the provisions of subsection (c) of this section, order support in accordance with the provisions of article one-b of this chapter and the payment of incurred expenses as provided in subsection (e) of this section.

(b) Upon motion by a party, the court shall issue a temporary order for child support pending a judicial determination of parentage if there is clear and convincing evidence of paternity on the basis of genetic tests or other scientifically recognized evidence.

(c) Reimbursement support ordered pursuant to this section shall be limited to a period not to exceed thirty-six months prior to the service of notice of the commencement of paternity or support establishment, unless the court finds, by clear and convincing evidence:

(1) That the defendant had actual knowledge that he was believed to be the father of the child;

(2) That the defendant deliberately concealed his whereabouts or deliberately evaded attempts to serve process upon him; or
(3) That the defendant deliberately misrepresented relevant information which would have enabled the plaintiff to proceed with the cause of action.

If the court finds by clear and convincing evidence that the circumstances in subsection (1), (2) or (3) exist, then the court shall order reimbursement support to the date of birth of the child, subject to the equitable defense of laches.

(d) The court shall give full faith and credit to a determination of paternity made by any other state, based on the laws of that state, whether established through voluntary acknowledgment or through administrative or judicial process.

(e) Bills for pregnancy, childbirth and genetic testing are admissible and constitute prima facie evidence of medical expenses incurred.

(f) The thirty-six month limitation on reimbursement support does not apply to the award of medical expenses incurred.

(g) For purposes of this section, "reimbursement support" means the amount of money awarded as child support for a period of time prior to the entry of the order which establishes the support obligation.

§48A-6-6. Establishing paternity by acknowledgment of natural father.

A written, notarized acknowledgment executed pursuant to the provisions of section twelve, article five, chapter sixteen of this code legally establishes the man as the father of the child for all purposes and child support may be established in accordance with the provisions of article one-b of this chapter.
AN ACT to amend and reenact section seventeen, article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to subsidized adoption and legal guardianship; and expanding authority of the department of health and human resources to subsidize legal guardianship of a child without regard to the status of the parents’ rights.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article two, 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:

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.

§49-2-17. Subsidized adoption and legal guardianship.

From funds appropriated to the department of health and human resources, the secretary shall establish a system of assistance for facilitating the adoption or legal guardianship of children. An adoption subsidy shall be available for children who are legally free for adoption and who are dependents of the department or a child welfare agency licensed to place children for adoption. A legal guardianship subsidy shall not require the surrender or termination of parental rights. For either subsidy, the children must be in special circumstances either because they:
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11 (a) Have established emotional ties with prospective
adoptive parents or prospective legal guardians while in their
care; or

14 (b) Are not likely to be adopted or become a ward of a legal
guardian by reason of one or more of the following conditions:

16 (1) They have a physical or mental disability;

17 (2) They are emotionally disturbed;

18 (3) They are older children;

19 (4) They are a part of a sibling group;

20 (5) They are a member of a racial or ethnic minority; or

21 (6) They have any combination of these conditions.

22 The department shall provide assistance in the form of
subsidies or other services to parents who are found and
approved for adoption or legal guardianship of a child certified
as eligible for subsidy by the department, but before the final
decree of adoption or order of legal guardianship is entered,
there must be a written agreement between the family entering
into the subsidized adoption or legal guardianship and the
department. Adoption or legal guardianship subsidies in
individual cases may commence with the adoption or legal
guardianship placement, and will vary with the needs of the
child as well as the availability of other resources to meet the
child’s needs. The subsidy may be for special services only, or
for money payments, and either for a limited period, or for a
long term, or for any combination of the foregoing. The specific
financial terms of the subsidy shall be included in the agree-
ment between the department and the adoptive parents or legal
guardians. The amount of the time-limited or long-term subsidy
may in no case exceed that which would be allowable from time
to time for such child under foster family care, or, in the case of
a special service, the reasonable fee for the service rendered. In
addition, the department shall provide either medicaid or other health insurance coverage for any special needs child for whom there is an adoption or legal guardianship assistance agreement between the department and the adoptive parent or legal guardian and who the department determines cannot be placed with an adoptive parent or legal guardian without medical assistance because the child has special needs for medical, mental health or rehabilitative care.

Whenever significant emotional ties have been established between a child and his or her foster parents, and the foster parents seek to adopt the child or to become legal guardians, the child shall be certified as eligible for a subsidy conditioned upon his or her adoption or his or her becoming a ward of a legal guardian under applicable procedures by the foster parents.

In all other cases, after reasonable efforts have been made without the use of subsidy and no appropriate adoptive family or legal guardian has been found for the child, the department shall certify the child as eligible for a subsidy in the event of adoption or a legal guardianship.

If the child is the dependent of a voluntary licensed child-placing agency, that agency shall present to the department evidence of significant emotional ties between the child and his foster parents or evidence of inability to place the child for adoption. In no event shall the value of the services and assistance provided by the department under an agreement pursuant to this section exceed the value of assistance available to foster families in similar circumstances. All records regarding subsidized adoptions or legal guardianships shall be held in confidence, however, records regarding the payment of public funds for subsidized adoptions or legal guardianships shall be available for public inspection provided they do not directly or indirectly identify any child or persons receiving funds for such child.
AN ACT to amend and reenact section thirteen-d, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the teen court program; giving counties the option to institute program; removing requirement that program be administered by the governor’s committee on crime, delinquency and correction; eliminating continuing legal education credit for participation in the program; allowing teenagers to act as jurors in program; and removing the provision that declares these programs to be pilot projects.

Be it enacted by the Legislature of West Virginia:

That section thirteen-d, article five, 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:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13d. Teen court program.

1 (a) Notwithstanding any provision of this article to the contrary, in any county that chooses to institute a teen court program in accordance with the provisions of this section, 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 the 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 extend the option to enter the teen court program as an alternative procedure shall be made by the circuit court if the court finds that the offender is a suitable candidate for the program. No juvenile may enter the teen court program unless he or she and his or her parent or guardian consent. 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 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.

(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, bailiff and jurors 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 that 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 at least two sessions of teen court jury service and, if
considered appropriate by the circuit court 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.

(c) 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 allega-
tion 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.

CHAPTER 49

(H. B. 4791 — By Delegates Staton, Hines,
C. White, L. White, Mahan, Capito and Wills)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, 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 ten-a, relating to
resolution of disputes between prosecuting attorneys and the
department of health and human resources in child abuse and
neglect cases; and clarifying a prosecutor’s ability to file an abuse
or neglect petition independently of the department.

Be it enacted by the Legislature of West Virginia:
That article six, 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 ten-a, to read as follows:

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-10a. Dispute resolution.

(a) Whenever, pursuant to the provisions of this article, a prosecuting attorney acts as counsel for the department of health and human resources and a dispute arises between the prosecuting attorney and the department’s representative because an action proposed by the other is believed to place the child at imminent risk of abuse or serious neglect, either the prosecuting attorney or the department’s representative may contact the secretary of the department and the executive director of the West Virginia prosecuting attorneys institute for prompt mediation and resolution. The secretary may designate either his or her general counsel or the director of social services to act as his or her designee and the executive director may designate an objective prosecuting attorney as his or her designee.

(b) Nothing in this code shall be construed to limit the authority of a prosecuting attorney to file an abuse or neglect petition, including the duties and responsibilities owed to its client the department of health and human resources, in his or her fulfillment of the provisions of chapter forty-nine, article six of this code.

CHAPTER 50

(Com. Sub. for H. B. 4300 — By Delegates Houston, Hatfield, Rowe, Susman, Johnson and Marshall)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-e, relating to the voluntary delivery of infants to hospitals or health care facilities by persons who do not express an intent to return for the child; requiring hospitals to take possession of the infants and report the possession to the child protective services division of the department of health and human resources; requiring hospital or health care facility to respect anonymity; requiring department to take possession of child immediately upon notification; requiring department to cause petition to be brought in conjunction with assistance of county prosecutor; providing affirmative defense to certain child neglect crime; and providing that the department may place child for adoption.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6E. EMERGENCY POSSESSION OF CERTAIN ABANDONED CHILDREN.

§49-6E-1. Accepting possession of certain abandoned children.
A hospital or health care facility operating in this state, shall, without a court order, take possession of a child if the child is voluntarily delivered to the hospital or health care facility by the child’s parent within thirty days of the child’s birth and the parent did not express an intent to return for the child. A hospital or health care facility that takes possession of a child under this section shall perform any act necessary to protect the physical health or safety of the child. In accepting possession of the child, the hospital or health care facility may not require the person to identify themselves, but shall otherwise respect the person’s desire to remain anonymous.
§49-6E-2. Notification of possession of abandoned child.

(a) Not later than the close of the first business day after the date on which a hospital or health care facility takes possession of a child under section one of this article, the hospital or health care facility shall notify the child protective services division of the department of health and human resources that it has taken possession of the child and shall provide to the department of health and human resources division of child protective services any information provided by the parent delivering the child. The hospital or health care facility shall refer any inquiries about the child to the department of health and human resources protective services division.

(b) The department of health and human resources shall assume the care, control and custody of the child as of the time of delivery of the child to the hospital or health care facility, and may contract with private child care agency for the care and placement of the child after the child leaves the hospital or health care facility.

§49-6E-3. Filing petition after accepting possession of abandoned child.

A child of whom the department of health and human resources assumes care, control and custody under the provisions of this article shall be deemed an abandoned child and be treated in all respects as a child taken into custody under the provisions of section nine, article six of this chapter. Upon taking custody of a child under the provisions of this article, the department with the cooperation of the county prosecuting attorney shall cause a petition to be presented pursuant to the provisions of section three, article six of this chapter. Thereafter, the department shall proceed in compliance with the provisions of article six of this chapter.

§49-6E-4. Affirmative defense for certain prosecutions.
It is an affirmative defense to prosecution under subsection (a), section four, article eight-d, chapter sixty-one of this code if a parent charged under that section delivered the child, for whom the parent is charged, within thirty days of the child’s birth.

§49-6E-5. Placement of child for adoption.

The child shall be eligible for adoption as an abandoned child under article four, chapter forty-eight of the code.

CHAPTER 51

(H. B. 4365 — By Delegates Givens, Douglas, Facemyer, Fleischauer, Mezzatesta, Staton and Trump)
[Passed March 9, 2000; 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 releasing or disclosing state held records of a juvenile by a court of record after review.

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:

ARTICLE 7. GENERAL PROVISIONS.

§49-7-1. Confidentiality of records.

(a) Except as otherwise provided in this chapter or by order of the court, all records and information concerning a child or juvenile which are maintained by the division of juvenile services, the department of health and human resources, 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 an order of a court of record: Provided, That the court shall review such record or records for relevancy and materiality to the issues in the proceeding, and may issue an order to limit the examination and use of the records or any part thereof.

(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.

CHAPTER 52

(H. B. 4529 — By Delegates Kelley, Beane, Compton, Evans and Hall)

[Passed March 10, 2000; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the attorney general's office; division of corrections; division of labor; and the supreme court of appeals to be moral obligations of the state and directing payments thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state, and agencies thereof, which have arisen due to overexpenditures of the departmental appropriations by officers of the state spending units, the claims having been previously considered by the court of claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the court of claims on the purely statutory grounds that to allow the claims would be condoning illegal
acts contrary to the laws of the state. The Legislature pursuant to its findings of fact and also by the adoption of the findings of fact by the court of claims as its own, and, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below, and directs the auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) Claim against the Attorney General's Office:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Juliet R. Stevenson .................... $11,706.13

(b) Claims against the Division of Corrections:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Anthony Creek Rescue Squad. ............ 481.50
(2) Associated Surgical Care, P.L.L.C. ........ 593.00
(3) Ramsey Behnam, M.D. ..................... 150.00
(4) Bluefield Anesthesia Associates, Inc. .... 558.00
(5) Cabell County Commission ................. 10.08
(6) Arthur L. Calhoun, M.D., Janus E. LeVos, M.D., Partners dba Harrisville Medical Center. .... 347.50
(7) Central WV Medcorp, Inc. ................. 8,510.00
(8) Charleston Area Medical Center, Inc. ... 286,590.93
(9) Charleston Cardiology Group .............. 1,380.00
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CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the adjutant general; alcohol beverage control administration; board of barbers and cosmetologists; board of trustees of the university system of West Virginia; department of administration; department of health and human resources; department of tax and revenue; division of banking; division of corrections; division of highways; division of juvenile services; division of labor; division of motor vehicles; ethics commission; insurance commission; public service commission; regional jail and correctional facility authority; state rail authority; and West Virginia state police to be moral obligations of the state and directing payment thereof.
The Legislature has considered the findings of fact and recommendations reported to it by the court of claims concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) *Claims against the Adjutant General:*

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Bell Atlantic-West Virginia, Inc ........ $1,108.32

(2) Danka .......................................... 303.87

(3) Brian R. Debow .............................. 732.00

(4) Vickie Marie Tetrick ..................... 609.03

(b) *Claim against the Alcohol Beverage Control Administration:*

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Dickinson Fuel Company, Inc. .......... 508.57

(c) *Claim against the Board of Barbers and Cosmetologists:*

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Phyllis Haynes Edens, CCR ............ 209.60

(d) *Claims against the Board of Trustees of the University System of WV:*

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Sherene N. Ballengee ..................... 53.00
(2) Logan Merritt .......................... 339.18

(3) Jason R. Simmons ..................... 100.00

(e) Claims against the Department of Administration:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) The Continental Insurance Company .... 21,255.00

(2) West Virginia Association of
Rehabilitation Facilities .................... 27.62

(f) Claims against the Department of
Health and Human Resources:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Charles E. McElfish, D.D.S. .......... 20,564.59

(2) River Valley Child Development Services . 5,000.00

(g) Claims against the Department of Tax and Revenue:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Computer Associates International,
Inc. ........................................ 254,000.00

(2) Tax Net Governmental Communications
Corporation .............................. 2,124.43

(h) Claim against the Division of Banking:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Board of Governors of the Federal
Reserve System .......................... 1,600.00

(i) Claims against the Division of Corrections:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Barbour County Commission .......... 16,225.00
(2) Browning Ferris Industries .................. 374.25
(3) Correctional Foodservice Management .. 69,289.25
(4) Roy J. Cunningham ......................... 74.24
(5) Thomas E. Gardner, Jr. .................... 250.00
(6) Goldfarb Electric Supply Company, Inc. .. 272.64
(7) Goodyear Tire and Rubber Company ...... 523.16
(8) Green Acres Reg. Ctr.,
c/o Sheltered Workshop ...................... 468.40
(9) John J. Haddox ............................ 18.50
(10) Hampshire County Commission ......... 13,813.53
(11) Hancock County Commission ............. 48,234.56
(12) Harrison County Commission .......... 15,250.00
(13) Hervis Leasing .......................... 13,589.89
(14) Lexis Law Publishing .................... 632.45
(15) Lexis Publishing ......................... 149.21
(16) Lincoln County Commission .......... 17,893.50
(17) Marion County Commission ............. 12,469.11
(18) Marshall County Commission .......... 4,050.79
(19) McDowell County Correctional Center ........................................... 224,690.14
(20) Monongalia County Commission ......... 38,725.00
(21) Preston County Commission ............. 450.00
(22) Randolph County Commission .......... 3,713.00
(23) Sergeant Robert L. Richard ............. 22.46
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<tr>
<td>169</td>
<td>(m) Claim against the Division of Motor Vehicles:</td>
<td></td>
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<tr>
<td>170</td>
<td>(TO BE PAID FROM STATE ROAD FUND)</td>
<td></td>
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<tr>
<td>171</td>
<td>(1) A &amp; B Sales, Inc.</td>
<td>9,013.17</td>
</tr>
<tr>
<td>172</td>
<td>(2) J. Christopher Burket</td>
<td>2,500.00</td>
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</tbody>
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173  (3) Roy A. and Glenna Y. Wiles ............... 2,000.00

174  (n) Claim against the Ethics Commission:
175    (TO BE PAID FROM GENERAL REVENUE FUND)
176  (1) Sherri Goodman Reveal .................... 2,706.28

177  (o) Claim against the Insurance Commission:
178    (TO BE PAID FROM SPECIAL REVENUE FUND)
179  (1) Taylor & James, PLLC ....................... 4,127.00

180  (p) Claims against the Public Service Commission:
181    (TO BE PAID FROM SPECIAL REVENUE FUND)
182  (1) Charleston Department Store ............... 826.55
183  (2) Weston Armory Committee ................. 54.47

184  (q) Claims against the Regional Jail and
185    Correctional Facility Authority:
186    (TO BE PAID FROM SPECIAL REVENUE FUND)
187  (1) Steven Benjamin Adkins .................... 120.00
188  (2) Anthony Keith Leonard ..................... 234.90
189  (3) Keith Parker ............................. 47.50
190  (4) Gary Phillips ............................. 200.00

191  (r) Claim against the State Rail Authority:
192    (TO BE PAID FROM GENERAL REVENUE FUND)
193  (1) Garrett B. Kuykendall, Jr. ............... 2,000.00

194  (s) Claim against the WV State Police:
195    (TO BE PAID FROM GENERAL REVENUE FUND)

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants, and that prior to the payments to any claimant provided for in this bill, the court of claims shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The court of claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.

CHAPTER 54

(H. B. 4104 — By Delegates Jenkins, Hubbard, J. Smith, Campbell, Williams, Hall and Harrison)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section five, article ten-d, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to award of disability retirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§1. Repeal of section relating to award of disability retirement.

Section five, article ten-d, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.
CHAPTER 55

(H. B. 4646 — By Delegates Douglas, Kuhn, Varner, Marshall, Perdue, Stalnaker and Willison)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section ten, article eight, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the charity food bank advisory committee.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating charity food bank advisory committee.

1 That section ten, article eight, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 56

(Com. Sub. for S. B. 202 — By Senators Love, Hunter and Bailey)

[Passed March 6, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eight, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring that male and female inmates be kept separate; and providing for the care of infants born in the penitentiary.
Be it enacted by the Legislature of West Virginia:

ARTICLE 5. THE PENITENTIARY.

§1. Repeal of section relating to keeping male and female convicts separate and providing for infants born in the penitentiary.

1 Section eight, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, is hereby repealed.

CHAPTER 57

(Com. Sub. for S. B. 153 — By Senator Sprouse)

[Passed March 8, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and seven, article three-c, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing criminal penalties for the introduction of computer contaminants; defining terms; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-3. Definitions.

§61-3C-7. Alteration, destruction, etc., of computer equipment.

§61-3C-3. Definitions.
As used in this article, unless the context clearly indicates otherwise:

(a) "Access" means to instruct, communicate with, store data in, retrieve data from, intercept data from or otherwise make use of any computer, computer network, computer program, computer software, computer data or other computer resources.

(b) "Authorization" means the express or implied consent given by a person to another to access or use said person's computer, computer network, computer program, computer software, computer system, password, identifying code or personal identification number.

(c) "Computer" means an electronic, magnetic, optical, electrochemical or other high speed data processing device performing logical, arithmetic or storage functions and includes any data storage facility or communication facility directly related to or operating in conjunction with such device. The term "computer" includes any connected or directly related device, equipment or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device, but such term does not include an automated typewriter or typesetter, a portable handheld calculator or other similar device.

(d) "Computer contaminant" means any set of computer instructions that are designed to damage or destroy information within a computer, computer system or computer network without the consent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms that are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer
resources or damage or destroy the normal operation of the computer.

(e) “Computer data” means any representation of knowledge, facts, concepts, instruction or other information computed, classified, processed, transmitted, received, retrieved, originated, stored, manifested, measured, detected, recorded, reproduced, handled or utilized by a computer, computer network, computer program or computer software and may be in any medium, including, but not limited to, computer print-outs, microfilm, microfiche, magnetic storage media, optical storage media, punch paper tape or punch cards, or it may be stored internally in read-only memory or random access memory of a computer or any other peripheral device.

(f) “Computer network” means a set of connected devices and communication facilities, including more than one computer, with the capability to transmit computer data among them through such communication facilities.

(g) “Computer operations” means arithmetic, logical, storage, display, monitoring or retrieval functions or any combination thereof and includes, but is not limited to, communication with, storage of data in or to, or retrieval of data from any device and the human manual manipulation of electronic magnetic impulses. A “computer operation” for a particular computer shall also mean any function for which that computer was designed.

(h) “Computer program” means an ordered set of computer data representing instructions or statements, in a form readable by a computer, which controls, directs or otherwise influences the functioning of a computer or computer network.

(i) “Computer software” means a set of computer programs, procedures and associated documentation concerned with computer data or with the operation of a computer, computer program or computer network.
(j) "Computer services" means computer access time, computer data processing or computer data storage and the computer data processed or stored in connection therewith.

(k) "Computer supplies" means punch cards, paper tape, magnetic tape, magnetic disks or diskettes, optical disks or diskettes, disk or diskette packs, paper, microfilm and any other tangible input, output or storage medium used in connection with a computer, computer network, computer data, computer software or computer program.

(l) "Computer resources" includes, but is not limited to, information retrieval; computer data processing, transmission and storage; and any other functions performed, in whole or in part, by the use of a computer, computer network, computer software or computer program.

(m) "Owner" means any person who owns or leases or is a licensee of a computer, computer network, computer data, computer program, computer software, computer resources or computer supplies.

(n) "Person" means any natural person, general partnership, limited partnership, trust, association, corporation, joint venture or any state, county or municipal government and any subdivision, branch, department or agency thereof.

(o) "Property" includes:

(1) Real property;

(2) Computers and computer networks;

(3) Financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether they are:

(i) Tangible or intangible;
(ii) In a format readable by humans or by a computer;

(iii) In transit between computers or within a computer network or between any devices which comprise a computer; or

(iv) Located on any paper or in any device on which it is stored by a computer or by a human; and

(4) Computer services.

(p) "Value" means having any potential to provide any direct or indirect gain or advantage to any person.

(q) "Financial instrument" includes, but is not limited to, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security or any computerized representation thereof.

(r) "Value of property or computer services" shall be: (1) The market value of the property or computer services at the time of a violation of this article; or (2) if the property or computer services are unrecoverable, damaged or destroyed as a result of a violation of section six or seven of this article, the cost of reproducing or replacing the property or computer services at the time of the violation.

§61-3C-7. Alteration, destruction, etc., of computer equipment.

(a) Misdemeanor offenses. — Any person who knowingly, willfully and without authorization, directly or indirectly, tampers with, deletes, alters, damages or destroys or attempts to tamper with, delete, alter, damage or destroy any computer, computer network, computer software, computer resources, computer program or computer data or who knowingly introduces, directly or indirectly, a computer contaminant into any computer, computer program or computer network which results in a loss of value of property or computer services up to one thousand dollars, is guilty of a misdemeanor and, upon
11 conviction thereof, shall be fined not more than one thousand
dollars or confined in the county or regional jail not more than
six months, or both.

14 (b) *Felony offenses.* — Any person who knowingly,
willfully and without authorization, directly or indirectly,
damages or destroys or attempts to damage or destroy any
computer, computer network, computer software, computer
resources, computer program or computer data by knowingly
introducing, directly or indirectly, a computer contaminant into
any computer, computer program or computer network which
results in a loss of value of property or computer services more
than one thousand dollars is guilty of a felony and, upon
conviction thereof, shall be fined not less than two hundred
dollars and not more than ten thousand dollars or confined in a
state correctional facility not more than ten years, or both, or,
in the discretion of the court, be fined not less than two hundred
nor more than one thousand dollars and confined in the county
or regional jail not more than one year.

CHAPTER 58

(Com. Sub. for H. B. 2605 — By Delegates Proudfoot,
Kominar, Staton and Mezzatesta)

[Passed February 15, 2000; in effect ninety days from passage. Approved by the Governor.]
providing that sheriffs shall issues permits within a specified time period and only upon qualification.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.

(a) Except as provided in subsection (h) of this section, any person desiring to obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for such license, and shall pay to the sheriff, at the time of application, a fee of sixty dollars. Concealed weapons permits may only be issued for pistols or revolvers. Each applicant shall file with the sheriff, a complete application, as prepared by the superintendent of the West Virginia state police, in writing, duly verified, which sets forth only the following licensing requirements:

(1) The applicant's full name, date of birth, social security number and a description of the applicant's physical features;

(2) That, on the date the application is made, the applicant is a bona fide resident of this state and of the county in which the application is made and has a valid driver's license or other state-issued photo identification showing such residence;

(3) That the applicant is twenty-one years of age or older: Provided, That any individual who is less than twenty-one years of age and possesses a properly issued concealed weapons license as of the effective date of this article shall be licensed to maintain his or her concealed weapons license notwithstanding the provisions of this section requiring new applicants to be at least twenty-one years of age: Provided, however, That upon a
showing of any applicant who is eighteen years of age or older that he or she is required to carry a concealed weapon as a condition for employment, and presents satisfactory proof to the sheriff thereof, then he or she shall be issued a license upon meeting all other conditions of this section. Upon discontinuance of employment that requires the concealed weapons license, if the individual issued the license is not yet twenty-one years of age, then the individual issued the license is no longer eligible and must return his or her license to the issuing sheriff;

(4) That the applicant is not addicted to alcohol, a controlled substance or a drug, and is not an unlawful user thereof;

(5) That the applicant has not been convicted of a felony or of an act of violence involving the misuse of a deadly weapon;

(6) That the applicant has no criminal charges pending and is not currently serving a sentence of confinement, parole, probation or other court-ordered supervision, because of a charge of domestic violence as provided for in section twenty-eight, article two of this chapter, or is the subject of a restraining order as a result of a domestic violence act as defined in that section, or because of a verified petition of domestic violence as provided for in article two-a, chapter forty-eight of this code or is subject to a protective order as provided for in that article;

(7) That the applicant is physically and mentally competent to carry such weapon;

(8) That the applicant has not been adjudicated to be mentally incompetent;

(9) That the applicant has qualified under the minimum requirements set forth in subsection (d) of this section for handling and firing such weapon: Provided, That this requirement shall be waived in the case of a renewal applicant who has previously qualified;
(10) That the applicant authorizes the sheriff of the county, or his or her designee, to conduct an investigation relative to the information contained in the application.

(b) The sheriff shall conduct an investigation which shall verify that the information required in subdivisions (1), (2), (3), (5), (6), (8) and (9), subsection (a) of this section are true and correct.

(c) The sixty-dollar application fee and any fees for replacement of lost or stolen licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license administration fund. Such fund shall be administered by the sheriff and shall take the form of an interest bearing account with any interest earned to be compounded to the fund. Any funds deposited in this concealed weapon license administration fund are to be expended by the sheriff to pay for the costs associated with issuing concealed weapons licenses. Any surplus in the fund on hand at the end of each fiscal year may be expended for other law-enforcement purposes or operating needs of the sheriff's office, as the sheriff may deem appropriate.

(d) All persons applying for a license must complete a training course in handling and firing a handgun. The successful completion of any of the following courses fulfills this training requirement:

(1) Any official national rifle association handgun safety or training course;

(2) Any handgun safety or training course or class available to the general public offered by an official law-enforcement organization, community college, junior college, college or private or public institution or organization or handgun training school utilizing instructors duly certified by such institution;
(3) Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the national rifle association;

(4) Any handgun training or safety course or class conducted by any branch of the United States military, reserve or national guard.

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization or group that conducted or taught said course or class attesting to the successful completion of the course or class by the applicant or a copy of any document which shows successful completion of the course or class shall constitute evidence of qualification under this section.

(e) All concealed weapons license applications must be notarized by a notary public duly licensed under article four, chapter twenty-nine of this code. Falsification of any portion of the application constitutes false swearing and is punishable under the provisions of section two, article five, chapter sixty-one of this code.

(f) If the information in the application is found to be true and correct, the sheriff shall issue a license. The sheriff shall issue or deny the license within forty-five days after the application is filed if all required background checks authorized by this section are completed.

(g) Before any approved license shall be issued or become effective, the applicant shall pay to the sheriff a fee in the amount of fifteen dollars which the sheriff shall forward to the superintendent of the West Virginia state police within thirty days of receipt. Any such license shall be valid for five years throughout the state, unless sooner revoked.

(h) All persons holding a current and valid concealed weapons license as of the sixteenth day of December, one
thousand nine hundred ninety-five, shall continue to hold a valid concealed weapons license until his or her license expires or is revoked as provided for in this article: Provided, That all reapplication fees shall be waived for applications received by the first day of January, one thousand nine hundred ninety-seven, for any person holding a current and valid concealed weapons license as of the sixteenth day of December, one thousand nine hundred ninety-five, which contains use restrictions placed upon the license as a condition of issuance by the issuing circuit court. Any licenses reissued pursuant to this subsection will be issued for the time period of the original license.

(i) Each license shall contain the full name, social security number and address of the licensee and a space upon which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign and attach his or her seal to all license cards. The sheriff shall provide to each new licensee a duplicate license card, in size similar to other state identification cards and licenses, suitable for carrying in a wallet, and such license card is deemed a license for the purposes of this section.

(j) The superintendent of the West Virginia state police shall prepare uniform applications for licenses and license cards showing that such license has been granted and shall do any other act required to be done to protect the state and see to the enforcement of this section.

(k) In the event an application is denied, the specific reasons for the denial shall be stated by the sheriff denying the application. Any person denied a license may file, in the circuit court of the county in which the application was made, a petition seeking review of the denial. Such petition shall be filed within thirty days of the denial. The court shall then determine whether the applicant is entitled to the issuance of a license under the criteria set forth in this section. The applicant may be represented by counsel, but in no case shall the court be
required to appoint counsel for an applicant. The final order of
the court shall include the court’s findings of fact and conclu-
sions of law. If the final order upholds the denial, the applicant
may file an appeal in accordance with the rules of appellate
procedure of the supreme court of appeals.

(l) In the event a license is lost or destroyed, the person to
whom the license was issued may obtain a duplicate or substi-
tute license for a fee of five dollars by filing a notarized
statement with the sheriff indicating that the license has been
lost or destroyed.

(m) The sheriff shall, immediately after the license is
granted as aforesaid, furnish the superintendent of the West
Virginia state police a certified copy of the approved applica-
tion. It shall be the duty of the sheriff to furnish to the superin-
tendent of the West Virginia state police at any time so re-
quested a certified list of all such licenses issued in the county.
The superintendent of the West Virginia state police shall
maintain a registry of all persons who have been issued
concealed weapons licenses.

(n) All licensees must carry with them a state-issued photo
identification card with the concealed weapons license when-
ever the licensee is carrying a concealed weapon. Any licensee
who fails to have in his or her possession a state-issued photo
identification card and a current concealed weapons license
while carrying a concealed weapon shall be guilty of a misde-
meanor and, upon conviction thereof, shall be fined not less
than fifty or more than two hundred dollars for each offense.

(o) The sheriff shall deny any application or revoke any
existing license upon determination that any of the licensing
application requirements established in this section have been
violated by the licensee.

(p) No person who is engaged in the receipt, review or in
the issuance or revocation of a concealed weapon license shall
incur any civil liability as the result of the lawful performance
of his or her duties under this article.

(q) Notwithstanding the provisions of subsection (a) of this
section, with respect to application by a former
law-enforcement officer honorably retired from agencies
governed by article fourteen, chapter seven; article fourteen,
chapter eight; article two, chapter fifteen; and article seven,
chapter twenty of this code, an honorably retired officer is
exempt from payment of fees and costs as otherwise required
by this section, and the application of the honorably retired
officer shall be granted without proof or inquiry by the sheriff
as to those requirements set forth in subdivision (9), subsection
(a) of this section, if the officer meets the remainder of the
requirements of this section and has the approval of the
appropriate chief law-enforcement officer.

CHAPTER 59

(Comm. Sub. for H. B. 4322 — By Mr. Speaker, Mr. Kiss, and
Delegates Staton, Hunt, Wills, Stemple, Smirl and Laird)

[Passed February 23, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two-b, chapter
fifteen of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to the taking of blood samples for
DNA analysis; and requiring the taking of blood samples from
persons convicted of certain additional offenses.

Be it enacted by the Legislature of West Virginia:

That section six, article two-b, 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 2B. DNA DATA.


(a) Any person convicted of an offense described in section one, two, three, four, seven, nine, nine-a (when that offense constitutes a felony), ten, ten-a, ten-b, twelve, fourteen or fourteen-a, article two, chapter sixty-one of this code or section twelve, article eight of said chapter, when that offense constitutes a felony, shall provide a blood sample to be used for DNA analysis as described in this article. Further, any person convicted of any offense described in article eight-b or eight-d of said chapter shall provide a blood sample to be used for DNA analysis as described in this article.

(b) All persons incarcerated in a state correctional facility or any county or regional jail in this state who are incarcerated due to the conviction of any offense listed in subsection (a) of this section who are incarcerated on the first day of July, one thousand nine hundred ninety-five, or who are convicted of any such offense on or after the first day of July, one thousand nine hundred ninety-five, shall have a blood sample drawn for purposes of analysis and storage of the DNA.

(c) Any person convicted after the first day of July, two thousand, of a violation of section five or thirteen, article two, chapter sixty-one of this code, section one, two, three, four, five, seven, eleven, twelve (when that offense constitutes a felony) or subsection (a), section thirteen, article three of said chapter, section three, four, five or ten, article three-e of said chapter or section three, article four of said chapter, shall provide a blood sample to be used for DNA analysis as described in this article.

(d) When a person who is required to submit to blood testing as required by this section refuses to comply with any blood testing, the state shall apply to a circuit court for an order
requiring the prisoner to permit a blood sample to be withdrawn
for the purpose of DNA typing and testing. The circuit court
shall order the prisoner to submit to blood testing in conformity
with the provisions of this article.

CHAPTER 60

(S. B. 98 — By Senators Wooton, Ball, Dawson, Dittmar,
Kessler, McCabe, Minard, Ridd, Ross and Snyder)

[Passed January 31, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section one, article thirteen, chapter sixty-two of
the code of West Virginia, one thousand nine hundred thirty-one,
as amended; and to amend article one, chapter twenty-five of said
code by adding thereto a new section, designated section one-a,
relating to clarifying the purpose of the division of corrections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS
MANAGEMENT.

§25-1-1a. Purpose and legislative intent.

(a) The primary purpose of the division of corrections is to
enhance public safety by providing for the incarceration and
care of convicted offenders who have been sentenced by courts
of proper jurisdiction to serve terms of incarceration. It is the intent of the Legislature:

(1) That persons committed to correctional institutions of the state for whom release is available for crimes be afforded appropriate treatment to reestablish their ability to live peaceably, consistent with the protection of the community;

(2) That persons committed to correctional institutions of the state be released at the earliest possible date, consistent with public safety;

(3) To establish a just, humane and efficient corrections program; and

(4) To avoid duplication and waste of effort and money on the part of public and private agencies.

(b) This section shall be construed in favor of public safety.

CHAPTER 61

(Com. Sub. for S. B. 177 — By Senators Love, Dawson, Ball, Mitchell, Hunter and Sprouse)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section six, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three-a, article one, chapter twenty-five of said code, relating to inmate funds; requiring commissioner to make an annual report regarding the average cost of incarceration; and authorizing the division of corrections to collect certain costs from inmates.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-3a. Trustee accounts and funds, earnings and personal property of inmates.

(a) The commissioner of corrections is authorized to establish at each institution under his or her jurisdiction a “trustee fund”. The warden or administrator of each institution shall receive and take charge of the money and personal property, as defined by policy, of all inmates in his or her institution and all money or personal property, as defined by policy, sent to the inmates or earned by the inmates as compensation for work performed while they are domiciled there. The warden or administrator shall credit the money and earnings to the inmate entitled to it and shall keep an accurate account of all such money and personal property so received, which account is subject to examination by the state commissioner of corrections. The warden or administrator shall deposit the moneys in one or more responsible banks in accounts to be designated a “trustee fund”.

(b) For all inmates, except those serving life without mercy, the warden or administrator shall keep in an account at least ten percent of all money earned during the inmate’s incarceration and pay same to the inmate at the time of the inmate’s release.

(c) The commissioner of corrections may direct that offenders who work in community work programs, including work release inmates who have obtained employment, make reimbursement to the state towards the cost of his or her incarceration.
(d) (1) Prior to ordering an incarcerated offender to make reimbursement towards the costs of his or her incarceration, the commissioner, or his or her designee, shall consider the following:

(A) The offender’s ability to pay;

(B) The nature and extent of the offender’s responsibilities to his or her dependents, if any;

(C) The length of probable incarceration under the court’s sentence; and

(D) The effect, if any, that reimbursement might have on the offender’s rehabilitation.

(2) No order of reimbursement entered pursuant to this section may exceed five hundred dollars per month unless the offender gives his or her express consent.

(3) The commissioner of corrections shall, prior to the beginning of each fiscal year, prepare a report that details the average cost per inmate incurred by the division for the care and supervision of those individuals in his or her custody.

(e) The chief executive officer of any correctional institution, on request of an inmate, may expend up to one half of the money earned by the inmate on behalf of the family of the inmate if the ten percent mandatory savings has first been set aside and other fees owed by the inmate have been paid. The remainder of the money earned, after deducting amounts expended as authorized, shall be accumulated to the credit of the inmate and be paid to the inmate at times as may be prescribed by rules. The funds so accumulated on behalf of inmates shall be held by the chief executive officer of each institution, under a bond approved by the attorney general.

(f) The warden or administrator shall deliver to the inmate at the time he or she leaves the institution, or as soon as
practicable thereafter, all personal property, moneys and earnings then credited to the inmate, or in case of the death of the inmate before authorized release from the institution, the warden or administrator shall deliver the property to the inmate’s personal representative. In case a conservator is appointed for the inmate while he or she is domiciled at the institution, the warden or administrator shall deliver to the conservator, upon proper demand, all moneys and personal property belonging to the inmate that are in the custody of the warden or administrator.

CHAPTER 62

(Com. Sub. for S. B. 178 — By Senators Love, Ball, Dawson, Hunter, Mitchell and Ross)

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section three-b, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the creation and operation of inmate benefit funds in correctional institutions; creating special revenue accounts; and providing for an automated inmate family and victim notification system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-3b. Inmate benefit funds.
(a) The commissioner of corrections shall establish an inmate benefit fund for each of the institutions under his or her jurisdiction. The inmate benefit fund is a fund held by the institutions for the benefit and welfare of inmates incarcerated in state correctional facilities and for the benefit of victims.

(b) There is hereby created a special revenue account in the state treasury for each inmate benefit fund established by the commissioner. Moneys received by an institution for deposit in an inmate benefit fund shall be deposited with the state treasurer to be credited to the special revenue account created for the institution’s inmate benefit fund. Moneys in a special revenue account established for an inmate benefit fund may be expended by the institution for the purposes set forth in this section. Moneys to be deposited into an inmate benefit fund consist of:

   (1) All profit from the exchange or commissary operation;

   (2) All net proceeds from vending machines used for inmate visitation;

   (3) All proceeds from contracted inmate telephone commissions;

   (4) Any funds that may be assigned by inmates or donated to the institution by the general public or an inmate service organization on behalf of all inmates;

   (5) Any funds confiscated considered contraband; and

   (6) Any unexpended balances in individual inmate trustee funds if designated by the inmate upon his or her discharge from the institution.

(c) The inmate benefit fund may only be used for the following purposes at correctional facilities:

   (1) Open-house visitation functions or other nonroutine inmate functions;
(2) Holiday functions which may include decorations and gifts for children of inmates;

(3) Cable television service;

(4) Rental of video cassettes;

(5) Payment of video license;

(6) Recreational supplies, equipment or area surfacing;

(7) Reimbursement of employee wages for overtime incurred during open house visitations and holiday functions;

(8) Post-secondary education classes;

(9) Reimbursement of a pro rata share of inmate work compensation;

(10) Household equipment and supplies in day rooms or units as approved by chief executive officers of institutions, excluding supplies used in the daily maintenance and sanitation of the unit;

(11) Christmas or other holidays gift certificates for each inmate to be used at the exchange or commissary;

(12) Any expense associated with the operation of the fund;

(13) Expenditures necessary to properly operate an automated inmate family and victim information notification system; and

(14) Any expense for improvement of the facility which will benefit the inmate population that is not otherwise funded.

(d) The institution shall compile a monthly report that specifically documents inmate benefit fund receipts and expenditures and a yearly report for the previous fiscal year by the first day of September of each year and submit the reports to the commissioner.
AN ACT to amend article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven-e, relating to prohibiting the unauthorized use of a uniform, badge, identification card or other insignia of the division of corrections and the impersonation of its employees; and establishing a criminal penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-11e. Unauthorized use of uniform, badge, identification card or other insignia; impersonation of member; and penalty.

(a) No person who is not an officer or employee of the division of corrections, and no officer or employee of the division who is not authorized to do so, may, with intent to deceive, wear, use, order to be used or worn, copy or imitate in any respect or manner the uniform, badge, identification card or other insignia prescribed for employees of the division.
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(b) No person who is not an officer or employee of the division of corrections may falsely represent himself or herself to be an officer or employee of the division of corrections or to be under the order or direction of any officer or employee of the division.

(c) Any person who violates the provisions of subsection (a) or (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two hundred dollars, or confined in the county or regional jail for not more than six months, or both fined and confined.

CHAPTER 64

(Com. Sub. for H. B. 4169 — By Delegates Stemple, Manuel, Warner and Pino)

[Passed March 8, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the electronic monitoring of offenders; permitting use of electronic monitoring equipment to aid in supervision of any offender; providing for the use of fees collected in the program; and revising restrictions on the types of equipment that may be used.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.
§25-1-14. Electronic monitoring of offenders; special account.

The commissioner may use electronic monitoring equipment to aid in the supervision of offenders. The commissioner shall charge offenders subject to supervision by means of electronic monitoring equipment a reasonable fee, to be established under a legislative rule promulgated by the commissioner pursuant to article three, chapter twenty-nine-a of this code, to help defray the costs of the purchase and use of the equipment and the division of correction's operational costs: Provided, That an offender's inability to pay a fee does not preclude the offender from being eligible for this program.

All fees collected shall be deposited in a special account in the state treasury designated the "electronic monitoring program account". The funds deposited in the account may be used by the commissioner only for the operation of the program and for the administration of the division of corrections.

"Electronic monitoring equipment" means an electronic device or apparatus approved by the division of corrections which is capable of recording or transmitting information regarding the offender's presence or nonpresence in a designated area. The device shall be minimally intrusive. Except to the extent provided in this section, the division of corrections shall not approve any monitoring device which is capable of recording or transmitting (i) visual images, except for that of a still image of the offender that can only be transmitted by the offender triggering the monitoring system, or (ii) information as to the offender's activities while he or she is within the designated area. A monitoring device may transmit information regarding blood alcohol levels. The monitoring device shall not be used to eavesdrop or record any conversation: Provided, That conversations between the offender and the person supervising the offender may be recorded solely for purpose of voice identification.
AN ACT to amend and reenact section fifteen, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to diagnostic and classification divisions of the division of corrections; and removing restrictions and obsolete language concerning the location of the divisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.


1 The commissioner of corrections may establish diagnostic
2 and classification divisions.

3 Notwithstanding any provision of the code to the contrary,
4 all persons committed to the custody of the commissioner of the
5 division of corrections for presentence diagnosis and classification
6 and all persons sentenced to the custody of the division of
7 corrections shall, upon transfer to the division of corrections,
8 undergo diagnosis and classification.
AN ACT to amend chapter twenty-five 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 inmate litigation reform; defining terms; requiring exhaustion of administrative remedies; providing for full payment of filing fees; requiring judicial review of initial pleading; requiring dismissal of actions; permitting hearings at correctional facilities; limiting recovery; allowing forfeiture of good-time credit; and providing for payment of pending judgments.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. WEST VIRGINIA PRISONER LITIGATION REFORM ACT.

§25-1A-1. Definitions.
§25-1A-3. Payment of filing fees and court costs.
§25-1A-4. Judicial review of initial pleading; dismissal.
§25-1A-5. Hearings.
§25-1A-7. Court-ordered payments.

§25-1A-1. Definitions.

As used in this article,
(a) "Civil action" means any action or appeal from an action filed by any current or former inmate or his or her personal representative with respect to conditions of confinement, including, but not limited to, petitions for extraordinary writs, civil actions under 42 U.S.C. §1983 and other federal and state laws and negligence actions. Actions that exclusively concern an inmate's sentence or conviction are not subject to the requirements of this article.

(b) "Correctional facility" means any county jail, regional jail or any facility operated by the division of corrections, the West Virginia regional jail and correctional facility authority or division of juvenile services for the confinement of inmates.

(c) "Inmate" means any person confined in a correctional facility who is accused of, convicted of, sentenced for or adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial release or a diversionary program.


(a) An inmate may not bring a civil action until the administrative remedies promulgated by the facility have been exhausted: Provided, That the remedies promulgated by the facility will be deemed completed within sixty days from the date the inmate filed his or her initial complaint if the inmate fully complied with the requirements for filing and appealing the administrative complaint.

(b) The commissioner of the division of corrections and the executive director of the regional jail authority shall propose joint legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish administrative rules for processing inmate complaints concerning food quality, health care, nonviolent or nonsexual conduct of employees or contractors of the division of corrections or regional jail authority, loss of privileges and other
general complaints about daily living conditions which do not
directly and seriously concern an inmate’s physical health or
security.

(c) Notwithstanding any other provision of this code, no
inmate shall be prevented from filing an appeal of his or her
conviction or bringing a civil or criminal action alleging past,
current or imminent physical or sexual abuse; if such a civil or
criminal action is ultimately dismissed by a judge as frivolous,
then the inmate shall pay the filing costs associated with the
civil or criminal action as provided for in this article.

§25-1A-3. Payment of filing fees and court costs.

(a) Notwithstanding any other provision of this code, an
inmate may not file with any court of this state a civil action
without the payment of filing fees as set forth in this section:
Provided, That the collection of the full filing fee is not
required before the inmate’s claim may be filed and served.

(b) When an inmate seeks to file a civil action as an
indigent and requests that customary filing fees and court costs
be waived, the clerk of the court in which the inmate has filed
his or her complaint shall notify the warden or designated
representative of the facility in which the inmate resides of the
inmate’s request and the amount of filing costs. Once the
facility receives notification, the custodian of the inmate’s trust
account shall immediately compute the average monthly
balance of the inmate’s trust account over the preceding three-
month period and deduct from the inmate’s trust account thirty
percent of the average balance as a partial filing fee. The
custodian shall deduct that same amount or up to thirty percent
of the balance of the inmate’s trust account, whichever is
greater, on a monthly basis until the filing fee is paid in full.

(c) The custodian of the inmate’s trust account shall place
all funds deducted from the inmate’s trust into a special account
designated as the “filing fees account”, to be established for
each correctional facility and to be administered by the custo-
dian and warden or chief administrator of each facility. Biannu-
ally the custodian and warden or chief administrator of the
filing fees account shall distribute the balance of the account,
minus any expense in maintaining that account, to the circuit
clerk of the county in which the state correctional facility
resides as a filing fee for all suits filed by indigent inmates of
that facility.

§25-1A-4. Judicial review of initial pleading; dismissal.

(a) The court shall, prior to issuance of process, review the
complaint, petition or other initial pleading to determine
whether a civil action is frivolous or malicious as defined in
subsection (b) of this section and fails to state a claim for which
relief can be granted or seeks monetary relief from a party who
is immune from such relief. If the complaint, petition or other
initial pleading is frivolous or malicious, fails to state a claim
for which relief can be granted or seeks monetary relief from a
party who is immune from such relief, the court shall not issue
process and shall dismiss the case.

(b) A civil action is frivolous or malicious if it:

(1) Has no arguable basis in fact or law; or

(2) Is substantially similar to a previous civil action in
which the inmate did not substantially prevail, either in that it
is brought against the same parties or in that the civil action
arises from the same operative facts of a previous civil action;
or

(3) Has been brought with the intent to harass an opposing
party.

§25-1A-5. Hearings.
(a) To the extent practicable, a court shall conduct pretrial proceedings in any civil action in which an inmate’s participation is required or permitted by telephone, video conference or other telecommunications technology without removing the inmate from the facility in which an inmate is confined.

(b) Subject to the agreement of the official with custody over an inmate, the court may conduct hearings at the correctional facility in which an inmate is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference or other communications technology in any hearing held at the facility.

(c) No court may compel the commissioner of the division of corrections or warden of any correctional facility operated by the division of corrections or the executive director of the West Virginia regional jail and correctional facility authority or any administrator of any facility operated by the West Virginia regional jail and correctional facility authority to transport to court any inmate having a maximum security classification if the warden or administrator of the facility tenders to the court an affidavit attesting to the custody level of the inmate and stating that, in the warden’s or administrator’s opinion, the inmate possesses a substantial risk of escape if transported. If a warden or administrator files an affidavit, then the warden or administrator shall, upon demand of the court, provide suitable room to conduct any trial or hearings at which an inmate’s presence is required. The warden or administrator shall allow the court, counsel and all court personnel access to the correctional facility to conduct the proceedings the court considers necessary.


Upon a finding by the court that a civil action is frivolous, malicious or intended to harass the party against whom the civil action is brought or that the inmate knowingly testified falsely
4 or otherwise knowingly presented false evidence or information to the court, the court may order that the inmate forfeit earned good-time credit. A court may take additional evidence to determine the appropriate amount of good-time credit to be forfeited.

§25-1A-7. Court-ordered payments.

Any compensatory damages awarded to an inmate in connection with a civil action, after deduction for any attorney fees, shall be paid directly to satisfy any outstanding court-ordered payments pending against the inmate, including, but not limited to, restitution or child support. The remainder of the award after full payment of all pending court orders shall be forwarded to the inmate.


(a) In any action based upon prison conditions brought under any statute or constitutional provision, if attorney fees are recoverable pursuant to any state statute, no attorney fees shall be awarded to a prisoner, except to the extent that:

(1) The fees were directly and reasonably incurred by an attorney in proving an actual violation of prisoner’s rights protected by the constitution or statute; and

(2) The amount of the fees is proportionately related to the court-ordered relief for the violation, or the fees were directly and reasonably incurred in enforcing the relief ordered for the violation.

(b) Nothing in this section shall prohibit a prisoner from entering into an agreement to pay an attorney fee in excess of the amount authorized in this section, if the fee is paid by the prisoner rather than by another party to a civil action.
CHAPTER 67

(Com. Sub. for H. B. 4106 — By Mr. Speaker, Mr. Kiss, and Delegates Michael, Varner, Martin, Kominar, Kuhn and Douglas)

[Passed February 8, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the West Virginia regional jail and correctional facility authority board to appoint an executive director; and providing a term of five years.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-4. Governing body; organization and meetings; quorum; administrative expenses.

The governing body of the authority shall consist of the voting members of the board as provided for in section three of this article and shall exercise all the powers given to the authority in this article. On the second Monday of July of each odd-numbered year, the board shall meet to elect a chairman and a secretary from among its own members. The secretary of the department of administration or his or her designated representative shall serve as treasurer of the board. The board shall otherwise meet quarterly, unless a special meeting is called by its chairman.
A majority of the members of the board constitute a quorum, and a quorum must be present for the board to conduct business. Unless the bylaws require a larger number, action may be taken by majority vote of the members present.

The board shall prescribe, amend and repeal bylaws and rules governing the manner in which the business of the authority is conducted and shall review and approve the budget prepared by the executive director annually.

On or before the first day of April, two thousand, the West Virginia regional jail and correctional facility authority board shall, with the advice and consent of the Senate, appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the board at an annual salary of seventy thousand dollars. The appointment shall be for a term of five years to begin on the first day of April, two thousand. The executive director is empowered to employ any other personnel he or she determines necessary and may appoint counsel and legal staff for the authority and retain such temporary engineering, financial and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article. The executive director is further empowered to engage in negotiations and carry out plans to implement the provisions of this article and to exercise those powers listed in section five of this article on behalf of the authority. The executive director shall prepare annually a budget to be submitted to the board for its review and approval.

All costs incidental to the administration of the authority, including office expense, personal services expense and current expense, shall be paid from the regional jail and correctional facility development fund in accordance with guidelines issued by the board of the authority.
Be it enacted by the Legislature of West Virginia:

That sections one and two, article eight, chapter sixty-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 8. CRIMES BY AND PROCEEDINGS AGAINST CONVICTS.

§62-8-1. Offenses by inmates; conspiracy.

§62-8-2. Punishment of convicts; no discharge from correctional institution while prosecution is pending.

§62-8-1. Offenses by inmates; conspiracy.

1 A person imprisoned or otherwise in the custody of the commissioner of corrections is guilty of a felony if he or she kills, wounds or inflicts other bodily injury upon any person at any correctional facility; or breaks, cuts or injures any building, fixture or fastening of any correctional facility, or any part thereof, for the purpose of escaping or aiding any other inmate to escape therefrom, or renders any correctional facility less secure as a place of confinement; or makes, procures, secretes or has in his or her possession, any instrument, tool or other thing for such purpose, or with intent to kill, wound or inflict bodily injury; or resists the lawful authority of an officer or guard of any correctional facility for such purpose or with such intent. Any three or more inmates so confined, or in such
custody, who conspire together to commit any offense mentioned in this section are each guilty of a felony.

§62-8-2. Punishment of convicts; no discharge from correctional institution while prosecution is pending.

(a) Any inmate who violates the provisions of section one of this article and the violation results in the death of any person is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for life, and he or she shall not be eligible for parole, notwithstanding the provisions of article twelve, chapter sixty-two of this code.

(b) Any inmate who violates the provisions of section one of this article and is serving a term of confinement for life, is guilty of a felony and, upon conviction thereof, he or she may not be eligible for parole, notwithstanding the provisions of article twelve, chapter sixty-two of this code.

(c) Any inmate who is not serving a term of confinement for life and who violates the provisions of section one of this article and whose violation did not result in the death of any person is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than one nor more than five years. Any term of confinement imposed pursuant to this subsection is to be consecutive to any term of confinement already imposed.

(d) An inmate prosecuted for an offense under this article may not be discharged from a state correctional facility while the prosecution is pending.

(e) Any person convicted pursuant to the provisions of this section may not be sentenced under sections eighteen or nineteen, article eleven, chapter sixty-one of this code: Provided, That if an inmate commits an offense punishable by confinement in a state correctional facility, other than the offenses defined in section one of this article, he or she shall be punished as if he or she had been discharged before committing the offense.
AN ACT to amend and reenact section fifteen, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to records management and preservation of county records; alternate storage of county records; creating a records management and preservation board; setting the qualifications of and providing for the appointment of members; providing for reimbursement of expenses; providing that the director of the division of archives and history section shall be the staff to the board; giving the board rule-making authority; providing for the study of records management needs of state agencies; providing for grants to counties; and providing for the termination of the board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-15. Records management and preservation of county records; alternate storage of county records; records management and preservation board created; qualifications and appointment of members; reimbursement of expenses; staffing; rule-making authority; study of records management needs of state agencies; grants to counties; termination of board.
The Legislature finds that the use of electronic technology and other procedures to manage and preserve public records by counties should be uniform throughout the state where possible.

(a) The governing body and the chief elected official of any unit of each county, hereinafter referred to as a county government entity, whether organized and existing under a charter or under general law, shall promote the principles of efficient records management and preservation of local records. Such county governing entity may, as far as practical, follow the program established for the uniform management and preservation of county records as set out in a rule or rules proposed for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as proposed by the records management and preservation board established herein.

(b) In the event any such governing body or the chief elected official of a unit of a county government entity decides to destroy or otherwise dispose of a county record, the governing body or such chief elected official may, prior to destruction or disposal thereof, offer the record to the director of the section of archives and history of the division of culture and history for preservation of the record as a document of historical value. Unless authorized by the supreme court of appeals, the records of courts of record and magistrate courts are not affected by the provisions of this section.

(c) A preservation duplicate of a county government entity record may be stored in any format, approved by the board as hereinafter established, where the image of the original record is preserved in a form, including CD-ROM and optical image storage media in which the image thereof is incapable of erasure or alteration, and from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original county government record.

Except for those formats, processes and systems used for the storage of records on the effective date of this section, no alternate format for the storage of county government entity
records described in this section is authorized for the storage of
county government entity records unless the particular format
has been approved pursuant to a legislative rule promulgated by
the board as herein created in accordance with the provisions of
chapter twenty-nine-a of this code. The board as herein estab-
lished may prohibit the use of any format, process or system
used for the storage of records upon its determination that the
same is not reasonably adequate to preserve the records from
destruction, alteration or decay.

Upon creation of a preservation duplicate which stores an
original county government entity record in an approved format
in which the image thereof is incapable of erasure or alteration,
and from which a reproduction of the stored record may be
retrieved which truly and accurately depicts the image of the
original record, the county government entity may destroy or
otherwise dispose of the original in accordance with the
provisions of section seven-c, article one, chapter fifty-seven of
this code.

(d) There is hereby created a records management and
preservation board for county government entities, to be
composed of nine members.

(1) Three members shall serve ex officio. One member
shall be the commissioner of the division of culture and history
who shall be the chairman of the board. One member shall be
the administrator of the supreme court of appeals. One member
shall be the administrator of the governor’s office of technology
or his or her designee.

(2) The governor shall appoint six members of the board
with the advice and consent of the Senate. Not more than five
appointments to the board may be from the same political party
and not more than three members may be appointed from the
same congressional district. Of the six members appointed by
the governor: (i) Three appointments shall be county elected
officials, one of whom shall be a clerk of the county commis-
sion, one of whom shall be a circuit court clerk and one of
whom shall be a county commissioner, to be selected from a list
of nine names, including the names of three clerks of county
commissions and three circuit court clerks submitted to the
governor by the West Virginia association of counties and the
names of three county commissioners, submitted to the gover-
ner jointly by the West Virginia association of counties and the
West Virginia county commissioners association; (ii) one
appointment shall be a county prosecuting attorney to be
selected from a list of three names submitted by the West
Virginia prosecuting attorney’s institute; (iii) one appoint-
ment shall be an attorney licensed in West Virginia and in good
standing as a member of the state bar with experience in real
estate and mineral title examination, to be selected from a list
of three names submitted by the state bar; and (iv) one appoint-
ment shall be a representative of a local historical or genealogi-
cal society;

(e) The members of the board shall serve without compen-
sation but shall be reimbursed for all reasonable and necessary
expenses actually incurred in the performance of their duties as
members of the board. In the event the expenses are paid, or are
to be paid, by a third party, the member shall not be reimbursed
by the state.

(f) The staff of the board shall consist of the director of the
archives and history section of the division of culture and
history and such staff as he or she may designate to assist him
or her.

(g) On or before the first day of July, two thousand one, the
board shall propose rules for legislative approval in accordance
with the provisions of article three, chapter twenty-nine-a of
this code to establish a system of records management and
preservation for county governments: Provided, That, for the
retention and disposition of records of courts of record and
magistrate courts, the implementation of the rule is subject to
action of the West Virginia supreme court of appeals. The
proposed rule or rules shall include provisions for establishing
a program of grants to county governments for making records
management and preservation uniform throughout the state. The board is not authorized to propose or promulgate emergency rules under the provisions of this section.

(h) On or before the first day of April, two thousand two, the board, in cooperation with the administrator and state executive agencies under the general authority of the governor, shall conduct a study of the records management and preservation needs of state executive agencies. Should the board determine a need for a uniform records management and preservation system for such agencies, it shall recommend that the administrator propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to provide for the implementation of a uniform records management and preservation system for state executive agencies.

(i) In addition to the fees charged by the clerk of the county commission under the provisions of section ten, article one, chapter fifty-nine of this code, the clerk shall charge and collect an additional one dollar fee for every document containing less than ten pages filed for recording and an additional one dollar fee for each additional ten pages of such document filed for recording. At the end of each month, the clerk of the county commission shall deposit into the special public records and preservation account as herein established in the state treasury all fees collected: Provided, That the clerk may retain not more than ten percent of such fees for costs associated with the collection of the fees. Clerks shall be responsible for accounting for the collection and deposit in the state treasury of all fees collected by such clerk under the provisions of this section.

There is hereby created in the state treasury a special account entitled the "public records and preservation revenue account". The account shall consist of all fees collected under the provisions of this section, legislative appropriations, interest earned from fees, investments, gifts, grants or contributions received by the board. Expenditures from the account shall be for the purposes set forth in this article and are not authorized
143 from collections but are to be made only in accordance with
144 appropriation by the Legislature and in accordance with the
145 provisions of article three, chapter twelve of this code and upon
146 the fulfillment of the provisions set forth in article two, chapter
147 five-a of this code: Provided, That for the fiscal year ending the
148 thirtieth day of June, two thousand one, expenditures are
149 authorized from collections rather than pursuant to an appropri-
150 ation by the Legislature.

151 Subject to the above provision, the board may expend the
152 funds in the account to implement the provisions of this article.
153 In expending funds from the account, the board shall allocate
154 not more than fifty percent of such funds for grants to counties
155 for records management, access and preservation purposes. The
156 board shall provide for applications, set guidelines and establish
157 procedures for distributing grants to counties including a
158 process for appealing an adverse decision on a grant applica-
159 tion. Expenditures from the account shall be for the purposes
160 set forth in this section, including the cost of additional staff of
161 the division of archives and history.

162 (j) The board shall terminate on the first day of July, two
163 thousand two, pursuant to the provisions of article ten, chapter
164 four of this code.

CHAPTER 70

(Com. Sub. for S. B. 125 — By Senators McKenzie, Mitchell,
Bowman, Oliverio, Snyder and Kessler)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]
to empowering county commissions to execute lease agreements to obtain equipment or materials.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3gg. Lease agreements for equipment or materials with option to cancel or renew.

(a) In addition to all other powers and duties now conferred by law upon county commissions, county commissions are hereby authorized and empowered to enter into and execute a lease agreement to obtain equipment or material.

(b) The lease agreement may not be voided because it provides: (1) That title to the equipment or material shall vest in the county commission at or before the expiration of the leasehold term upon fulfillment of the terms and conditions stipulated in the lease agreement; (2) for application of the annual rental payments made under the lease agreement toward the purchase price of the equipment or material, although the total rental payments under the lease agreement are in excess of the cash price of the equipment or material described in the lease agreement, whether the excess is by way of interest or a time-price differential; and/or (3) that the risk of loss of the equipment or material shall be borne by the county commission.

(c) A lease agreement shall be void, unless the lease agreement provides that the county commission has the following options, during each fiscal year of the lease agreement: (1) The option to terminate the lease agreement and return the equipment or material without any further obligation on the part of the county commission; and (2) the option to
continue the lease agreement for an additional rental period not to exceed one year in length.

When the lease agreement contains the provisions described in subdivisions (1), (2) and (3), subsection (b) of this section, then the following option must be included: The option to pay in advance at any time during any fiscal year the balance due under the lease agreement, with an appropriate rebate of the unearned interest or time-price differential.

(d) The funds for the initial rental payment under a lease agreement must be legally at the disposal of the county commission for expenditure in the fiscal year in which the lease agreement is executed. If the county commission elects during any subsequent fiscal year to continue the lease agreement for any additional rental period or to pay in advance the balance due, the funds for the additional rental period or the funds to be used to pay the balance in advance must be legally at the disposal of the county commission for expenditure in the fiscal year in which the county commission elects to continue the lease agreement or to pay in advance the balance due.

CHAPTER 71

(Com. Sub. for H. B. 4669 — By Delegate Michael)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment and removal of members of a county development authority.

Be it enacted by the Legislature of West Virginia:
That section three, article twelve, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

§7-12-3. Management and control of county authority vested in board; appointment and terms of members; vacancies; removal of members.

The management and control of a county authority, its property, operations, business and affairs shall be lodged in a board of not fewer than twelve nor more than twenty-one persons who shall be appointed by the county commission and be known as members of the authority. The county commission shall appoint one member to represent the county commission on the board and, for each municipality located within the county, the county commission shall appoint one member to represent the municipality. The city and town council of each municipality located within the county shall submit to the county commission the names of three persons, one of whom the county commission shall appoint to be the municipality’s representative on the board. Other members of the board shall be appointed by the county commission and shall include representatives of business, industry and labor. The members of the authority first appointed shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equal as possible between these terms. Thereafter, members shall be appointed for terms of three years each. A member may be reappointed for such additional term or terms as the county commission may deem proper. If a member resigns, is removed or for any other reason his membership terminates during his term of office, a successor shall be appointed by the county commission to fill out the remainder of his 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 county commission may at
any time remove any member of the board by an order duly
entered of record and may appoint a successor member for any
member so removed.

Other persons, firms, unincorporated associations, and
corporations, who reside, maintain offices, or have economic
interests, as the case may be, in the county, shall be eligible to
participate in and request the county commission to appoint
members to the development authority as the said authority
shall by its bylaws provide.

CHAPTER 72

(H. B. 2866 — By Delegates Stalnaker, Staton, Hines,
Amores, Trump and Williams)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing concurrent juvenile jurisdiction of circuit courts, magistrate courts and municipal courts for violation of laws prohibiting public intoxication, unlawful drinking, possession or sale of alcoholic liquor, beverages or nonintoxicating beer in a public place or illegal possession of alcoholic liquor.

Be it enacted by the Legislature of West Virginia:

That section two, article five, 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:

ARTICLE 5. JUVENILE PROCEEDINGS.

§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, for a violation of section nine, article six, chapter sixty or section nineteen, article sixteen, chapter eleven of this code, 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, for any municipal curfew ordinance which is enforceable or for any municipal ordinance regulating or prohibiting public intoxication, drinking or possessing alcoholic liquor or nonintoxicating beer in public places, or any other act prohibited by section nine, article six, chapter sixty or section nineteen, article sixteen, chapter eleven of this code. 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 represen-
tative 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 state-
ments 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 held in circuit court. 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.

CHAPTER 73

(Com. Sub. for H. B. 4009 — By Delegate Hines)

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article three of said chapter, all relating to magistrate courts; providing for the number of magistrates; eliminating the formula for determining the number and location of magistrates for elections held after the year two thousand; providing for the disposition of court costs collected in magistrate courts; continuing and increasing allowable deposits in magistrate court funds to be used to defray expenses incurred by counties for providing services to magistrate courts; and allowing court costs collected in excess of limitations on deposits in magistrate court funds to be placed in a newly created surplus account for distribution to counties with underfunded magistrate court funds.

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

Article
1. Courts and Officers.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-2. Number of magistrates.

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

(b) The number of magistrates serving in each county of the state shall comport with the numbers certified by the supreme court of appeals to the ballot commissioners of each county on or before the thirty-first day of January, two thousand, for purposes of the primary and general elections to be held in the year two thousand.

(c) (1) The Legislature finds that there exists among the various counties large and unwarranted disparities of caseload between the magistrate courts. The Legislature further finds that the disparity causes an inequity with regard to magistrate court resources and the ability of such courts to effectively meet the needs of the citizens of this state who need to avail themselves of this judicial resource. The Legislature further finds that the system currently in place for allocating magistrate court resources which has been in effect since the year one thousand nine hundred ninety-one produces certain anomalies which cause quadrennial reallocation of magistrate resources based upon said anomalies which in turn cause a waste of funds, inequitable workloads, unnecessary shifting of resources and confusion among the various counties.
(2) The office of legislative services is hereby directed to undertake a comprehensive study of the magistrate courts of the various counties to determine, among other things, the work performed by various personnel in the magistrate court system, how work time is spent by said employees and to report its findings no later than the tenth day of December, two thousand one, to the joint standing committee on the judiciary.

(3) The division of criminal justice and highway safety shall, in conjunction with the administrative office of the West Virginia supreme court of appeals, compile for consideration by the Legislature statistical information and documentation regarding caseloads, cases handled per year per magistrate, cases per county, cases per circuit and provide to the president of the Senate and the speaker of the House of Delegates no later than the first day of the regular session of the Legislature, two thousand two, their recommendations for improving the magistrate process, better utilization of court resources, including, but not limited to, categorizing the various types of cases heard in magistrate court and developing a new weighted formula to evaluate types of cases by the amount of time necessary to bring said cases to a resolution.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-4. Disposition of costs; magistrate court fund.

(a) All costs collected in magistrate courts in a civil proceeding pursuant to the provisions of section one of this article, and all costs collected in magistrate courts in a criminal proceeding pursuant to the provisions of section two of this article, shall be submitted on or before the tenth day of the month following the month of their collection to the magistrate court clerk or, if there is no magistrate court clerk, to the clerk of the circuit court along with such information as may be required by the rules of the supreme court of appeals and by the rules of the chief inspector of public offices.
(b) (1) The special county fund known as the magistrate court fund established in each county by chapter thirty-three, Acts of the Legislature, regular session, one thousand nine hundred seventy-six, as amended and reenacted in subsequent Acts of the Legislature, is hereby continued. The moneys credited to the fund may be used solely for the purposes provided in this section.

(2) The magistrate court clerk of each county shall pay the sum of ten dollars collected by magistrates in each civil and criminal proceeding into the magistrate court fund during each fiscal year until there is paid a sum equal to fifteen thousand dollars multiplied by the number of magistrates authorized for the county.

(3) A county may, in accordance with the supervisory rules of the supreme court of appeals, appropriate and spend from the fund such sums as are necessary to defray the expenses of providing services to magistrate courts.

(c)(1) There is hereby created in the state treasury a special escrow account designated as the “magistrate court surplus account.” The moneys credited to the account may be used solely for the purposes provided in this subsection.

(2) Beginning on the first day of July, two thousand, all costs collected during a fiscal year in excess of the sum specified in subdivision (2), subsection (b) of this section shall be deposited in the magistrate court surplus account in the state treasury.

(3) Beginning on the first day of September, two thousand one, and on the first day of September of each year thereafter, in accordance with the supervisory rules of the supreme court of appeals, funds from the magistrate court surplus account deposited therein as excess costs collected in the prior fiscal year pursuant to the provisions of subdivision (2) of this
subsection shall be disbursed as a supplement to any county magistrate court fund which generated less than fifteen thousand dollars per magistrate in the prior fiscal year in accordance with the provisions of this subsection.

(4) The amount disbursed to a county magistrate court fund from the magistrate court surplus account, when combined with the court costs generated by the magistrate court fund of the county in the prior fiscal year, may not exceed fifteen thousand dollars per magistrate.

(5) The disbursements described in subdivision (3) of this subsection shall be made as follows:

(A) There shall be distributed to each county magistrate court fund that generated less than nine thousand dollars in the prior fiscal year the sum of nine thousand dollars less the amount of court costs generated by the county magistrate court fund in the prior fiscal year. To the extent that the funds available for this disbursement are insufficient to fully fund this disbursement, the funds available shall be disbursed to these counties on a pro rata basis.

(B) Any funds that remain available for disbursement after disbursements made pursuant to paragraph (A) of this subdivision shall be disbursed in equal shares to each county magistrate court fund that generated less than fifteen thousand dollars per magistrate in the prior fiscal year. The shares to be disbursed to each county magistrate court fund are to be equal to the number of magistrates in the county. Any disbursement made under this paragraph shall be subject to the limitations specified in subdivision (4) of this subsection.

(6) Any funds that remain available in the magistrate court surplus account after the disbursements have been made pursuant to the provisions of paragraphs (A) and (B), subdivision (5) of this subsection shall be deposited by the state treasurer into the general revenue fund of the state.
AN ACT to amend and reenact section three, article two-a, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the appointment of a person who has previously served as a family law master as a temporary family law master; and establishing limitations thereon.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. CIRCUIT COURTS; FAMILY COURT DIVISION.

§51-2A-3. Assignment of family law masters by family court circuits.

(a) A total of thirty-three family law masters shall be appointed to serve throughout the state. The state is divided into twenty-four family court circuits with the number of family law masters allocated as follows:

The counties of Brooke, Hancock and Ohio constitute the first family court circuit and have two family law masters; the counties of Marshall, Wetzel and Tyler constitute the second family court circuit and have one family law master; the counties of Pleasants, Wood, Wirt, Ritchie and Doddridge constitute the third family court circuit and have two family law masters; the counties of Jackson, Roane, Calhoun and Gilmer
constitute the fourth family court circuit and have one family law master; the counties of Mason and Putnam constitute the fifth family court circuit and have one family law master; the county of Cabell constitutes the sixth family court circuit and has two family law masters; the county of Wayne constitutes the seventh family court circuit and has one family law master; the county of Mingo constitutes the eighth family court circuit and has one family law master; the counties of Lincoln and Boone constitute the tenth family court circuit and have one family law master; the county of Kanawha constitutes the eleventh family court circuit and has four family law masters; the counties of McDowell and Mercer constitute the twelfth family court circuit and have two family law masters; the counties of Raleigh and Wyoming constitute the thirteenth family court circuit and have two family law masters; the counties of Fayette and Summers constitute the fourteenth family court circuit and have one family law master; the counties of Greenbrier, Monroe and Pocahontas constitute the fifteenth family court circuit and have one family law master; the counties of Clay, Nicholas and Webster constitute the sixteenth family court circuit and have one family law master; the counties of Braxton, Lewis and Upshur constitute the seventeenth family court circuit and have one family law master; the county of Harrison constitutes the eighteenth family court circuit and has one family law master; the county of Marion constitutes the nineteenth family court circuit and has one family law master; the county of Monongalia constitutes the twentieth family court circuit and has one family law master; the counties of Barbour, Preston and Taylor constitute the twenty-first family court circuit and have one family law master; the counties of Grant, Tucker and Randolph constitute the twenty-second family court circuit and have one family law master; the counties of Mineral, Hampshire, Hardy and Pendleton constitute the twenty-third family court circuit and have one family law master; and the counties of Berkeley,
Jefferson and Morgan constitute the twenty-fourth family court circuit and have two family law masters.

(b) The chief justice of the supreme court of appeals may temporarily assign a family law master from one family court circuit to another family court circuit as caseload, disqualification, recusal, vacation or illness may dictate.

c) The chief justice of the supreme court of appeals may appoint a person who has previously served as a law master to serve as a temporary law master as disqualification, recusal, vacation or illness may dictate. Only persons who have completed courses of continuing education instruction in principles of family law and procedure, as required by supervisory rule of the supreme court of appeals, are eligible for such appointment.

AN ACT to amend chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-a; and to amend article three, chapter fifty-six of said code by adding thereto a new section, designated section thirty-four, all relating to registration of bail bond enforcers with the West Virginia state police; definitions; requiring registration of bail bond enforcers and filing of authorization to act by bail bondsmen; authorizing superintendent of the state police to enforce registration and set fees; creation of the "bail bond enforcers account" in the state treasury; effect of authorization; prohibited conduct; unauthorized acts; criminal and civil penalties; and secretary of state to be agent or attorney in
fact to accept service of process on behalf of bail bondsmen and bail bond enforcers.

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

That chapter fifty-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 ten-a; and that article three, chapter fifty-six of said code be amended by adding thereto a new section, designated section thirty-four, all to read as follows:

Chapter
51. Courts and Their Officers.
56. Pleading and Practice.

**CHAPTER 51. COURTS AND THEIR OFFICERS.**

**ARTICLE 10A. BAIL BOND ENFORCERS.**

§51-10A-1. Definitions.

§51-10A-2. Registration of bail bond enforcers and authorization by bail bondsman required; fees.


§51-10A-4. Prohibited conduct.

§51-10A-5. Unauthorized acts; penalties.

§51-10A-1. Definitions.

1 As used in this article:

2 (a) "Bail bondsman" means any person, partnership or corporation engaged for profit in the business of furnishing bail, making bonds or entering into undertakings, as surety, for the appearance of persons charged with a criminal offense or violation of law punishable by fine or imprisonment before any court within or without this state. The term "bail bondsman" includes, but is not limited to, persons conducting a bonding business as defined in section one, article ten of this chapter.
(b) “Bail bond enforcer” means a person who on behalf of a bail bondsman enters this state or is present in this state for the purposes of: (1) Assisting a bail bondsman in presenting the defendant in court when required; (2) assisting in the apprehension and surrender of the defendant to a court; (3) keeping a defendant under surveillance; or (4) executing bonds on behalf of a bail bondsman when a power of attorney has been duly recorded. The term “bail bond enforcer” does not include a duly licensed attorney-at-law or a law-enforcement officer assisting a bail bondsman.

§51-10A-2. Registration of bail bond enforcers and authorization by bail bondsman required; fees.

(a) No person may act in the capacity of a bail bond enforcer within this state or perform any of the functions, duties, or powers prescribed for bail bond enforcers under section one of this article unless duly registered with the West Virginia state police as provided in this section.

(b) The superintendent of the West Virginia state police shall design registration, authorization and notice forms, which, at minimum, shall require:

1. Identifying information as to the registrant and at least one bail bondsman on whose behalf he or she is authorized to act as agent: Provided, That a registrant may not act on behalf of any bail bondsman until authorization to act is filed with the superintendent;

2. A complete set of the registrant’s fingerprints, certified by an authorized law enforcement officer;

3. A recent credential-sized, full-face photograph of the registrant;

4. Certification, under penalties of perjury, that the registrant is at least twenty-one years of age, is a citizen of the
United States, and has never been convicted of a felony in any state of the United States;

(5) Authorization in writing, as provided in subsection (b) or (c) of this section, from any bail bondsman on whose behalf the bail bond enforcer is authorized to enter this state or act within this state; and

(6) Other information as the superintendent determines is reasonable and necessary.

(c) A bail bondsman conducting a bonding business in this state may grant continuing authorization to a bail bond enforcer who is a citizen and resident of this state to act as his or her agent on a continuing basis, for a period of time not to exceed two years, either statewide or within named counties or judicial circuits of the state, with respect to all defendants for whom the bail bondsman acts as surety to secure an appearance. A continuing authorization shall state the expiration date of the authorization on the face of the document.

(d) A bail bondsman within or without this state may grant authorization to a bail bond enforcer within or without this state to act as his or her agent with respect to a named defendant or named defendants, for a period of time not to exceed sixty days, in which case notice in advance of any action to the West Virginia state police of the time and place of any proposed action within this state with respect to any defendant, and the date any bail bond enforcer who is not a resident of this state will enter the state, is required. An authorization shall state the expiration date of the authorization on the face of the document.

(e) The superintendent may require any reasonable interrogatories or examinations relating to a registrant’s qualifications or other matters which are reasonably necessary to protect the public.
(f)(1) The superintendent may establish and collect a reasonable registration fee not to exceed fifty dollars to accompany registration, and a filing fee not to exceed ten dollars to accompany the filing of any authorization, to be used for the purposes of defraying administrative and other expenses incurred due to the enactment of this article. No fee is authorized for the filing of notices required under this article.

(2) There is hereby created in the state treasury a special account, designated the “bail bond enforcer account”. All fees collected pursuant to the provisions of this article shall be deposited in the bail bond enforcer account. Expenditures from the account shall be for the purposes set forth in this subsection 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, two thousand, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature.

(g) The superintendent is authorized to file and disseminate an interpretive rule for the purpose of providing information and guidance to prospective registrants, bail bondsmen, and the general public with respect to the enforcement of this article. The superintendent is charged with the enforcement of this article in the civil and criminal courts of the state and may take any lawful action reasonably necessary to effectuate its purposes.


A bail bond enforcer authorized or employed by a bail bondsman to act within this state with respect to any defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, is the agent of the bail bondsman for any act
related to the purposes set forth in section one of this article. A bail bond enforcer who acts in that capacity within this state is the agent of the bail bondsman with whom the bail bond enforcer has an agreement or written or verbal contract, whether or not authorization is filed with the West Virginia state police as required in section two of this article.

§51-10A-4. Prohibited conduct.

A bail bond enforcer may not:

(a) Enter an occupied residential structure without the consent of the occupants who are present at the time of the entry;

(b) Conduct a bail recovery arrest or apprehension without written authorization from a bail bondsman;

(c) Wear, carry or display any uniform, badge, shield or other insignia or emblem that implies that the bail bond enforcer is an employee, officer or agent of this state, a political subdivision of this state or the federal government. A bail bond enforcer may display identification that indicates his or her status as a bail bond enforcer only; or

(d) Conduct a bail bond apprehension or arrest without exercising due care to protect the safety of persons other than the defendant and the property of persons other than the defendant.

§51-10A-5. Unauthorized acts; penalties.

(a) A person who willfully violates any provision of section four of this article, or who acts as a bail bond enforcer within this state without filing a registration, authorization or notice required by this article, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred or
6 more than ten thousand dollars, or imprisoned in the county jail
7 not more than sixty days, or both fined and imprisoned.

8 (b) A bail bondsman who, without filing the authorization
9 required in this article, employs or contracts with a bail bond
10 enforcer who enters this state or acts on the bondsman's behalf
11 within this state; who authorizes an unregistered bail bond
12 enforcer to act on his or her behalf; or whose agent acts in a
13 manner prohibited in section four of this article, is subject to a
14 civil penalty of ten thousand dollars, enforceable by civil action
15 in the circuit court of Kanawha County or the circuit court of
16 any county in which the unauthorized action as a bail bond
17 enforcer has occurred. The superintendent of the West Virginia
18 state police is authorized to enforce payment of civil penalties
19 through the courts of this state. Civil penalties pursuant to this
20 section are payable one-half to the state police death, disability
21 and retirement fund and one-half to the crime victims compen-
22 sation fund.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-34. Actions by or against nonresident bail bond enforce-
1 ment agents or bail bondsmen; appointment of
2 secretary of state as agents; service of process.

1 (a) Every nonresident bail bond enforcer or bail bondsman,
2 for the privilege of entering this state to act in the capacity of a
3 bail bond enforcer, either personally or through an agent,
4 appoints the secretary of state, or his or her successor in office,
5 to be his or her agent or attorney-in-fact upon whom may be
6 served all lawful process in any action or proceeding against
7 him or her in any court of record in this state for any act
8 occurring within this state resulting in injury arising out of any
9 breach of the applicable standard of care with respect to any
10 person other than a defendant whose custody or appearance the
bail bond enforcer secures or attempts to secure, or with respect to the property of any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure; or for enforcement of any civil penalty for breach of a duty imposed by this code with respect to bail bondsmen employing or contracting with bail bond enforcers:

Provided, That in the event process against a nonresident defendant cannot be effected through the secretary of state, as provided by this section, for the purpose only of service of process, the nonresident bail bond enforcer or bondsman shall be deemed to have appointed as his or her agent or attorney-in-fact any insurance company which has a contract of liability insurance for his or her activities.

(b) For purposes of service of process as provided in this section, every insurance company shall be deemed the agent or attorney-in-fact of every nonresident bail bond enforcer or bondsman insured by the company if the insured nonresident bail bond enforcer or bondsman is involved in any bail bond enforcement activity occurring within this state resulting in injury arising out of any breach of the applicable standard of care with respect to any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, or with respect to the property of any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure and service of process cannot be effected upon the nonresident through the office of the secretary of state. Upon receipt of process as hereinafter provided, the insurance company may, within thirty days, file an answer or other pleading or take any action allowed by law on behalf of the defendant.

(c) A nonresident bail bond enforcer or bail bondsman entering this state, either personally or through an agent, is deemed to acknowledge the appointment of the secretary of state, or, as the case may be, his or her liability insurance
company, as his or her agent or attorney-in-fact, or the agent or
average of his or her administrator, administratrix, 
executor or executrix in the event the nonresident dies, and
furthermore is deemed to agree that any process against him or
her or against his or her administrator, administratrix, executor
or executrix, which is served in the manner hereinafter pro-
vided, shall be of the same legal force and validity as though
said nonresident or his or her administrator, administratrix,
executor or executrix were personally served with a summons
and complaint within this state.

Any action or proceeding may be instituted, continued or
maintained on behalf of or against the administrator,
administratrix, executor or executrix of any nonresident who
dies subsequent to bail bond enforcement activity in this state
by the nonresident or his or her duly authorized agent.

(d) At the time of filing a complaint against a nonresident
bail bond enforcer or bondsman who has been involved in bail
bond enforcement activity in the state of West Virginia and
before a summons is issued thereon, the plaintiff, or someone
for him or her, shall execute a bond in the sum of one hundred
dollars before the clerk of the court in which the action is filed,
with surety to be approved by said clerk, conditioned that on
failure of the plaintiff to prevail in the action he or she will
reimburse the defendant, or cause the defendant to be reim-
bursed, the necessary expense incurred in the defense of the
action in this state. Upon the issue of a summons the clerk will
certify thereon that the bond has been given and approved.

(e) Service of process upon a nonresident defendant shall be
made by leaving the original and two copies of both the
summons and complaint, together with the bond certificate of
the clerk, and the fee required by section two, article one,
chapter fifty-nine of this code with the secretary of state, or in
his or her office, and said service shall be sufficient upon the
nonresident defendant or, if a natural person, his or her adminis-
Provided, That notice of service and a copy of the summons and complaint shall be sent by registered or certified mail, return receipt requested, by the secretary of state to the nonresident defendant. The return receipt signed by the defendant or his or her duly authorized agent shall be attached to the original summons and complaint and filed in the office of the clerk of the court from which process is issued. In the event the registered or certified mail sent by the secretary of state is refused or unclaimed by the addressee or if the addressee has moved without any forwarding address, the registered or certified mail returned to the secretary of state, or to his or her office, showing thereon the stamp of the post-office department that delivery has been refused or not claimed or that the addressee has moved without any forwarding address, shall be appended to the original summons and complaint and filed in the clerk’s office of the court from which process issued. The court may order such continuances as may be reasonable to afford the defendant opportunity to defend the action.

(f) The fee remitted to the secretary of state at the time of service, shall be taxed in the costs of the proceeding and the secretary of state shall pay into the state treasury all funds so coming into his or her hands from the service. The secretary of state shall keep a record in his or her office of all service of process and the day and hour of service thereof.

(g) In the event service of process upon a nonresident defendant cannot be effected through the secretary of state as provided by this section, service may be made upon the defendant’s insurance company. The plaintiff must file with the clerk of the circuit court an affidavit alleging that the defendant is not a resident of this state; that process directed to the secretary of state was sent by registered or certified mail, return receipt requested; that the registered or certified mail was returned to the office of the secretary of state showing the stamp of the post-office department that delivery was refused
or that the notice was unclaimed or that the defendant addressee
moved without any forwarding address; and that the secretary
of state has complied with the provisions of subsection (e) of
this section. Upon receipt of process the insurance company
may, within thirty days, file an answer or other pleading and
take any action allowed by law in the name of the defendant.

(h) The following words and phrases, when used in this
article, shall, for the purpose of this article and unless a
different intent on the part of the Legislature is apparent from
the context, have the following meanings:

(1) "Agent" or "duly authorized agent" means and includes,
among others, a bail bond enforcer who, on behalf of a bail
bondsman, is involved in any bail bond enforcement activity
occurring within this state resulting in injury arising out of any
breach of the applicable standard of care with respect to any
person other than a defendant whose custody or appearance the
bail bond enforcer secures or attempts to secure, or with respect
to the property of any person other than a defendant whose
custody or appearance the bail bond enforcer secures or
attempts to secure;

(2) "Nonresident" means any person who is not a resident
of this state or a resident who has moved from the state subse-
quent to bail bond enforcement activity within this state, and
among others includes a nonresident firm, partnership, corpora-
tion or voluntary association, or a firm, partnership, corporation
or voluntary association that has moved from the state subse-
quent to bail bond enforcement activity;

(3) "Nonresident defendant or defendants" means a
nonresident bail bond enforcer or bondsman who, either
personally or through his or her agent, is involved in any bail
bond enforcement activity occurring within this state resulting
in injury arising out of any breach of the applicable standard of
care with respect to any person other than a defendant whose
custody or appearance the bail bond enforcer secures or attempts to secure, or with respect to the property of any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, which has given rise to a civil action filed in any court in this state;

(4) “Insurance company” means any firm, corporation, partnership or other organization which issues liability insurance.

(i) The provision for service of process herein is cumulative and nothing herein contained shall be construed as a bar to the plaintiff in any action from having process in the action served in any other mode and manner provided by law.

(j) This section is not retroactive and its provisions are not available to a plaintiff in a cause of action arising out of acts occurring prior to the effective date of this section.

CHAPTER 76

(Com. Sub. for H. B. 4645 — By Delegates Pettit, Martin, Kuhn and Shelton)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]
written examination or for the practical demonstration in some instances; allowing the practical demonstration be administered on-site by a qualified company representative; permitting experience or training to be substituted for the written examination or practical demonstration until September 1, 2001; allowing the labor commissioner to set fees for training courses; requiring the labor commissioner to set standards, criteria and establish a dual classification certification; setting forth components towards a national classification and a state classification certification; setting forth time limits; and authorizing certification reciprocity without the required training.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, six and nine, article three-d, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.

§21-3D-1. Definitions.
§21-3D-2. Certification required; exemptions.
§21-3D-4. Minimum certification requirements.
§21-3D-9. Reciprocity.

§21-3D-1. Definitions.

1 For purposes of this article:

2 (a) "Commissioner" means the commissioner of the
division of labor, or his or her authorized representative.

4 (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 mean a forklift, derrick truck, bucket truck or any vehicle, aircraft or helicopter, 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.

(f) "Training or training course" means a course approved by the commissioner which includes some form of testing throughout, or a final written examination or practical test, or both, which ensures, or tends to ensure that learning has occurred and that the objectives of the training have been realized. The commissioner will evaluate whether the approved training adequately demonstrates competency to safely operate cranes.

§21-3D-2. Certification required; exemptions.

(a) Commencing with the first day of September, two thousand one 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

*Clerk's Note: This section was also amended by H. B. 4004 (Chapter 77), which passed prior to this act.*
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 public service
section was also amended by H. B. 4004 (Chapter 77), which passed prior to this act.
(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 must include a written examination and a current physician’s certificate at least every five years: Provided, That the successful completion of a training course approved by the commissioner may be substituted for the written examination.

(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 and training course fees in an amount not to exceed the actual cost of the examination and the training course.

(e) Administer or cause to be administered the written examination, practical demonstrations and the training course as required for certification.

(f) Determine the standards for acceptable performance on the written examination, practical demonstration and the required training course: Provided, That the minimum standards must be consistent with national standards, current operating procedures and technology and be transferable to other states where possible: Provided, however, That the commissioner shall develop standards and criteria to establish a dual classification system of certification and implement this dual system of certification no later than the first day of January, two thousand one.

(g) Provide the option for applicants and crane operators to take examinations that meet or exceed requirements for national crane operator certification.

(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: Provided, That any person who documents at least two thousand hours of on-the-job experience operating a crane during the four years immediately preceding filing for application, or successfully completes a training course approved by the commissioner, and applies for certification no later than the first day of September, two thousand one, and meets all other requirements and pays all applicable fees, is entitled to certification without a written examination;

4. Passes the practical demonstration: Provided, That the practical demonstration approved by the commissioner may be administered on-site by a qualified company representative: Provided, however, 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 or the successful completion of a training course approved by the commissioner is entitled to certification without a practical demonstration under this article if the person applies for certification no later than the first day of September, two thousand one, 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.

*Clerk's Note: This section was also amended by H. B. 4004 (Chapter 77), which passed prior to this act.*
§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, training or examination fees as is appropriate.

(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.

(c) Notwithstanding any other provision of this section, the division of labor may issue a temporary certification, to expire on the first day of January, two thousand one, to an applicant who: (1) Documents at least two thousand hours of on-the-job experience during the preceding four years; (2) submits scores for the written examination; and (3) provides proof of attendance at an approved crane safety training course, in an application for certification filed not later than the first day of July, two thousand.

(d) Notwithstanding any other provision of this article to the contrary, the commissioner shall establish a dual classification system of certification no later than the first day of January, two thousand one. One classification will provide eligibility for national certification, and the applicant must achieve a passing score of seventy on the national commission for the certification of crane operators written examination. To be classified for West Virginia certification, the commissioner may accept a lesser score on the national commission for the certification of crane operators written examination: Provided, That this score may not be less than sixty for state certification: Provided, however, That the successful completion of a training course approved by the commissioner may be substituted for the written examination and for the practical demonstration if the applicant applies for certification no later than the first day of September, two thousand one. The commissioner shall
propose a legislative rule as to the dual classification system no later than the first day of July, two thousand.


(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 written certification examination, or practical demonstration or both the certification examination and the practical demonstration or successfully completes a training course approved by the commissioner before the certificate holder may apply to have the certification reinstated.

§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 or without the required training upon satisfactory proof furnished to the commissioner that the
7 qualifications for the applicants are equal to the qualifications
8 of the holders of similar certification in this state, and upon
9 payment of the required application fee.

CHAPTER 77

(H. B. 4004 — By Mr. Speaker, Mr. Kiss, and Delegates
Douglas, Varner, Martin, Stalnaker, Kuhn and Pettit)

[Passed January 17, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and four, article
three-d, chapter twenty-one of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, providing for a
six-month extension in implementing crane operator certification;
permitting temporary certification for an additional six-month
period in certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.

§21-3D-2. Certification required; exemptions.
§21-3D-4. Minimum certification requirements.

*§21-3D-2. Certification required; exemptions.

1 (a) Commencing with the first day of July, two thousand,
2 and notwithstanding the provisions contained in subsection (b)
3 of this section, a person may not operate a crane with a lifting

*Clerk's Note: This section was also amended by H. B. 4645 (Chapter 76), which
passed subsequent to this act.
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,
(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 public service commission, federal energy regulatory commission or federal communications commission; or

(8) Is operating timbering harvesting machinery associated with the production of timber and the manufacturing of wood products.


The commissioner shall:

(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:

(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 July, two thousand one;

*Clerk's Note: This section was also amended by H. B. 4645 (Chapter 76), which passed subsequent to this act.
(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;

(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;

(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 July, 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.

(c) Notwithstanding any other provision of this section, the division of labor may issue a temporary certification, to expire on the first day of January, two thousand one, to an applicant who: (1) Documents at least two thousand hours of on-the-job experience during the preceding four years; (2) submits scores for the written examination; and (3) provides proof of attendance at an approved crane safety training course, in an application for certification filed not later than the first day of July, two thousand.

*Clerk's Note: This section was also amended by H. B. 4645 (Chapter 76), which passed subsequent to this act.
AN ACT to amend and reenact section four hundred six, article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the length of incarceration for persons convicted of selling drugs to minors by making them ineligible for parole for a longer period of time than under current law.

Be it enacted by the Legislature of West Virginia:

That section four hundred six, article four, chapter sixty-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. OFFENSES AND PENALTIES.

§60A-4-406. Distribution to persons under the age of eighteen by persons over the age of twenty-one; distribution by persons eighteen or over in or on, or within one thousand feet of, school or college; increasing mandatory period of incarceration prior to parole eligibility.

(a) Notwithstanding any other provision of law to the contrary, a person is ineligible for parole for a period of three years if he or she is sentenced to the custody of the commissioner of corrections for service of a sentence of incarceration and is convicted of a felony violation under the provisions of
(1) Is twenty-one years of age or older at the time of the distribution upon which the conviction is based, and the person to whom the controlled substance was distributed was under the age of eighteen years at the time of the distribution; or

(2) Is eighteen years of age or older and the distribution upon which the conviction is based occurred in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university in this state.

(b) Notwithstanding any other provision of law to the contrary, a person is ineligible for parole for a period of two years if he or she is sentenced to the custody of the commissioner of corrections for service of a sentence of incarceration and is convicted of a felony violation under the provisions of subdivision (ii), subsection (a), section four hundred one of this article for distribution of a controlled substance and:

(1) Is twenty-one years of age or older at the time of the distribution upon which the conviction is based, and the person to whom the controlled substance was distributed was under the age of eighteen years at the time of the distribution; or

(2) Is eighteen years of age or older and the distribution upon which the conviction is based occurred in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university in this state.

(c) The existence of any fact which would make any person subject to the provisions of this section may not be considered unless the fact is clearly stated and included in the indictment or presentment by which the person is charged and is either:
(1) Found by the court upon a plea of guilty or nolo contendere;

(2) Found by the jury, if the matter be tried before a jury, upon submission to the jury of a special interrogatory for such purpose; or

(3) Found by the court, if the matter be tried by the court without a jury.

(d) Nothing in this section shall be construed to limit the sentencing alternatives made available to circuit court judges under other provisions of this code.

CHAPTER 79

(Com. Sub. for S. B. 371 — By Senators Redd, Mitchell, Unger, Kessler, Dawson, McCabe, Hunter, Ball and Sharpe)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

ACT to amend and reenact section ten-b, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections ten and seventeen, article five of said chapter, all relating to the treatment of parole officers; making certain criminal provisions concerning malicious assault, unlawful assault, battery, assault, obstructing, escaping and fleeing from specified law-enforcement personnel and their criminal penalties apply to those actions involving probation officers; and penalties.

Be it enacted by the Legislature of West Virginia:
That section ten-b, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections ten and seventeen, article five of said chapter be amended and reenacted, all to read as follows:

Article
2. Crimes Against the Person.
5. Crimes Against Public Justice.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10b. Malicious assault; unlawful assault; battery and recidivism of battery; assault on police officers, conservation officers, probation officers, humane officers, emergency medical service personnel, firefighters, fire marshal and county or state correctional employees; penalties.

(a) Malicious assault. — Any person who maliciously shoots, stabs, cuts or wounds or by any means causes bodily injury with intent to maim, disfigure, disable or kill a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee or state correctional employee, employee of an urban mass transportation system acting in his or her official capacity and the person committing the malicious assault knows or has reason to know that the victim is a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee, state correctional employee, employee of an urban mass transportation system acting in his or her official capacity, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than three nor more than fifteen years.

(b) Unlawful assault. — Any person who unlawfully but not maliciously shoots, stabs, cuts or wounds or by any means
causes a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee or state correctional employee, employee of an urban mass transportation system acting in his or her official capacity, bodily injury with intent to maim, disfigure, disable or kill him or her and the person committing the unlawful assault knows or has reason to know that the victim is a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee, state correctional employee, employee of an urban mass transportation system acting in his or her official capacity, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than two nor more than five years.

(c) Battery. — Any person who unlawfully, knowingly and intentionally makes physical contact of an insulting or provoking nature with a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee, state correctional employee, employee of a mass transportation system acting in his or her official capacity, or unlawfully and intentionally causes physical harm to a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee, state correctional employee, employee of an urban mass transportation system acting in such capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one month nor more than twelve months, fined the sum of five hundred dollars, or both. If any person commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one year nor more than three years or fined the sum of one thousand dollars or both.
fined and confined. Any person who commits a third violation
of this subsection is guilty of a felony and, upon conviction
thereof, shall be confined in a correctional facility not less than
two years nor more than five years or fined not more than two
thousand dollars or both fined and confined.

(d) Assault. — Any person who unlawfully attempts to
commit a violent injury to the person of a police officer,
probation officer, conservation officer, humane officer,
emergency medical service personnel, firefighter, state fire
marshal or employee, county correctional employee, state
correctional employee, employee of a mass transportation
system acting in his or her official capacity, or unlawfully
commits an act which places a police officer, probation officer,
conservation officer, humane officer, emergency medical
service personnel, firefighter, county correctional employee or
state correctional employee, employee of a mass transportation
system acting in his or her official capacity in reasonable
apprehension of immediately receiving a violent injury, is
guilty of a misdemeanor and, upon conviction thereof, shall be
confined in the county or regional jail for not less than
twenty-four hours nor more than six months, fined not more
than two hundred dollars, or both fined and confined.

(e) For purposes of this section:

(1) "Police officer" means any person employed by the
state police, any person employed by the state to perform law-
enforcement duties, any person employed by a political
subdivision of this state who is responsible for the prevention
or detection of crime and the enforcement of the penal, traffic
or highway laws of this state or employed as a special police
officer as defined in section forty-one, article three of this
chapter.

(2) "Employee of an urban mass transportation system”
means any person employed by an urban mass transportation
system as such is defined in section three, article twenty-seven, chapter eight of this code or by a system that receives federal transit administration funding under 49 U.S.C. §5307 or 5311.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-10. Persons in custody of institutions or officers.
§61-5-17. Obstructing officer; fleeing from officer; fleeing from officer in a vehicle; penalties; definitions.

§61-5-10. Persons in custody of institutions or officers.

Whoever escapes or attempts to escape by any means from the custody of a county sheriff, the director of the regional jail authority, an authorized representative of said persons, a law-enforcement officer, probation officer, employee of the division of corrections, court bailiff, or from any institution, facility, or any alternative sentence confinement, by which he or she is lawfully confined, if the custody or confinement is by virtue of a charge or conviction for a felony, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not more than five years; and if the custody or confinement is by virtue of a charge or conviction for a misdemeanor, is guilty of a misdemeanor and, upon conviction thereof, he or she shall be confined in a county or regional jail for not more than one year.

§61-5-17. Obstructing officer; fleeing from officer; fleeing from officer in a vehicle; penalties; definitions.

(a) Any person who by threats, menaces, acts or otherwise, forcibly or illegally hinders or obstructs, or attempts to hinder or obstruct, any law-enforcement officer, probation officer or parole officer acting in his or her official capacity is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars, and may, in the discretion of the court, be confined in the county or regional jail not more than one year.

(b) Any person who intentionally flees or attempts to flee by any means other than the use of a vehicle from any law-enforcement officer, probation officer or parole officer acting
in his or her official capacity who is attempting to make a lawful arrest of the person, and who knows or reasonably believes that the officer is attempting to arrest him or her, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars, and may, in the discretion of the court, be confined in the county or regional jail not more than one year.

(c) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, and shall be confined in the county or regional jail not more than one year.

(d) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who causes damage to the real or personal property of any person during or resulting from his or her flight, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand nor more than three thousand dollars, and shall be confined in the county or regional jail for not less than six months nor more than one year.

(e) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who causes bodily injury to any person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years.
(f) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who causes death to any person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be punished by a definite term of imprisonment in a state correctional facility which is not less than three nor more than fifteen years. A person imprisoned pursuant to the provisions of this subsection is not eligible for parole prior to having served a minimum of three years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

(g) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who is under the influence of alcohol, controlled substances or drugs at the time, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years.

(h) For purposes of this section, the term “vehicle” includes any motor vehicle, motorcycle, motorboat, all-terrain vehicle or snowmobile, as those terms are defined in section one, article one, chapter seventeen-a of this code, whether or not it is being operated on a public highway at the time and whether or not it is licensed by the state.

(i) For purposes of this section, the terms “flee”, “fleeing” and “flight” do not include any person’s reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer to maintain appropriate surveillance, for the purpose of complying with the officer’s direction to stop.
AN ACT to amend and reenact section twelve, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including the use of temporarily disabling substances or devices, including disabling chemical substances and electronic shock devices, to commit robbery; and providing for penalties therefore.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-12. Robbery or attempted robbery; penalties.

(a) Any person who commits or attempts to commit robbery by: (1) Committing violence to the person, including, but not limited to, partial strangulation or suffocation or by striking or beating; or (2) uses the threat of deadly force by the presenting of a firearm or other deadly weapon, is guilty of robbery in the first degree and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than ten years.

(b) Any person who commits or attempts to commit robbery by placing the victim in fear of bodily injury by means other than those set forth in subsection (a) of this section or any
person who commits or attempts to commit robbery by the use of any means designed to temporarily disable the victim, including, but not limited to, the use of a disabling chemical substance or an electronic shock device, is guilty of robbery in the second degree and, upon conviction thereof, shall be confined in a correctional facility for not less than five years nor more than eighteen years.

(c) If any person: (1) By force and violence, or by putting in fear, feloniously takes, or feloniously attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management or possession of, any bank, he shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary not less than ten nor more than twenty years; and (2) if any person in committing, or in attempting to commit, any offense defined in the preceding clause (1) of this subsection, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, disabling chemical substance or an electronic shock device, he shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary not less than ten years nor more than twenty-five years.

CHAPTER 81

(Com. Sub. for S. B. 85 — By Senators Hunter, Ball, Dawson, Dittmar, McCabe, McKenzie, Mitchell, Redd and Snyder)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine-a, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article
by adding thereto five new sections, designated sections thirty-nine-m, thirty-nine-n, thirty-nine-o, thirty-nine-p and thirty-nine-q, all relating to worthless checks; increasing fines for making a worthless check; creating a worthless check restitution program in the office of the prosecuting attorney; allowing the prosecuting attorney to adopt standards; requiring notice to persons accepted into program; allowing the prosecuting attorney to agree to suspend prosecution for person in program; allowing certain fees; requiring the sheriff to establish a special fund in the county treasury and requiring the county commission to appropriate funds therefrom; and making statements by participants in the program inadmissible in civil or criminal proceedings.

Be it enacted by the Legislature of West Virginia:

That section thirty-nine-a, article three, chapter sixty-one 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 five new sections, designated sections thirty-nine-m, thirty-nine-n, thirty-nine-o, thirty-nine-p and thirty-nine-q, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39a. Making, issuing, etc., worthless checks; penalty.

§61-3-39m. Creation and operation of a program for worthless check offenders; acceptance of person in program.

§61-3-39n. Notice to persons accepted to the worthless check restitution program.

§61-3-39o. Agreement to suspend prosecution of a person accepted into the restitution program.

§61-3-39p. Fees for participation in the worthless check restitution program.

§61-3-39q. Statements by individuals referred to or participating in the worthless check restitution program.

§61-3-39a. Making, issuing, etc., worthless checks; penalty.

(a) It is unlawful for any person, firm or corporation to make, draw, issue, utter or deliver any check, draft or order for the payment of money or its equivalent upon any bank or other depository, knowing or having reason to know there is not sufficient funds on deposit in or credit with the bank or other depository with which to pay the check, draft or order upon presentation. The making, drawing, issuing, uttering or deliver-
ing of any check, draft or order, for or on behalf of any corpo-
ration, or its name, by any officer or agent of the corporation,
shall subject the officer or agent to the penalty of this section to
the same extent as though the check, draft or order was his or
her own personal act.

(b) This section shall not apply to any such check, draft or
order when the payee or holder knows or has been expressly
notified prior to the acceptance of same or has reason to believe
that the drawer did not have on deposit or to his or her credit
with the drawee sufficient funds to insure payment as aforesaid,
nor shall this section apply to any postdated check, draft or
order. This section shall not apply when the insufficiency of
funds or credit is caused by any adjustment to the drawer’s
account by the bank or other depository without notice to the
drawer or is caused by the dishonoring of any check, draft or
order deposited in the account unless there is knowledge or
reason to believe that the check, draft or order would be
dishonored.

c) Any person violating the provisions of this section is
guilty of a misdemeanor and, upon conviction thereof, shall be
fined not more than two hundred dollars; and upon a third or
subsequent conviction thereof, shall be fined not more than two
hundred dollars, or confined in the county or regional jail not
more than ten days, or both.

§61-3-39m. Creation and operation of a program for worthless
check offenders; acceptance of person in program.

(a) A prosecuting attorney may create within his or her
office a worthless check restitution program for persons who
have violated sections thirty-nine or thirty-nine-a of this article.
This program may be conducted by the prosecuting attorney in
conjunction with a law-enforcement agency or by a private
entity under contract with the prosecuting attorney.

(b) The prosecuting attorney may adopt standards to
determine the appropriateness of an individual case for the
program. In developing these standards, the prosecuting
attorney should consider the following factors:
(1) The amount of the check, draft or order made, drawn, issued, uttered or delivered;

(2) The person's criminal record;

(3) The number of times the person has participated in the program; and

(4) The number of warrants or cases pending against the person for violations of sections thirty-nine or thirty-nine-a of this article.

(c) Except as provided in section thirty-nine-o of this article, nothing in this section shall preclude the prosecuting attorney from prosecuting violations of sections thirty-nine or thirty-nine-a of this article.

(d) Nothing in this section may be construed or interpreted to mandate funding for any worthless check restitution program created in a prosecuting attorney's office or to require any appropriation by the Legislature.

(e) Notwithstanding any other provision of law to the contrary, no case is appropriate for referral to the program unless notice has been provided pursuant to section thirty-nine-e or thirty-nine-g of this article.

§61-3-39n. Notice to persons accepted to the worthless check restitution program.

(a) Upon approval of an individual case for referral to the worthless check restitution program, a representative of the program shall send a notice by registered or certified mail to the person named in the complaint or warrant.

(b) This notice must contain:

(1) The date and amount of the check, draft or order;

(2) The name of the payee or holder;
(3) The date by which the individual must contact the designated representative of the worthless check restitution program;

(4) A demand for full restitution of the face amount of the check, draft or order and any fees reflected in the complaint or warrant as having been imposed on the payee or holder by the payee’s or holder’s bank or financial institution; and

(5) A statement that failure to pay restitution and fees may result in criminal prosecution.

§61-3-39o. Agreement to suspend prosecution of a person accepted into the restitution program.

(a) The prosecuting attorney may enter into an agreement with a participant of the worthless check restitution program to suspend prosecution for a period to be determined by the prosecuting attorney.

(b) To remain eligible for the worthless check restitution program, the participant shall:

(1) Contact a representative of the program before the date required by the notice sent pursuant to section thirty-nine-n of this article;

(2) Agree to comply with all the program terms;

(3) Complete a class conducted by the prosecuting attorney, his or her designee, or a private entity under contract with the prosecuting attorney, which offers offender education and instruction;

(4) Pay a fee in the amount of ten dollars to be deposited in the “worthless check fund” established pursuant to the provisions of section thirty-nine-h of this article;

(5) Pay the fee required to participate in the class;
(6) Pay full victim restitution; and

(7) Pay all fees for participation in the program, unless those fees are waived.

(c) The prosecuting attorney shall agree not to file criminal charges if the participant in the program completes the conditions of the agreement.

§61-3-39p. Fees for participation in the worthless check restitution program.

(a) The prosecuting attorney, his or her designee, or a private entity under contract with the prosecuting attorney may collect a fee not to exceed one hundred dollars from any person participating in the worthless check restitution program: Provided, That the prosecuting attorney shall waive the fee if he or she determines that the person is indigent and unable to pay the fee.

(b) All fees collected pursuant to subsection (a) of this section by the prosecutor shall be remitted to the sheriff. The sheriff shall establish a special fund in the county treasury, designated the worthless check restitution program fund, in which the sheriff shall deposit all fees remitted by the prosecutor. The county commission shall appropriate money from the fund for the administration of the worthless check restitution program. The county commission shall also appropriate any excess money from the fund to supplement the annual operation expense appropriation of the office of the prosecuting attorney, if the prosecuting attorney certifies in writing to the county commission that a surplus exists in the fund at the end of the fiscal year.

§61-3-39q. Statements by individuals referred to or participating in the worthless check restitution program.
Any statement made by a person referred to the worthless check restitution program in connection with the determination of his or her eligibility for participation in the program and any statement made or information given by that person while participating in the program is inadmissible in any civil or criminal action or proceeding.

CHAPTER 82

(Com. Sub. for S. B. 389 — By Senators Oliverio, Ross and Bell)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifty-five, relating to creating the criminal offense of failure to pay for gasoline; establishing criminal penalties; and providing for the suspension of a license to operate a motor vehicle.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-55. Failure to pay for gasoline.

Any person who knowingly and willfully drives a motor vehicle off the premises of an establishment where gasoline offered for retail sale was dispensed into the fuel tank of the motor vehicle with the intent to avoid payment for the gasoline
that was so dispensed shall be deemed to be guilty of the larceny thereof. In addition to the penalties provided for by the provisions of section thirteen, article three of this chapter, upon a second conviction for larceny of gasoline, the court shall order the suspension of the person's license to drive a motor vehicle for six months, and upon a third or subsequent conviction, the court shall order the suspension of the person's license to drive a motor vehicle for one year.

Whenever a second or subsequent offense is had under the provisions of this section, the clerk of the court shall transmit a certified abstract of the judgment to the division of motor vehicles within seventy-two hours of the conviction. Upon receipt of the abstract of judgment the division of motor vehicles shall enter an order suspending the person's license to operate a motor vehicle for the appropriate time period.

CHAPTER 83

(Com. Sub. for H. B. 4641 — By Delegate Thompson)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three-a, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to creating criminal offenses involving theft detection shielding devices and theft detection device removers; definitions; penalties; right to detain person suspected of violation; and, immunity from civil or criminal liability for detainers.

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

ARTICLE 3A. SHOPLIFTING.

§61-3A-4a. Criminal offenses involving theft detection shielding devices; detention.

(a) As used in this section:

(1) "Theft detection device" means any tag or other device that is used to prevent or detect theft and that is attached to merchandise held for resale by a merchant or to property of a merchant.

(2) "Theft detection device remover" means any tool or device specifically designed or manufactured to be used to remove a theft detection device from merchandise held for resale by a merchant or property of a merchant.

(3) "Theft detection shielding device" means any laminated or coated bag or device designed to shield merchandise held for resale by a merchant or property of a merchant from being detected by an electronic or magnetic theft alarm sensor.

(b) A person commits unlawful distribution of a theft detection shielding device when he or she knowingly manufactures, sells, offers to sell or distribute any theft detection shielding device.

(c) A person commits unlawful possession of a theft detection shielding device when he or she knowingly possesses any theft detection shielding device with the intent to commit theft or retail theft.

(d) A person commits unlawful possession of a theft detection shielding device remover when he or she knowingly possesses any theft detection device remover with the intent to
use such tool to remove any theft detection device from any
merchandise without the permission of the merchant or person
owning or holding said merchandise.

(e) A person commits unlawful use of a theft detection
shielding device or a theft detection shielding remover when he
or she uses or attempts to use either device while committing a
violation of this article.

(f) A person commits unlawful removal of a theft detection
device when he or she intentionally removes any theft detection
device by the use of manual force or by any tool or device,
which is not specifically designed or manufactured to remove
theft detection devices, from merchandise prior to purchase.

(g) Any person convicted for violating the provisions of
subsections (b), (c), (d), or (e) of this section is guilty of a
misdemeanor, and upon conviction thereof, shall be confined in
a county or regional jail facility for not less than thirty days nor
more than one year, and fined not less than two hundred fifty
dollars nor more than one thousand dollars.

(h) Any person convicted of violating the provisions of
subsection (f) of this section is guilty of a misdemeanor, and
upon conviction thereof, shall be fined not less than one
hundred dollars nor more than five hundred dollars, and such
fine shall not be suspended, or the person shall be confined in
the county or regional jail not more than sixty days, or both.

(i) The activation of an anti-shoplifting or inventory control
device as a result of a person exiting the establishment or a
protected area within the establishment shall constitute reason-
able cause for the detention of the person so exiting by the
owner or operator or the establishment or by an agent or
employee of the owner or operator, provided sufficient notice
has been posted to advise the patrons that such a device is being
utilized. Each such detention shall be made only in a reasonable
manner and only for a reasonable period of time sufficient for
any inquiry into the circumstances surrounding the activation
of the device or for the recovery of goods.

(j) Such taking into custody and detention by a
law-enforcement officer, merchant, or merchant’s employee, if
done in compliance with all the requirements of this section,
does not render such law-enforcement officer, merchant, or
merchant’s employee criminally or civilly liable for false arrest,
false imprisonment, or unlawful detention.

CHAPTER 84

(S. B. 641 — By Senators Wooton, Ball, Dawson, Dittmar, Hunter, Kessler,
Minard, Mitchell, Oliverio, Redd, Ross, Snyder, Deem and McKenzie)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend article eight, chapter sixty-one of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section twenty-eight,
relating to creating the offense of criminal invasion of privacy;
definitions; penalties; and enhanced penalties for second and
subsequent offenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.


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

5 (1) “A person fully or partially nude” means a male or female who is either clothed or unclothed so that: (A) All or any part of his or her genitals, pubic area or buttocks is visible; or (B) in the case of a female only, a part of a nipple of her breast is visible and is without a fully opaque covering;

10 (2) “To visually portray” a person means to create a reproducible image of that person by means of:

12 (A) A photograph;
13 (B) A motion picture;
14 (C) A video tape;
15 (D) A digital recording; or
16 (E) Any other mechanical or electronic recording process or device that can preserve, for later viewing, a visual image of a person; and

19 (3) “Place where a reasonable person would have an expectation of privacy” means a place where a reasonable person would believe that he or she could, in privacy, be fully or partially nude without expecting that the act of exposing his or her body was being visually portrayed by another person.

(b) It is unlawful for a person to knowingly visually portray another person without that other person’s knowledge, while that other person is fully or partially nude and is in a place where a reasonable person would have an expectation of privacy. A person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, shall be confined in a county or regional jail for not more than one year or fined not more than five thousand dollars, or both.

(c) Any person who displays or distributes visual images of another person with knowledge that said visual images were obtained in violation of subsection (b) of this section is guilty of a misdemeanor and, upon conviction, shall be confined in a
county or regional jail for not more than one year or fined not more than five thousand dollars, or both.

(d) A person who is convicted of a second or subsequent violation of subsection (b) or (c) of this section is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than one year nor more than five years or fined not more than ten thousand dollars, or both.

CHAPTER 85

(H. B. 4561 — By Delegates Mahan, Spencer, Hunt, Amores, Hines, Capito and Webb)

[Passed March 9, 2000: in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section six, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, three and five of said article, all relating to sexual assault.

Be it enacted by the Legislature of West Virginia:

That section six, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, three and five of said article be amended and reenacted, all to read as follows:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-1. Definition of terms.
§61-8B-5. Sexual assault in the third degree.

§61-8B-1. Definition of terms.

1 In this article, unless a different meaning plainly is re-
(1) "Forcible compulsion" means:

(a) Physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or

(b) Threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to himself or herself or another person or in fear that he or she or another person will be kidnapped; or

(c) Fear by a person under sixteen years of age caused by intimidation, expressed or implied, by another person who is at least four years older than the victim.

For the purposes of this definition "resistance" includes physical resistance or any clear communication of the victim's lack of consent.

(2) "Married", for the purposes of this article in addition to its legal meaning, includes persons living together as husband and wife regardless of the legal status of their relationship.

(3) "Mentally defective" means that a person suffers from a mental disease or defect which renders that person incapable of appraising the nature of his or her conduct.

(4) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to that person without his or her consent or as a result of any other act committed upon that person without his or her consent.

(5) "Physically helpless" means that a person is unconscious or for any reason is physically unable to communicate unwillingness to an act.

(6) "Sexual contact" means any intentional touching, either directly or through clothing, of the anus or any part of the sex
organs of another person, or the breasts of a female or intentional touching of any part of another person's body by the actor's sex organs, where the victim is not married to the actor and the touching is done for the purpose of gratifying the sexual desire of either party.

(7) "Sexual intercourse" means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person.

(8) "Sexual intrusion" means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party.

(9) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition.

(10) "Serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(11) "Deadly weapon" means any instrument, device or thing capable of inflicting death or serious bodily injury, and designed or specially adapted for use as a weapon, or possessed, carried or used as a weapon.

(12) "Forensic medical examination" means an examination provided to a possible victim of a violation of the provisions of this article by medical personnel qualified to gather evidence of the violation in a manner suitable for use in a court of law, to include: An examination for physical trauma; a determination of penetration or force; a patient interview; and the collection and evaluation of other evidence that is potentially relevant to

(a) A person is guilty of sexual assault in the first degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person and, in so doing:

(i) Inflicts serious bodily injury upon anyone; or

(ii) Employs a deadly weapon in the commission of the act; or

(2) The person, being fourteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is eleven years old or less and is not married to that person.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years, or fined not less than one thousand dollars nor more than ten thousand dollars and imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years.

§61-8B-5. Sexual assault in the third degree.

(a) A person is guilty of sexual assault in the third degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or

(2) The person, being sixteen years old or more, engages in sexual intercourse or sexual intrusion with another person who
is less than sixteen years old and who is at least four years younger than the defendant and is not married to the defendant.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years, or fined not more than ten thousand dollars and imprisoned in a state correctional facility not less than one year nor more than five years.

CHAPTER 86

(Com. Sub. for S. B. 157 — By Senators Love, Hunter, Ross and Helmick)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article eight-b, chapter sixty-one of said code by adding thereto a new section, designated section ten, relating to creating the felony criminal offenses of engaging in sexual intercourse or intrusion by persons employed at correctional institutions or as supervisory probation or parole officers; and penalties.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article eight-b, chapter sixty-one of said code be amended by adding thereto a new section, designated section ten, to read as follows:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-10. Imposition of sexual intercourse or sexual intrusion on incarcerated persons; penalties.
(a) Any person employed by the division of corrections, any person working at a correctional facility managed by the commissioner of corrections pursuant to contract or as an employee of a state agency, any person working at a correctional facility managed by the division of juvenile services pursuant to contract or as an employee of a state agency, any person employed by a county jail or by the regional jail and correctional facility authority or any person working at a facility managed by the regional jail and correctional facility authority or a county jail who engages in sexual intercourse or sexual intrusion with a person who is incarcerated in this state is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility under the control of the commissioner of corrections for not less than one nor more than five years or fined not more than five thousand dollars.

(b) Any person employed by the division of corrections as a parole officer or by the West Virginia supreme court of appeals as an adult or juvenile probation officer who engages in sexual intercourse or sexual intrusion with a person said parole officer or probation officer is charged as part of his or her employment with supervising, is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility under the control of the commissioner of corrections for not less than one nor more than five years or fined not more than five thousand dollars, or both.

CHAPTER 87

(Com. Sub. for S. B. 121 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article eleven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sentencing of habitual
criminals; and doubling the minimum term of an indeterminate felony sentence for a twice-convicted felon.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-18. Punishment for second or third offense of felony.

(a) Except as provided by subsection (b) of this section, when any person is convicted of an offense and is subject to confinement in the state correctional facility therefor, and it is determined, as provided in section nineteen of this article, that such person had been before convicted in the United States of a crime punishable by confinement in a penitentiary, the court shall, if the sentence to be imposed is for a definite term of years, add five years to the time for which the person is or would be otherwise sentenced. Whenever in such case the court imposes an indeterminate sentence, the minimum term shall be twice the term of years otherwise provided for under such sentence.

(b) Notwithstanding the provisions of subsection (a) or (c) of this section or any other provision of this code to the contrary, when any person is convicted of first degree murder or second degree murder or a violation of section three, article eight-b of this chapter and it is determined, as provided in section nineteen of this article, that such person had been before convicted in this state of first degree murder, second degree murder or a violation of section three, article eight-b of said chapter or has been so convicted under any law of the United States or any other state for an offense which has the same elements as any offense described in this subsection, such person shall be punished by confinement in the state correctional facility for life and is not eligible for parole.
When it is determined, as provided in section nineteen of this article, that such person shall have been twice before convicted in the United States of a crime punishable by confinement in a penitentiary, the person shall be sentenced to be confined in the state correctional facility for life.

CHAPTER 88

(S. B. 519 — By Senators Wooton, Ball, Dawson, Dittmar, Fanning, Hunter, Kessler, McCabe, Minard, Mitchell, Redd, Ross, Snyder, Deem and McKenzie)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-five, relating to expungement of criminal records where a person is acquitted or where charges are dismissed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-25. Expungement of criminal records for those found not guilty of crimes or against whom charges have been dismissed.

1 (a) Any person who has been charged with a criminal offense under the laws of this state and who has been found not guilty of the offense, or against whom charges have been dismissed, and not in exchange for a guilty plea to another offense, may make a motion in the circuit court in which the
charges were filed to expunge all records relating to the arrest, charge or other matters arising out of the arrest or charge: Provided, That any person who has previously been convicted of a felony may not make a motion for expungement pursuant to this section. The term records as used in this section includes, but is not limited to, arrest records, fingerprints, photographs, index references or other data whether in documentary or electronic form, relating to the arrest, charge or other matters arising out of the arrest or charge. Criminal investigation reports and all records relating to offenses subject to the provisions of article twelve, chapter fifteen of this code because the person was found not guilty by reason of mental illness, mental retardation or addiction are exempt from the provisions of this section.

(b) The expungement motion shall be filed not sooner than sixty days following the order of acquittal or dismissal by the court. Any court entering an order of acquittal or dismissal shall inform the person who has been found not guilty or against whom charges have been dismissed of his or her rights to make a motion for expungement pursuant to this section.

(c) Following the filing of the motion, the court may set a date for a hearing. If the court does so, it shall notify the prosecuting attorney and the arresting agency of the motion and provide an opportunity for a response to the expungement motion.

(d) If the court finds that there are no current charges or proceedings pending relating to the matter for which the expungement is sought, the court may grant the motion and order the sealing of all records in the custody of the court and expungement of any records in the custody of any other agency or official including law-enforcement records. Every agency with records relating to the arrest, charge or other matters arising out of the arrest or charge, that is ordered to expunge records, shall certify to the court within sixty days of the entry of the expungement order, that the required expungement has been completed. All orders enforcing the expungement procedure shall also be sealed.
(e) Upon expungement, the proceedings in the matter shall be deemed never to have occurred. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit or other type of application.

(f) Inspection of the sealed records in the court’s possession may thereafter be permitted by the court only upon a motion by the person who is the subject of the records or upon a petition filed by a prosecuting attorney that inspection and possible use of the records in question are necessary to the investigation or prosecution of a crime in this state or another jurisdiction. If the court finds that the interests of justice will be served by granting the petition, it may be granted.

CHAPTER 89

(H. B. 4467 — By Delegates Varner and Pino)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eight, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the filing of recidivist information in the appropriate county.

Be it enacted by the Legislature of West Virginia:

That section four, article eight, 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 8. CRIMES BY AND PROCEEDINGS AGAINST INMATES.

§62-8-4. Procedure in sentencing inmates to further confinement for second and third offenses.

1 When a inmate convicted of an offense and sentenced to confinement therefor in a state correctional facility, is received
therein, if he or she was before convicted in the United States of a crime punishable by imprisonment in a state correctional facility, and the record of his or her conviction does not show that he or she has been sentenced under section eighteen or nineteen, article eleven, chapter sixty-one of this code, the warden of a state correctional facility may give information thereof, to the circuit court of the county in which the facility is located, whether it be alleged or not in the indictment on which he or she was convicted that he or she had before been previously so convicted. If such information is given, the court shall cause the inmate to be brought before it, and upon an information filed, setting forth the several records of conviction, and alleging the identity of the inmate with the person named in each, shall require the inmate named to say whether he or she is the same person or not. If he or she say he or she is not, or remain silent, his or her plea, or the fact of his or her silence, shall be entered of record, and a jury shall be impaneled to inquire whether the inmate is the same person mentioned in the several records. If the jury find that he or she is not the same person, he or she shall be remanded to a state correctional facility; but if they find that he or she is the same person, or if he or she acknowledge in open court, after being duly cautioned, that he or she is the same person, the court shall sentence him or her to such further confinement as is prescribed by article eleven, chapter sixty-one of this code, on a second or third conviction, as the case may be.

CHAPTER 90

(Com. Sub. for S. B. 634 --- By Senators Kessler, Edgell, Hunter, Mitchell and Fanning)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]
hundred thirty-one, as amended, relating to providing a sentenc-
ing alternative under which persons would be required to report
to a day-reporting center for alcohol or drug testing or other
medical testing where such monitoring is required on a regular
basis.

Be it enacted by the Legislature of West Virginia:

That section one-a, article eleven-a, 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 11A. RELEASE FOR WORK AND OTHER PURPOSES.


(a) Any person who has been convicted in a circuit court or
in a magistrate court under any criminal provision of this code
of a misdemeanor or felony, which is punishable by imposition
of a fine or confinement in the county or regional jail or a state
correctional facility, or both fine and confinement, may, in the
discretion of the sentencing judge or magistrate, as an alterna-
tive to the sentence imposed by statute for the crime, be
sentenced under one of the following programs:

(1) The weekend jail program under which persons would
be required to spend weekends or other days normally off from
work in jail;

(2) The work program under which sentenced persons
would be required to spend the first two or more days of their
sentence in jail and then, in the discretion of the court, would be
assigned to a county agency to perform labor within the jail, or
in and upon the buildings, grounds, institutions, bridges, roads,
including orphaned roads used by the general public and public
works within the county. Eight hours of labor shall be credited
as one day of the sentence imposed. Persons sentenced under
this program may be required to provide their own transportation to and from the work site, lunch and work clothes;

(3) The community service program under which persons sentenced would spend no time in jail but would be sentenced to a number of hours or days of community service work with government entities or charitable or nonprofit entities approved by the circuit court. Regarding any portion of the sentence designated as confinement, eight hours of community service work shall be credited as one day of the sentence imposed. Regarding any portion of the sentence designated as a fine, the fine shall be credited at an hourly rate equal to the prevailing federal minimum wage at the time the sentence was imposed. In the discretion of the court, the sentence credits may run concurrently or consecutively. Persons sentenced under this program may be required to provide their own transportation to and from the work site, lunch and work clothes; or

(4) A day-reporting center program if the program has been implemented in the sentencing court’s jurisdiction or in the area where the offender resides. For purposes of this subdivision “day-reporting center” means a court-operated or court-approved facility where persons ordered to serve a sentence in such a facility are required to report under the terms and conditions set by the court for purposes which include, but are not limited to, counseling, employment training, alcohol or drug testing or other medical testing.

(b) In no event may the duration of the alternate sentence exceed the maximum period of incarceration otherwise allowed.

(c) In imposing a sentence under the provisions of this section, the court shall first make the following findings of fact and incorporate them into the court’s sentencing order:

(1) The person sentenced was not convicted of an offense for which a mandatory period of confinement is imposed by statute;
(2) In circuit court cases, that the person sentenced is not a habitual criminal within the meaning of sections eighteen and nineteen, article eleven, chapter sixty-one of this code;

(3) In circuit court cases, that the offense underlying the sentence is not a felony offense for which violence or the threat of violence to the person is an element of the offense;

(4) In circuit court cases, that adequate facilities for the administration and supervision of alternative sentencing programs are available through the court’s probation officers or the county sheriff or, in magistrate court cases, that adequate facilities for the administration and supervision of alternative sentencing programs are available through the county sheriff; and

(5) That an alternative sentence under provisions of this article will best serve the interests of justice.

(d) Persons sentenced by the circuit court under the provisions of this article shall remain under the administrative custody and supervision of the court’s probation officers or the county sheriff. Persons sentenced by a magistrate shall remain under the administrative custody and supervision of the county sheriff.

(e) Persons sentenced under the provisions of this section may be required to pay the costs of their incarceration, including meal costs, at the discretion of the court.

(f) Persons sentenced under the provisions of this section remain under the jurisdiction of the court. The court may withdraw any alternative sentence at any time by order entered with or without notice and require that the remainder of the sentence be served in the county jail, regional jail or a state correctional facility: Provided, That no alternative sentence directed by the sentencing judge or magistrate or administered under the supervision of the sheriff, his or her deputies, a jailer
or a guard, shall require the convicted person to perform duties which would be considered detrimental to the convicted person’s health as attested by a physician.

CHAPTER 91

(S. B. 657 — Originating in the Committee on Finance)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section ten, article twenty-two-a of said chapter, all relating to the grants for competitive arts program fund; establishing the cultural facilities and capital resources grant matching program; and dedicating moneys from the state lottery to the fund.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Division of Culture and History.
22A. Racetrack Video Lottery.

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-3. Commission on the arts.

1 (a) The commission on the arts is continued and shall be composed of fifteen appointed members.
(b)(1) The governor shall appoint, by and with the advice and consent of the Senate, the members of the commission for staggered terms of three years. A person appointed to fill a vacancy shall be appointed only for the remainder of that term.

(2) No more than eight members may be of the same political party. Members of the commission shall be appointed so as to fairly represent both sexes, the ethnic and cultural diversity of the state and the geographic regions of the state.

(3) The commission shall elect one of its members as chair. It shall meet at the times specified by the chair. Notice of each meeting shall be given to each member by the chair in compliance with the open meetings laws of the state. A majority of the members constitute a quorum for the transaction of business. The director of the arts section shall be an ex officio nonvoting member of the commission and shall serve as secretary. The director or a majority of the members may also call a meeting upon notice as provided in this section.

(4) Each member or ex officio member of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of the duties of the office; except that in the event the expenses are paid, or are to be paid, by a third party, the member or ex officio member, as the case may be, shall not be reimbursed by the state.

(5) Upon recommendation of the commissioner, the governor may also appoint those officers of the state that are appropriate to serve on the commission as ex officio nonvoting members.

(c) The commission has the following powers:

(1) To advise the commissioner and the director of the arts section concerning the accomplishment of the purposes of that section and to establish a state plan with respect to the arts section;
(2) To approve and distribute grants-in-aid and awards from federal and state funds relating to the purposes of the arts section;

(3) To request, accept or expend federal funds to accomplish the purposes of the arts section when federal law or regulations would prohibit the same by the commissioner or section director, but would permit the same to be done by the commission on the arts;

(4) To otherwise encourage and promote the purposes of the arts section;

(5) To approve rules concerning the professional policies and functions of the section as promulgated by the director of the arts section; and

(6) To advise and consent to the appointment of the director by the commissioner.

(d) There is created in the state treasury a special revenue account created by the amendment to this section in one thousand nine hundred ninety-nine and hereby continued and redesignated as the “cultural facilities and capital resources matching grant program fund”. The fund shall consist of moneys received under section ten, article twenty-two-a of this chapter and funds from any other source. Moneys in the fund shall be expended for capital improvements: Provided, That the commission shall make a women’s veterans memorial statue a priority when expending the funds: Provided, however, That the commission shall submit the plans for the statue to the secretary of administration for his or her approval. The commission on the arts shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to create a matching grant program for cultural facilities and capital resources.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.
§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

(a) The commission shall provide to manufacturers, or applicants applying for a manufacturer's permit, the protocol documentation data necessary to enable the respective manufacturer's video lottery terminals to communicate with the commission's central computer for transmitting auditing program information and for activation and disabling of video lottery terminals.

(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission thirty days' advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission, the commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack and the resulting amount after such deduction shall be the net terminal income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income.

(c) Net terminal income shall be divided as set out in this subsection. The licensed racetrack's share shall be in lieu of all lottery agent commissions and is considered to cover all costs

*Clerk's Note: This section was also amended by H. B. 4689 (Chapter 137), which passed subsequent to this act.
and expenses required to be expended by the licensed racetrack in connection with video lottery operations. The division shall be made as follows:

(1) The commission shall receive thirty percent of net terminal income, which shall be paid into the general revenue fund of the state to be appropriated by the Legislature;

(2) Fourteen percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee, and used for payment of regular purses in addition to other amounts provided for in article twenty-three, chapter nineteen of this code;

(3) The county where the video lottery terminals are located shall receive two percent of the net terminal income: Provided, That:

(A) Beginning the first day of July, one thousand nine hundred ninety-nine, and thereafter, any amount in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack is located that has participated in the West Virginia thoroughbred development fund since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipalities of the county shall receive fifty percent of the excess amount, said fifty percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population; and

(B) Beginning the first day of July, one thousand nine hundred ninety-nine, and thereafter, any amount in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located
and where the racetrack has been located in a municipality within the county since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided, if applicable, as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipality shall receive fifty percent of the excess amount; and

(C) This proviso shall not affect the amount to be received under this subdivision by any county other than a county described in paragraph (A) or (B) of this proviso;

(4) One half of one percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the racing commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia thoroughbred development fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia greyhound breeding development fund created under section ten, article twenty-three, chapter nineteen of this code shall receive an equal share of a total of not less than one and one-half percent of the net terminal income: Provided, That for any racetrack which does not have a breeder’s program supported by the thoroughbred development fund or the greyhound breeding development fund, the one and one-half percent provided for in this subdivision shall be deposited in the special fund established by the licensee and used for payment of regular purses, in addition to other amounts provided for in subdivision (2) of this subsection and article twenty-three, chapter nineteen of this code;

(6) The West Virginia thoroughbred breeders classic shall receive one percent of the net terminal income which shall be used for purses. The moneys shall be deposited in the separate
account established for the classic under section thirteen, article twenty-three, chapter nineteen of this code;

(7) A licensee shall receive forty-seven percent of net terminal income;

(8) The tourism promotion fund established in section twelve, article two, chapter five-b of this code shall receive three percent of the net terminal income; and

(9) The veterans memorial program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the state capitol complex in Charleston, West Virginia. The moneys shall be deposited in the state treasury in the division of culture and history special fund created under section three, article one-i of this chapter: Provided, That only after sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded indebtedness on the veterans memorial, not more than twenty thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited into a special revenue fund in the state treasury, to be known as the "John F. 'Jack' Bennett fund". The moneys in this fund shall be expended by the division of veterans affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The division of veterans affairs shall promulgate legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code specifying the manner in which the funds are spent, determine the ability of the surviving spouse to pay for the placement of the marker and setting forth the standards to be used to determine the priority in which the veterans grave markers will be placed in the event that there are not sufficient funds to complete the placement of veterans grave markers in any one year, or at all. Upon payment in full of the bonded indebtedness on the veterans memorial, one hundred thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited in the
129 special fund in the division of culture and history created under
130 section three, article one-i of this chapter and be expended by
131 the division of culture and history to establish a West Virginia
132 veterans memorial archives within the cultural center to serve
133 as a repository for the documents and records pertaining to the
134 veterans memorial, to restore and maintain the monuments and
135 memorial on the capitol grounds, and not more than twenty
136 thousand dollars be deposited in the “John F. ‘Jack’ Bennett
137 fund”: Provided, however, That five hundred thousand dollars
138 of the one percent of net terminal income shall be deposited in
139 the state treasury in a special fund of the department of admin-
140 istration, created under section five, article four, chapter five-a
141 of this code to be used for construction and maintenance of a
142 parking garage on the state capitol complex: Provided further,
143 That the remainder of the one percent of net terminal income
144 shall be deposited in equal amounts in the capitol dome and
145 improvements fund created under section two, article four,
146 chapter five-a of this code and the cultural facilities and capitol
147 resources matching grant program fund created under section
148 three, article one of this chapter.

149 (d) Each licensed racetrack shall maintain in its account an
150 amount equal to or greater than the gross terminal income from
151 its operation of video lottery machines, to be electronically
152 transferred by the commission on dates established by the
153 commission. Upon a licensed racetrack’s failure to maintain
154 this balance, the commission may disable all of a licensed
155 racetrack’s video lottery terminals until full payment of all
156 amounts due is made. Interest shall accrue on any unpaid
157 balance at a rate consistent with the amount charged for state
158 income tax delinquency under chapter eleven of this code,
159 · which interest shall begin to accrue on the date payment is due
160 to the commission.

161 (e) The commission’s central control computer shall keep
162 accurate records of all income generated by each video lottery
163 terminal. The commission shall prepare and mail to the licensed
164 racetrack a statement reflecting the gross terminal income
generated by the licensee’s video lottery terminals. Each licensed racetrack must report to the commission any discrepancies between the commission’s statement and each terminal’s mechanical and electronic meter readings. The licensed racetrack is solely responsible for resolving income discrepancies between actual money collected and the amount shown on the accounting meters or on the commission’s billing statement.

(f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the commission may make no credit adjustments. For any video lottery terminal reflecting a discrepancy, the licensed racetrack shall submit to the commission the maintenance log which includes current mechanical meter readings and the audit ticket which contains electronic meter readings generated by the terminal’s software. If the meter readings and the commission’s records cannot be reconciled, final disposition of the matter shall be determined by the commission. Any accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the commission.

(g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies licensed racetracks that remittance by this method is required. The licensed racetracks shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets, and remit such amount as generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the day when the payment would otherwise be completed through electronic funds transfer.

(h) Licensed racetracks may, upon request, receive additional reports of play transactions for their respective video lottery terminals and other marketing information not considered confidential by the commission. The commission may
charge a reasonable fee for the cost of producing and mailing any report other than the billing statements.

(i) The commission has the right to examine all accounts, bank accounts, financial statements and records in a licensed racetrack’s possession, under its control or in which it has an interest and the licensed racetrack must authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.

CHAPTER 92

(Com. Sub. for S. B. 460 — By Senators Craigo, Bowman, Plymale, Walker, McCabe, Dittmar, Sharpe, Ross, Ball, Dawson, Hunter, Oliverio, Love, Unger, Minear, Snyder and Prezioso)

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the archives and history section of the division of culture and history to provide matching grants to political subdivisions for document preservation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-6. Archives and history section; director.
(a) The purposes and duties of the archives and history section are to locate, survey, investigate, register, identify, preserve, protect, restore and recommend to the commissioner for acquisition documents and records having historical, evidential, administrative and/or legal value relating to the state of West Virginia and the territory included in the state from the earliest times to the present, upon its own initiative or in cooperation with any private or public society, organization or agency; to conduct a continuing survey and study throughout the state to develop a state plan to determine the needs and priorities for the preservation of the documents and records; to direct, protect, preserve, study and disseminate information on the documents and records; to provide matching grants to political subdivisions of this state to protect and preserve the documents and records; to operate and maintain a state library for the preservation of all public records, state papers, documents and reports of all three branches of state government including all boards, commissions, departments and agencies as well as any other private or public papers, books or documents of peculiar or historic interest or significance; to designate appropriate monuments, tablets or markers for historic, architectural and scenic sites within the state and to arrange for the purchase, replacement, care of and maintenance of the monuments, tablets and markers and to formulate and prepare suitable copy for them; to edit and publish a historical journal devoted to the history, biography, bibliography and genealogy of West Virginia; and to perform any other duties assigned to the section by the commissioner.

(b) With the advice and consent of the archives and history commission, the commissioner shall appoint a director of the archives and history section, who shall have: (1) A graduate degree in one of the social sciences, or equivalent training and experience in the field of West Virginia history, history, or in records, library or archives management; and (2) three years' experience in administration in the field of West Virginia history, history, or in records, library or archives management. Notwithstanding these qualifications, the person serving as the state historian and archivist on the date of enactment of this
article is eligible for appointment as the director of the archives and history section. The director of the archives and history section shall serve as the state historian and archivist.

(c) With the approval of the commissioner, the director shall establish professional positions within the section and develop appropriate organizational structures to carry out the duties of the section. The director shall employ the personnel with applicable professional qualifications to fill positions within the organizational structure with the minimum professional qualifications. At the minimum, the following professions shall be represented within the section staff: Historian, archivist, librarian and technical and clerical positions as are required.

(d) The director shall promulgate rules with the approval of the archives and history commission and in accordance with chapter twenty-nine-a of this code concerning: (1) The professional policies and functions of the archives and history section; and (2) any other rules determined necessary to effectuate the purposes of this article.

CHAPTER 93

(S. B. 480 — By Senators Bowman and Balley)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and five, article fourteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the commission for the deaf and hard-of-hearing; increasing the membership of the committee to seventeen; altering the membership to place the deaf and hard-of-hearing in the majority; and granting the secretary rule-making capability and the commissioner the
authority to test interpreters for certification and to collect and expend funds for that purpose.

Be it enacted by the Legislature of West Virginia:

That sections three and five, article fourteen, 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 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD-OF-HEARING.

§5-14-3. Continuation of commission; membership.
§5-14-5. Powers and duties of the commission; register of hearing-impaired; duty to report to the commission; census; information clearinghouse; coordination of interpreters; outreach programs; seminars and training sessions.

§5-14-3. Continuation of commission; membership.

The West Virginia commission for the deaf and hard-of-hearing is hereby continued within the department of health and human resources consisting of seventeen persons, eight of whom shall serve ex officio. The remaining members are appointed by the governor by and with the advice and consent of the Senate. The commission shall meet no less than four times annually. All meetings and activities held by the commission shall be attended by at least two qualified interpreters who shall be hired at the commission's expense or provided free of charge by agencies, organizations or individuals willing to volunteer qualified interpreters. The members are:

1. The secretary, or his or her designee, of the department of health and human resources; the commissioner, or his or her designee, of the division of labor; the director, or his or her designee, of the division of health; the state superintendent of schools, or his or her designee, of the state board of education; the director, or his or her designee, of the division of rehabilitation; the director, or his or her designee, of the division of handicapped children's services in the division of human services; the chairman, or his or her designee, of the advisory
(2) Nine persons appointed by the governor, at least five of whom are deaf or hard-of-hearing, one of whom is the parent of a deaf child, one of whom is a certified teacher of the hearing-impaired, one audiologist and one otolaryngologist. Of the five deaf people, at least three shall be selected from a list of five people recommended by the board of the West Virginia association of the deaf.

§5-14-5. Powers and duties of the commission; register of hearing-impaired; duty to report to the commission; census; information clearinghouse; coordination of interpreters; outreach programs; seminars and training sessions.

The commission shall maintain a complete register of persons who are deaf or hard-of-hearing in the state. For each hearing-impaired person, the register shall describe the condition and cause of the hearing problem, the person’s capacity for education and industrial training and any other facts the commission considers valuable. Identifying information contained in the register is confidential: Provided, That information collected and maintained in the register will be available upon request to other government agencies in order to facilitate services to their hearing-impaired clients. Every health, educational and social agency and physician or other medical professional serving hearing-impaired individuals shall report to the commission, in writing, the name, age and residence of persons who are deaf or hard-of-hearing.

In addition to the register, the commission is responsible for conducting and maintaining a census of both the deaf and hard-of-hearing populations in West Virginia. Such census shall contain state, county and city figures.
The commission shall maintain a clearinghouse of information, the purpose of which is to aid hearing-impaired persons and others in obtaining appropriate services or information about such services, including, but not limited to, education, communication (including interpreters), group home facilities, independent living skills, recreational facilities, employment, vocational training, health and mental health services, substance abuse and other services necessary to assure their ability to function in society. The commission shall consult existing public and private agencies and organizations in compiling and maintaining the clearinghouse.

The commission shall establish, maintain and coordinate a statewide service to provide courts, state and local legislative bodies and others with a list of qualified and certified interpreters for the deaf and a list of qualified and certified teachers of American sign language.

The secretary of the department of health and human resources shall promulgate rules pursuant to article three, chapter twenty-nine-a of this code for the state quality assurance evaluation, including the establishment of required qualifications and ethical standards for interpreters, the approval of interpreters, the monitoring and investigation of interpreters and the suspension and revocation of approvals. The commission may conduct national association of the deaf interpreter evaluations and collect and expend funds with regard thereto.

The commission shall develop an outreach program to familiarize the public with the rights and needs of hearing-impaired people and of available services.

The commission shall investigate the condition of the hearing-impaired in this state with particular attention to those who are aged, homeless, needy, victims of rubella and victims of abuse or neglect. It shall determine the means the state possesses for establishing group homes for its hearing-impaired citizens and the need for additional facilities. The commission shall also determine the advisability and necessity of providing services to the multihandicapped hearing-impaired.
AN ACT to amend and reenact section five, article one-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the itemization of the proposed appropriations for the division of highways.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. ITEMIZATION OF PROPOSED APPROPRIATIONS IN BUDGET BILL SUBMITTED BY GOVERNOR TO LEGISLATURE.

§5-1A-5. Itemization of appropriations for state division of highways; state aid to schools.

(a) Proposed appropriations for the state division of highways shall be itemized separately for:

1. "Debt service" which means the payment of principal and interest due on all state bonds issued for the benefit of the state road fund;

2. "General operations" which includes all expenses of administration of the division of highways;

3. "Federal Aid Construction — Interstate Program";

4. "Nonfederal Aid Construction";
Any specific purposes which do not fall within the items in the subsection may be itemized and designated separately by the governor.

(b) Proposed appropriations for "State Aid to Schools" shall be itemized separately for each allowance set forth in section three, article nine-a, chapter eighteen of this code, for each allowance mentioned elsewhere in said article and chapter, and for any other purpose mentioned in said article and chapter for which an appropriation must be made from the general revenue fund.

CHAPTER 95

(S. B. 146 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed March 11, 2006; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eighteen-a, relating to marriages; requiring an application for a marriage license state that marriage is designed for a woman and a man;
and providing that certain acts, records and proceedings are not to be given effect in this state.

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

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

**ARTICLE 1. MARRIAGE.**

§48-1-7. Contents of application for marriage license; execution of application; recordation of application.

§48-1-18a. Certain acts, records and proceedings not to be given effect in this state.

§48-1-7. Contents of application for marriage license; execution of application; recordation of application.

(a) The application for a marriage license must contain a statement of the full names of both female and male parties, their social security account numbers, dates of birth, places of birth and residence addresses. If either of the parties is a legal alien in the United States of America and has no social security account number, the tourist or visitor visa number or number equivalent to a United States social security account number must be provided.

(b) Every application for a marriage license must contain the following statement: “Marriage is designed to be a loving and lifelong union between a woman and a man. The laws of this state affirm your right to enter into this marriage and to live within the marriage free from violence and abuse. Neither of you is the property of the other. Physical abuse, sexual abuse, battery and assault of a spouse or other family member, and other provisions of the criminal laws of this state are applicable to spouses and other family members and these violations are punishable by law.”
(c) Both female and male parties to a contemplated marriage are required to sign the application for a marriage license, under oath, before the clerk of the county commission or another person authorized to administer oaths under the laws of this state.

(d) The clerk shall record the application for a marriage license in the register of marriages provided for in section eleven of this article. The clerk shall note the date of the filing of the application in the register. The notation, or a certified copy thereof, is legal evidence of the facts contained in the license.

§48-1-18a. Certain acts, records and proceedings not to be given effect in this state.

A public act, record or judicial proceeding of any other state, territory, possession or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of any other state, territory, possession or tribe or a right or claim arising from the relationship shall not be given effect by this state.

CHAPTER 96

(H. B. 4780 — By Delegates Hines, Mahan, Wills, Webb, Spencer, Faircloth and Capito)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-seven, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the confidentiality of domestic relations court files; and requiring the
clerk of the circuit court to maintain a log of all persons who examine or copy confidential documents.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.


All orders in domestic relations cases entered in the civil order books by circuit clerks are public records. For purposes of this section, domestic relations cases shall include actions for divorce, annulment, separate maintenance, paternity, child support, custody, visitation, actions brought under the provisions of the uniform interstate family support act and petitions for writs of habeas corpus wherein the issue is child custody.

Upon the filing of a domestic relations case, all pleadings, exhibits or other documents contained in the court file are confidential and not open for public inspection either during the pendency of the case or after the case is closed.

When sensitive information has been disclosed during a hearing or in pleadings, evidence, or documents filed in the record, a circuit judge or family law master may, sua sponte or upon motion of a party, order such information sealed in the court file. Sealed documents or court files shall only be opened by order of a circuit judge or family law master: Provided, that, in any case pending before a family law master, the master may open and inspect the entire contents of the court file.

The parties, their designees, their attorneys, a duly appointed guardian ad litem or any person who has standing to modify or enforce a support order, shall have the right to examine and copy any document in a confidential court file.
which has not been sealed by order of a circuit judge or family
law master. Upon motion and for good cause shown, the circuit
court or family law master may permit a person not a party to
the action the right to examine and copy such documents as are
necessary to further the interests of justice.

The clerk of the circuit court shall keep a written log of all
persons who examine confidential documents as provided for
in this section. Every person who examines confidential
documents must sign the log, other than a circuit judge or
family law master before whom the case is pending, or court
personnel acting within the scope of their duties. The clerk shall
record the time and date of examination. The log shall be
retained by the clerk and shall be available upon request for
inspection by the court.

CHAPTER 97

(Com. Sub. for S. B. 128 — By Senators Kessler, Dawson, Minard,
Oliverio, Redd, Ross, Snyder, Deem, Bowman, McKenzie, Edgell,
Hunter, Mitchell, Fanning and Helmick)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two-a, chapter
forty-eight of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to redefining certain
terms for purposes of domestic or family violence proceedings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. PREVENTION AND TREATMENT OF DOMESTIC AND
FAMILY VIOLENCE.

As used in this article, unless the context clearly requires otherwise:

(a) "Family violence" or "domestic violence" or "domestic or family violence" or "abuse" means the occurrence of one or more of the following acts between family or household members, as that term is defined in subsection (b) of this section:

(1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;

(2) Placing another in reasonable apprehension of physical harm;

(3) Creating fear of physical harm by harassment, psychological abuse or threatening acts;

(4) Committing either sexual assault or sexual abuse as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code; and

(5) Holding, confining, detaining or abducting another person against that person's will.

(b) "Family or household members" means persons who:

(1) Are or were married to each other;

(2) Are or were living together as spouses;

(3) Are or were sexual or intimate partners;

(4) Are or were dating: Provided: That a casual acquaintance or ordinary fraternization between persons in a business or social context does not establish a dating relationship;

(5) Are or were residing together in the same household;
(6) Are or were related by marriage or related by consanguinity within the second degree;

(7) Have a child in common, regardless of whether they have ever married or lived together; or

(8) Are the father, stepfather, mother, stepmother, brother or sister of a family or household member described in subdivisions (1) through (7) of this subsection.

(c) "Program for victims of domestic or family violence" means a licensed program for victims of domestic or family violence and their children, which program provides advocacy, shelter, crisis intervention, social services, treatment, counseling, education or training.

(d) "Program of intervention for perpetrators" means a licensed program, where available, or if no licensed program is available, a program that:

(1) Accepts perpetrators of domestic or family violence into educational intervention groups or counseling pursuant to a court order; or

(2) Offers educational intervention groups to perpetrators of domestic or family violence.

CHAPTER 98

(Com. Sub. for S. B. 372 — By Senators Mitchell and Hunter)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article five-a of said chapter, all relating generally to the
offense of driving under the influence of alcohol, controlled
substances or drugs; procedures for conducting a secondary test;
administrative sanctions for driving under the influence; and
amending the hearing procedure for revocation of license.

Be it enacted by the Legislature of West Virginia:

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

Article
5. Serious Traffic Offenses.
5A. Administrative Procedures for Suspension and Revocation of Licenses for
Driving under the Influence of Alcohol, Controlled Substances or
Drugs.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-4. Implied consent to test; administration at direction of
law-enforcement officer; designation of type of
test; definition of law-enforcement officer.

Any person who drives a motor vehicle in this state shall be
deemed to have given his consent by the operation thereof,
subject to the provisions of this article, to a preliminary breath
analysis and a secondary chemical test of either his blood,
breath or urine for the purposes of determining the alcoholic
content of his blood. A preliminary breath analysis may be
administered in accordance with the provisions of section five
of this article whenever a law-enforcement officer has reason-
able cause to believe a person to have committed an offense
prohibited by section two of this article or by an ordinance of
a municipality of this state which has the same elements as an
offense described in said section two of this article. A second-
ary test of blood, breath or urine shall be incidental to a lawful
arrest and shall be administered at the direction of the arresting
law-enforcement officer having reasonable grounds to believe
the person to have committed an offense prohibited by section two of this article or by an ordinance of a municipality of this state which has the same elements as an offense described in said section two of this article. The law-enforcement agency by which such law-enforcement officer is employed shall designate which one of the aforesaid secondary tests shall be administered: Provided, That if the test so designated is a blood test and the person so arrested refuses to submit to such blood test, then the law-enforcement officer making such arrest shall designate in lieu thereof, either a breath or urine test to be administered, and notwithstanding the provisions of section seven of this article, such refusal to submit to a blood test only shall not result in the revocation of the arrested person's license to operate a motor vehicle in this state. Any person to whom a preliminary breath test is administered who is then arrested shall be given a written statement advising him that his refusal to submit to the secondary chemical test finally designated as provided in this section, will result in the revocation of his license to operate a motor vehicle in this state for a period of at least one year and up to life.

For the purpose of this article, the term "law-enforcement officer" or "police officer" shall mean and be limited to: (1) Any member of the department of public safety of this state; (2) any sheriff and any deputy sheriff of any county; (3) any member of a police department in any municipality as defined in section two, article one, chapter eight of this code; (4) any conservation officer of the division of natural resources; and (5) any special police officer appointed by the governor pursuant to the provisions of section forty-one, article three, chapter sixty-one of this code who has completed the course of instruction at a law-enforcement training academy as provided for under the provisions of section nine, article twenty-nine, chapter thirty of this code. Any law-enforcement officer who has been properly trained in the administration of any secondary chemical test which a law-enforcement officer may conduct
under this article, including, but not limited to, certification by
the division of health in the operation of any equipment
required for the collection and analysis of a breath sample, may
conduct such test at any location in the county wherein the
arrest is made that the equipment and the facilities may be
found. However, when the arresting officer lacks such training,
then any other law-enforcement officer who has received
training in the administration of the secondary chemical test to
be administered may, upon the request of such arresting
law-enforcement officer and in his presence, conduct such
secondary test and the results of such test may be used in
evidence to the same extent and in the same manner as if such
test had been conducted by such arresting law-enforcement
officer. Only the person actually administering or conducting
such test shall be competent to testify as to the results and the
veracity of such test.

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND
REVOCATION OF LICENSES FOR DRIVING UNDER
THE INFLUENCE OF ALCOHOL, CONTROLLED
SUBSTANCES OR DRUGS.

§17C-5A-2. Hearing; revocation; review.

(a) Upon the written request of a person whose license to
operate a motor vehicle in this state has been revoked or
suspended under the provisions of section one of this article or
section seven, article five of this chapter, the commissioner of
motor vehicles shall stay the imposition of the period of
revocation or suspension and afford the person an opportunity
to be heard. The written request must be filed with the commis-
sioner in person or by registered or certified mail, return receipt
requested, within thirty calendar days after receipt of a copy of
the order of revocation or suspension or no hearing will be
granted. The hearing shall be before the commissioner or a
hearing examiner retained by the commissioner who shall rule
on evidentiary issues and submit proposed findings of fact and
conclusions of law for the consideration of the commissioner
and all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply. The hearing shall be held at an office of the division located in or near the county wherein the arrest was made in this state or at some other suitable place in the county wherein the arrest was made if an office of the division is not available.

(b) Any such hearing shall be held within one hundred eighty days after the date upon which the commissioner received the timely written request therefor, unless there is a postponement or continuance. The commissioner may postpone or continue any hearing on the commissioner’s own motion, or upon application for each person for good cause shown. The commissioner shall adopt and implement by a procedural rule written policies governing the postponement or continuance of any such hearing on the commissioner’s own motion or for the benefit of any law-enforcement officer or any person requesting the hearing, and such policies shall be enforced and applied to all parties equally. For the purpose of conducting the hearing, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code: Provided, That the notice of hearing to the appropriate law-enforcement officers by registered or certified mail, return receipt requested, shall constitute a subpoena to appear at the hearing without the necessity of payment of fees by the division of motor vehicles.

(c) Law-enforcement officers shall be compensated for the time expended in their travel and appearance before the commissioner by the law-enforcement agency by whom they are employed at their regular rate if they are scheduled to be on duty during said time or at their regular overtime rate if they are scheduled to be off duty during said time.

(d) The principal question at the hearing shall be whether the person did drive a motor vehicle while under the influence
of alcohol, controlled substances or drugs, or did drive a motor
vehicle while having an alcohol concentration in the person’s
blood of ten hundredths of one percent or more, by weight, or
did refuse to submit to the designated secondary chemical test,
or did drive a motor vehicle while under the age of twenty-one
years with an alcohol concentration in his or her blood of two
hundredths of one percent or more, by weight, but less than ten
hundredths of one percent, by weight.

The commissioner may propose a legislative rule in
compliance with the provisions of article three, chapter twenty-
nine-a of this code, which rule may provide that if a person
accused of driving a motor vehicle while under the influence of
alcohol, controlled substances or drugs, or accused of driving
a motor vehicle while having an alcohol concentration in the
person’s blood of ten hundredths of one percent or more, by
weight, or accused of driving a motor vehicle while under the
age of twenty-one years with an alcohol concentration in his or
her blood of two hundredths of one percent or more, by weight,
but less than ten hundredths of one percent, by weight, intends
to challenge the results of any secondary chemical test of blood,
breath or urine, or intends to cross-examine the individual or
individuals who administered the test or performed the chemi-
cal analysis, the person shall, within an appropriate period of
time prior to the hearing, notify the commissioner in writing of
such intention. The rule may provide that when there is a failure
to comply with the notice requirement, the results of the
secondary test, if any, shall be admissible as though the person
and the commissioner had stipulated the admissibility of such
evidence. Any such rule shall provide that the rule shall not be
invoked in the case of a person who is not represented by
counsel unless the communication from the commissioner to
the person establishing a time and place for the hearing also
informed the person of the consequences of the person’s failure
to timely notify the commissioner of the person’s intention to
challenge the results of the secondary chemical test or cross-
examine the individual or individuals who administered the test or performed the chemical analysis.

(e) In the case of a hearing wherein a person is accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcohol concentration in the person’s blood of ten hundredths of one percent or more, by weight, or accused of driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, the commissioner shall make specific findings as to: (1) Whether the arresting law-enforcement officer had reasonable grounds to believe the person to have been driving while under the influence of alcohol, controlled substances or drugs, or while having an alcohol concentration in the person’s blood of ten hundredths of one percent or more, by weight, or to have been driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test; and (3) whether the tests, if any, were administered in accordance with the provisions of this article and article five of this chapter.

(f) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person’s blood of ten hundredths of one percent or more, by weight, or 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, the commissioner also finds by a preponderance of the evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person and was committed in reckless disregard of the safety of others, and if the commissioner further finds that the influence of alcohol, controlled substances or drugs or the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person’s license for a period of ten years: Provided, That if the commissioner has previously suspended or revoked the person’s license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(g) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person’s blood of ten hundredths of one percent or more, by weight, the commissioner also finds by a preponderance of the evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, the commissioner shall revoke the person’s license for a period of five years: Provided, That if the commissioner has previously suspended or revoked the person’s license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(h) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person’s blood of ten hun-
dredths of one percent or more, by weight, the commissioner
also finds by a preponderance of the evidence that the person
when so driving did an act forbidden by law or failed to
perform a duty imposed by law, which act or failure prox-
mately caused bodily injury to a person other than himself or
herself, the commissioner shall revoke the person's license for
a period of two years: Provided, That if the commissioner has
previously suspended or revoked the person's license under the
provisions of this section or section one of this article within the
ten years immediately preceding the date of arrest, the period of
revocation shall be ten years: Provided, however, That if the
commissioner has previously suspended or revoked the per-
son's license more than once under the provisions of this
section or section one of this article within the ten years
immediately preceding the date of arrest, the period of revoca-
tion shall be for the life of the person.

(i) If the commissioner finds by a preponderance of the
evidence that the person did drive a motor vehicle while under
the influence of alcohol, controlled substances or drugs, or did
drive a motor vehicle while having an alcohol concentration in
the person's blood of ten hundredths of one percent or more, by
weight, or finds that the person, being an habitual user of
narcotic drugs or amphetamine or any derivative thereof, did
drive a motor vehicle, or finds that the person knowingly
permitted the person's vehicle to be driven by another person
who was under the influence of alcohol, controlled substances
or drugs, or knowingly permitted the person's vehicle to be
Driven by another person who had an alcohol concentration in
his or her blood of ten hundredths of one percent or more, by
weight, the commissioner shall revoke the person's license for
a period of six months: Provided, That if the commissioner has
previously suspended or revoked the person's license under the
provisions of this section or section one of this article within the
ten years immediately preceding the date of arrest, the period of
revocation shall be ten years: Provided, however, That if the
commissioner has previously suspended or revoked the per-
son's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(j) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, the commissioner also finds by a preponderance of the evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, and if the commissioner further finds that the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person's license for a period of five years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(k) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, the commissioner also finds by a preponderance of the evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, and if the commissioner further finds that the alcohol concentration in the blood was a contributing cause to the bodily injury, the commissioner shall revoke the person's license for a period of two years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the commissioner has
previously suspended or revoked the person’s license more than
time under the provisions of this section or section one of this
article within the ten years immediately preceding the date of
arrest, the period of revocation shall be for the life of the
person.

(1) If the commissioner finds by a preponderance of the
evidence that the person did drive a motor vehicle while under
the age of twenty-one years with an alcohol concentration in his
or her blood of two hundredths of one percent or more, by
weight, but less than ten hundredths of one percent, by weight,
the commissioner shall suspend the person’s license for a
period of sixty days: Provided, That if the commissioner has
previously suspended or revoked the person’s license under the
provisions of this section or section one of this article, the
period of revocation shall be for one year, or until the person’s
twenty-first birthday, whichever period is longer.

(m) If, in addition to a finding that the person did drive a
motor vehicle while under the influence of alcohol, controlled
substances or drugs, or did drive a motor vehicle while having
an alcohol concentration in the person’s blood of ten hun-
dredths of one percent or more, by weight, the commissioner
also finds by a preponderance of the evidence that the person
when so driving did have on or within the motor vehicle another
person who has not reached his or her sixteenth birthday, the
commissioner shall revoke the person’s license for a period of
one year: Provided, That if the commissioner has previously
suspended or revoked the person’s license under the provisions
of this section or section one of this article within the ten years
immediately preceding the date of arrest, the period of revoca-
tion shall be ten years: Provided, however, That if the commis-
sioner has previously suspended or revoked the person’s license
more than once under the provisions of this section or section
one of this article within the ten years immediately preceding
the date of arrest, the period of revocation shall be for the life
of the person.
(n) For purposes of this section, where reference is made to
previous suspensions or revocations under this section, the
following types of criminal convictions or administrative
suspicions or revocations shall also be regarded as suspes-
sions or revocations under this section or section one of this
article:

(1) Any administrative revocation under the provisions of
the prior enactment of this section for conduct which occurred
within the ten years immediately preceding the date of arrest.

(2) Any suspension or revocation on the basis of a convic-
tion under a municipal ordinance of another state or a statute of
the United States or of any other state of an offense which has
the same elements as an offense described in section two,
article five of this chapter, for conduct which occurred within
the ten years immediately preceding the date of arrest.

(3) Any revocation under the provisions of section seven,
article five of this chapter, for conduct which occurred within
the ten years immediately preceding the date of arrest.

(o) In the case of a hearing wherein a person is accused of
refusing to submit to a designated secondary test, the commis-
sioner shall make specific findings as to: (1) Whether the
arresting law-enforcement officer had reasonable grounds to
believe the person had been driving a motor vehicle in this state
while under the influence of alcohol, controlled substances or
drugs; (2) whether the person was lawfully placed under arrest
for an offense relating to driving a motor vehicle in this state
while under the influence of alcohol, controlled substances or
drugs; (3) whether the person refused to submit to the second-
ary test finally designated in the manner provided in section
four, article five of this chapter; and (4) whether the person had
been given a written statement advising the person that the
person’s license to operate a motor vehicle in this state would
be revoked for at least one year and up to life if the person
refused to submit to the test finally designated in the manner
provided in section four, article five of this chapter.
(p) If the commissioner finds by a preponderance of the evidence that: (1) The arresting law-enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) the person was lawfully placed under arrest for an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (3) the person refused to submit to the secondary chemical test finally designated; and (4) the person had been given a written statement advising the person that the person’s license to operate a motor vehicle in this state would be revoked for a period of at least one year and up to life if the person refused to submit to the test finally designated, the commissioner shall revoke the person’s license to operate a motor vehicle in this state for the periods specified in section seven, article five of this chapter. The revocation period prescribed in this subsection shall run concurrently with any other revocation period ordered under this section or section one of this article arising out of the same occurrence.

(q) If the commissioner finds to the contrary with respect to the above issues, the commissioner shall rescind his or her earlier order of revocation or shall reduce the order of revocation to the appropriate period of revocation under this section, or section seven, article five of this chapter.

A copy of the commissioner’s order made and entered following the hearing shall be served upon the person by registered or certified mail, return receipt requested. During the pendency of any such hearing, the revocation of the person’s license to operate a motor vehicle in this state shall be stayed.

If the commissioner shall after hearing make and enter an order affirming the commissioner’s earlier order of revocation, the person shall be entitled to judicial review as set forth in chapter twenty-nine-a of this code. The commissioner may not stay enforcement of the order. The court may grant a stay or supersedeas of the order only upon motion and hearing, and a finding by the court upon the evidence presented, that there is
a substantial probability that the appellant shall prevail upon the merits, and the appellant will suffer irreparable harm if the order is not stayed: Provided, That in no event shall the stay or supersedeas of the order exceed one hundred fifty days. Notwithstanding the provisions of section four, article five, chapter twenty-nine-a of this code, the commissioner may not be compelled to transmit a certified copy of the transcript of the hearing to the circuit court in less than sixty days.

(r) In any revocation or suspension pursuant to this section, if the driver whose license is revoked or suspended had not reached the driver’s eighteenth birthday at the time of the conduct for which the license is revoked or suspended, the driver’s license shall be revoked or suspended until the driver’s eighteenth birthday, or the applicable statutory period of revocation or suspension prescribed by this section, whichever is longer.

(s) Funds for this section’s hearing and appeal process may be provided from the drunk driving prevention fund, as created by section forty-one, article two, chapter fifteen of this code, upon application for such funds to the commission on drunk driving prevention.

CHAPTER 99

(Com. Sub. for H. B. 4426 — By Delegates Modesitt, L. Smith, Stemple, Willison, Angotti, Manchin and Ashley)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. DRUG PARAPHERNALIA.

§47-19-8. Sale of drug paraphernalia at certain events or outdoors prohibited.

(a) Any person who attempts to sell or offer for sale drug paraphernalia as such is defined in section three of this article at any fair, festival, musical or theatrical production or at any event performed or conducted outdoors is guilty of a misdemeanor and, upon conviction, shall be fined not less than ten dollars nor more than five hundred dollars.

(b) Any person who attempts to sell or offer for sale items as described in section three of this article at any temporary roadside booth or table along any municipal street or highway is guilty of a misdemeanor and, upon conviction, shall be fined not less than ten dollars nor more than five hundred dollars.

CHAPTER 100

(S. B. 653 — Originating in the Committee on Education)

[Passed March 19, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-eight, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eleven, article three, chapter twelve of said code; to amend and
reenact sections one-a, one-d, two, three and six, article one, chapter eighteen-b of said code; to amend said chapter by adding thereto five new articles, designated articles one-a, one-b, one-c, two-a, and three-f; to amend and reenact section one, article two of said chapter; to amend and reenact section one, article three of said chapter; to amend and reenact articles three-a and three-c of said chapter; to amend and reenact section two, article four of said chapter; to amend said article by adding thereto a new section, designated section eight; to amend and reenact sections three and four, article five of said chapter; to amend and reenact section one, article six of said chapter; to amend said article by adding thereto four new sections, designated sections one-a, two-a, three-a and four-a; to amend and reenact section one, article seven of said chapter; to amend and reenact section two, article nine of said chapter; to amend and reenact sections one, two and eight, article ten of said chapter; and to amend article fourteen of said chapter by adding thereto two new sections, designated sections eight and nine, all relating to education; public education; post-secondary education; colleges, universities and community and technical colleges; rules; motor vehicle and travel rules; governance; administration; goals for post-secondary education; purposes; intents; findings; retirement and separation incentives; transfers; eliminating the pilot flexibility initiative; defined terms; compact with higher education; institutional compacts; peer institutions; legislative financing goals; financing; allocations, appropriations and expenditures; institutional operating budget; graduate education; contrary provisions; repealing inconsistent and obsolete sections; higher education policy commission; public policy agenda; appointments; composition of commission and boards; terms and qualifications of commission and board members; vacancies; eligibility for reappointment; oath of office; removal from office; meetings, expenses and compensation; powers and duties; chancellor for higher education; vice chancellors; institutional presidents and provosts; compensation; evaluation; transition year; accountability; report cards; statewide master plan; transition oversight and implementation; legislative
oversight commission on education accountability; higher education interim governing board; board of trustees; board of directors; institutional boards of governors; supervision; capital investments and projects; joint commission for vocational-technical-occupational education; duties and responsibilities of the joint commission; essential conditions for community and technical colleges; responsibility districts and areas; programs; district consortia committees; process for achieving independently accredited community and technical colleges; increasing flexibility for community and technical colleges; shared facilities and resources; relationship between administratively linked community and technical colleges and sponsoring institutions; community and technical college services in the responsibility areas of Marshall university, West Virginia state college and West Virginia university institute of technology; implementation board; continuing services; West Virginia anatomical board; purchase and acquisition; institutional boards of advisors; state advisory council of faculty; state advisory council of students; state advisory council of classified employees; personnel and faculty; classified and nonclassified employees; seniority; classified employee salary schedule and classification systems; maximum percentage of nonclassified employees; enrollment; tuition and fees; higher education resource fee; revenue bonds; statewide task force on teacher quality; and statewide task force on student financial aid.

Be it enacted by the Legislature of West Virginia:

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

Chapter
  5A. Department of Administration.
  18B. Higher Education.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-48. Travel rules; exceptions.

      (a) The secretary of administration shall promulgate rules
      relating to the ownership, purchase, use, storage, maintenance
      and repair of all motor vehicles and aircraft owned by the state
      of West Virginia and in the possession of any department,
      institution or agency thereof: Provided, That the provisions of
      sections forty-eight through fifty-three, inclusive, of this article
      do not apply to the division of highways of the department of
      transportation, the West Virginia state police of the department
      of military affairs and public safety, the division of natural
      resources, the division of forestry, the department of agricul-
      ture, the higher education policy commission and the higher

*Clerk's Note: This section was also amended by H. B. 4568 (Chapter 123), which
passed prior to this act.
education governing boards and their institutions: Provided, however, That the higher education governing boards and their institutions shall report annually to the chancellor for higher education and the legislative oversight commission on education accountability in a form and manner as required by the chancellor for higher education. Such report shall include at least the following: The number of vehicles purchased and the purchase price, the number of donated vehicles and the cost of lease agreements on leased vehicles.

(b) If, in the judgment of the secretary of administration, economy or convenience indicate the expediency thereof, the secretary may require all vehicles and the aircraft subject to regulation by this article, or those he or she may designate, to be kept in garages and other places of storage and to be made available in a manner and under the terms necessary for the official use of any departments, institutions, agencies, officers, agents and employees of the state as designated by the secretary in rules promulgated pursuant to this section. The secretary may administer the travel regulations promulgated by the governor in accordance with section eleven, article three, chapter twelve of this code, unless otherwise determined by the governor.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-11. Travel expenses; rules to be promulgated concerning same; dues to voluntary organizations; recruitment expenses for higher education policy commission and West Virginia higher education governing boards; moving expenses of employees of higher education policy commission and West Virginia higher education governing boards.

The governor shall promulgate rules concerning out-of-state travel by state officials and employees, except those in the legislative and judicial branches of the state government and
except for the attorney general, auditor, secretary of state, treasurer, board of investments, commissioner of agriculture and their employees, the higher education policy commission and the higher education governing boards and institutions under their jurisdiction. The Legislature, the supreme court of appeals and the attorney general, auditor, secretary of state, treasurer, board of investments, commissioner of agriculture, the higher education policy commission and the higher education governing boards shall promulgate rules concerning out-of-state travel for their respective branches and departments of state government. Copies of such rules shall be filed with the auditor and the secretary of state. It shall be unlawful for the auditor to issue a warrant in payment of any claim for out-of-state travel expenses incurred by a state officer or employee unless such claim meets all the requirements of the rules so filed.

Payment for dues or membership in annual or other voluntary organizations shall be made from the proper item or appropriation after an itemized schedule of such organizations, together with the amount of such dues or membership, has been submitted to the budget director and approved by the governor.

It shall be lawful for the higher education policy commission or a higher education governing board to authorize the payment of traveling expenses incurred by any person invited to visit the campus of any state institution of higher education or any other facility under control of the board to be interviewed concerning his or her possible employment by the board or agent thereof.

It shall be lawful for the higher education policy commission or a higher education governing board to authorize payment of: (1) All or part of the reasonable expense incurred by a person newly employed by the board in moving his or her household furniture, effects and immediate family to his or her place of employment; and (2) all or part of the reasonable
expense incurred by an employee of the board in moving his or
her household furniture, effects and immediate family as a
result of a reassignment of the employee which is considered
desirable, advantageous to and in the best interest of the state:
Provided, That no part of the moving expenses of any one such
employee shall be paid more frequently than once in twelve
months.

CHAPTER 18B. HIGHER EDUCATION.

Article
1. Governance.
1A. Compact with Higher Education for the Future of West Virginia.
1B. Higher Education Policy Commission.
1C. Transition Implementation.
2. University of West Virginia Board of Trustees.
2A. Institutional Boards of Governors.
3. Board of Directors of the State College System.
3A. West Virginia Joint Commission for Vocational Technical-Occupational
Education.
3C. Community and Technical College System.
3F. Community and Technical College Services in the Responsibility Areas
of Marshall University, West Virginia State College and West
Virginia University Institute of Technology.
4. General Administration.
5. Higher Education Budgets and Expenditures.
6. Advisory Boards.
9. Classified Employee Salary Schedule and Classification System.
10. Fees and Other Money Collected at State Institutions of Higher Educa-
tion.

ARTICLE 1. GOVERNANCE.

§18B-1-1d. Retirement and separation incentives.
§18B-1-2. Definitions.
§18B-1-3. Transfer of powers, duties, property, obligations, etc., of prior govern-
ing boards to the higher education interim governing board.
§18B-1-6. Rulemaking.

(a) *Findings.* — The Legislature finds that post-secondary education is vital to the future of West Virginia. For the state to realize its considerable potential in the twenty-first century, it must have a system for the delivery of post-secondary education which is competitive in the changing national and global environment, is affordable within the fiscal constraints of the state and for the state’s residents to participate and has the capacity to deliver the programs and services necessary to meet regional and statewide needs.

(1) West Virginia leads a national trend toward an aging population wherein a declining percentage of working-age adults will be expected to support a growing percentage of retirees. Public school enrollments statewide have declined and will continue to do so for the foreseeable future with a few notable exceptions in growing areas of the state. As the state works to expand and diversify its economy, it is vitally important that young people entering the workforce from our education systems have the knowledge and skills to succeed in the economy of the twenty-first century. It is equally important, however, that working-age adults who are the large majority of the current and potential workforce also possess the requisite knowledge and skills and the ability to continue learning throughout their lifetimes. The reality for West Virginia is that its future rests not only on how well its youth are educated, but also on how well it educates its entire population of any age.

(2) Post-secondary education is changing throughout the nation. Place-bound adults, employers and communities are demanding education and student services that are accessible at any time, at any place and at any pace. Institutions are seizing the opportunity to provide academic content and support services on a global scale by designing new courseware, increasing information technology-based delivery, increasing access to library and other information resources and develop-
ing new methods to assess student competency rather than "seat
time" as the basis for recognizing learning, allocating resources
and ensuring accountability. In this changing environment, the
state must take into account the continuing decline in the public
school-age population, the limits of its fiscal resources and the
imperative need to serve the educational needs of working-age
adults. West Virginia cannot afford to finance quality higher
education systems that aspire to offer a full array of programs
while competing among themselves for a dwindling pool of
traditional applicants. The competitive position of the state and
its institutions will depend fundamentally on its capacity to
reinforce the quality and differentiation of its institutions
through policies that encourage focus and collaboration.

(3) The current accountability system is exceptionally
complicated and largely defines accountability in terms of
institutional procedures. It also is not well equipped to address
cross-cutting issues such as regional economic and workforce
development, community and technical college services,
collaboration with the public schools to improve quality and
student participation rates, access to graduate education and
other broad issues of state interest. Severe fiscal constraints
require West Virginia to make maximum use of existing assets
to meet new demands. New investments must be targeted to
those initiatives designed to enhance and reorient existing
capacity, provide incentives for collaboration and focus on the
new demands. It must have a single accountability point for
developing, building consensus around and sustaining attention
to the public policy agenda and for allocating resources
consistent with this policy agenda.

(4) The state should make the best use of the expertise that
private institutions of higher education can offer and recognize
the importance of their contributions to the economic, social
and cultural well-being of their communities.
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67  (5) The system of public higher education should be open
68  and accessible to all persons, including persons with disabilities
69  and other persons with special needs.

70  (b) Compact with higher education. — In pursuance of
71  these findings, it is the intent of the Legislature to engage
72  higher education in a statewide compact for the future of West
73  Virginia, as provided in article one-a of this chapter, that
74  focuses on a public policy agenda that includes, but is not
75  limited to, the following:

76  (1) Diversifying and expanding the economy of the state;

77  (2) Increasing the competitiveness of the state’s workforce
78  and the availability of professional expertise by increasing the
79  number of college degrees produced to the level of the national
80  average and significantly improving the level of adult func-
81  tional literacy; and

82  (3) Creating a system of higher education that is equipped
83  to succeed at producing these results.

84  (c) Elements of the compact with higher education. — It is
85  the intent of the Legislature that the compact with higher
86  education include the following elements:

87  (1) A step-by-step process, as provided in articles one-b and
88  three-c of this chapter, which will enable the state to achieve its
89  public policy agenda through a system of higher education
90  equipped to assist in producing the needed results. This process
91  includes, but is not limited to, separate institutional compacts
92  with state institutions of higher education that describe changes
93  in institutional missions in the areas of research, graduate
94  education, admission standards, community and technical
95  college education and geographical areas of responsibility to
96  accomplish the following:
(A) A capacity within higher education to conduct research to enhance West Virginia in the eyes of the larger economic and educational community and to provide a basis for West Virginia’s improved capacity to compete in the new economy through research oriented to state needs;

(B) Access to stable and continuing graduate level programs in every region of the state, particularly in teacher education related to teaching within a subject area to improve teacher quality;

(C) Universities and colleges that have focused missions, their own points of distinction and quality and strong links with the educational, economic and social revitalization of their regions and the state of West Virginia;

(D) Greater access and capacity to deliver technical education, workforce development and other higher education services to place-bound adults thus improving the general levels of post-secondary educational attainment and literacy;

(E) Independently accredited community and technical colleges in every region of the state, to the extent possible, that: (i) Assess regional needs; (ii) ensure access to comprehensive community and technical college and workforce development services within each of their respective regions; (iii) convene and act as a catalyst for local action in collaboration with regional leaders, employers and other educational institutions; (iv) provide and, as necessary, broker educational services; (v) provide necessary student services; (vi) fulfill such other aspects of the community and technical college mission and general provisions for community and technical colleges as provided for in article three-c of this chapter; and (vii) make maximum use of existing infrastructure and resources within their regions to increase access, including, but not limited to, vocational technical centers, schools, libraries, industrial parks and work sites.
(2) Providing additional resources, subject to availability and appropriation by the Legislature, as provided in article one-a of this chapter, to make the state institutions of higher education more competitive with their peers, assist them in accomplishing the elements of the public policy agenda and ensure the continuity of academic programs and services to students.

(3) Establishing a process for the allocation of additional resources which focuses on achieving the elements of the public policy agenda and streamlines accountability for the step-by-step progress toward achieving these elements within a reasonable time frame as provided in article one-a of this chapter.

(4) Providing additional flexibility to the state institutions of higher education by making permanent the exceptions granted to higher education relating to travel rules and vehicles pursuant to sections forty-eight through fifty-three, inclusive, article three, chapter five-a of this code and section eleven, article three, chapter twelve of this code.

(5) Revising the higher education governance structure to make it more responsive to state and regional needs.

(d) General goals for post-secondary education. — In pursuance of the findings and the development of institutional compacts with higher education for the future of West Virginia pursuant to article one-a of this chapter, it is the intent of the Legislature to establish general goals for post-secondary education and to have the commission report the progress toward achieving these goals in the higher education report card required pursuant to section eight, article one-b of this chapter and, where applicable, made a part of the institutional compacts. The Legislature establishes the general goals as follows:

(1) The overall focus of education is on a lifelong process which is to be as seamless as possible at all levels and is to
encourage citizens of all ages to increase their knowledge and skills. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) Collaboration, coordination and interaction between public and post-secondary education to: (i) Improve the quality of public education, particularly with respect to ensuring that the needs of public schools for teachers and administrators is met; (ii) inform public school students, their parents and teachers of the academic preparation that students need to be prepared adequately to succeed in their selected fields of study and career plans; and (iii) improve instructional programs in the public schools so that the students enrolling in post-secondary education are adequately prepared;

(B) Collaboration, coordination and interaction between public and post-secondary education, the governor’s council on literacy and the governor’s workforce investment office to promote the effective and efficient utilization of workforce investment and other funds to: (i) Provide greatly improved access to information and services for individuals and employers on education and training programs, financial assistance, labor markets and job placement; (ii) increase awareness among the state’s citizens of the opportunities available to them to improve their basic literacy, workforce and post-secondary skills and credentials; and (iii) help improve their motivation to take advantage of available opportunities by making the system more seamless and user friendly;

(C) Collaboration, coordination and interaction between public and post-secondary education on the development of seamless curriculum in technical preparation programs of study between the secondary and post-secondary levels; and

(D) Opportunities for advanced high school students to obtain college credit prior to high school graduation.
(2) The number of degrees produced per capita by West Virginia institutions of higher education is at the national average. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) Collaboration, coordination and interaction between public and post-secondary education, the governor's council on literacy and the governor's workforce investment office to promote to individuals of all ages the benefits of increased post-secondary educational attainment;

(B) Assistance in overcoming the financial barriers to post-secondary education for both traditional and nontraditional students;

(C) An environment within post-secondary education that is student-friendly and that encourages and assists students in the completion of degree requirements within a reasonable time frame. The environment also should expand participation for the increasingly diverse student population;

(D) A spirit of entrepreneurship and flexibility within post-secondary education that is responsive to the needs of the current workforce and other nontraditional students for upgrading and retraining college-level skills; and

(E) The expanded use of technology for instructional delivery and distance learning.

(3) All West Virginians, whether traditional or nontraditional students, displaced workers or those currently employed, have access to post-secondary educational opportunities through their community and technical colleges, colleges and universities which: (i) Are relevant and affordable; (ii) allow them to gain transferrable credits and associate or higher level degrees; (iii) provide quality technical education and skill training; and (iv) are responsive to business, industry, labor and community needs.
State institutions of higher education prepare students to practice good citizenship and to compete in a global economy in which good jobs require an advanced level of education and skills which far surpasses former requirements. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) The development of entrepreneurial skills through programs such as the rural entrepreneurship through action learning (REAL) program which include practical experience in market analysis, business plan development and operations;

(B) Elements of citizenship development are included across the curriculum in core areas, including practical applications such as community service, civic involvement and participation in charitable organizations and in the many opportunities for the responsible exercise of citizenship that higher education institutions provide;

(C) Students are provided opportunities for internships, externships, work study and other methods to increase their knowledge and skills through practical application in a work environment;

(D) College graduates meet or exceed national and international standards for skill levels in reading, oral and written communications, mathematics, critical thinking, science and technology, research and human relations;

(E) College graduates meet or exceed national and international standards for performance in their fields through national accreditation of programs and through outcomes assessment of graduates; and

(F) Admission and exit standards for students, professional staff development, program assessment and evaluation and other incentives are used to improve teaching and learning.
State institutions of higher education exceed peer institutions in other states in measures of institutional productivity and administrative efficiency. Efforts in pursuit of this goal include, but are not limited to:

(A) The establishment of systematic ongoing mechanisms for each state institution of higher education to set goals, to measure the extent to which those goals are met and to use the results of quantitative evaluation processes to improve institutional effectiveness;

(B) The combination and use of resources, technology and faculty to their maximum potential in a way that makes West Virginia higher education more productive than its peer institutions in other states while maintaining educational quality; and

(C) The use of systemic program review to determine how much duplication is necessary to maintain geographic access and to eliminate unnecessary duplication.

Post-secondary education enhances state efforts to diversify and expand the economy of the state. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) The focus of resources on programs and courses which offer the greatest opportunities for students and the greatest opportunity for job creation and retention in the state;

(B) The focus of resources on programs supportive of West Virginia employment opportunities and the emerging high-technology industries;

(C) Closer linkages among higher education and business, labor, government and community and economic development organizations; and
(D) Clarification of institutional missions and shifting of resources to programs which meet the current and future workforce needs of the state.

(7) Faculty, staff and administrators are compensated on a competitive level with peer institutions to attract and keep quality personnel at state institutions of higher education.

(8) The tuition and fee levels for in-state students are competitive with those of peer institutions and the tuition and fee levels for out-of-state students are set at a level which at the least covers the full cost of instruction.

§18B-1-1d. Retirement and separation incentives.

(a) Notwithstanding any other provisions of this code to the contrary, each state institution of higher education may include in its strategic plan, pursuant to section one-c of this article, policies that offer various incentives for voluntary, early or phased retirement of employees or voluntary separation from employment when necessary to implement programmatic changes effectively pursuant to the findings, directives, goals and objectives of this article: Provided, That such incentives for voluntary, early or phased retirement of employees or voluntary separation from employment must be submitted by the governing board to the legislative joint committee on pensions and retirement and approved before such policies are adopted as part of the institution's strategic plan.

(b) Effective the first day of July, two thousand one, each state institution of higher education may implement, under its institutional compact, created pursuant to section two, article one-a of this chapter, policies that offer various incentives for voluntary, early or phased retirement of employees, or voluntary separation from employment, when necessary to implement programmatic changes effectively: Provided, That the institu-
tion shall meet all the requirements, including the requirement for obtaining legislative approval, set forth in this section.

(c) The policies may include the following provisions:

(1) Payment of a lump sum to an employee to resign or retire;

(2) Continuation of full salary to an employee for a predetermined period of time prior to the employee’s resignation or retirement and a reduction in the employee’s hours of employment during the predetermined period of time;

(3) Continuation of insurance coverage pursuant to the provisions of article sixteen, chapter five of this code for a predetermined period;

(4) Continuation of full employer contributions to an employee’s retirement plan during a phased retirement period; and

(5) That an employee retiring pursuant to an early or phased retirement plan may begin collecting an annuity from the employee’s retirement plan prior to the statutorily designated retirement date without terminating his or her service with the institution.

(d) No incentive provided for in this section shall be granted except in furtherance of programmatic changes undertaken pursuant to the findings, directives, goals and objectives set forth in this article.

(e) No incentive proposed by an institution pursuant to this section shall become a part of the institution’s approved strategic plan or institutional compact or be implemented without approval of the legislative joint committee on pensions and retirement.
Any costs associated with any incentive adopted or implemented in accordance with this section shall be borne entirely by the institutions and no incentive shall be granted that imposes costs on the retirement systems of the state or the public employees insurance agency unless those costs are paid entirely by the institutions.

(f) The Legislature further finds and declares that there is a compelling state interest in restricting the availability and application of these incentives to individual employees determined by the institutions to be in furtherance of the aims of this section and nothing herein shall be interpreted as granting a right or entitlement of any such incentive to any individual or group of individuals. Any employee granted incentives shall be ineligible for reemployment by the institutions during or after the negotiated period of his or her incentive concludes, including contract employment in excess of five thousand dollars per fiscal year.

(g) The West Virginia network for educational telecomputing may utilize the incentives contained in any policy approved by the legislative joint committee on pensions and retirement pursuant to this section.

§18B-1-2. Definitions.

The following words when used in this chapter and chapter eighteen-c of this code have the meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

(a) For the transition year beginning on the first day of July, two thousand, and ending on the thirtieth day of June, two thousand one, only, "governing board" or "board" means the higher education interim governing board created pursuant to article one-c of this chapter; and, beginning on the first day of July, two thousand one, "governing board" or "board" means the institutional board of governors of West Virginia university,
Marshall university, the West Virginia school of osteopathic medicine, Bluefield state college, Concord college, eastern West Virginia community and technical college, Fairmont state college, Glenville state college, Shepherd college, southern West Virginia community and technical college, West Liberty state college, West Virginia northern community and technical college and West Virginia state college, whichever is applicable within the context of the institution or institutions referred to in this chapter or in other provisions of law;

(b) Beginning on the first day of July, two thousand one, “governing boards” or “boards” means the institutional boards of governors created pursuant to subsection (b), section one, article two-a of this chapter;

(c) "Freestanding community and technical colleges" means southern West Virginia community and technical college, West Virginia northern community and technical college and eastern West Virginia community and technical college, which shall not be operated as branches or off-campus locations of any other state institution of higher education;

(d) "Community college" or "community colleges" means community and technical college or colleges as those terms are defined in this section;

(e) "Community and technical college", in the singular or plural, means the freestanding community and technical colleges and other state institutions of higher education which have defined community and technical college responsibility districts and programs in accordance with the provisions of sections four and six, article three-c of this chapter;

(f) "Community and technical college education" means the programs, faculty, administration and funding associated with the mission of community and technical colleges as provided in article three-c of this chapter.
(g) "Essential conditions" means those conditions which shall be met by community and technical colleges as provided in section three, article three-c of this chapter;

(h) "Higher education institution" means any institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended;

(i) "Higher education policy commission" or "commission" means the commission created pursuant to section one, article one-b of this chapter;

(j) "chancellor" means the chief executive officer of the higher education policy commission employed pursuant to section five, article one-b of this chapter;

(k) "Institutional operating budget" or "operating budget" for any fiscal year means an institution's total unrestricted education and general funding from all sources in a prior fiscal year, including, but not limited to, tuition and fees and legislative appropriation, and any adjustments to that funding as approved by the commission based on comparisons with peer institutions or to reflect consistent components of peer operating budgets;

(l) "Post-secondary vocational education programs" means any college-level course or program beyond the high school level provided through an institution of higher education under the jurisdiction of a governing board which results in or may result in the awarding of a two-year associate degree.

(m) "Rule" or "rules" means a regulation, standard, policy or interpretation of general application and future effect;

(n) For the purposes of this chapter and chapter eighteen-c of this code, "senior administrator" means the vice chancellor for administration employed by the chancellor in accordance with section two, article four of this chapter. The vice chancel-
lor for administration shall assume all the powers and duties that are assigned by law to the senior administrator;

(o) "State college" means Bluefield state college, Concord college, Fairmont state college, Glenville state college, Shepherd college, West Liberty state college or West Virginia state college;

(p) "State institution of higher education" means any university, college or community and technical college under the direct or indirect jurisdiction of a governing board as that term is defined in this section;

(q) "Regional campus" means West Virginia university at Parkersburg, Potomac state college of West Virginia university, and West Virginia university institute of technology. Each regional campus shall adopt separate strategic plans required by section one-c of this article;

(r) The advisory board previously appointed for the West Virginia graduate college shall be known as the "board of visitors" and shall provide guidance to the Marshall university graduate college;

(s) "Institutional compact" means a compact between a state institution of higher education and the commission, as described in section two, article one-a of this chapter.

(t) "Peer institutions", "peer group" or "peers" means public institutions of higher education used for comparison purposes and selected by the commission pursuant to section three, article one-a of this chapter;

(u) "Administratively linked community and technical college" means a community and technical college created pursuant to section eight, article three-c of this chapter;
(v) "Sponsoring institution" means the state institution of higher education that maintains an administrative link to a community and technical college pursuant to section eight, article three-c of this chapter;

(w) "Collaboration" means entering into an agreement with one or more providers of education services in order to enhance the scope, quality, or efficiency of education services;

(x) "Broker" or the act of "brokering" means serving as an agent on behalf of students, employers, communities or responsibility areas to obtain education services not offered by a sponsoring institution. These services include courses, degree programs or other services contracted through an agreement with a provider of education services either in-state or out-of-state; and

(y) "Joint commission for vocational-technical-occupational education" or "joint commission" means the commission established pursuant to article three-a of this chapter.

§18B-1-3. Transfer of powers, duties, property, obligations, etc., of prior governing boards to the higher education interim governing board.

(a) All powers, duties and authorities transferred to the board of regents pursuant to former provisions of chapter eighteen of this code and transferred to the board of trustees and board of directors which were created as the governing boards pursuant to the former provisions of this chapter and all powers, duties and authorities of the board of trustees and board of directors, to the extent they are in effect on the effective date of this section, are hereby transferred to the interim governing board created in article one-c of this chapter and shall be exercised and performed by the interim governing board as such powers, duties and authorities may apply to the institutions under its jurisdiction.
(b) Title to all property previously transferred to or vested in the board of trustees and the board of directors and property vested in either of the boards separately, formerly existing under the provisions of chapter eighteen-b of this code, are hereby transferred to the interim governing board created in article one-c of this chapter. Property transferred to or vested in the board of trustees and board of directors shall include: (1) All property vested in the board of governors of West Virginia university and transferred to and vested in the West Virginia board of regents; (2) all property acquired in the name of the state board of control or the West Virginia board of education and used by or for the state colleges and universities and transferred to and vested in the West Virginia board of regents; (3) all property acquired in the name of the state commission on higher education and transferred to and vested in the West Virginia board of regents; and (4) all property acquired in the name of the board of regents and transferred to and vested in the respective board of trustees and board of directors.

(c) Each valid agreement and obligation previously transferred to or vested in the board of trustees and board of directors formerly existing under the provisions of chapter eighteen-b of this code is hereby transferred to the interim governing board as those agreements and obligations may apply to the institutions under its jurisdiction. Valid agreements and obligations transferred to the board of trustees and board of directors shall include: (1) Each valid agreement and obligation of the board of governors of West Virginia university transferred to and deemed the agreement and obligation of the West Virginia board of regents; (2) each valid agreement and obligation of the state board of education with respect to the state colleges and universities transferred to and deemed the agreement and obligation of the West Virginia board of regents; (3) each valid agreement and obligation of the state commission on higher education transferred to and deemed the agreement and obligation of the West Virginia board of regents; and (4)
each valid agreement and obligation of the board of regents transferred to and deemed the agreement and obligation of the respective board of trustees and board of directors.

(d) All orders, resolutions and rules adopted or promulgated by the respective board of trustees and board of directors and in effect immediately prior to the first day of July, two thousand, are hereby transferred to the interim governing board and shall continue in effect and shall be deemed the orders, resolutions and rules of the interim governing board until rescinded, revised, altered or amended by the commission in the manner and to the extent authorized and permitted by law. Such orders, resolutions and rules shall include: (1) Those adopted or promulgated by the board of governors of West Virginia university and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law; (2) those respecting state colleges and universities adopted or promulgated by the West Virginia board of education and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law; (3) those adopted or promulgated by the state commission on higher education and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law; and (4) those adopted or promulgated by the board of regents prior to the first day of July, one thousand nine hundred eighty-nine, unless and until rescinded, revised, altered or amended by the respective board of trustees or board of directors in the manner and to the extent authorized and permitted by law.
(e) As to any title, agreement, obligation, order, resolution, rule or any other matter about which there is some uncertainty, misunderstanding or question, the matter shall be summarized in writing and sent to the commission which shall make a determination regarding such matter within thirty days of receipt thereof.

(f) Rules or provisions of law which refer to other provisions of law which were repealed, rendered inoperative or superseded by the provisions of this section shall remain in full force and effect to such extent as may still be applicable to higher education and may be so interpreted. Such references include, but are not limited to, references to sections and prior enactments of article twenty-six, chapter eighteen of this code and code provisions relating to retirement, health insurance, grievance procedures, purchasing, student loans and savings plans. Any determination which needs to be made regarding applicability of any provision of law shall first be made by the commission.

§18B-1-6. Rulemaking.

Effective the first day of July, two thousand one, the chancellor for higher education is hereby empowered to promulgate, adopt, amend or repeal rules, subject to the approval of the education policy commission, in accordance with the provisions of article three-a, chapter twenty-nine-a of this code, as he or she may deem necessary and convenient to ensure the full implementation of his or her powers and duties. The chancellor shall file a copy of any rule he or she proposes to promulgate, adopt, amend or repeal under the authority of this article with the legislative oversight commission on education accountability created in said article three-a, chapter twenty-nine-a of this code.
Nothing in this section may be construed to apply to any rule promulgated or adopted by a state institution of higher education.

ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE FUTURE OF WEST VIRGINIA.

§ 18B-1A-1. Purpose of article; legislative findings and intent. The purpose of this article is to establish a compact with higher education for the future of West Virginia. The Legislature recognizes both the progress achieved thus far through the higher education strategic planning process established pursuant to section one-c, article one of this chapter, and the shortfalls. West Virginia long has recognized the value of education and, on a per capita income basis, invests more to support education than most other states. Based on its findings, the Legislature recognizes that because of a combination of state and national demographic and economic factors and emerging changes in higher education delivery systems, it is in the best interests of both the state and the state’s higher education system to begin a process that will strengthen their capacity, over the long term, to provide the services of higher education so valued by the citizens of the state and so essential to the state’s economic vitality. The compact with higher education for the future of West Virginia is intended to encourage continued progress toward achieving the state’s goals for higher education and to provide incentives for change. The changes include strengthening the capacity of the higher
education system and institutions to serve regional and state
needs and responding to the challenges of growing national and
global competition in higher education delivery systems. It is
the intent of the Legislature that legislative appropriations for
higher education for fiscal year two thousand two and thereafter
will be made in accordance with this article and the strategies,
policies, timelines and benchmarks for accomplishing the goals
of the compact over a six-year period: Provided, That nothing
in this article requires any specific level of appropriation by the
Legislature.

§18B-1A-2. Institutional compacts with state institutions of
higher education; establishment and review
process.

(a) Each institution of higher education shall prepare an
institutional compact for submission to the commission. When
the process herein provided is completed, the institutional
compacts shall form the agreement between the institutions of
higher education and the commission and, ultimately, between
the institutions of higher education and the people of West
Virginia on how the institutions will use their resources to
address the intent of the Legislature and the goals set forth in
section one-a, article one of this chapter. The compacts shall
contain the following:

(1) A step-by-step process to accomplish the intent of the
Legislature and the goals set forth in section one-a, article one
of this chapter as organized by the commission. The step-by-
step process shall be delineated by objectives and shall set forth
a timeline for achieving the objectives which shall, where
applicable, include benchmarks to measure institutional
progress as defined in subsection (e) of this section.

(2) A determination of the mission of the institution which
specifically addresses changes, as applicable, in the areas of
research, graduate education, baccalaureate education, revised
admission requirements, community and technical colleges and such other areas as the commission determines appropriate. In the determination of mission, the institutions and the commission shall consider the report completed by the national center for higher education management systems pursuant to the legislative study as provided in section seven, article three of this chapter;

(3) A plan which is calculated to make any changes in institutional mission and structure within a six-year period;

(4) A statement of the geographic areas of responsibility, where applicable, for each goal to be accomplished as provided in subsection (d) of this section;

(5) A detailed statement of how the compact is aligned with and will be implemented in conjunction with the master plan of the institution;

(6) Such other items, requirements or initiatives, required by the commission, designed to accomplish the intent of the Legislature and the goals set forth in section one-a, article one of this chapter or other public policy goals established by the commission.

(b) Each institutional compact shall be updated annually and shall follow the same general guidelines contained in subsection (a) of this section.

(c) Development and updating of the institutional compacts shall be subject to the following:

(1) The ultimate responsibility for developing and updating the institutional compacts at the institutional level resides with the institutional board of advisors or the institutional board of governors, as appropriate;
(2) The ultimate responsibility for developing and adopting the final version of the institutional compacts resides with the commission;

(3) The initial institutional compacts shall be submitted to the commission by the institutions on or before the first day of February, two thousand one, and the annual updates shall be submitted on or before the first day of February of each succeeding year;

(4) The commission shall review the initial institutional compacts and the annual updates and either shall adopt the institutional compact or return it with specific comments for change or improvement. The commission shall continue this process as long as it considers advisable;

(5) By the first day of May of each year, if the institutional compact of any institution as presented by that institution is not adopted by the commission, then the commission is empowered and directed to develop and adopt the institutional compact for the institution and the institution shall be bound by the compact so adopted; and

(6) The commission shall, as far as practicable, establish uniform processes and forms for the development and submission of the institutional compacts. As a part of this function, the commission shall organize the statements of legislative intent and goals contained in section one-a, article one of this chapter in a manner that facilitates the purposes of this subdivision and the purposes of this section.

(d) The commission shall assign geographic areas of responsibility to the state institutions of higher education as a part of their institutional compacts to ensure that all areas of the state are provided necessary programs and services to achieve the public policy agenda. The benchmarks established in the institutional compacts shall include measures of programs and
services by geographic area throughout the assigned geographic area of responsibility.

(e) The compacts shall contain benchmarks used to determine progress toward meeting the goals established in the compacts. The benchmarks shall meet the following criteria:

1. They shall be as objective as possible;
2. They shall be directly linked to the goals in the compacts;
3. They shall be measured by the indicators described in subsection (f) of this section; and
4. Where applicable, they shall be used to measure progress in geographic areas of responsibility.

(f) The commission shall establish indicators which measure the degree to which the goals and objectives set forth in section one-a, article one of this chapter, are being addressed and met. The benchmarks established in subsection (e) of this section shall be measured by the indicators. The commission shall, on or before the first day of January, two thousand one, file with the legislative oversight commission on education accountability, legislative rules pursuant to article three-a, chapter twenty-nine-a of this code, that set forth at the least the following:

1. The indicators to be used to measure the degree to which the goals and objectives are being met.
2. Uniform definitions for the various data elements to be used in establishing the indicators; and
3. Guidelines for the collection and reporting of data.

(g) The commission shall approve the master plans developed by the institutional boards of governors and the institu-
tional boards of advisors pursuant to subsection (b), section 
four, article two-a of this chapter and subsection (k), section 
one, article six of this chapter.

§18B-1A-3. Peer institutions.

(a) The commission shall select not fewer than ten peer 
institutions for each state institution of higher education in West 
Virginia, including, but not limited to, independently accredited 
community and technical colleges.

(b) The peer institutions shall be selected from among institu-
tions throughout the United States and not solely from the states that 
are members of the southern regional education board.

(c) The peer institutions, as selected by the commission, 
shall be used as benchmarks for comparison purposes only and 
are not intended to reflect funding goals for West Virginia 
institutions of higher education. Such a use is inappropriate 
since institutions selected as peers for a state institution may be 
located in an area of high per capita income or have their 
funding subject to other factors that make its use unrealistic for 
setting funding goals in West Virginia. The peer institutions 
shall be used for comparison in the following areas:

(1) To determine adjustments to base operating budgets as 
described in section five of this article;

(2) To determine comparable levels of tuition;

(3) To determine comparable faculty and staff teaching 
requirements and other workloads; and

(4) For such other purposes as the law may require or the 
commission may find useful or necessary.

(d) The commission shall contract with a national, inde-
dependent education consulting firm to assist in the unbiased 
selection of peer institutions for each West Virginia institution.
The commission shall select peer institutions for each institution through an open, deliberative, objective process and in consultation with the institutional boards of governors, intended to achieve broad understanding of the basis for this selection in the higher education community and the Legislature. Final peer selection is subject to the review of the legislative oversight commission on education accountability. In selecting peer institutions, the commission shall use criteria such as, but not limited to:

(1) Institutional mission;

(2) Institutional size related to full-time equivalent students;

(3) The proportions of full-time and part-time students;

(4) The level of academic programs, including, but not limited to, number of degrees granted at the associate, baccalaureate, masters, doctoral and first-professional level;

(5) The characteristics of academic programs such as health sciences, professional, technical or liberal arts and sciences; and

(6) The level of research funding from federal competitive funding sources.

Subject to the review of the legislative oversight commission on education accountability, the commission shall review and make necessary adjustments to peer institutions at least every six years or as necessary based on changes in institutional missions as approved in institutional compacts or in changes at peer institutions.

Nothing herein shall be construed to prevent the commission from using the same peers or peer groups for more than one institution of higher education.

§18B-1A-4. Legislative financing goals.
(a) The Legislature recognizes that the higher education goals set forth in section one-a, article one of this chapter are of utmost importance. The Legislature further recognizes that meeting the goals may require the appropriation of funds above the current operating budgets of the institutions.

(b) It is, therefore, the desire of the Legislature to increase funding annually for higher education at a rate not less than the annual percentage increase in the overall general revenue budget.

(c) If the commission determines that appropriations are insufficient to fund the requirements of the institutional compacts, the commission first shall consider extending the length of the compacts or otherwise modifying the compacts to allow the institutions to achieve the benchmarks in the compacts. If modifications to the institutional compacts are not sufficient to allow the institutions to meet their benchmarks, the commission shall recommend to the Legislature methods of making the higher education system more efficient. The methods may include, but are not limited to, the following:

(1) Administrative efficiencies;

(2) Consolidation of services;

(3) Elimination of programs;

(4) Consolidating institutions; and

(5) Closing institutions.

§18B-1A-5. Financing; institutional operating budgets, additional funding.

(a) Budget request and appropriations. — The commission has the responsibility to develop a budget for the state system of higher education and submit a budget request to the governor before the first day of September, beginning in two thousand,
and for each fiscal year thereafter. The budget request specifically shall include the amount of the institutional operating budgets, as defined in section two, article one of this chapter, required for all state institutions of higher education. The budget appropriation for the state system of higher education under this chapter and other provisions of the law shall consist of separate control accounts or institutional control accounts, or some combination of such accounts, for appropriation of institutional operating budgets and other funds. The commission is responsible for allocating state appropriations to supplement institutional operating budgets in accordance with this section. In addition to the institutional operating budget and incentive funding, however, the commission also is responsible for allocating funds that are appropriated to it for other purposes: Provided, That, in order to determine institutional allocations, it is the responsibility of the institutions and their respective institutional boards of governors or advisors, as appropriate, to provide to the commission documentation on institutional progress toward mission enhancement, preliminary peer comparison calculations, performance of increased productivity and academic quality and measurable attainment in fulfilling state priorities as set forth in this article. The documentation shall be provided to the commission no later than the first day of October each year for commission review and verification.

(b) Legislative funding priorities. –

(1) The Legislature recognizes the current resource allocation model has not moved all state institutions equitably towards comparable peer funding levels. This formula has left West Virginia institutions at a competitive disadvantage to their national peers.

(2) The Legislature acknowledges that the resource allocation model used to comply with Senate Bill 547, passed during the legislative session of one thousand nine hundred
ninety-five, alleviated some of the disparity that exists among state institutions’ operating budgets, but left significant differences between the institutions and their national peers.

(3) The Legislature recognizes that a system of independently-accredited community and technical colleges is essential to the economic vitality of the state.

(4) The Legislature places great importance on achieving the priority goals outlined in the public policy agenda and believes the state institutions of higher education should play a vital role in facilitating the attainment of these goals.

(5) The Legislature also believes it is imperative that the state make progress on narrowing the peer inequity while balancing the need for sustaining the quality of our institutions.

(6) It is the charge of the commission to allocate all funds appropriated in excess of the fiscal year two thousand one general revenue appropriations in alignment with the legislative funding priorities listed below. The commission shall consider the priorities and assign a percentage of the total appropriation of new funds to each priority.

(A) Peer equity. — Funds appropriated for this purpose increase the level of the institutional operating budget for state institutions of higher education comparable to their peer institutions. The allocation shall provide, subject to the availability of funds and legislative appropriations, for a systematic adjustment of the institutional operating budgets to move all institutions’ funding in the direction of levels comparable with their peers. Institutional allocations shall be calculated as follows:

(i) A calculation shall be made of the deficiency in per student funding of each institution in comparison with the mean per student funding of the peer institutions as defined by the commission pursuant to section three of this article;
(ii) For all institutions that are deficient in comparison with peer institutions, the amounts of the deficiencies shall be totaled;

(iii) A ratio of the amount of the deficiency for an institution divided by the total amounts of deficiency for all West Virginia institutions shall be established for each institution; and

(iv) The allocation to each institution shall be calculated by multiplying the ratio by the total amount of money in the account.

(B) Independently accredited community and technical colleges development. — Funds appropriated for this purpose will ensure a smooth transition, where required, from "component" community and technical colleges to independently accredited community and technical colleges as defined in section two, article one of this chapter. Appropriations for this purpose are only to be allocated to those institutions having approved compacts with the commission that expressly include the transition of their component community colleges to independently accredited status and have demonstrated measurable progress towards this goal. By the first day of July, two thousand seven, or when all required community and technical colleges are independently accredited, whichever first occurs, funds for this purpose shall be allocated to the incentives for institutional contributions to state priorities: Provided, That if the commission determines that payments from the account to the institutions should continue beyond the first day of July, two thousand seven, it shall request an extension from the Legislature;

(C) Research challenge. — Funds appropriated for this purpose shall assist public colleges and universities in West Virginia to compete on a national and international basis by providing incentives to increase their capacity to compete
successfully for research funding. The Legislature intends for institutions to collaborate in the development and execution of research projects to the extent practicable and to target research to the needs of the state as established in the public policy agenda and linked to the future competitiveness of this state.

(i) The commission shall develop criteria for awarding grants to institutions under this account, which may include, but are not limited to, the following:

(I) Grants to be used to match externally funded, peer-reviewed research;

(II) Grants to be used to match funds for strategic institutional investments in faculty and other resources to increase research capacity;

(ii) The grants shall be distributed as follows:

(I) Forty percent of the moneys shall be distributed at the discretion of the commission, but with particular emphasis on start-up money for new research efforts; and

(II) The balance of the moneys shall be distributed to each public college and university in the same percentage that the research funds received by that public college or university bears to the total research funds received by all public colleges and universities in the state for the previous year.

(iii) The commission may establish an advisory council consisting of nationally prominent researchers and scientists, including representatives from outside the state, to assist in developing the criteria for awarding grants under this account.

(iv) For the purposes of making the distributions from this account, the commission shall establish the definition for research, research funds and any other terms as may be necessary to implement this subdivision; and
(D) Incentives for institutional contributions to state priorities. — Funds appropriated for this purpose provide incentives to institutions which demonstrate success toward advancing the goals of the public policy agenda as set forth in section one-a, article one of this chapter and to provide incentives for mission enhancement as set forth in section two of this article.

(E) Sustained quality support. — The commission shall provide additional operating funds to institutions with approved compacts. The commission shall allocate these funds on an equal percentage basis to all institutions: Provided, That the commission may delay distribution of these funds to any institution which does not demonstrate measurable progress towards the goals provided in its compact with the commission.

(c) Allocations to institutional operating budgets. — For the purposes of this subsection, the commission shall establish by rule pursuant to subsection (f), section two of this article the method for measuring the progress of each institution towards meeting the benchmarks of its institutional compact.

(d) Allocation of appropriations to the institutions. — Appropriations in this section shall be allocated to the state institutions of higher education in the following manner:

(1) For the fiscal year two thousand two, appropriations above the fiscal year two thousand two institutional operating budget shall be allocated only to institutions with approved compacts, pursuant to this article;

(2) For the fiscal year two thousand three, and each fiscal year thereafter, appropriations from the funds shall be allocated only to institutions with approved compacts, pursuant to section two of this article and which also have achieved their annual benchmarks for accomplishing the goals of their compacts, as approved by the commission: Provided, That if an institution
has not achieved all of its annual benchmarks, the commission
may distribute a portion of the funds to the institution based on
its progress as the commission determines appropriate: Pro-
vided, however, That the commission shall establish by rule
pursuant to subsection (f), section two, of this article the
method for measuring the progress of each institution toward
meeting the benchmarks of its institutional compact;

(e) Nothing in this section shall be construed in a manner
that limits the appropriation or collection of fees necessary to
effectuate the operation and purpose of the commission.

§18B-1A-6. Graduate education.

(a) Intent. — It is the intent of the Legislature to address the
need for high quality graduate education programs to be
available throughout the state.

(b) Findings. — The Legislature makes the following
findings:

(1) Since West Virginia ranks below its competitor states
in graduate degree production, particularly in the areas that are
important to the state’s competitive position in the new econ-
omy of the twenty-first century, there is a considerable need for
greater access to graduate education, especially at the master’s
degree level;

(2) There is a significant disparity in access to part-time
graduate degree programs among the different regions of the
state and part-time graduate enrollments are heavily concen-
trated in the counties immediately surrounding Marshall
university and West Virginia university;

(3) There is a particular need for increased access to
graduate programs linked directly to the revitalization of the
regional economies of the state; and
(4) There is a particular need for improved quality and accessibility of pre-service and in-service programs for teachers in subject matter fields.

(c) In order to meet the need for graduate education, the commission shall be responsible for accomplishing the following:

(1) Ensuring that West Virginia university and Marshall university expand access to master’s degree programs throughout West Virginia, with a strong emphasis on collaboration with the baccalaureate colleges and community and technical colleges in each region;

(2) Ensuring that any institution providing a master’s degree program under the provisions of this section provides a meaningful, coherent program by offering courses in such a way that students, including place-bound adults, have ample opportunity to complete a degree in a reasonable period of time;

(3) Focusing on providing courses that enhance the professional skills of teachers in their subject areas; and

(4) Ensuring that programs are offered in the most cost-effective manner to expand access throughout the region and the state.

(d) Concord college, Fairmont state college, Shepherd college, West Liberty state college and West Virginia state college shall meet the need for graduate education in their regions by following the procedures outlined below with each step building upon the foundation of the step before it:

(1) The institutions shall develop as graduate centers for their regions to broker access to graduate programs by contracting with accredited colleges and universities in and out of the state. These programs shall be related directly to each region’s education and economic needs.
(2) If the graduate education needs of the region have not been met through brokering, then the institutions may begin collaborative programs with other institutions leading to the granting of master’s degrees in selected areas that are demonstrated to be related directly to the needs of their regions and that draw on faculty strengths. An institution may continue to offer collaborative programs aimed at meeting the documented needs with the approval of the commission or, if a sustained need still exists, the institution may move to the next level.

(3) If the graduate education needs of the region have not been met through brokering and collaborative programs, the institution may explore the option of beginning its own graduate-level program leading to the granting of a master’s degree. The institution may begin its own master’s degree program only if it can meet the following conditions as determined by the commission:

(A) Demonstrate that the institution has successfully completed each of the steps required before exploring development of its own master’s degree program;

(B) Provide evidence based on experience gained in the brokering and collaborative arrangements that a sustained demand exists for the program;

(C) Demonstrate that the baccalaureate institution has the capacity to provide the program;

(D) Demonstrate that the core mission of the baccalaureate institution will not be impaired by offering the graduate program;

(E) Provide evidence that the graduate program has a reasonable expectation of being accredited;
(F) Demonstrate that the need documented in subdivision (B) of this subsection is not currently being met by any other state institution of higher education; and

(G) Such other conditions as the commission may determine.

(e) There is an urgent need for master's degree programs for teachers in disciplines or subject areas, such as mathematics, science, history, literature, foreign languages and the arts. Currently, master's-level courses in education that are offered in the regions served by the state universities are primarily in areas such as guidance and counseling, administration, special education and other disciplines unrelated to teaching in subject areas. If the commission determines that this need is not being met or can not be met in a region through the procedure established in subsection (d) of this section, then the graduate center in that region may plan one master's degree program in education focused on teaching in subject area fields. No institution may begin a graduate program under the provisions of this section until the program has been reviewed and approved by the commission. The commission shall approve only those programs, as authorized by this subsection, that emphasize serving the needs of teachers and schools in the colleges' immediate regions. In determining whether a program should be approved, the commission also shall rely upon the recommendations of the statewide task force on teacher quality provided for in section eight, article fourteen of this chapter.

(f) The commission shall review all graduate programs being offered under the provisions of this section and, using the criteria established for program startup in subsection (d) of this section, determine which programs should be discontinued.

(g) At least annually, the governing boards shall evaluate graduate programs developed pursuant to the provisions of this section and report to the commission on the following:
(1) The number of programs being offered and the courses offered within each program;

(2) The disciplines in which programs are being offered;

(3) The locations and times at which courses are offered;

(4) The number of students enrolled in the program; and

(5) The number of students who have obtained master’s degrees through each program.

The governing boards shall provide the commission with any additional information the commission requests in order to make a determination on the viability of a program.

(h) In developing any graduate program under the provisions of this section, institutions shall consider delivering courses at times and places convenient to adult students who are employed full time. Institutions shall place an emphasis on extended degree programs, distance learning and off-campus centers which utilize the cost-effective nature of extending existing university capacity to serve the state rather than duplicating the core university capacity and incurring the increased cost of developing master’s degree programs at other institutions throughout the state.

(i) Brokering institutions shall invite proposals from other public institutions of higher education for service provision prior to contracting with other institutions: Provided, That if institutions propose providing graduate programs in service areas other than in their responsibility district, the institution seeking to establish a program shall work through the district’s lead institution in providing those services.

(j) In addition to the approval required by the commission, authorization for any institution to offer a master’s degree program under the provisions of this section is subject to the formal approval processes established by the governing boards.
§18B-1A-7. Contrary provisions.

Effective the first day of July, two thousand, the provisions of this article shall supersede any provision of this code to the contrary.

§18B-1A-8. Sections repealed.

(a) On the effective date of this section, sections three-a and four, article three of this chapter relating to community and technical colleges are repealed.

(b) Effective the first day of July, two thousand, section two-b, article five of this chapter, relating to resource allocation policy relief, is repealed.

(c) Effective the first day of July, two thousand, section two-c, article five of this chapter, relating to a review of resource allocation model and policies, is repealed.

(d) Effective the first day of July, two thousand, section five, article six of this chapter, relating to the creation of advisory council on federal resources, is repealed.

(e) Effective the thirtieth day of June, two thousand one, section eight, article one of this chapter, relating to the powers and duties of the governing boards generally, is repealed.

(f) Effective the thirtieth day of June, two thousand one, section eight-a, article one of this chapter, relating to higher education accountability, is repealed.

(g) Effective the first day of July, two thousand, section six, article three of this chapter, relating to increasing flexibility for freestanding community and technical colleges, is repealed.

(h) Effective the thirtieth day of June, two thousand one, section one-b, article one of this chapter, relating to implementation of findings, directives, goals and objectives, is repealed.
(i) Effective the thirtieth day of June, two thousand one, section one-c, article one of this chapter, relating to strategically focusing resources to maximize opportunity, is repealed.

(j) Effective the first day of July, two thousand, section five, article one of this chapter, relating to placing governing boards under the department of education and the arts, is repealed.

(k) Effective the first day of July, two thousand, section six, article six of this chapter, relating to the university of West Virginia anatomical board, is repealed.

(l) Effective the thirtieth day of June, two thousand one, section one, article five of this chapter, relating to appropriations, is repealed.

(m) Effective the thirtieth day of June, two thousand one, section two, article five of this chapter, relating to resource allocation model and policies, is repealed.

(n) Effective the thirtieth day of June, two thousand, section two, article six of this chapter, relating to advisory councils of faculty, is repealed.

(o) Effective the thirtieth day of June, two thousand, section three, article six of this chapter, relating to advisory councils of students, is repealed.

(p) Effective the thirtieth day of June, two thousand, section four, article six of this chapter, relating to advisory councils of classified employees, is repealed.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-1. Higher education policy commission established; development of public policy agenda.

§18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.
§18B-1B-1. Higher education policy commission established; development of public policy agenda.

There is hereby created the "higher education policy commission", hereinafter referred to as the "commission", which is responsible for developing, gaining consensus around and overseeing the implementation of a public policy agenda. It is the intent of the Legislature that the commission be responsible for development and articulation of the public policy agenda for higher education and other statewide issues pursuant to section one-a, article one of this chapter. All matters of governance not specifically assigned to the commission by law are the duty and responsibility of the governing board or boards.

§18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

(a) The commission is comprised of nine members, all of whom are entitled to vote. One is the secretary of education and the arts, ex officio. One is the state superintendent of schools: Provided, That if the state superintendent of schools desires not to serve, the state board of education shall submit to the governor the names of three nominees, which may include members of the state board of education. The governor shall select from the nominees a member to serve on the commission. The three nominees shall be persons who are knowledgeable in the area of public education policy, are able to represent the
state board of education and who understand and are committed
to achieving the goals and objectives as set forth in the institu-
tional compacts and in section one-a, article one of this chapter.

(b) The other seven members of the commission shall be
citizens of the state, appointed by the governor, by and with the
advice and consent of the Senate: Provided, That prior to
appointment, the governor shall interview each candidate to
assure that the person selected understands and is committed to
achieving the goals and objectives as set forth in the institu-
tional compacts and in section one-a, article one of this chapter.
The governor shall invite the president of the Senate, the
speaker of the House of Delegates, the chairs of the Senate and
House of Delegates committees on finance and education and
such other legislative leaders as the governor may determine to
participate in interviewing potential candidates. Each member
appointed to the commission by the governor shall represent the
public interest and shall be committed to the legislative intent
and goals set forth in section one-a, article one of this chapter.

(c) The governor may not appoint any person to be a
member of the commission who is an officer, employee or
member of an advisory board of any state college or university,
an officer or member of any political party executive commit-
tee, the holder of any other public office or public employment
under the government of this state or any of its political
subdivisions or an appointee or employee of any governing
board or an immediate family member of any employee under
the jurisdiction of the commission or any governing board. Of
the members appointed by the governor from the public at
large, no more than four thereof shall belong to the same
political party and at least two shall be appointed from each
congressional district.

(d) The governor shall appoint seven members to the
commission on the first day of July, two thousand, or as soon
thereafter as is practicable and the original terms of all members shall commence on the first day of July, two thousand.

(e) The terms of the members appointed by the governor shall be for overlapping terms of four years, except, of the original appointments, one shall be appointed to a term of one year, two shall be appointed to a term of two years, two shall be appointed to a term of three years and two shall be appointed to a term of four years. Each subsequent appointment which is not for the purpose of filling a vacancy in an unexpired term shall be for a term of four years.

(f) The governor shall appoint a member to fill any vacancy among the seven members of the commission appointed by the governor, by and with the advice and consent of the Senate, which member appointed to fill such vacancy shall serve for the unexpired term of the vacating member. The governor shall fill the vacancy within thirty days of the occurrence of the vacancy.

(g) No member appointed by the governor shall be eligible to serve more than two consecutive terms.

(h) Before exercising any authority or performing any duties as a member of the commission, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the constitution of West Virginia and the certificate thereof shall be filed with the secretary of state.

(i) No member of the commission appointed by the governor may be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality, and then only in the manner prescribed by law for the removal of the state elective officers by the governor.

§18B-1B-3. Meetings and compensation.
(a) The secretary of education and the arts shall call the initial meeting of the commission and preside until a chairperson is selected. Thereafter, the commission shall meet as needed at the time and place specified by the call of the chairperson.

(b) The commission shall hold an annual meeting each June for the purpose of electing officers for the next fiscal year. At the annual meeting, the commission shall elect from its members appointed by the governor a chairperson and other officers as it may consider necessary or desirable: Provided, That the initial meeting for the purpose of selecting the first chairperson and other officers shall be held during July, two thousand, or as soon thereafter as practicable. All officers shall be elected from the citizen appointees. The chairperson and other officers shall be elected for a one-year term commencing on the first day of July following the annual meeting and ending on the thirtieth day of June of the following year: Provided, however, That the terms of officers elected in July, two thousand, begin upon election and end on the thirtieth day of June, two thousand one. The chairperson of the board may serve no more than two consecutive terms as chair.

(c) Members of the commission shall be reimbursed for actual and necessary expenses incident to the performance of their duties upon presentation of an itemized sworn statement thereof. The foregoing reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the commission.

(d) A majority of the members constitutes a quorum for conducting the business of the commission.

§18B-1B-4. Powers and duties of higher education policy commission.
(a) The primary responsibility of the commission is to develop, establish and implement policy that will achieve the goals and objectives found in section one-a, article one of this chapter. To that end, the commission has the following powers and duties:

(1) Develop, oversee and advance the public policy agenda to address major challenges facing the state, including, but not limited to, the goals and objectives found in section one-a, article one of this chapter and including specifically those goals and objectives pertaining to the compacts created pursuant to section two, article one-a of this chapter and to develop and implement the master plan described in section ten of this article for the purpose of accomplishing the mandates of this section;

(2) Develop, oversee and advance the implementation of a financing policy for higher education in West Virginia. The policy shall meet the following criteria:

(A) Provide an adequate level of education and general funding for institutions pursuant to section five, article one-a of this chapter;

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and deferred maintenance; and

(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one of this chapter;

(3) Create a policy leadership structure capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the commission shall seek input from
the Legislature and the governor and specifically from the state
board of education and local school districts in order to create
the necessary linkages to assure smooth, effective and seamless
movement of students through the public education and post-
secondary education systems and to ensure that the needs of
public school courses and programs can be fulfilled by the
graduates produced and the programs offered;

(B) Ensuring that the governing boards carry out their duty
effectively to govern the individual institutions of higher
education; and

(C) Holding the higher education institutions and the higher
education system as a whole accountable for accomplishing
their missions and implementing the provisions of the com-

pacts;

(4) Develop and adopt each institutional compact;

(5) Review and adopt the annual updates of the institutional
compacts;

(6) Review the progress of community and technical
colleges in every region of West Virginia; such review includes,
but is not limited to, evaluating and reporting annually to the
legislative oversight commission on education accountability
on the step-by-step implementation required in article three-c
of this chapter;

(7) Serve as the accountability point for the governor for
implementation of the public policy agenda and for the Legisla-
ture by maintaining a close working relationship with the
legislative leadership and the legislative oversight commission
on education accountability;

(8) Promulgate legislative rules pursuant to article three-a,
chapter twenty-nine-a to fulfill the purposes of section five,
article one-a of this chapter;
(9) Establish and implement a peer group for each public institution of higher education in the state as described in section three, article one-a of this chapter;

(10) Establish and implement the benchmarks and performance indicators necessary to measure institutional achievement towards state policy priorities and institutional missions;

(11) In January, two thousand one, and annually thereafter, report to the Legislature and to the legislative oversight commission on education accountability during the January interim meetings, on a date and at a time and location to be determined by the president of the Senate and the speaker of the House of Delegates. The report shall address at least the following:

(A) The performance of the system of higher education during the previous fiscal year, including, but not limited to, progress in meeting goals stated in the compacts and progress of the institutions and the higher education system as a whole in meeting the goals and objectives set forth in section one-a, article one of this chapter;

(B) An analysis of enrollment data collected pursuant to subsection (i), section one, article ten of this chapter and recommendations for any changes necessary to assure access to high-quality, high-demand education programs for West Virginia residents;

(C) The priorities established for capital investment needs pursuant to subdivision (12) of this subsection and the justification for such priority; and

(D) Recommendations of the commission for statutory changes needed to further the goals and objectives set forth in section one-a, article one of this chapter;
(12) Establish a formal process for identifying needs for capital investments and for determining priorities for these investments;

(13) On or before the first day of October, two thousand, develop, establish and implement guidelines for institutions to follow concerning extensive capital projects. The guidelines shall provide a process for developing capital projects, including, but not limited to, the notification by an institution to the commission of any proposed capital project which has the potential to exceed one million dollars in cost. No such project may be pursued by an institution without the approval of the commission;

(14) Draw upon the expertise available within the governor's workforce investment office and the West Virginia development office as a resource in the area of workforce development and training;

(15) Acquire legal services as are considered necessary, including representation of the commission, its institutions, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the attorney general for legal assistance and representation as provided by law;

(16) Employ a chancellor for higher education pursuant to section five of this article;

(17) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission;

(18) Provide suitable offices in Charleston for the chancellor, vice chancellors and other staff;
(19) Conduct a study of the faculty tenure system as administered by the governing boards with specific attention to the role of community service and other criteria for achieving tenured status. The commission shall make a report of its findings and recommendations to the legislative oversight commission on education accountability by the first day of July, two thousand one;

(20) Advise and consent in the appointment of the presidents of the institutions of higher education pursuant to section six of this article. The role of the commission in approving an institutional president is to assure through personal interview that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compact and in section one-a, article one of this chapter;

(21) Approve the total compensation package from all sources for institutional presidents, as proposed by the governing boards. The governing boards must obtain approval from the commission of the total compensation package both when institutional presidents are employed initially and afterward when any change is made in the amount of the total compensation package;

(22) Establish and implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other post-secondary education and careers related, as far as possible, to results from current assessment tools in use in West Virginia;

(23) Approve and implement a uniform standard, as developed by the chancellor, to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by
the governing boards throughout the public higher education
system. The chancellor shall develop a clear, concise explana-
tion of the standard which the governing boards shall communi-
cate to the state board of education and the state superintendent
of schools;

(24) Review and approve or disapprove capital projects as
described in subdivision (12), subsection (a) of this section;

(25) Develop and implement an oversight plan to manage
system-wide technology such as the following:

(A) Expanding distance learning and technology networks
to enhance teaching and learning, promote access to quality
educational offerings with minimum duplication of effort,
increase the delivery of instruction to nontraditional students,
provide services to business and industry and increase the
management capabilities of the higher education system; and

(B) Reviewing courses and programs offered within the
state by nonstate public or private institutions of higher
education;

(26) Establish and implement policies and procedures to
ensure that students may transfer and apply toward the require-
ments for a bachelor's degree the maximum number of credits
earned at any regionally accredited in-state or out-of-state
community and technical college with as few requirements to
repeat courses or to incur additional costs as is consistent with
sound academic policy;

(27) Establish and implement policies and procedures to
ensure that students may transfer and apply toward the require-
ments for a degree the maximum number of credits earned at
any regionally accredited in-state or out-of-state higher educa-
tion institution with as few requirements to repeat courses or to
incur additional costs as is consistent with sound academic
policy;
(28) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a master's degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(29) Establish and implement policies and programs, in cooperation with the institutions of higher education, through which students who have gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or internet-based education programs, may demonstrate by competency-based assessment that they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor's degree at a state institution of higher education;

(30) Seek out and attend regional, national and international meetings and forums on education and workforce development related topics, as in the commission's discretion is critical for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals and objectives pursuant to section one-a, article one of this chapter;

(31) Develop, establish and implement guidelines for higher education governing boards and institutions to follow when considering capital projects. The guidelines shall include, but not be limited to, the following:

(A) That the governing boards and institutions not approve or promote projects that give competitive advantage to new private sector projects over existing West Virginia businesses, unless the commission determines such private sector projects
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are in the best interest of the students, the institution and the community to be served; and

(B) That the governing boards and institutions not approve or promote projects involving private sector businesses which would have the effect of reducing property taxes on existing properties or avoiding, in whole or in part, the full amount of taxes which would be due on newly developed or future properties.

The commission shall determine whether the guidelines developed pursuant to this subdivision should apply to any project which a governing board and institution alleges to have been planned on or before the effective date of this section. In making the determination, the commission shall be guided by the best interests of the students, the institution and the community to be served.

(32) Certify to the Legislature, on or before the first day of February, two thousand one, the priority funding percentages and other information needed to complete the allocation of funds in section five, article one-a of this chapter;

(33) Consider and submit to the appropriate agencies of the executive and legislative branches of state government, a single budget for higher education that reflects recommended appropriations: Provided, That on the first day of January, two thousand one, and annually thereafter, the commission shall submit the proposed institutional allocations based on each institution's progress toward meeting the goals of its institutional compact;

(34) Initiate a full review and analysis of all student fees charged by state institutions of higher education and make recommendations to the legislative oversight commission on education accountability no later than the second day of January, two thousand two. The final report shall contain
(35) The commission has the authority to assess institutions for the payment of expenses of the commission or for the funding of statewide higher education services, obligations or initiatives; and

(36) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to institutions of higher education for qualifying noncapital expenditures incurred in the provision of services to students with physical, learning or severe sensory disabilities.

(b) In addition to the powers and duties listed in subsection (a) of this section, the commission has the following general powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda:

(1) Planning and policy leadership including a distinct and visible role in setting the state’s policy agenda and in serving as an agent of change;

(2) Policy analysis and research focused on issues affecting the system as a whole or a geographical region thereof;

(3) Development and implementation of institutional mission definitions including use of incentive money to influence institutional behavior in ways that are consistent with public priorities;

(4) Academic program review and approval including the use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes;
(5) Development of budget and allocation of resources, including reviewing and approving institutional operating and capital budgets and distributing incentive and performance-based funding;

(6) Administration of state and federal student aid programs;

(7) Acting as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

(8) Development, establishment and implementation of information, assessment and accountability systems including maintenance of statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(9) Developing, establishing and implementing policies for licensing and oversight for both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs in the state;

(10) Development, implementation and oversight of statewide and regionwide projects and initiatives such as those using funds from federal categorical programs or those using incentive and performance-based funding from any source; and

(11) Quality assurance that intersects with all other duties of the commission particularly in the areas of planning, policy analysis, program review and approval, budgeting and information and accountability systems.

c) In addition to the powers and duties provided for in subsections (a) and (b) of this section and any other powers and duties as may be assigned to it by law, the commission has such other powers and duties as may be necessary or expedient to accomplish the purposes of this article.
The commission is authorized to withdraw specific powers of any institutional governing board for a period not to exceed two years if the commission makes a determination that:

1. The governing board has failed for two consecutive years to develop an institutional compact as required in article one of this chapter;

2. The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the institutional board of governors according to state law; or

3. Other circumstances which, in the view of the commission, severely limit the capacity of the institutional board of governors to carry out its duties and responsibilities.

4. The period of withdrawal of specific powers may not exceed two years during which time the commission is authorized to take steps necessary to reestablish the conditions for restoration of sound, stable and responsible institutional governance.

Notwithstanding the provisions of section six, article one-a of this chapter, the commission shall undertake a study of the most effective and efficient strategies and policies to address the findings and intent of that section.

1. The issues addressed by this study shall include, but not be limited to:

A. Strategies to ensure access to graduate education;

B. The development of state colleges as regional graduate centers with authority to broker access to graduate programs in their responsibility areas;

C. The process by which state colleges obtain authorization to grant graduate degrees;
(D) The relationship of regional graduate centers at state colleges to graduate programs offered within those regions by state universities; and

(E) Other issues related to initiatives to meet each region’s need and enhance the quality and competitiveness of graduate programs offered and/or brokered by West Virginia state colleges and universities.

(2) The commission shall report the findings of this study along with the recommendations for legislative actions, if any, to address these findings and the intent of this section, to the legislative oversight commission on education accountability by the first day of January, two thousand one.

§18B-1B-5. Employment of chancellor for higher education; office; powers and duties generally; employment of vice chancellors.

(a) The commission, created pursuant to section one of this article, shall employ a chancellor for higher education who shall be the chief executive officer of the commission and who shall serve at its will and pleasure. The vice chancellor for administration shall serve as the interim chancellor until a chancellor is employed.

(b) The commission shall set the qualifications for the position of chancellor and shall conduct a thorough nationwide search for qualified candidates. A qualified candidate is one who meets at least the following criteria:

(1) Possesses an excellent academic and administrative background;

(2) Demonstrates strong communication skills;

(3) Has significant experience and an established national reputation as a professional in the field of higher education;
(4) Is free of institutional or regional biases; and

(5) Holds or retains no other administrative position within the system of higher education while employed as chancellor.

(c) The chancellor shall be compensated on a basis in excess of, but not to exceed twenty percent greater than, the base salary of any president of a state institution of higher education or the administrative head of a governing board.

(d) With the approval of the commission, the chancellor may employ a vice chancellor for health sciences who shall serve at the will and pleasure of the chancellor. The vice chancellor for health sciences shall coordinate the West Virginia university school of medicine, the Marshall university school of medicine, and the West Virginia school of osteopathic medicine and also shall provide assistance to the governing boards on matters related to medical education and health sciences. The vice chancellor for health sciences shall perform all duties assigned by the chancellor, the commission and state law. In the case of a vacancy in the office of vice chancellor of health sciences, the duties assigned to this office by law are the responsibility of the chancellor or a designee;

(e) With the approval of the commission, the chancellor shall employ a vice chancellor for community and technical college education and workforce development who serves at the will and pleasure of the chancellor. The duties of this position include the general supervision of the joint commission for vocational-technical-occupational education, as provided in article three-a of this chapter, and such other duties as assigned. Any reference in this code to the vice chancellor for community and technical colleges means the vice chancellor for community and technical college education and workforce development, which vice chancellor for community and technical colleges shall become the vice chancellor for community and technical college education and workforce development. It is the duty and
responsibility of the vice chancellor for community and technical college education and workforce development to:

(1) Provide assistance to the commission, the chancellor and the governing boards on matters related to community and technical college education;

(2) Advise, assist and consult regularly with the institutional presidents; institutional boards of governors or boards of advisors, as appropriate; and district consortia committees of the state institutions of higher education involved in community and technical college education; and

(3) Perform all duties assigned by the chancellor, the commission and state law.

(f) With the approval of the commission, the chancellor shall employ a vice chancellor for administration pursuant to section two, article four of this chapter;

(g) With the approval of the commission, the chancellor shall employ a vice chancellor for state colleges who shall serve at the will and pleasure of the chancellor. It is the duty and responsibility of the vice chancellor for state colleges to:

(1) Provide assistance to the commission, the chancellor and the state colleges and freestanding community and technical colleges on matters related to or of interest and concern to these institutions;

(2) Advise, assist and consult regularly with the institutional presidents and institutional boards of governors of each state college or freestanding community and technical college;

(3) Serve as an advocate and spokesperson for the state colleges and community and technical colleges to represent them and to make their interests, views and issues known to the chancellor, the commission and governmental agencies;
(4) Perform all duties assigned by the chancellor, the commission and state law; and

(5) Establish such guidelines as believed appropriate to restrict the use of public funds by the state colleges and freestanding community and technical colleges for influencing public policy development.

In addition, the vice chancellor for state colleges has the responsibility and the duty to provide staff assistance to the institutional presidents and governing boards to the extent practicable;

(h) Apart from the offices of the vice chancellors as set forth in this section and section two, article four of this chapter, the chancellor shall determine the organization and staffing positions within the office that are necessary to carry out his or her powers and duties and may employ necessary staff;

(i) The chancellor may enter into agreements with any state agency or political subdivision of the state, any state higher education institution or any other person or entity to enlist staff assistance to implement the powers and duties assigned by the commission or by state law;

(j) The chancellor shall be responsible for the day-to-day operations of the commission and shall have the following responsibilities:

(1) To carry out policy and program directives of the commission;

(2) To develop and submit annual reports on the implementation plan to achieve the goals and objectives set forth in section one-a, article one of this chapter and in the institutional compacts;
(3) To prepare and submit to the commission for its approval the proposed budget of the commission including the offices of the chancellor and the vice chancellors;

(4) Effective the first day of July, two thousand one, and under the direction of the commission, to promulgate rules for higher education, as set forth in article three-a, chapter twenty-nine-a of this code;

(5) Effective the first day of July, two thousand one, and under the direction of the commission, to:

(A) Provide technical assistance, when requested, to the governing boards in the development of rules;

(B) Review rules and approve rules of the governing boards for filing with the office of the vice chancellor for administration;

(C) Determine when a joint rule among the governing boards is necessary or required by law and, in those instances and in consultation with the governing boards, promulgate the joint rule;

(D) Ensure that all the requirements are met for promulgating rules as set forth in article three-a, chapter twenty-nine-a of this code: Provided, That nothing in said chapter shall be construed to require the approval and filing of institution rules except for approval by the chancellor and filing in the office of the vice chancellor as provided herein; and

(E) Establish a process for the transition from the rules promulgated by the previous board of trustees, board of directors and the interim governing board to new rules filed by the chancellor, subject to approval of the policy commission. Until new rules are filed, the existing rules of said boards shall remain in effect and applicable to the respective state institutions of higher education. The chancellor shall review all new
rules filed to replace the existing rules of the said boards and determine their proper classification as legislative, procedural or interpretive, notwithstanding the classification of the existing rule or a classification established for a specific rule by this code prior to the effective date of this section. The chancellor shall strictly and uniformly apply the definitions of rule, legislative rule, interpretive rule and procedural rule set forth in section two, article one, chapter twenty-nine-a of this code and unless specifically mandated by an act of the Legislature following the effective date of this section, may not require the filing, as rules, of regulations relating solely to the internal management of the commission, governing boards and institutions under their jurisdiction. The chancellor shall be responsible for ensuring that any policy which is required to be uniform across the institutions is applied in a uniform manner;

(6) To perform all other duties and responsibilities assigned by the commission or by state law.

(k) The chancellor shall be reimbursed for all actual and necessary expenses incurred in the performance of all assigned duties and responsibilities;

(l) The chancellor is the primary advocate for higher education and, with the commission, advises the Legislature on matters of higher education in West Virginia. As the primary advocate for higher education, the chancellor shall work closely with the legislative oversight commission on education accountability and with the elected leadership of the state to ensure that they are fully informed about higher education issues and that the commission fully understands the goals for higher education that the Legislature has established by law;

(m) The chancellor may design and develop for consideration by the commission new statewide or regional initiatives in accordance with the goals set forth in section one-a, article
one of this chapter and the public policy agenda articulated by
the commission.

(n) The chancellor shall work closely with members of the
state board of education and with the state superintendent of
schools to assure that the following goals are met:

(1) Development and implementation of a seamless
kindergarten-through-college system of education; and

(2) Appropriate coordination of missions and programs. To
further the goals of cooperation and coordination between the
commission and the state board of education, the chancellor
shall serve as an ex officio, nonvoting member of the state
board of education.

§18B-1B-6. Appointment of institutional presidents; evaluation.

(a) Appointment of institutional presidents. — Effective on
the first day of July, two thousand, appointment of presidents
of the public institutions of higher education shall be made as
follows:

(1) Subject to the approval of the commission, the appropri-
ate governing board of the institution shall appoint a president
for Bluefield state college, Concord college, eastern West
Virginia community and technical college, Fairmont state
college, Glenville state college, Marshall university, Shepherd
college, southern West Virginia community and technical
college, West Liberty state college, West Virginia northern
community and technical college, West Virginia school of
osteopathic medicine, West Virginia state college and West
Virginia university;

(2) Subject to the approval of the appropriate governing
board and to the provisions of article three-c of this chapter, the
president of the appropriate institution shall appoint the
president of the regional campuses of West Virginia university
and of the community and technical colleges which remain linked administratively to a sponsoring institution. The presidents of such regional campuses and community and technical colleges shall serve at the will and pleasure of the institutional president. The president of the sponsoring institution shall appoint a president for the administratively linked community and technical college at the appropriate time as outlined in the institutional compact and approved by the commission.

(3) Subject to the approval of the commission and to the provisions of articles three-c and three-f of this chapter, the president of the appropriate institution shall appoint the provost in those cases where the community and technical college remains as a component of another institution. The provost shall serve at the will and pleasure of the president of the employing institution.

(b) Incumbent heads of institutions. — Any president of a public institution of higher education in office on the first day of July, two thousand, shall continue in office subject to state law: Provided, That the provost of an administratively linked community and technical college in office on the thirtieth day of June, two thousand one, may become the president of that community and technical college on the first day of July, two thousand one, with the approval of the governing board of the institution and subject to the consent of the commission. The presidents shall continue in office subject to state law and subject to the will and pleasure of the appropriate governing board or employing institution.

(c) Evaluation of institutional presidents. — The governing boards shall conduct written performance evaluations of each institution's president: Provided, That the presidents of regional campuses shall be evaluated by the president of West Virginia University and the presidents of administratively linked commu-
nity and technical colleges shall be evaluated by the president of the employing institution. Evaluations shall be done in every fourth year of employment as president, recognizing unique characteristics of the institution and utilizing institutional personnel, institutional boards of advisors as appropriate, staff of the appropriate governing board and persons knowledgeable in higher education matters who are not otherwise employed by a governing board. A part of the evaluation shall be a determination of the success of the institution in meeting the requirements of its institutional compact.

§18B-1B-7. Duties of higher education policy commission during transition year.

During the transition year beginning on the first day of July, two thousand, and ending on the thirtieth day of June, two thousand one, the following is the intent of the Legislature:

(a) The higher education interim governing board, established in article one-c of this chapter, is the governing agency for public higher education in West Virginia;

(b) The chancellor for higher education shall provide to the governing board adequate and appropriate staff assistance to carry out its duties and responsibilities as assigned by law;

(c) The commission has the power and authority to require the interim governing board to transfer from accounts under the control of the interim governing board such sums as the commission believes appropriate for the proper performance of its duties and responsibilities;

(d) The commission shall focus its attention first on organizing itself to carry out its duties and responsibilities, including, but not limited to, establishing a search and screening process to identify candidates and to employ a chancellor;
The commission shall focus its attention second on the following policy areas, but may consider others as appropriate:

(1) Developing legislative rules as required by law;

(2) Researching and developing the elements of the finance plan required by section five, article one-a of this chapter;

(3) Developing guidelines to be used by institutional boards of governors in employing institutional presidents;

(4) Developing a statewide master plan pursuant to section nine of this article;

(5) Developing and approving the institutional compacts as provided in section two, article one-a of this chapter;

(6) Developing a plan to provide on-going education and training opportunities to members of institutional boards of governors and institutional boards of advisors, including, but not limited to, exploring the possibility of obtaining private funds to bring members together for orientation, education and leadership training prior to the first day of July, two thousand one;

(7) Establishing a peer group for each public institution of higher education in the state as provided in section three, article one-a of this chapter; and

(8) Developing the elements of the higher education report card to be used to report institutional and system progress on meeting the goals and objectives of the institutional compacts and of section one-a, article one of this chapter; and

On or before the first day of January, two thousand one, the commission shall certify to the governor, the president of the Senate and the speaker of the House of Delegates draft legislation which will accomplish the transfer on the first day of July, two thousand one, of all powers, duties, property,
obligations, contracts, rules, orders, resolutions or any other matters which should be transferred or vested in the commission, the governing boards or any other agency. In the event the Legislature does not enact legislation which accomplishes the recommended transfers or vesting, effective the first day of July, two thousand one, all such matters are transferred to and vested in the commission and the commission is hereby authorized and directed to delegate such matters as is consistent with assigned powers and duties in section four of this article and section four, article two-a of this chapter. In the event of a dispute between or among the commission and the governing boards as to the proper delegation of these matters, the decision of the commission shall control.

§18B-1B-8. Higher education accountability; institutional and statewide report cards.

Effective on the first day of July, two thousand one:

(a) The commission is directed to make information available to parents, students, faculty, staff, state policymakers and the general public on the quality and performance of public higher education. This information shall be consistent and comparable between and among the state institutions of higher education and, if applicable, comparable with information from peer institutions in the region and the nation.

(b) On or before the first day of July, two thousand one, the chancellor shall review policy series sixteen, related to the higher education report card, of the rules of the board of trustees and board of directors and determine whether a new rule should be adopted providing for the collection, analysis and dissemination of data and information on the performance of the state institutions of higher education, including health sciences education, in relation to the findings, directives, goals and objectives set forth in section one-a, article one of this chapter, the institutional compacts and in comparison to their
peers. The rules shall provide the legislative oversight commis-

sion on education accountability with full and accurate informa-
tion while minimizing the institutional burden of recordkeeping
and reporting. The rules shall include uniform definitions for
the various indicators of student and institutional performance
and guidelines for the collection and reporting of data and the
preparation, printing and distribution of report cards under this
section. The report card forms shall provide for brief, concise
reporting in nontechnical language of required information.
Any technical or explanatory material which a governing board
wishes to include shall be contained in a separate appendix
available for a reasonable fee to the general public upon
request.

(c) The president or chief executive officer of each public
college, university or community and technical college shall
prepare and submit annually all requested data to the commis-

sion at the time established by the commission.

The commission shall prepare report cards for institutions
under their jurisdiction and in accordance with the guidelines
set forth in this section and rules promulgated under this
section.

(d) The higher education central office staff under the
direction of the vice chancellor for administration shall provide
technical assistance to each institution and governing board in
data collection and reporting and is responsible for assembling
the statewide report card from information submitted by each
governing board. The statewide report card shall include the
data for each institution for each separately listed, applicable
indicator and the aggregate of the data for all public institutions
of higher education. The statewide report card shall be prepared
using actual institutional, state, regional and national data, as
applicable and available, indicating the present performance of
the individual institutions, the governing boards and the state
system of higher education. The report card also shall include
goals and trends for the institutions and the higher education
system and shall include all the information required either by
statute or by rule as authorized in subsection (b) of this section.
Statewide report cards shall be based upon information for the
current school year or for the most recent school year for which
the information is available, in which case such year shall be
clearly footnoted.

(e) The statewide report card shall be completed and
disseminated with copies to the legislative oversight commis-
sion on education accountability prior to the first day of January
of each year.

(f) For a reasonable fee, the chancellor shall make copies of
the report cards available to any individual requesting them.

§18B-1B-9. Statewide master plan.

(a) The commission shall develop a master plan for higher
education for the state.

(b) The plan shall be developed on or before the first day of
July, two thousand one, and shall be communicated to the
legislative oversight commission on education accountability.

(c) The master plan shall include, but not be limited to, the
following:

(1) A detailed demonstration of how the master plan will be
used to meet the goals and objectives outlined in section one-a,
article one of this chapter;

(2) A well-developed set of goals, as set forth in section
one-a, article one of this chapter, outlining missions, degree
offerings, resource requirements, physical plant needs, person-
nel needs, enrollment levels and other planning determinants
and projections for public higher education and other matters
necessary in such a plan to assure that the needs of the state for a quality system of higher education are addressed; and

(3) A plan for involving and collaborating with the state board of education, the public and private institutions of higher education and other education providers to assure that a comprehensive system of education is developed for West Virginia.

(d) The master plan for higher education for the state shall be established for periods of not less than three nor more than six years and shall be revised periodically as necessary.

ARTICLE 1C. TRANSITION IMPLEMENTATION.

§18B-1C-1. Transition oversight.

§18B-1C-2. Higher education interim governing board.

§18B-1C-1. Transition oversight.

(a) The legislative oversight commission on education accountability is charged with responsibility to monitor and oversee implementation of the policy changes required by this act.

(b) The responsibilities of the commission include, but are not limited to, the following:

(1) Reviewing the overall progress of the commission and institutions in implementing the provisions of this act;

(2) Reviewing the implementation of financing policy including:

(A) Monitoring the process for selecting peer institutions as provided for in section three, article one-a of this chapter;

(B) Monitoring the process for determining the institutional operating budgets pursuant to section five, article one-a of this chapter;
(3) Monitoring the development of indicators and benchmarks as provided for in section two, article one-a of this chapter;

(4) Monitoring the development of the institutional compacts pursuant to section two, article one-a of this chapter and the statewide master plan required in section nine, article one-b of this chapter; and

(5) Subject to the provisions of section eight, article three-c of this chapter, evaluating the existing community and technical college programs and services at each of the community and technical colleges and determining the effectiveness of the indicated manner to accomplish the essential conditions at each institution. Notwithstanding the provisions of section eight, article three-c of this chapter, the team shall determine if the goals of section one-a, article one of this chapter are being met under the current structure;

(c) The provisions of this section expire the thirtieth day of June, two thousand one.

§18B-1C-2. Higher education interim governing board.

(a) For the transition year beginning on the first day of July, two thousand, and ending on the thirtieth day of June, two thousand one, there is hereby established the higher education interim governing board, hereinafter referred to as the "interim governing board", to serve as the governing board for public higher education in West Virginia. The interim governing board shall have such powers and duties pursuant to section eight, article one of this chapter, as may be necessary to carry out their responsibilities under this section.

(b) The interim governing board is comprised of nine persons, appointed by the governor, with the advice and consent of the Senate. Nothing herein shall prohibit a person from
serving concurrently on the interim governing board and an
institutional board of advisors.

(c) The interim governing board shall be appointed as soon
as possible after the passage of this act and shall continue its
duties until the thirtieth day of June, two thousand one. Ap-
pointments to the board shall be made so that members may
begin their work no later than the first day of July, two thou-
sand.

(d) Any person appointed to a position on the board shall
have governing experience in higher education, be knowl-edge-
able on education matters and represent the public interest.

(e) The members shall elect a chairman.

(f) The board shall meet as needed at the time and place
specified by the call of the chairperson or a majority of the
members.

(g) The intent and purposes of the interim governing board
are:

(1) To serve and act as the governing board for state
institutions of higher education and to ensure a smooth,
efficient transition to a new governing structure to be effective
the first day of July, two thousand one;

(2) To initiate the implementation of this act and to inform
the governor and the Legislature of the implementation status
and of any areas in which further executive or legislative action
may be necessary;

(3) To advise and assist the commission on implementation
of the act in a manner which achieves the intent, purposes and
goals of the act;
(4) To resolve, or seek appropriate remedy of, errors, omissions, oversights or conflicts relative to implementation of the act; and

(5) To take such other action within their scope of authority as may be necessary to provide for the smooth transition in the governance of the higher education system.

(h) Members of the board shall be reimbursed for actual and necessary expenses incident to the performance of their duties upon presentation of an itemized sworn statement thereof. The reimbursement shall be paid from legislative appropriations and other funds available to the board.

(i) A majority of the members constitutes a quorum for conducting the business of the board.

(j) On the first day of July, two thousand, there is transferred to the interim governing board, all powers, duties, property, obligations, contracts, rules, orders, resolutions or any other matters which were vested in the prior boards of trustees, directors or both.

(k) The provisions of this section expire on the thirtieth day of June, two thousand one.

ARTICLE 2. UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES.

§18B-2-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

(a) The board of trustees shall consist of seventeen persons, of whom one shall be the chancellor of the board of directors of the state college system, ex officio, who shall not be entitled to vote; one shall be the state superintendent of schools, ex officio, who shall not be entitled to vote; one shall be the chairman of the advisory council of students, ex officio, who shall be entitled to vote; one shall be the chairman of the advisory
8 council of faculty, ex officio, who shall be entitled to vote: and
9 one shall be the chairman of the advisory council of classified
10 employees, ex officio, who shall be entitled to vote. The other
11 twelve trustees shall be citizens of the state, appointed by the
12 governor, by and with the advice and consent of the Senate.
13
14 Each of the trustees appointed to the board by the governor
15 shall represent the public interest and shall be especially
16 qualified in the field of higher education by virtue of the
17 person’s knowledge, learning, experience or interest in the
18 field.
19
20 Except for the ex officio trustees, no person shall be eligible
21 for appointment to membership on the board of trustees who is
22 an officer, employee or member of an advisory board of any
23 state college or university, an officer or member of any political
24 party executive committee, the holder of any other public office
25 or public employment under the government of this state or any
26 of its political subdivisions or an appointee or employee of the
27 board of trustees or the board of directors: Provided, That if
28 there are no ethical restrictions under state or federal law, a
29 federal employee may serve as a member of the board of
30 trustees. Of the twelve trustees appointed by the governor from
31 the public at large, not more than six thereof shall belong to the
32 same political party and at least two trustees shall be appointed
33 from each congressional district.
34
35 Except as provided in this section, no other person may be
36 appointed to the board.
37
38 (b) The governor shall appoint twelve trustees as soon after
39 the first day of July, one thousand nine hundred eighty-nine, as
40 is practicable and the original terms of all trustees shall
41 commence on that date.
42
43 The terms of the trustees appointed by the governor shall be
44 for overlapping terms of six years, except, of the original
appointments, four shall be appointed to terms of two years, four shall be appointed to terms of four years and four shall be appointed to terms of six years. Each subsequent appointment which is not for the purpose of filling a vacancy in an unexpired term shall be for a term of six years.

The governor shall appoint a trustee to fill any vacancy among the twelve trustees appointed by the governor, by and with the advice and consent of the Senate, which trustee appointed to fill such vacancy shall serve for the unexpired term of the vacating trustee. The governor shall fill the vacancy within sixty days of the occurrence of the vacancy.

All trustees appointed by the governor shall be eligible for reappointment: Provided, That a person who has served as a trustee or director during all or any part of two consecutive terms shall be ineligible to serve as a trustee or director for a period of three years immediately following the second of the two consecutive terms.

The chairman of the advisory council of students, ex officio; the chairman of the advisory council of faculty, ex officio; and the chairman of the advisory council of classified employees, ex officio, shall serve the terms for which they were elected by their respective advisory councils. These members shall be eligible to succeed themselves.

(c) Before exercising any authority or performing any duties as a trustee, each trustee shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the constitution of West Virginia and the certificate thereof shall be filed with the secretary of state.

(d) No trustee appointed by the governor shall be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality and then
only in the manner prescribed by law for the removal of the
state elective officers by the governor.

(e) The board of trustees is abolished the thirtieth day of
June, two thousand.

(f) On the first day of July, two thousand, there is trans-
ferred to the interim governing board, all powers, duties,
property, obligations, contracts, rules, orders, resolutions or any
other matters which were vested in the prior boards of trustees,
directors or both.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.


§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

(a) Effective the thirtieth day of June, two thousand one, the
institutional boards of advisors at Bluefield state college,
Concord college, eastern West Virginia community and
technical college, Fairmont state college, Glenville state
college, Marshall university, Shepherd college, southern West
Virginia community and technical college, West Liberty state
college, West Virginia northern community and technical
college, the West Virginia school of osteopathic medicine, West
Virginia state college and West Virginia university are abol-
ished.

(b) Effective the first day of July, two thousand one, an
institutional board of governors is established at each of the
following institutions: Bluefield state college, Concord college,
eastern West Virginia community and technical college,
Fairmont state college, Glenville state college, Marshall
university, Shepherd college, southern West Virginia commu-
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... community and technical college, West Liberty state college, West Virginia northern community and technical college, the West Virginia school of osteopathic medicine, West Virginia state college and West Virginia university. Each institutional board of governors shall consist of twelve persons: Provided, That the institutional boards of governors for Marshall university and West Virginia university shall consist of fifteen persons. Each institutional board of governors shall include:

(1) A full-time member of the faculty with the rank of instructor or above duly elected by the faculty;

(2) A member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body;

(3) A member of the institutional classified staff duly elected by the classified staff; and

(4) Nine lay members appointed by the governor by and with the advice and consent of the Senate pursuant to section one-a, article six of this chapter: Provided, That for the institutional boards of governors at Marshall university and West Virginia university, twelve lay members shall be appointed by the governor by and with the advice and consent of the Senate pursuant to section one-a, article six of this chapter: Provided, however, That, of the appointed lay members, the governor shall appoint one superintendent of a county board of education from the area served by the institution: Provided further, That in making the initial appointments to the institutional boards of governors, the governor shall appoint, except in the case of death, resignation or failure to be confirmed by the Senate, those persons who are lay members of the institutional boards of advisors for those institutions named in subsection (a) on the thirtieth day of June, two thousand one, and appointed pursuant to section one-a, article six of this chapter.
(c) Of the nine members appointed by the governor, no more than five may be of the same political party: Provided,
That of the twelve members appointed by the governor to the governing boards of Marshall university and West Virginia university, no more than seven may be of the same political party. At least six of the members shall be residents of the state:
Provided, however, That of the twelve members appointed by the governor to the governing boards of Marshall university and West Virginia university, at least eight of the members shall be residents of the state. The student member shall serve for a term of one year. The term beginning in July, two thousand, shall end on the thirtieth day of June, two thousand one. The term beginning in July, two thousand one, shall end on the thirtieth day of June, two thousand two. Thereafter, the term shall begin on the first day of July. The faculty member and the classified staff member shall serve for a term of two years. The term beginning in July, two thousand, shall end on the thirtieth day of June, two thousand one, and the term beginning in July, two thousand one, shall end on the thirtieth day of June, two thousand three. Thereafter, the term shall begin on the first day of July. The appointed lay citizen members shall serve terms of four years each. All members shall be eligible to succeed themselves for no more than one additional term. A vacancy in an unexpired term of a member shall be filled for the unexpired term within thirty days of the occurrence of the vacancy in the same manner as the original appointment or election. Except in the case of a vacancy, all elections shall be held and all appoint-ments shall be made no later than the thirtieth day of June preceding the commencement of the term, except the election of officers for the term beginning in July, two thousand one shall be made that July. Each institutional board of governors shall elect one of its appointed lay members to be chairperson in June of each year. No member may serve as chairperson for more than two consecutive years.
(d) The appointed members of the institutional boards of governors shall serve staggered terms. Of the initial appointments by the governor to each of the institutional boards of governors, two shall be appointed for terms of one year, two shall be appointed for terms of two years, two shall be appointed for terms of three years and three shall be appointed for terms of four years: Provided, That for the initial appointments to the governing boards of Marshall University and West Virginia University, three shall be appointed for terms of one year, three shall be appointed for terms of two years, three shall be appointed for terms of three years and three shall be appointed for terms of four years. After the initial appointments, all appointees shall serve for terms of four years.

(e) No person shall be eligible for appointment to membership on an institutional board of governors who is an officer, employee or member of any other institutional board of governors, a member of an institutional board of advisors of any public institution of higher education, an employee of any institution of higher education, an officer or member of any political party executive committee, the holder of any other public office or public employment under the government of this state or any of its political subdivisions or a member of the commission: Provided, That this subsection shall not be construed to prevent the faculty, classified staff, student representative or superintendent of a county board of education from being members of the governing boards.

(f) Before exercising any authority or performing any duties as a member of a governing board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the constitution of West Virginia and the certificate thereof shall be filed with the secretary of state.

(g) No member of a governing board appointed by the governor may be removed from office by the governor except
for official misconduct, incompetence, neglect of duty or gross
immorality and then only in the manner prescribed by law for
the removal of the state elective officers by the governor.

(h) The president of the institution shall make available
resources of the institution for conducting the business of its
institutional board of governors. The members of the institu-
tional board of governors shall serve without compensation, but
shall be reimbursed for all reasonable and necessary expenses
actually incurred in the performance of their official duties
under this article upon presentation of an itemized sworn
statement of their expenses. All expenses incurred by the
institutional board of governors and the institution under this
section shall be paid from funds allocated to the institution for
that purpose.


(a) The boards of governors shall hold at least six meetings
in every fiscal year, including an annual meeting each June:
Provided, That an annual meeting for the purpose of selecting
the first chairperson and other officers shall be held during July,
two thousand one. The president of the appropriate institution
shall call the first meeting of the institutional board of gover-
nors in July, two thousand one, or as soon thereafter as practica-
ble and preside until officers are elected. Officers elected in
July, two thousand one, shall begin their terms upon election
and shall serve until the thirtieth day of June the following year.
Of the twelve voting members of the boards of governors, seven
shall constitute a quorum: Provided, however, That of the
fifteen voting members of each of the boards of governors for
the state universities, eight shall constitute a quorum. A
majority vote of the quorum shall be necessary to pass upon
matters before the institutional board of governors.

(b) The boards of governors may set aside time as they
consider appropriate to afford administrators, faculty, students
and classified staff an opportunity to discuss issues affecting these groups.


(a) For the transition year beginning on the first day of July, two thousand and ending on the thirtieth day of June, two thousand one, the interim governing board is subject to the supervision of the secretary of education and the arts. Rules adopted by the governing board are subject to approval by the secretary of education and the arts.

(b) Effective the first day of July, two thousand one, and thereafter, the governing boards are subject to the supervision of the chancellor. The chancellor is responsible for the coordination of policies and purposes of the governing boards and shall provide for and facilitate sufficient interaction among the governing boards and between the governing boards and the state board of education to meet the goals and objectives provided for in the compacts and in section one-a, article one of this chapter.

(c) The governing boards and the state board of education shall provide any and all information requested by the chancellor in a timely manner.


Effective the first day of July, two thousand one, each governing board shall separately have the following powers and duties:

(a) Determine, control, supervise and manage the financial, business and education policies and affairs of the state institutions of higher education under its jurisdiction;
(b) Develop a master plan for the institutions under its jurisdiction; except the administratively linked community and technical colleges shall develop their master plans subject to the provisions of section one, article six of this chapter. The ultimate responsibility for developing and updating the master plans at the institutional level resides with the institutional board of governors or board of advisors, as applicable, but the ultimate responsibility for approving the final version of the institutional master plans, including periodic updates, resides with the commission. Each master plan shall include, but not be limited to, the following:

(1) A detailed demonstration of how the master plan will be used to meet the goals and objectives of the institutional compact;

(2) A well-developed set of goals outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in such a plan to assure that the needs of the institution’s area of responsibility for a quality system of higher education are addressed;

(3) Documentation of the involvement of the commission, institutional constituency groups, clientele of the institution and the general public in the development of all segments of the institutional master plan.

The plan shall be established for periods of not less than three nor more than six years and shall be revised periodically as necessary, including the addition or deletion of degree programs as, in the discretion of the appropriate governing board, may be necessary.

(c) Prescribe for the state institutions of higher education under its jurisdiction, in accordance with its master plan and the compact for each institution, specific functions and responsibil-
(d) Direct the preparation of a budget request for the state institutions of higher education under its jurisdiction, such request to relate directly to missions, goals and projections as found in the institutional master plans and the institutional compacts;

(e) Consider, revise and submit to the commission a budget request on behalf of the state institutions of higher education under its jurisdiction;

(f) Review, at least every five years, all academic programs offered at the state institutions of higher education under its jurisdiction. The review shall address the viability, adequacy and necessity of the programs in relation to its institutional master plan, the institutional compact and the education and workforce needs of its responsibility district. As a part of the review, each governing board shall require the institutions under its jurisdiction to conduct periodic studies of its graduates and their employers to determine placement patterns and the effectiveness of the education experience. Where appropriate, these studies should coincide with the studies required of many academic disciplines by their accrediting bodies.

(g) The governing boards also shall ensure that the sequence and availability of academic programs and courses offered by the institutions under their jurisdiction is such that students have the maximum opportunity to complete programs in the time frame normally associated with program completion. Each governing board also is responsible to see that the needs of nontraditional college-age students are appropriately addressed and, to the extent it is possible for the individual governing board to control, to assure core coursework completed at state institutions of higher education under its jurisdic-
tion is transferable to any other state institution of higher education for credit with the grade earned.

(h) Subject to the provisions of article one-b of this chapter, the appropriate governing board has the exclusive authority to approve the teacher education programs offered in the institution under its control. In order to permit graduates of teacher education programs to receive a degree from a nationally accredited program and in order to prevent expensive duplication of program accreditation, the chancellor may select and utilize one nationally recognized teacher education program accreditation standard as the appropriate standard for program evaluation.

(i) Utilize faculty, students and classified staff in institutional-level planning and decision making when those groups are affected.

(j) Administer a system for the management of personnel matters, including, but not limited to, personnel classification, compensation, and discipline for employees of the institutions under their jurisdiction, subject to the provisions of state and federal law: Provided, That the chancellor may promulgate a new uniform rule for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;

(k) Administer a system for the hearing of employee grievances and appeals therefrom as prescribed by article twenty-nine, chapter eighteen of this code so that aggrieved parties may be assured of timely and objective review: Provided, That after the first day of July, two thousand, the procedure established in article twenty-nine, chapter eighteen of this code shall be the exclusive mechanism for hearing employee grievances and appeals.
(l) Solicit and utilize or expend voluntary support, including financial contributions and support services, for the state institutions of higher education under its jurisdiction;

(m) Appoint a president or other administrative head for the institutions of higher education under its jurisdiction subject to the provisions of section six, article one-b of this chapter.

(n) Conduct written performance evaluations of each institution's president pursuant to section six, article one-b of this chapter;

(o) Submit to the commission no later than the first day of November of each year an annual report of the performance of the institutions of higher education under its jurisdiction during the previous fiscal year as compared to stated goals in its master plan and institutional compact.

(p) Enter into contracts or consortium agreements with the public schools, private schools or private industry to provide technical, vocational, college preparatory, remedial and customized training courses at locations either on campuses of the public institution of higher education or at off-campus locations in the institution's responsibility district. To accomplish this goal, the boards are permitted to share resources among the various groups in the community.

(q) Delegate, with prescribed standards and limitations, the part of its power and control over the business affairs of a particular state institution of higher education under its jurisdiction to the president or other administrative head of the state institution of higher education in any case where it considers the delegation necessary and prudent in order to enable the institution to function in a proper and expeditious manner and to meet the requirements of its institutional compact. If a governing board elects to delegate any of its power and control under the provisions of this subsection, it shall notify the
chancellor. Any such delegation of power and control may be rescinded by the appropriate governing board or the chancellor at any time, in whole or in part.

(r) Unless changed by the interim governing board or the chancellor, the governing boards shall continue to abide by existing rules setting forth standards for acceptance of advanced placement credit for their respective institutions. Individual departments at institutions of higher education may, upon approval of the institutional faculty senate, require higher scores on the advanced placement test than scores designated by the appropriate governing board when the credit is to be used toward meeting a requirement of the core curriculum for a major in that department.

(s) Each governing board, or its designee, shall consult, cooperate and work with the state treasurer and the state auditor to update as necessary and maintain an efficient and cost-effective system for the financial management and expenditure of special revenue and appropriated state funds at the institutions under its jurisdiction that ensures that properly submitted requests for payment be paid on or before due date, but in any event, within fifteen days of receipt in the state auditor's office.

(t) The governing boards in consultation with the chancellor and the secretary of the department of administration shall develop, update as necessary and maintain a plan to administer a consistent method of conducting personnel transactions, including, but not limited to, hiring, dismissal, promotions and transfers at the institutions under their jurisdiction. Each such personnel transaction shall be accompanied by the appropriate standardized system or forms which will be submitted to the respective governing board and the department of finance and administration.
(u) Notwithstanding any other provision of this code to the contrary, the governing boards shall have the authority to transfer funds from any account specifically appropriated for their use to any corresponding line item in a general revenue account at any agency or institution under their jurisdiction as long as such transferred funds are used for the purposes appropriated. The governing boards also shall have the authority to transfer funds from appropriated special revenue accounts for capital improvements under their jurisdiction to special revenue accounts at agencies or institutions under their jurisdiction as long as such transferred funds are used for the purposes appropriated; and

(v) Notwithstanding any other provision of this code to the contrary, the governing boards may acquire legal services as are considered necessary, including representation of the governing boards, their institutions, employees and officers before any court or administrative body. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the governing boards may, but are not required to, call upon the attorney general for legal assistance and representation as provided by law.

ARTICLE 3. BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM.

§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

(a) The board of directors of the state college system shall consist of sixteen persons, of whom one shall be the chancellor of the university of West Virginia board of trustees, ex officio, who shall not be entitled to vote; one shall be the state superintendent of schools, ex officio, who shall not be entitled to vote; one shall be the chair of the joint commission for vocational-technical-occupational education, ex officio, who shall not be
entitled to vote; one shall be the chairman of the advisory
council of students, ex officio, who shall be entitled to vote; one
shall be the chairman of the advisory council of faculty, ex
officio, who shall be entitled to vote; and one shall be the
chairman of the advisory council of classified employees, ex
officio, who shall be entitled to vote. The other ten directors
shall be citizens of the state, appointed by the governor, by and
with the advice and consent of the Senate. On or after the tenth
day of March, one thousand nine hundred ninety-six, the board
shall be reconstituted and all terms of members appointed by
the governor prior to the tenth day of March, one thousand nine
hundred ninety-six, shall expire upon the appointment by the
 governor of all the directors required to be appointed by this
section. The governor shall make appointments required by this
section no later than the fifteenth day of March, one thousand
nine hundred ninety-six.

Each of the directors appointed to the board by the governor
shall represent the public interest and shall be especially
qualified in the field of higher education by virtue of the
person’s knowledge, learning, experience or interest in the
field. The relative enrollments of baccalaureate and community
and technical students in the state college system shall be
considered by the governor when making such appointments
and the governor shall use his or her best efforts to achieve a
balance among the members who reflect the various interests,
goals and concerns reflected by the relative enrollments.

Except for the ex officio directors, no person shall be
eligible for appointment to membership on the board of
directors who is an officer, employee or member of an advisory
board of any state college or university, an officer or member
of any political party executive committee, the holder of any
other public office or public employment under the government
of this state or any of its political subdivisions, or an appointee
or employee of the board of trustees or board of directors:
Provided, That if there are no ethical restrictions under state or federal law, a federal employee may serve as a member of the board of directors. Of the ten directors appointed by the governor from the public at large, not more than five thereof shall belong to the same political party and at least three directors of the board shall be appointed from each congressional district.

Except as provided in this section, no other person may be appointed to the board.

(b) The governor shall appoint ten directors as soon after the tenth day of March, one thousand nine hundred ninety-six, as is practicable and the original terms of all directors shall commence on that date. The terms of the directors appointed by the governor shall be for overlapping terms of six years, except, of the original appointments, three shall be appointed to terms of two years, three shall be appointed to terms of four years and four shall be appointed to terms of six years. Each subsequent appointment which is not for the purpose of filling a vacancy in an unexpired term shall be appointed to a term of six years.

The governor shall appoint a director to fill any vacancy among the ten directors appointed by the governor, by and with the advice and consent of the Senate, which director appointed to fill such vacancy shall serve for the unexpired term of the vacating director. The governor shall fill the vacancy within sixty days of the occurrence of the vacancy.

All directors appointed by the governor shall be eligible for reappointment: Provided, That a person who serves as a director or trustee during all or any part of two consecutive terms beginning after the first day of March, one thousand nine hundred ninety-six, shall be ineligible to serve as a director for a period of three years immediately following the second of the two consecutive terms.
The chairman of the advisory council of students, ex officio; the chairman of the advisory council of faculty, ex officio; and the chairman of the advisory council of classified employees, ex officio, shall serve the terms for which they were elected by their respective advisory councils. These members shall be eligible to succeed themselves.

(c) Before exercising any authority or performing any duties as a director, each director shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the constitution of West Virginia and the certificate thereof shall be filed with the secretary of state.

(d) No director appointed by the governor shall be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal by the governor of the state elective officers.

(e) The board of directors is abolished the thirtieth day of June, two thousand.

(f) On the first day of July, two thousand, there is transferred to the interim governing board all powers, duties, property, obligations, contracts, rules, orders, resolutions or any other matters which were vested in the prior boards of trustees, directors or both.

ARTICLE 3A. WEST VIRGINIA JOINT COMMISSION FOR VOCATIONAL-TECHNICAL-OCUPATIONAL EDUCATION.

§18B-3A-1. Joint commission continued; jurisdiction of higher education policy commission.
§18B-3A-2. Legislative findings and intent.
§18B-3A-3. Appointment, composition and terms of joint commission; meetings; expenses.
§18B-3A-4. Definitions.
§18B-3A-5. Duties and responsibilities.
§18B-3A-1. Joint commission continued; jurisdiction of higher education policy commission.

The West Virginia joint commission for vocational-technical-occupational education, hereinafter referred to in this article as the joint commission, is hereby continued. The joint commission is subject to the jurisdiction of the commission established in article one-b of this chapter and is subject to the supervision of the chancellor and the vice chancellor for community and technical college education and workforce development.

§18B-3A-2. Legislative findings and intent.

The Legislature finds that the goals for post-secondary education set forth in section one-a, article one of this chapter include a finding that West Virginia's future rests not only on how well its youth are educated, but also on how well it educates its entire population at any age and that the state must take into account the imperative need to serve the education needs of working-age adults. These findings further note that the state should make the best use of the expertise that private institutions of higher education, vocational and technical programs and private proprietary schools can offer and recognize the importance of their contributions to the economic, social and cultural well-being of their communities.

The Legislature further finds that certain goals focus on the need to serve better both traditional and nontraditional students and adults. Among these goals is one which states that the overall focus of education is on a lifelong process which is to be as seamless as possible at all levels and is to encourage citizens of all ages to increase their knowledge and skills. These goals also emphasize the need for cooperation and collaboration at all levels in education, training and workforce development to achieve the state's public policy agenda.
The Legislature further finds that certain acts to streamline accountability, to make maximum use of existing assets to meet new demands and target new funding to initiatives designed to enhance and reorient existing capacity, to provide incentives for brokering and collaboration and to focus on new demands now require that many of the responsibilities originally charged to the joint commission be reexamined.

Therefore, the intent of the Legislature in amending and reenacting this article is to reorient the mission, role and responsibilities of the joint commission consistent with and supportive of the mission, role and responsibilities of the commission, the goals for post-secondary education and accountability for achieving the state's public policy agenda.

§18B-3A-3. Appointment, composition and terms of joint commission; meetings; expenses.

(a) The joint commission is comprised of nine persons, seven of whom are appointed by the governor, with the advice and consent of the Senate. The vice chancellor for community and technical college education and workforce development and the assistant superintendent for technical and adult education of the state department of education shall serve as ex officio, nonvoting members of the joint commission. On or after the effective date of this section, the joint commission shall be reconstituted and all terms of members appointed by the governor prior to the effective date of this section shall expire upon the appointment by the governor of all the members required to be appointed by this section.

The seven members appointed by the governor shall represent the interests of the business, labor and employer communities and demonstrate knowledge of the workforce needs of the various areas of the state. No person who is employed by an institution of higher education and no person who is engaged in providing, or employed by a person or
company whose primary function is to provide workforce
development services and activities, is eligible to serve on the
joint commission. No provider of education services, workforce
development services or related activities may serve on the joint
commission. The governor shall appoint three members from
each congressional district. Not more than four of the members
may be from the same political party.

(b) Members of the joint commission shall serve for terms
of four years, except that of the original appointments, one
member shall be appointed for one year; two members shall be
appointed for two years; two members shall be appointed for
three years; and two members shall be appointed for four years.
No member may serve more than two consecutive full terms
nor may any member be appointed to a term which results in
the member serving more than eight consecutive years.

(c) The vice chancellor for community and technical
college education and workforce development shall call the
initial meeting of the commission and preside until a chairper-
son is selected. The members shall elect a chairperson from
among the persons appointed by the governor. The joint
commission shall meet at least quarterly and may meet more
often at the call of the chairperson. One such meeting shall be
a public forum for the discussion of the goals and standards for
vocational education in the state. Members of the joint commis-
sion shall serve without compensation, but shall be reimbursed
for all reasonable and necessary expenses actually incurred in
the performance of their official duties under this article upon
presentation of an itemized sworn statement of their expenses,
except that members of the commission who are employees of
the state shall be reimbursed by their employing agency.

§18B-3A-4. Definitions.
(a) "Secondary vocational-technical-occupational education" means any course or program at the high school level that results in, or may result in, a high school diploma or its equivalent, under the jurisdiction of the state board of education.

(b) "Post-secondary vocational-technical-occupational education" means any course or program beyond the high school level that results in, or may result in, the awarding of a two-year associate degree, certificate or other credential from an institution under the jurisdiction of a governing board or other public or private education provider.

(c) "Adult basic education" means adult basic skills education designed to improve the basic literacy needs of adults, including information processing skills, communication skills and computational skills, leading to a high school equivalency diploma, under the jurisdiction of the state board of education.

§18B-3A-5. Duties and responsibilities.

The joint commission has the duties and responsibilities set forth in the provisions of section two, article two-b, chapter eighteen of this code and in addition shall:

(a) Advise and assist the state board of education and the commission on state plans for secondary and post-secondary vocational-technical-occupational and adult basic education, including, but not limited to:

(1) Policies to strengthen vocational-technical-occupational and adult basic education;

(2) Programs and methods to assist in the improvement, modernization and expanded delivery of vocational-technical-occupational and adult basic education programs;
(3) The distribution of federal vocational education funding provided under the Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, with an emphasis on the distribution of financial assistance among secondary and post-secondary vocational-technical-occupational and adult basic education programs to help meet the public policy agenda;

(4) Collaboration, cooperation and interaction among all secondary and post-secondary vocational-technical-occupational and adult basic education programs in the state, including the programs assisted under the federal Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332 and the Workforce Investment Act, to promote the development of seamless curriculum and the elimination of duplicative programs;

(5) Coordination of the delivery of vocational-technical-occupational and adult basic education in a manner designed to make the most effective use of available public funds to increase accessibility for students; and

(6) Encouraging through articulation the most efficient utilization of available resources, both public and private, to meet the needs of vocational-technical-occupational and adult basic education students.

(b) Analyze and report to the commission on the distribution of spending for vocational-technical-occupational and adult basic education in the state and on the availability of vocational-technical-occupational and adult basic education activities and services within the state.

(c) Promote the delivery of vocational-technical-occupational and adult basic education programs in the state which emphasize the involvement of business and labor organizations.
(d) Promote public participation in the provision of vocational-technical-occupational and adult basic education at the local level, with an emphasis on programs which involve the participation of local employers and labor organizations.

(e) Promote equal access to quality vocational-technical-occupational and adult basic education programs to handicapped and disadvantaged individuals, adults who are in need of training and retraining, individuals who are single parents or homemakers, individuals participating in programs designed to eliminate sexual bias and stereotyping in vocational-technical-occupational education, and criminal offenders serving in correctional institutions.

(f) Assist the commission, the chancellor, the vice chancellor for community and technical college education and workforce development and those institutions delivering community and technical college education, as defined in section two, article one, of this chapter in the successful and efficient development, coordination and delivery of community and technical college programs and services in the state.

(g) Under the supervision of the chancellor and the vice chancellor for community and technical college education and workforce development, the joint commission has the following additional powers and duties:

(1) To oversee the step-by-step implementation of the comprehensive community and technical college system of education provided in article three-c of this chapter;

(2) To interview nominees for appointment as community and technical college presidents or provosts and make recommendations to the chancellor, or in the case of a provost, to the institutional president;
(3) To review and make recommendations to the commission for the approval of the institutional compacts for the community and technical colleges;

(4) To make recommendations to the commission for approval of the administration and distribution of the independently-accredited community and technical college development account;

(5) To ensure coordination among the community and technical colleges and other state-level, regional and local workforce entities, including, but not limited to, the human resource investment council and the West Virginia literacy council;

(6) To assist the community and technical colleges in establishing and promoting links with employers and labor in the geographic areas for which each of the community and technical colleges is responsible;

(7) To develop alliances among the community and technical colleges for resource sharing, joint development of courses and courseware, sharing of expertise and staff development;

(8) To provide a point for resolving issues relating to transfer and articulation between and among community and technical colleges, state colleges and universities and to advise the commission on these issues;

(9) To assist the commission in developing a statewide system of community and technical college programs and services to place-bound adults and employers in every region of West Virginia for competency-based certification of knowledge and skills, including a statewide competency-based associate degree program; and
(10) To review and make recommendations to the commission for the approval of the institutional master plans for the community and technical colleges.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-1. Legislative findings.

§18B-3C-2. Purposes of article.

§18B-3C-3. Essential conditions for community and technical college programs and services.

§18B-3C-4. Responsibility districts.

§18B-3C-5. Appointment of community and technical college presidents.

§18B-3C-6. Community and technical college programs.

§18B-3C-7. District consortia committees.

§18B-3C-8. Process for achieving independently-accredited community and technical colleges.

§18B-3C-9. Increasing flexibility for community and technical colleges.

§18B-3C-10. Free-standing community and technical colleges; tuition and fees.

§18B-3C-11. Shared facilities and resources, memoranda of agreements; and joint administrative boards.

§18B-3C-12. Relationship between administratively linked community and technical colleges and sponsoring institutions.

§18B-3C-1. Legislative findings.

1 (a) Findings. — The Legislature hereby finds:

2 (1) That community and technical colleges in every region of West Virginia are essential elements of a statewide strategy to prepare students for further post-secondary education, lifelong learning and development of the workforce necessary to diversity and grow the state’s economy.

7 (2) That, despite progress in the past decade, West Virginia continues to lag behind neighboring states and the nation in the competitiveness of its workforce for the new economy. Specifically, West Virginia:

11 (A) Ranks fiftieth among the states in the preparation of its workforce for the new economy;
(B) Continues to have low rates of participation among high school graduates in post-secondary education and ranks last among competitor states in the proportion of high school graduates who attend a community college;

(C) Ranks forty-seventh in the nation in the proportion of its adult population at the lowest levels of literacy; and

(D) Ranks tenth among eleven competitor states in the number of certificates and associate degrees granted.

(3) That, despite progress made in developing community and technical colleges pursuant to Senate Bill No. 547, most of these colleges remain subordinated to colleges and universities with four-year and graduate missions.

(4) That, while the number of high school graduates is declining and the needs of adults for further education and training is increasing, less than twenty-five percent of the students enrolled in West Virginia institutions are over age twenty-five.

(5) That only half the enrollment in community and technical colleges is in institutions independently accredited to carry out that mission.

(6) That in most of the component community and technical colleges the majority of faculty are appointed and rewarded according to the policies of the four-year institution, not the community and technical college.

(7) That West Virginia is one of only five states in which most of the enrollment in associate degree programs is in institutions that are not independently accredited as two-year institutions.

(8) That the community and technical college mission in West Virginia continues to be seen by many as narrowly
defined and offering primarily associate degree programs and rather than the critical functions of workforce development, developmental education, community outreach and regional economic development as defined in Senate Bill No. 547.

(9) That half the community and technical college students in West Virginia pay the higher tuition and fees of the sponsoring four-year institution and not the lower rate of free-standing community and technical colleges.

(10) That, despite the needs of place-bound adults, adults in the workplace and employers, current higher education financing policy provides strong disincentives for both free-standing and component community and technical colleges to provide off-campus programs and services.

(11) That Senate Bill No. 547 set forth a definition of the kinds of community and technical college programs or service that should be available and accessible in every region of West Virginia.

(12) That over the past forty years, West Virginia has debated forming a distinct system of community and technical colleges with a focused mission in each region of the state. However, the state already had a network of public colleges in each region and, because of severe resource limitation and low population density, West Virginia evolved a system of community and technical colleges that depends in large part on the existing four-year colleges to offer associate degrees and other community and technical college services. West Virginia has established only a limited number of freestanding community and technical colleges.

(13) That Senate Bill No. 547 sought to strengthen the state's community and technical colleges in a number of ways.
(14) That the implementation of specific structural and procedural provisions of Senate Bill No. 547 was decidedly mixed.

(15) That Senate Bill No. 547 had widely varying impact on the availability of community and technical college services throughout West Virginia. The scope of services in several regions of the state, especially those with component colleges, has fallen far short of the kind of comprehensive, dynamic services envisioned in Senate Bill No. 547.

(16) That since the enactment of Senate Bill No. 547 increasing attention has been given to the related priority of workforce development.

(17) That since the enactment of Senate Bill No. 547 changes have accelerated dramatically in post-secondary education demand and delivery systems.

(18) That the substantive goal of Senate Bill No. 547 to ensure access to community and technical college programs and services remains valid and is even more important today than five years ago; and

(19) That there are essential conditions which must be met by each community and technical college in West Virginia in order to address the needs of the people of the state.

(b) Legislative Intent. — It is the intent of the Legislature, that the process for achieving independently accredited community and technical colleges be carried out using the most effective and most efficient method available. In implementing this process the governing boards and institutions of higher education should utilize facilities that already are available. These include, but are not limited to, the facilities of public high schools and vocational education centers. It is further the intent of the Legislature that this article not be implemented in such a manner as to require an extensive building program.
Prior to pursuing any capital project, an institution shall follow the guidelines for developing capital projects provided for in subdivision thirteen, subsection (a), section four, article one-b of this chapter.

§18B-3C-2. Purposes of article.

The general purposes of this article are the following:

(a) To establish community and technical college education that is well articulated with the public schools and four-year colleges; that makes maximum use of shared facilities, faculty, staff, equipment and other resources; that encourages traditional and nontraditional students and adult learners to pursue a lifetime of learning; that serves as an instrument of economic development; and that has the independence and flexibility to respond quickly to changing needs;

(b) To charge the respective governing boards with providing community and technical college education at state institutions of higher education under their jurisdiction that has the administrative, programmatic and budgetary control necessary to allow maximum flexibility and responsiveness to district and community needs. Education services shall be provided consistent with the goal of sharing facilities, faculty, staff, equipment and other resources within and among the districts, the other systems of public and higher education and other education and training programs;

(c) To establish the essential conditions for community and technical college programs and services, as defined in section three of this article, necessary to ensure that each region of West Virginia is served by a community and technical college meeting the needs of the people of the region;

(d) To establish a mechanism for assuring that, where applicable, a transition plan for meeting the essential conditions is developed by each relevant community and technical college;
(e) To establish responsibility districts for each of the community and technical colleges to ensure accountability that the full range of community and technical education programs and services is provided in all areas of the state;

(f) To define the full range of programs and services that every community and technical college has the responsibility to provide; and

(g) To establish such other policies and procedures necessary to ensure that the needs of West Virginia, its people and its businesses are met for the programs and services that can be provided through a comprehensive system of community and technical colleges.

§18B-3C-3. Essential conditions for community and technical college programs and services.

The Legislature hereby establishes the following essential conditions for community and technical college programs and services:

(a) Independent accreditation by the commission on institutions of higher education of the north central association of colleges and schools (NCA) reflecting external validation that academic programs, services, faculty, governance, financing and other policies are aligned with the community and technical college mission of the institution;

(b) A full range of community and technical college services offered as specified in section six of this article;

(c) Programmatic approval consistent with the provisions of section nine of this article;

(d) A fee structure competitive with its peer institutions;
(e) Basic services, some of which may be obtained under contract with existing institutions in the region. These basic services shall include, but are not limited to, the following:

1. Student services, including, but not limited to, advising, academic counseling, financial aid and provision of the first line of academic mentoring and mediation;
2. Instructional support services;
3. Access to information and library services;
4. Physical space in which courses can be offered;
5. Access to necessary technology for students, faculty and mentors;
6. Monitoring and assessment; and
7. Administrative services, including, but not limited to, registration, fee collection and bookstore and other services for the distribution of learning materials;

(f) A president who is the chief academic and administrative officer of the community and technical college appointed and serving pursuant to the terms of section six, article one-b of this chapter;

(g) An institutional board of governors or an institutional board of advisors appointed and serving as required by law;

(h) A full-time core faculty, complemented by persons engaged through contract or other arrangements, including college and university faculty, to teach community college courses and qualified business, industry and labor persons engaged as adjunct faculty in technical areas;

(i) A faculty personnel policy, formally established to be separate and distinct from that of other institutions, which includes, but is not limited to, appointment, promotion, work-
load and, if appropriate, tenure pursuant to section nine of this article. These policies shall be appropriate for the community and technical college mission and may not be linked to the policies of any other institution;

(j) Community and technical colleges designed and operating as open-provider centers with the authority and flexibility to draw on the resources of the best and most appropriate provider to ensure that community and technical college services are available and delivered in the region in a highly responsive manner. A community and technical college may contract with other institutions and providers as necessary to obtain the academic programs and resources to complement those available through a sponsoring college, where applicable, in order to meet the region's needs.

(k) Separately identified state funding allocations for each of the community and technical colleges. The president of the community and technical college has full budgetary authority for the entity, subject to accountability to its governing board, including authority to retain all tuition and fees generated by the community and technical college for use to carry out its mission.

§18B-3C-4. Responsibility districts.

(a) Each community and technical college is hereby assigned a responsibility district within which it is responsible for providing the full array of community and technical college programs and services as defined in section six of this article. The programs and services shall address the public policy agenda, compact elements and goals for post-secondary education established in section one-a, article one of this chapter as they relate to community and technical colleges, and other goals which may be established by the commission. The responsibility districts shall be comprised of contiguous areas of the state which have similar economic, industrial, edu-
tional, community and employment characteristics to facilitate specialization in mission and programming. For the purposes of initial implementation and organization, the districts shall be comprised as follows and assigned to the designated community and technical colleges:

(1) West Virginia northern community and technical college - Ohio, Brooke, Hancock, Marshall, Tyler and Wetzel counties;

(2) West Virginia university at Parkersburg - Wood, Jackson, Pleasants, Ritchie, Roane, Tyler and Wirt counties;

(3) Southern West Virginia community and technical college - Logan, Boone, Lincoln, McDowell, Mingo, Raleigh and Wyoming counties;

(4) Bluefield state community and technical college - Mercer, Greenbrier, McDowell, Monroe, Pocahontas, Raleigh and Summers counties;

(5) Glenville state community and technical college - Gilmer, Barbour, Braxton, Calhoun, Clay, Lewis, Nicholas, Roane, Upshur and Webster counties;

(6) Fairmont state community and technical college - Marion, Doddridge, Harrison, Monongalia, Preston, Randolph, Taylor and Barbour counties;

(7) Shepherd community and technical college - Jefferson, Berkeley, Grant and Morgan counties;

(8) Eastern West Virginia community and technical college - Mineral, Grant, Hampshire, Hardy, Tucker and Pendleton counties;

(9) West Virginia state community and technical college - Kanawha, Putnam and Clay counties;
West Virginia university institute of technology community and technical college - Fayette, Clay, Kanawha, Raleigh and Nicholas counties; and

Marshall university community and technical college- Cabell, Mason, Putnam and Wayne counties.

(b) It is the intent of the Legislature that, where counties are listed in more than one district, the county shall be the joint responsibility of each community and technical college assigned that county or shall be divided as determined by the commission. The boundaries of the districts may be modified from time to time by the commission to serve better the needs within the districts. Such modifications are not required to follow county boundaries.

§18B-3C-5. Appointment of community and technical college presidents.

The administrative head of a community and technical college shall be the president or the provost, who shall be chosen pursuant to the terms of section six, article one-b of this chapter.

§18B-3C-6. Community and technical college programs.

(a) The mission of each community and technical college includes the following programs which may be offered on or off campus, at the work site, in the public schools and at other locations and at times that are convenient for the intended population:

(1) Career and technical education certificate, associate of applied science and selected associate of science degree programs for students seeking immediate employment, individual entrepreneurship skills, occupational development, skill enhancement and career mobility;
(2) Transfer education associate of arts and associate of science degree programs for students whose education goal is to transfer into a baccalaureate degree program;

(3) Developmental/remedial education courses, literacy education, tutorials, skills development labs and other services for students who need to improve their skills in mathematics, English, reading, study skills, computers and other basic skill areas;

(4) Workforce training and retraining and contract education with business and industry to train or retrain employees;

(5) Continuing development assistance and education credit and noncredit courses for professional and self-development, certification and licensure and literacy training;

(6) Community service workshops, lectures, seminars, clinics, concerts, theatrical performances and other noncredit activities to meet the cultural, civic and personal interests and needs of the community; and

(7) Cooperative arrangements with the public school system for the seamless progression of students through programs of study which are calculated to begin at the secondary level and conclude at the community and technical college level.

(b) All administrative, programmatic and budgetary control over community and technical education within the district shall be vested in the president or provost, subject to rules adopted by the interim governing board or the chancellor. The president and the provost with the institutional board of governors or institutional board of advisors, as appropriate, shall be responsible for the regular review, revision, elimination and establishment of programs within the district to assure that the needs of the district for community and technical college programs are met. It is the intent of the Legislature that the program review and approval process for community and
technical education be separate and distinct from baccalaureate education and subject to the provisions of section nine of this article. The president and institutional board of advisors shall seek assistance from and utilize a district consortium committee in fulfilling this responsibility.

(c) Independently accredited community and technical colleges will serve as higher education centers for their regions by brokering with colleges, universities and other providers, in state and out of state to ensure the coordinated access of students, employers, and other clients to needed programs and services.

§18B-3C-7. District consortia committees.

(a) The president or provost of each community and technical college shall form a district consortium committee which shall include representatives, distributed geographically to the extent practicable, of the major community and technical college branches, vocational-technical centers, comprehensive high schools, four-year colleges and universities, community service or cultural organizations, economic development organizations, business, industry, labor, elected public officials and employment and training programs and offices within the district. The consortium committee shall be chaired by the president or provost, or his or her designee, and shall advise and assist the president or provost with the following:

(1) Completing a comprehensive assessment of the district to determine what education and training programs are necessary to meet the short and long-term workforce development needs of the district;

(2) Coordinating efforts with regional labor market information systems to identify the ongoing needs of business and industry, both current and projected, and to provide information
to assist in an informed program of planning and decision making;

(3) Planning and development of a unified effort to meet the documented workforce development needs of the district through individual and cooperative programs, shared facilities, faculty, staff, equipment and other resources and the development and use of distance learning and other education technologies;

(4) Regularly reviewing and revising curricula to ensure that the workforce needs are met, developing new programs and phasing out or modifying existing programs as appropriate to meet such needs, streamlining procedures for designing and implementing customized training programs and accomplishing such other complements of a quality comprehensive community and technical college;

(5) Increasing the integration of secondary and post-secondary curriculum and programs that are targeted to meet regional labor market needs, including implementation of a comprehensive school-to-work transition system that accomplishes the following:

(A) Helps students focus on career objectives;

(B) Establishes cooperative programs and student internships with business and industry;

(C) Builds upon current programs such as high schools that work, tech prep associate degree programs, registered apprenticeships and rural entrepreneurship through action learning;

and

(D) Addresses the needs of at-risk students and school dropouts;
(6) Planning and implementation of integrated professional development activities for secondary and post-secondary faculty, staff and administrators and other consortium partners throughout the district;

(7) Ensuring that program graduates have attained the competencies required for successful employment through the involvement of business, industry and labor in establishing student credentialing;

(8) Performance assessment of student knowledge and skills which may be gained from multiple sources so that students gain credit toward program completion and advance more rapidly without repeating coursework in which they already possess competency;

(9) Cooperating with workforce development investment councils in establishing one-stop-shop career centers with integrated employment and training and labor market information systems that enable job seekers to assess their skills, identify and secure needed education training and secure employment and employers to locate available workers;

(10) Increasing the integration of adult literacy, adult basic education, federal workforce investment act and community and technical college programs and services to expedite the transition of adults from welfare to gainful employment; and

(11) Establishing a single point of contact for employers and potential employers to access education and training programs throughout the district.

§18B-3C-8. Process for achieving independently-accredited community and technical colleges.

(a) Over a six-year period beginning the first day of July, two thousand one, West Virginia shall move from having “component” community and technical colleges to having a
statewide network of independently-accredited community and
technical colleges serving every region of the state. This section
does not apply to the freestanding community and technical
colleges, West Virginia university at Parkersburg and Potomac
state college of West Virginia university.

(b) To be eligible for funds appropriated to develop
independently accredited community and technical colleges, a
state institution of higher education shall demonstrate the
following:

(1) That it has as a part of its institutional compact ap-
proved by the commission a step-by-step plan with measurable
benchmarks for developing an independently accredited
community and technical college that meets the essential
conditions set forth in section three of this article, except as
limited in subdivisions (1), (2) and (4), subsection (c) of this
section;

(2) That it is able to offer evidence annually to the satisfac-
tion of the commission that it is making progress toward
accomplishing the benchmarks established in its institutional
compact for developing an independently accredited commu-
nity and technical college; and

(3) That it has submitted an expenditure schedule approved
by the commission which sets forth a proposed plan of expendi-
tures for funds allocated to it from the fund.

(c) The following are recommended strategies for moving
from the current arrangement of “component” community and
technical colleges to the legislatively mandated statewide
network of independently accredited community and technical
colleges serving every region of the state. The Legislature
recognizes that there may be other means to achieve this
ultimate objective; however, it is the intent of the Legislature
that the move from the current arrangement of “component”
Community and technical colleges to the legislatively mandated statewide network of independently accredited community and technical colleges serving every region of the state shall be accomplished. The following recommendations are designed to reflect significant variations among regions and the potential impacts on the sponsoring institutions.

(1) *Marshall university community and technical college, West Virginia state community and technical college and West Virginia university institute of technology.* — The status of these institutions shall be determined pursuant to the provisions of article three-f of this chapter.

(2) *Bluefield state community and technical college.* — Bluefield state community and technical college, including the Lewisburg center, should retain its relationship as a component of Bluefield state college. The president and the institutional board of governors of Bluefield state college are accountable to the commission for ensuring that the full range of community and technical college services is available throughout the region and that the community and technical college adheres, as nearly as possible, to the essential conditions pursuant to section three of this article with the possible exception of independent accreditation.

(3) *Center for higher education and workforce development at Beckley.* — The president of Bluefield state college and the institutional board of advisors are responsible, according to a plan approved by the commission, for the step-by-step implementation of a new independently accredited community and technical college administratively linked to Bluefield state college, known as the center for higher education and workforce development, which adheres to the essential conditions pursuant to section three of this article. As an independently accredited community and technical college, the center also shall serve as higher education center for its region by brokering with other colleges, universities and other providers,
in-state and out-of-state, both public and private, to ensure the
coordinated access of students, employers, and other clients to
needed programs and services. The new community and
technical college shall serve Raleigh, Summers and Fayette
counties and be headquartered in Beckley. The commission
shall appoint an institutional board of advisors for the center at
Beckley which is separate from the institutional board of
advisors of Bluefield state college but may have some overlap
in membership to facilitate coordination. In addition, the
president of the center shall appoint a district consortium
committee to advise the president on a comprehensive assess-
ment of the needs in the region, on coordinating efforts with
regional labor market information systems, and on other areas
as provided for in section seven of this article relating to the
duties of district consortia committees. The center shall
facilitate the planning and development of a unified effort
involving multiple providers and facilities, including, but not
limited to, Concord college, the college of West Virginia,
Marshall university, West Virginia university, West Virginia
university institute of technology and other entities to meet the
documented workforce development needs in the region:
Provided, That nothing in this subdivision prohibits or limits
any existing, or the continuation of any existing affiliation
between the college of West Virginia, West Virginia university
institute of technology and West Virginia university. The center
for higher education and workforce development at Beckley
shall also provide the facilities and support services for other
public and private institutions delivering courses, programs and
services in Beckley. The objective would be to assure students
and employers in the area that there would be coordination and
efficient use of resources among the separate programs and
facilities, existing and planned, in the Beckley area. If, at a
future time, the commission believes it appropriate, it may
recommend to the Legislature that the Beckley institution be
created as a freestanding institution.
(4) Glenville state community and technical college. —

Glenville state community and technical college, including the centers in Nicholas, Lewis and Roane counties, should retain its relationship as a component of Glenville state college. The president of Glenville state college and the governing board are accountable to the commission for ensuring that the full range of community and technical college services is available throughout the region and that the community and technical college adheres as nearly as possible to the essential conditions pursuant to section three of this article, with the possible exception of independent accreditation.

(5) Fairmont state community and technical college. —

Fairmont state community and technical college should be an independently accredited community and technical college serving Marion, Doddridge, Barbour, Harrison, Monongalia, Preston, Randolph and Taylor counties. The community and technical college is developed on the base of the existing component community and technical college of Fairmont state college. Subject to the provisions of section eight of this article, the president and the governing board of Fairmont state college are responsible, according to a plan approved by the commission, for step-by-step implementation of the independently accredited community and technical college which adheres to the essential conditions pursuant to section three of this article. Subject to the provisions of section eight of this article, the community and technical college will remain administratively linked to Fairmont state college. Nothing herein shall be construed to require Fairmont state college to discontinue any associate degree program in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution.
(6) Shepherd community and technical college. - Shepherd community and technical college should become an independently accredited community and technical college. It should serve Jefferson, Berkeley and Morgan counties. The new community and technical college is developed on the base of the existing component community and technical college of Shepherd college. Subject to the provisions of section eight of this article, the president and the governing board of Shepherd college are responsible, according to a plan approved by the commission, for step-by-step implementation of the new independently accredited community and technical college which adheres to the essential conditions pursuant to section three of this article. Subject to the provisions of section eight of this article, the community and technical college will remain administratively linked to Shepherd college. Nothing herein shall be construed to require Shepherd college to discontinue any associate degree program in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution.

§18B-3C-9. Increasing flexibility for community and technical colleges.

(a) Notwithstanding any rules or procedures of the governing boards to the contrary, the community and technical colleges have the authority and the duty to:

(1) Incorporate the most effective and efficient use of technology in accessing and delivering courses and programs in order to make the best use of available resources and to control costs;

(2) Incorporate a model to offer occupational program curricula in smaller modules to accommodate specific student
and employer needs and to gain sufficient flexibility in formatting courses;

(3) Serve as a facilitator for education programs from outside delivery sources to meet the needs of the residents and employers of the district; and

(4) Employ faculty in the most effective manner to serve the core mission of the community and technical college.

(A) To that end, the freestanding community and technical colleges may employ faculty for an indefinite period without a grant of tenure and shall work toward a staffing goal of no more than twenty percent of the faculty holding tenure or being tenure-track employees: Provided, That tenured faculty employed by the freestanding community and technical colleges before the first day of July, one thousand nine hundred ninety-nine, shall not be affected by this provision.

(B) All community and technical colleges, other than those set forth in paragraph (A) of this subdivision, may employ faculty for an indefinite period without a grant of tenure. The immediate goal is to use this provision as a tool to assist the community and technical colleges in meeting the essential conditions provided for in section three of this article and in gaining independent accreditation status. The ultimate goal is to provide the flexibility community and technical colleges need to meet the needs of the state by working toward having no more than twenty percent of the core faculty holding tenure or being tenure-track employees: Provided, That tenured faculty employed by community and technical colleges other than freestanding community and technical colleges on the effective date of this section may not be affected by this provision: Provided, however, That tenure shall not be denied to a faculty member solely as a result of change in employing institution necessitated by the change to independently accredited community and technical colleges.
(b) The governing boards shall adopt a model of program approval for the community and technical colleges that permits occupational programs to be customized to meet needs without requiring approval by any governing board or other agency of government and, furthermore, that incorporates a post-audit review of such programs on a three-year cycle to determine the effectiveness of such programs in meeting district needs.

(c) The interim governing board or the chancellor shall promulgate rules to implement the provisions of this section and shall file these rules for review and approval with the chancellor no later than the first day of December, two thousand.

§18B-3C-10. Free-standing community and technical colleges; tuition and fees.

(a) During the transition year, beginning the first day of July, two thousand, and ending the thirtieth day of June, two thousand one, the appropriate governing board may fix tuition and establish and set such other fees to be charged students at community and technical colleges as it considers appropriate and shall pay such tuition and fees collected into a revolving fund for the partial or full support, including the making of capital improvements, of any community and technical college. Funds collected at any such community and technical college may be used only for the benefit of that community and technical college. The appropriate governing board also may establish special fees for such purposes as, including, but not limited to, health services, student activities, student recreation, athletics or any other extracurricular purposes. Such special fees shall be paid into special funds in the state treasury and used only for the purposes for which collected.

(b) Beginning on the first day of July, two thousand one, the appropriate governing board may fix tuition and establish and set such other fees to be charged students at community and
20 technical colleges as it considers appropriate, subject to the
21 provisions of subdivision (2) of this subsection.

22 (1) As used in this subsection, "appropriate governing
23 board" means:

24 (A) The governing board of the institution, in the case of a
25 free-standing community and technical college;

26 (B) The governing boards of Glenville state college and
27 Bluefield state college, respectively, in the cases of Glenville
28 community and technical college and Bluefield community and
29 technical college; and

30 (C) The institutional board of advisors in all other cases.

31 (2) The appropriate governing board, in consultation with
32 the joint commission, also may establish special fees for such
33 purposes as, including, but not limited to, health services,
34 student activities, student recreation, athletics or any other
35 extracurricular purposes: Provided, That the joint commission
36 shall determine which fees, if any, do not apply to the entire
37 student population and to which students such fees do not
38 apply. Such special fees may be used only for the purposes for
39 which collected.

40 (3) A community and technical college may contract with
41 any other state institution of higher education for the participa-
42 tion of its students in programs, activities or services of the
43 other institution and for the use of such fees collected.

44 (c) All tuition and fee charges in the total aggregate shall
45 comply with the terms of the institutions compact approved by
46 the commission based on peer comparisons or cost of instruc-
47 tion as set forth in the goals for post-secondary education
48 pursuant to section one-a, article one of this chapter.
§18B-3C-11. Shared facilities and resources; memoranda of agreements; and joint administrative boards.

(a) To the maximum extent feasible, community and technical colleges shall be developed as multisite institutions utilizing existing facilities, including cooperative use of existing vocational education institutes and centers, offering services on the campuses of existing baccalaureate and graduate institutions, at work sites in collaboration with employers and other appropriate venues. Subject to the limitation of subdivision (13), subsection (a), section four, article one-b of this chapter, new public capital investment in physical facilities shall be kept to a minimum. All community and technical colleges shall have missions encompassing the full range of services and programs.

(b) The governing boards may accept federal grants and funds from county boards of education, other local governmental bodies, corporations or persons. The governing boards may enter into memoranda of understanding agreements with such governmental bodies, corporations or persons for the use or acceptance of local facilities and for the acceptance of grants or contributions toward the cost of the acquisition or construction of such facilities. Such local governmental bodies may convey capital improvements, or lease the same without monetary consideration, to the governing boards for the use by the community and technical college and the governing boards may accept such facilities, or the use or lease thereof, and grants or contributions for such purposes from such governmental bodies, the federal government or any corporation or person. In addition, the various education agencies shall establish cooperative relationships to utilize existing community and technical colleges and programs, public school vocational centers and other existing facilities to serve the identified needs within the community and technical college district.
(c) To facilitate the administration, operation and financing of programs in shared facilities of any institution of public higher education and a county board or boards of education, the affected president and county board or boards of education may appoint a joint administrative board consisting of such membership and possessing such delegated authorities as the respective boards consider necessary and prudent for the operation of such shared facilities. Such joint administrative boards, as an example, may consist of five members appointed as follows: The county board of education appoints two members; the president appoints two members; and one at-large member, who shall chair the joint administrative board, is appointed by mutual agreement of the board and the president. When two or more county boards of education are participating in such shared program, such county board appointments would be made by mutual agreement of each of the participating county boards. Members would serve for staggered terms of three years. With respect to initial appointments, one member appointed by the county board or boards of education and one member appointed by the governing board would serve for one year, one member appointed by the county board or boards of education and one member appointed by the governing board would serve for two years and the at-large member would serve for three years. Subsequent appointments should be for three years. A member would not serve more than two consecutive terms. Members would be reimbursed for reasonable and necessary expenses actually incurred in the performance of their duties as board members from funds allocated to the shared facility, except that members who are employed by a board of education, governing board or state institution of higher education would be reimbursed by their employer.

§18B-3C-12. Relationship between administratively linked community and technical colleges and sponsoring institutions.
(a) Intent and purposes. --

(1) It is the intent of the Legislature to establish community and technical colleges in every region of the state of West Virginia that, as far as possible, meet the essential conditions of section three of this article.

(2) The Legislature finds that, in order to increase efficiency, reduce costs and, generally, to facilitate the effective transition from community and technical colleges which are components of existing institutions of higher education to community and technical colleges which meet, as far as possible, the essential conditions, it is appropriate to maintain an administrative link between the community and technical colleges and the sponsoring institution.

(3) This section defines the relationship between the community and technical colleges and its sponsoring institution.

(b) Where independently accredited community and technical colleges are linked administratively to a sponsoring state college or university in order to ensure efficient use of limited resources, the following conditions shall apply:

(1) The community and technical college shall be accredited separately from the sponsoring institution;

(2) All state funding allocations for the community and technical college shall be transferred directly to the community and technical college. The sponsoring institution may charge fees for administrative overhead costs subject to a schedule approved by the commission;

(3) Policies shall be formally established to ensure the separation of academic and faculty personnel policies of the community and technical college from those of the sponsoring
institutions. These policies include, but are not limited to, appointment, promotion, workload and, if appropriate, tenure.

(c) The sponsoring institution which is administratively linked to a community and technical college shall provide the following services:

(1) Personnel management;
(2) Recordkeeping;
(3) Payroll;
(4) Accounting;
(5) Legal services;
(6) Registration;
(7) Student aid;
(8) Student records; and
(9) Such other services as determined to be necessary and appropriate by the commission.

(d) Subject to the approval of the appropriate governing board, the president of the sponsoring institution, pursuant to the terms of section six, article one-b of this chapter, shall appoint the presidents of the community and technical college, who shall serve at the will and pleasure of the institutional president. Subject to the provisions of section six, article one-b of this chapter, the appropriate governing board shall appoint the president of the sponsoring institution.

(e) The governing board and the president of the sponsoring institution shall be responsible for the step-by-step development of the community and technical college and for compliance with the essential conditions, all as required by this article.
(f) The president of the sponsoring institution shall have such responsibilities, powers and duties in the development of the community and technical college and in compliance with the essential conditions, as directed by the governing board or as are necessary for the proper implementation of the provisions of this act.

(g) Notwithstanding any other provision of the code to the contrary, the commission shall take necessary steps to ensure that institutional bonded indebtedness is secure and that administratively linked community and technical colleges assume their fair share of any institutional debt acquired while they were part of the baccalaureate institution.

(h) The community and technical college is encouraged to secure academic services from the sponsoring institution when it is in the best interests of the students to be served, the community and technical college and the sponsoring institution. In determining whether or not to secure services from the sponsoring institution, the community and technical college shall consider the following:

1. The cost of the academic services;
2. The quality of the academic services;
3. The availability, both as to time and place, of the academic services; and
4. Such other considerations as the community and technical college finds appropriate taking into account the best interests of the students to be served, the community and technical college, and the sponsoring institution: Provided, That nothing in this article shall be construed to prohibit any state institution of higher education from purchasing or brokering remedial and/or developmental courses from a community and technical college.
ARTICLE 3F. COMMUNITY AND TECHNICAL COLLEGE SERVICES IN THE RESPONSIBILITY AREAS OF MARSHALL UNIVERSITY, WEST VIRGINIA STATE COLLEGE AND WEST VIRGINIA UNIVERSITY INSTITUTE OF TECHNOLOGY.

§18B-3F-1. Legislative intent and findings.

§18B-3F-2. Implementation board established.

§18B-3F-3. Continuing community and technical services of existing institutions.

§18B-3F-1. Legislative intent and findings.

(a) Legislative intent. — It is the intent of the Legislature to enhance community and technical college services in the responsibility areas of Marshall university, West Virginia state college and West Virginia university institute of technology through the delivery of community and technical college services that meet the goals of section six, article three-c of this chapter and are delivered pursuant to the essential conditions of section three, article three-c of this chapter. It is further the intent of the Legislature to make maximum use of existing institutions in the region and to focus on the benefits available to the Kanawha valley and to the state of providing quality community and technical college education.

(b) Findings. — The Legislature finds the following:

(1) That the Kanawha valley is an area of the state that is underserved for community and technical college education and that deserves more convenient access to higher education opportunities, including access to workforce development programs; and

(2) That, in order to satisfy the growing needs of the Kanawha valley region for access to quality higher education programs, the delivery of community and technical college services in the Kanawha valley must meet the goals for comprehensive community and technical college education described in section two, article three-c of this chapter and must meet the
essential conditions for a comprehensive community and technical college education as described in section three, article three-c of this chapter.

§18B-3F-2. Implementation board established.

(a) There is established an implementation board appointed by the commission to ensure the step-by-step implementation of the legislative intent contained in section one of this article.

(b) The implementation board shall be comprised of nine members, including the president of Marshall university, or a designee; the president of West Virginia state college, or a designee; the president of West Virginia university institute of technology, or a designee; and six lay persons, three from the responsibility area of Marshall university and three from the responsibility areas of West Virginia state college and West Virginia university institute of technology.

(c) The implementation board shall develop a plan, to be recommended to the commission, for the most effective and efficient method to deliver comprehensive community and technical college education to the citizens and employers of the responsibility areas of Marshall university, West Virginia state college and West Virginia university institute of technology. The plan shall include, but not be limited to:

(1) A determination of the most appropriate manner to achieve the goals set forth in section one-a, article one of this chapter;

(2) The relative strengths of the existing institutions of higher education in the responsibility areas;

(3) The impact of the status of West Virginia state college as an historically black institution of higher education and as an eighteen hundred and ninety land grant institution; and
(4) A determination of the appropriate relationship among the existing public institutions of higher education in the responsibility areas.

(d) The commission shall be responsible for, and shall have the authority to implement, an appropriate system, based upon the recommendations of the implementation board or such other plan as the commission determines to be appropriate to meet the essential conditions for effective community and technical college education as provided for in section three, article three-c of this chapter.

(e) If, in the opinion of the commission, implementation of an appropriate plan can not be accomplished without statutory change, then, on or before the fifteenth day of January, two thousand one, the commission shall certify to the governor, the president of the Senate and the speaker of the House of Delegates draft legislation to accomplish the goals of this section and section one-a, article one of this chapter.

(f) The commission is responsible for promoting the effective delivery of community and technical college education programs and services in the responsibility areas of Marshall university community and technical college, West Virginia state community and technical college and West Virginia university institute of technology community and technical college.

§18B-3F-3. Continuing community and technical services of existing institutions.

Subject to change by the commission through the process for the establishment of institutional compacts defined in section two, article one-a of this chapter, nothing in this article may be construed to require Marshall university, West Virginia state college or West Virginia institute of technology to discontinue any associate degree program in areas of particular
institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high cost nature and can best be provided in direct coordination with a baccalaureate institution.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-2. Employment of vice chancellor for administration; office; powers and duties generally.

§18B-4-8. West Virginia anatomical board; powers and duties relating to anatomical gifts; requisition of bodies; autopsies; transportation of bodies; expenses of preservation; bond required; offenses and penalties.

§18B-4-2. Employment of vice chancellor for administration; office; powers and duties generally.

(a) With the approval of the commission, the chancellor for higher education shall employ the vice chancellor for administration who shall serve at the will and pleasure of the chancellor. Any reference in this chapter or chapter eighteen-c of this code to the senior administrator means the vice chancellor of administration, which senior administrator shall become the vice chancellor of administration and also shall serve as interim chancellor for higher education until a chancellor is employed pursuant to section five, article one-b of this chapter.

(b) The vice chancellor for administration has a ministerial duty, in consultation with and under direction of the chancellor, to perform such functions, tasks and duties as may be necessary to carry out the policy directives of the commission and such other duties as may be prescribed by law.

(c) The vice chancellor for administration may employ and discharge, and shall supervise, such professional, administrative, clerical and other employees as may be necessary to these duties and shall delineate staff responsibilities as considered desirable and appropriate. The vice chancellor for administration shall fix the compensation and emoluments of such employees: Provided, That those employees whose job duties
meet criteria listed in the system of job classifications as stated in article nine of this chapter shall be accorded the job title, compensation and rights established in the article as well as all other rights and privileges accorded classified employees by the provisions of this code.

(d) Effective on the first day of July, two thousand, the office of the senior administrator and all personnel employed on the thirtieth day of June, two thousand, within the higher education central office, the West Virginia network for educational telecomputing, and the offices of the chancellor of the board of trustees and the chancellor of the board of directors, shall be transferred to the jurisdiction of the chancellor for higher education: Provided, That prior to the first day of October, two thousand, no employee shall be terminated or have his or her salary and benefit levels reduced as the sole result of the governance reorganization that becomes effective on the first day of July, two thousand.

(e) The vice chancellor for administration shall follow state and national education trends and gather data on higher education needs.

(f) The vice chancellor for administration, in accordance with established guidelines and in consultation with and under the direction of the chancellor, shall administer, oversee or monitor all state and federal student assistance and support programs administered on the state level, including those provided for in chapter eighteen-c of this code.

(g) The vice chancellor for administration has a fiduciary responsibility to administer the tuition and registration fee capital improvement revenue bond accounts of the governing boards.

(h) The vice chancellor for administration shall administer the purchasing system or systems of the commission, the office
of the chancellor, and the governing boards: Provided, That the chancellor may delegate authority for the purchasing systems or portions thereof to the institution presidents.

(i) The vice chancellor for administration is responsible for the management of the West Virginia network for educational telecomputing (WVNET). The vice chancellor for administration shall establish a computer advisory board, which shall be representative of higher education and other users of the West Virginia network for educational telecomputing as the chancellor for higher education determines appropriate. It is the responsibility of the computer advisory board to recommend to the chancellor policies for a statewide shared computer system.

(j) The central office, under the direction of the vice chancellor for administration, shall provide necessary staff support to the commission and the office of the chancellor.

(k) Effective on the first day of July, two thousand, the vice chancellor for administration may administer any program or service authorized or required to be performed by the board of trustees or the board of directors on the thirtieth day of June, two thousand, and not specifically assigned to another agency. In addition, the vice chancellor for administration may administer any program or service authorized or required to be performed by the commission or the chancellor for higher education, but not assigned specifically to the commission or the chancellor. Such program or service may include, but shall not be limited to, telecommunications activities and other programs and services provided for under grants and contracts from federal and other external funding sources.

§18B-4-8. West Virginia anatomical board; powers and duties relating to anatomical gifts; requisition of bodies; autopsies; transportation of bodies; expenses of preservation; bond required; offenses and penalties.
(a) There is hereby established the "West Virginia anatomical board" which consists of the following four members: (1) The dean of the school of dentistry, West Virginia university; (2) the chairperson of the department of anatomy, West Virginia university; (3) the chairperson of the department of anatomy, school of medicine, Marshall university; and (4) the dean of the school of medicine, West Virginia school of osteopathic medicine.

(b) The board shall have authority to appoint such officers, employees and agents as may be necessary to carry out the purposes for which the board is organized. It shall keep a full and complete record of its transactions, showing, among other things, every dead human body coming under its authority, giving name, sex, age, date of death, place from which received and when and from whom received, which record shall be open at all times to the inspection of the attorney general and any prosecuting attorney in the state.

(c) The board shall be responsible for making requisition for, receiving and making disposition of the dead human bodies for the scientific uses and purposes of reputable education institutions, within the state and elsewhere, having medical, osteopathy, dentistry or nursing schools. The board shall have full power to establish rules for its own government and for the requisition, use, disposition and control of such bodies as may come under its authority by way of gift, pursuant to this section or pursuant to section four, article nineteen, chapter sixteen of this code.

(d) All dead human bodies which may come under the charge or control of any mortician, any officer or agent of the department of welfare or of any county commission or municipality, or any superintendent, officer or agent having the supervision of any prison, morgue, hospital or other public institution in this state and which may be required to be buried at public expense, shall be subject to the requisition of the board
as provided in this section. No such body shall be delivered to
the board if any person related to the deceased by blood or
marriage shall make a statement in writing to that effect and
shall claim such body for burial or shall make affidavit that the
relative is unable to bear the expense of burial and desires that
the deceased be buried at public expense. This statement and
affidavit may be filed by any such relative with the person
having charge and control of the body of the person so claimed,
either before or after the death of such person.

(e) No autopsy shall be performed on any unclaimed body
without the written permission of the board, except upon the
proper order of a duly authorized law-enforcement officer.

(f) It shall be the duty of any person who has charge or
control of any unclaimed body, subject to requisition by the
board, to give notice to the board of that fact by telephone or
telegraph within twenty-four hours after such body comes under
that person’s control. Thereafter, such person shall hold the
body subject to the order of the board for at least twenty-four
hours after the sending of such notice. If the board makes
requisition for the body within the twenty-four hour period, it
shall be delivered, pursuant to the order of the board, to the
board or its authorized agent for transportation to any education
institution which the board considers to be in bona fide need of
the body and able to adequately control, use and dispose of the
body. The board shall make suitable arrangements for the
transportation of any body, or part or parts of any body, which
may come under its authority to the education institution. All
expenses incurred in connection with the preservation, delivery
and transportation of any body delivered pursuant to the order
of the board shall be paid by the education institution receiving
the body.

(g) No dead body shall be received or requisitioned by the
board until the members of the board have filed a bond with the
clerk of the circuit court of Kanawha County in a penalty of one
thousand dollars, with good security, signed by a responsible
person or persons, or by some surety company authorized to do
business in this state, or have proved to the clerk that they are
covered by a suitable bond in at least that amount, conditioned
for the faithful performance of their duties.

(h) Any person who shall neglect, refuse or fail to perform
any duty required by this section relating to the board shall be
guilty of a misdemeanor and, upon conviction thereof, shall be
punished by a fine of not more than one hundred dollars or by
imprisonment in the county or regional jail for not more than
ten days or by both such fine and imprisonment. Any person
who fails to give the required notice that that person has charge
of an unclaimed body subject to requisition by the board shall
also be personally liable for all burial expenses, if such body
was buried at public expense, to the public agency that paid for
the burial.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-3. Authority to contract for programs, services and facilities.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment and printing.

§18B-5-3. Authority to contract for programs, services and facilities.

The governing boards and the commission are authorized
and empowered to enter into contracts and expend funds for
programs, services and facilities provided by public and private
education institutions, associations, boards, agencies, consortia,
corporations, partnerships, individuals and local, state and
federal governmental bodies within and outside of West
Virginia in order that maximum higher education opportunities
of high quality may be provided to the citizens of the state in
the most economical manner: Provided, That in no event may
a contract for such services and facilities be entered into unless
the commission or the governing boards have determined that
such services and facilities are necessary and that such services and facilities would be at a savings to the state.

Notwithstanding the provisions of this section, nothing herein contained shall supersede the responsibility and respective duties of the secretary of administration and the director of the purchasing division of such department for the execution and approval of the contracts entered into under this article and such contracts shall be in complete conformity with the provisions of articles three and five, chapter five-a of this code.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment and printing.

(a) The commission and each governing board, through the vice chancellor for administration shall purchase or acquire all materials, supplies, equipment and printing required for that governing board or the commission, as appropriate, and the state institutions of higher education under their jurisdiction. The commission shall adopt rules governing and controlling acquisitions and purchases in accordance with the provisions of this section. Such rules shall assure that the governing boards:

(1) Do not preclude any person from participating and making sales thereof to the governing board or to the higher education commission except as otherwise provided in section five of this article: Provided, That the providing of consultant services such as strategic planning services will not preclude or inhibit the governing boards or the commission from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services;

(2) shall establish and prescribe specifications, in all proper cases, for materials, supplies, equipment and printing to be purchased; (3) shall adopt and prescribe such purchase order, requisition or other forms as may be required; (4) shall negotiate for and make purchases and acquisitions in such quantities, at such times and under contract, in the open market or through other accepted methods of governmental purchasing as may be practicable in accordance with general law; (5) shall advertise for bids on all purchases exceeding fifteen thousand dollars, to
purchase by means of sealed bids and competitive bidding or to
effect advantageous purchases through other accepted govern-
mental methods and practices: Provided, however, That for
printing services, bids shall be advertised by written notification
of such bids to any print shop, affiliated with an institution of
higher education and operated by classified employees, on all
purchases exceeding five thousand dollars; (6) shall post notices
of all acquisitions and purchases for which competitive bids are
being solicited in the purchasing office of the specified institu-
tion involved in the purchase, at least two weeks prior to
making such purchases and ensure that the notice is available
to the public during business hours; (7) shall provide for
purchasing in the open market; (8) shall make provision for
vendor notification of bid solicitation and emergency purchas-
ing; and (9) provide that competitive bids are not required for
purchases of one thousand dollars or less.

(b) The commission or each governing board, through the
vice chancellor for administration may issue a check in advance
to a company supplying postage meters for postage used by that
board, the commission and by the state institutions of higher
education under their jurisdiction.

(c) When a purchase is to be made by bid, any or all bids
may be rejected. However, all purchases based on advertised
bid requests shall be awarded to the lowest responsible bidder
taking into consideration the qualities of the articles to be
supplied, their conformity with specifications, their suitability
to the requirements of the governing boards, the commission
and delivery terms: Provided, That the preference for resident
vendors as provided in section thirty-seven, article three,
chapter five-a of this code shall apply to the competitive bids
made pursuant to this section.

(d) The governing boards and the commission shall
maintain a purchase file, which shall be a public record and
open for public inspection. After the award of the order or
contract, the governing boards and the commission shall
indicate upon the successful bid that it was the successful bid
and shall further indicate why bids are rejected and, if the
mathematical low vendor is not awarded the order or contract,
the reason therefor. No records in the purchase file shall be
destroyed without the written consent of the legislative auditor.
Those files in which the original documentation has been held
for at least one year and in which the original documents have
been reproduced and archived on microfilm or other equivalent
method of duplication may be destroyed without the written
consent of the legislative auditor. All files, no matter the
storage method, shall be open for inspection by the legislative
auditor upon request.

(e) The commission also shall adopt rules to prescribe
qualifications to be met by any person who is to be employed
as a buyer pursuant to this section. These rules shall require that
no person may be employed as a buyer unless that person, at the
time of employment, either is: (1) A graduate of an accredited
college or university; or (2) has at least four years’ experience
in purchasing for any unit of government or for any business,
commercial or industrial enterprise. Any person making
purchases and acquisitions pursuant to this section shall execute
a bond in the penalty of fifty thousand dollars, payable to the
state of West Virginia, with a corporate bonding or surety
company authorized to do business in this state as surety
thereon, in form prescribed by the attorney general and condi-
tioned upon the faithful performance of all duties in accordance
with sections four through eight of this article and the rules of
the interim governing board and the commission. In lieu of
separate bonds for such buyers, a blanket surety bond may be
obtained. Any such bond or bonds shall be filed with the
secretary of state. The cost of any such bond or bonds shall be
paid from funds appropriated to the applicable governing board
or commission.

(f) All purchases and acquisitions shall be made in consid-
eration and within limits of available appropriations and funds
and in accordance with applicable provisions of article two,
chapter five-a of this code, relating to expenditure schedules
and quarterly allotments of funds.
(g) The governing boards and the commission may make requisitions upon the auditor for a sum to be known as an advance allowance account, in no case to exceed five percent of the total of the appropriations for the governing board or the commission, and the auditor shall draw a warrant upon the treasurer for such accounts; and all such advance allowance accounts shall be accounted for by the applicable governing board or commission once every thirty days or more often if required by the state auditor.

(h) Contracts entered into pursuant to this section shall be signed by the applicable governing board or the commission in the name of the state and shall be approved as to form by the attorney general: Provided, That a contract in which the total does not exceed five thousand dollars and for which the attorney general has not responded within fifteen days of presentation of the contract, the contract shall be deemed approved: Provided, however, That a contract or a change order for that contract which in total does not exceed fifteen thousand dollars and which uses terms and conditions or standardized forms previously approved by the attorney general and does not make substantive changes in the terms and conditions of the contract does not require approval by the attorney general: Provided further, That the attorney general shall make a list of those changes which he or she deems to be substantive and the list, and any changes thereto, shall be published in the state register. A contract that exceeds fifteen thousand dollars shall be filed with the state auditor: And provided further, That upon request, the governing boards or the commission shall make all contracts available for inspection by the state auditor. The governing board or the commission, as appropriate, shall prescribe the amount of deposit or bond to be submitted with a bid or contract, if any, and the amount of deposit or bond to be given for the faithful performance of a contract. If the governing board or the commission purchases or contracts for materials, supplies, equipment and printing contrary to the provisions of sections four through seven of this article or the rules pursuant thereto, such purchase or contract shall be void and of no effect.
(i) Any governing board or the commission, as appropriate, may request the director of purchases to make available, from time to time, the facilities and services of that department to the governing boards or the commission in the purchase and acquisition of materials, supplies, equipment and printing and the director of purchases shall cooperate with that governing board or the commission, as appropriate, in all such purchases and acquisitions upon such request.

(j) Each governing board or the commission, as appropriate, shall permit private institutions of higher education to join as purchasers on purchase contracts for materials, supplies and equipment entered into by that governing board or the commission. Any private school desiring to join as purchasers on such purchase contracts shall file with that governing board or the commission an affidavit signed by the president of the institution of higher education or a designee requesting that it be authorized to join as purchaser on purchase contracts of that governing board or the commission, as appropriate, and agreeing that it will be bound by such terms and conditions as that governing board or the commission may prescribe and that it will be responsible for payment directly to the vendor under each purchase contract.

(k) Notwithstanding any other provision of this code to the contrary, the governing boards and the commission, as appropriate, may make purchases from the federal government or from federal government contracts if the materials, supplies, equipment or printing to be purchased is available from the federal government or from a federal contract and purchasing from the federal government or from a federal government contract would be the most financially advantageous manner of making the purchase.

(l) An independent performance audit of all purchasing functions and duties which are performed at any institution of higher education shall be performed each fiscal year. The joint committee on government and finance shall conduct the performance audit and the governing boards and the commis-
(m) The governing boards shall require each institution under their respective jurisdictions to notify and inform every vendor doing business with that institution of the provisions of section fifty-four, article three, chapter five-a of this code, also known as the "prompt pay act of 1990".

(n) Consultant services, such as strategic planning services, may not preclude or inhibit the governing boards or the commission from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services.

ARTICLE 6. ADVISORY BOARDS.

§18B-6-1. Institutional boards of advisors for regional campuses and administratively linked community and technical colleges.

§18B-6-1a. Institutional boards of advisors for universities, state colleges and free-standing community and technical colleges.

§18B-6-2a. State advisory council of faculty.

§18B-6-3a. State advisory council of students.

§18B-6-4a. State advisory council of classified employees.

§18B-6-1. Institutional boards of advisors for regional campuses and administratively linked community and technical colleges.

(a) Effective the first day of July, two thousand, there is established at each regional campus and administratively-linked community and technical college, excluding centers and branches thereof, an institutional board of advisors: Provided, that the institutional board of advisors shall not be appointed for administratively linked community and technical colleges until provided for in their compact.

(1) For the transition year beginning on the first day of July, two thousand, through the thirtieth day of June, two thousand one, only, the lay members of the institutional board of advisors
established for each of the regional campuses of West Virginia university are appointed by the president of the respective institution. Effective the first day of July, two thousand one, the lay members of the institutional boards of advisors for the regional campuses are appointed by the institutional board of governors.

(2) The lay members of the institutional board of advisors established for the administratively linked community and technical colleges are appointed by the joint commission.

(b) The board of advisors consists of fifteen members, including a full-time member of the faculty with the rank of instructor or above duly elected by the faculty; a member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body; a member of the institutional classified staff duly elected by the classified staff; and twelve lay persons appointed pursuant to subsection (a) of this section who have demonstrated a sincere interest in and concern for the welfare of that institution and who are representative of the population of its responsibility district and fields of study. At least eight of the twelve lay persons appointed shall be residents of the state. Of the lay members who are residents of the state, at least two shall be alumni of the institution and no more than a simple majority may be of the same political party.

(c) The student member shall serve for a term of one year beginning upon appointment in July, two thousand, and ending on the thirtieth day of April, two thousand one. Thereafter the term shall begin on the first day of May. The faculty member and the classified staff member shall serve for a term of two years beginning upon appointment in July, two thousand, and ending on the thirtieth day of April, two thousand two. Thereafter the term shall begin on the first day of May; and the twelve lay members shall serve terms of four years each beginning upon appointment in July, two thousand. Thereafter the term shall begin on the first day of May. All members are eligible to succeed themselves for no more than one additional term. A
vacancy in an unexpired term of a member shall be filled for the
remainder of the unexpired term within thirty days of the
occurrence thereof in the same manner as the original appoint-
ment or election. Except in the case of a vacancy, all elections
shall be held and all appointments shall be made no later than
the thirtieth day of April preceding the commencement of the
term.

(d) Each board of advisors shall hold a regular meeting at
least quarterly, commencing in May of each year. Additional
meetings may be held upon the call of the chairperson, presi-
dent of the institution or upon the written request of at least five
members. A majority of the members constitutes a quorum for
conducting the business of the board of advisors.

(e) One of the twelve lay members shall be elected as
chairperson by the board of advisors in May of each year: 
Provided, That the chairperson elected in two thousand shall be
elected in July. No member may serve as chairperson for more
than two consecutive years.

(f) The president of the institution shall make available
resources of the institution for conducting the business of the
board of advisors. The members of the board of advisors shall
be reimbursed for all reasonable and necessary expenses
actually incurred in the performance of their official duties
under this section upon presentation of an itemized sworn
statement thereof. All expenses incurred by the boards of
advisors and the institutions under this section shall be paid
from funds allocated to the institutions for that purpose.

(g) The board of advisors shall review, prior to the submis-
sion by the president to its governing board, all proposals of the
institution in the areas of mission, academic programs, budget,
capital facilities and such other matters as requested by the
president of the institution or its governing board or otherwise
assigned to it by law. The board of advisors shall comment on
each such proposal in writing, with such recommendations for
concurrence therein or revision or rejection thereof as it
considers proper. The written comments and recommendations shall accompany the proposal to the governing board and the governing board shall include the comments and recommendations in its consideration of and action on the proposal. The governing board shall promptly acknowledge receipt of the comments and recommendations and shall notify the board of advisors in writing of any action taken thereon.

(h) The board of advisors shall review, prior to their implementation by the president, all proposals regarding institution-wide personnel policies. The board of advisors may comment on the proposals in writing.

(i) The board of advisors shall provide advice and assistance to the president in establishing closer connections between higher education and business, labor, government, community and economic development organizations to give students greater opportunities to experience the world of work, such as business and community service internships, apprenticeships and cooperative programs; to communicate better and serve the current workforce and workforce development needs of their service area, including the needs of nontraditional students for college-level skills upgrading and retraining and the needs of employers for specific programs of limited duration; and to assess the performance of the institution’s graduates and assist in job placement.

(j) Upon the occurrence of a vacancy in the office of president of the institution, the board of advisors shall serve as a search and screening committee for candidates to fill the vacancy under guidelines established by the commission pursuant to the provisions of section six, article one-b of this chapter. When serving as a search and screening committee, the board of advisors and its governing board are each authorized to appoint up to three additional persons to serve on the committee as long as the search and screening process is in effect. The three additional appointees of the board of advisors shall be faculty members of the institution. Only for the purposes of the search and screening process, the additional
members shall possess the same powers and rights as the regular members of the board of advisors, including reimbursement for all reasonable and necessary expenses actually incurred. Following the search and screening process, the committee shall submit the names of at least three candidates to the president of the sponsoring institution for consideration and appointment. If the president rejects all candidates submitted, the committee shall submit the names of at least three additional candidates and this process shall be repeated until the president appoints one of the candidates submitted. The governing board shall provide all necessary staff assistance to the board of advisors in its role as a search and screening committee.

(k) The boards of advisors shall develop a master plan for each administratively linked community and technical college. The ultimate responsibility for developing and updating the master plans at the institutional level resides with the institutional board of advisors, but the ultimate responsibility for approving the final version of the institutional master plans, including periodic updates, resides with the commission. The plan shall include, but not be limited to, the following:

(1) A detailed demonstration of how the master plan will be used to meet the goals and objectives of the institutional compact;

(2) A well-developed set of goals outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in such a plan to assure that the needs of the institution’s area of responsibility for a quality system of higher education are addressed;

(3) Documentation of the involvement of the commission, institutional constituency groups, clientele of the institution, and the general public in the development of all segments of the institutional master plan.
The plan shall be established for periods of not less than three nor more than six years and shall be revised periodically as necessary, including recommendations on the addition or deletion of degree programs as, in the discretion of the board of advisors, may be necessary.

§18B-6-1a. Institutional boards of advisors for universities, state colleges and free-standing community and technical colleges.

(a) For the transition year beginning on the first day of July, two thousand, through the thirtieth day of June, two thousand one, only, there is established at the following state institutions of higher education, excluding centers and branches thereof, an institutional board of advisors: Bluefield state college, Concord college, eastern West Virginia community and technical college, Fairmont state college, Glenville state college, Marshall university, Shepherd college, southern West Virginia community and technical college, West Liberty state college, West Virginia northern community and technical college, the West Virginia school of osteopathic medicine, West Virginia state college and West Virginia university.

(b) The boards of advisors are established as follows:

(1) Each institutional board of advisors shall consist of twelve persons: Provided, That the institutional boards of advisors for Marshall university and West Virginia university shall consist of fifteen persons. Each board of advisors shall include:

(A) A full-time member of the faculty with the rank of instructor or above duly elected by the faculty;

(B) A member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body;
(C) A member of the institutional classified staff duly elected by the classified staff; and

(D) Nine lay members appointed by the governor, by and with the advice and consent of the Senate: Provided, That for the institutional boards of advisors at Marshall university and West Virginia university, the governor shall appoint twelve members, by and with the advice and consent of the Senate: Provided, however, That, of the appointed lay members, the governor shall appoint one superintendent of a county board of education from the area served by the institution: Provided further, That in making the initial appointments only, the governor shall endeavor to make appointments from a pool of those persons who, on the thirtieth day of June, two thousand, are members of the board of trustees and the board of directors.

(2) Of the nine members appointed by the governor, no more than five may be of the same political party: Provided, That for the appointed members of the institutional boards of advisors of Marshall university and West Virginia university, no more than seven may be of the same political party. At least six of the members shall be residents of the state: Provided, however, That for the appointed members of the institutional boards of advisors of Marshall university and West Virginia university, at least eight of the members shall be residents of the state. All members shall serve for a term of one year. A vacancy in an unexpired term of a member shall be filled for the unexpired term within thirty days of the occurrence of the vacancy in the same manner as the original appointment or election. Except in the case of a vacancy, all elections shall be held and all appointments shall be made no later than the thirtieth day of June preceding the commencement of the term: Provided further, That election of officers for the term beginning in July, two thousand, shall be made in July. Each board of advisors shall elect one of its appointed lay members to be chairperson.

(3) Each board of advisors shall hold a regular meeting at least quarterly, commencing in July, two thousand. Additional
60  meetings may be held upon the call of the chairperson or upon
61  the written request of at least four members: Provided, That for
62  the institutional boards of advisors of Marshall university and
63  West Virginia university, additional meetings may be held upon
64  the call of the chairperson or upon the written request of at least
65  five members. A majority of the members constitutes a quorum
66  for conducting the business of the board of advisors.

67  (4) The president of the institution shall make available
68  resources of the institution for conducting the business of the
69  board of advisors. The members of the board of advisors shall
70  serve without compensation, but shall be reimbursed for all
71  reasonable and necessary expenses actually incurred in the
72  performance of their official duties under this section upon
73  presentation of an itemized sworn statement thereof. All
74  expenses incurred by the board of advisors and the institution
75  under this section shall be paid from funds allocated to the
76  institution for that purpose.

77  (5) The board of advisors shall review, prior to the submis-
78  sion by the president to its governing board, all proposals of the
79  institution in the areas of mission, academic programs, budget,
80  capital facilities and such other matters as requested by the
81  president of the institution or its governing board or otherwise
82  assigned to it by law. The board of advisors shall comment on
83  each such proposal in writing, with such recommendations for
84  concurrence therein or revision or rejection thereof as it
85  considers proper. The written comments and recommendations
86  shall accompany the proposal to the governing board and the
87  governing board shall include the comments and recommenda-
88  tions in its consideration of and action on the proposal. The
89  governing board shall promptly acknowledge receipt of the
90  comments and recommendations and shall notify the board of
91  advisors in writing of any action taken thereon.

92  (6) The board of advisors shall review, prior to their
93  implementation by the president, all proposals regarding
94  institution-wide personnel policies. The board of advisors may
95  comment on the proposals in writing.
(7) The board of advisors shall provide advice and assistance to the president in establishing closer connections between higher education and business, labor, government, community and economic development organizations to give students greater opportunities to experience the world of work, such as business and community service internships, apprenticeships and cooperative programs; to communicate better and serve the current workforce and workforce development needs of their service area, including the needs of nontraditional students for college-level skills upgrading and retraining and the needs of employers for specific programs of limited duration; and to assess the performance of the institution's graduates and assist in job placement.

(8) Upon the occurrence of a vacancy in the office of president of the institution, the board of advisors serves as a search and screening committee for candidates to fill the vacancy under guidelines established by its governing board. When serving as a search and screening committee, the board of advisors and its governing board are each authorized to appoint up to three additional persons to serve on the committee as long as the search and screening process is in effect. The three additional appointees of the board of advisors shall be faculty members of the institution. Only for the purposes of the search and screening process, the additional members shall possess the same powers and rights as the regular members of the board of advisors, including reimbursement for all reasonable and necessary expenses actually incurred. Following the search and screening process, the committee shall submit the names of at least three candidates to the governing board for consideration and appointment. If the governing board rejects all candidates submitted, the committee shall submit the names of at least three additional candidates and this process shall be repeated until the governing board appoints one of the candidates submitted. The governing board shall provide all necessary staff assistance to the board of advisors in its role as a search and screening committee.
(c) The institutional boards of advisors created under this section have the following additional duties:

1. The responsibility to develop the institutional compacts for their respective institutions under the guidance and direction of the commission pursuant to section two, article one-a of this chapter.

2. The authority to participate in any orientation or leadership training or education opportunities provided or arranged by the commission.

§18B-6-2a. State advisory council of faculty.

(a) Effective the first day of July, two thousand, there is hereby established the state advisory council of faculty. For the purposes of this section, the state advisory council of faculty shall be referred to as the “council”.

(b) During the month of April of each odd-numbered year, beginning in the year two thousand one, each president or other administrative head of a state institution of higher education, including, but not limited to, Potomac state college of West Virginia university, West Virginia university at Parkersburg, West Virginia university institute of technology, Robert C. Byrd health sciences Charleston division of West Virginia university and the Marshall university graduate college, at the direction of the council and in accordance with procedures established by the council, shall convene a meeting or otherwise institute a balloting process to elect one faculty to serve on the institutional board of governors or the institutional board of advisors, as applicable. Terms of the members of the council shall be for two years and shall begin on the first day of July of each odd-numbered year. Members of the council shall be eligible to succeed themselves. Each person so elected shall be a member of the statewide advisory council of faculty.

(c) The council shall meet at least once each quarter. One of the quarterly meetings shall be during the month of July, at
which meeting the council shall elect a chairperson: Provided,
That the chairperson shall serve no more than two consecutive
terms as chair. No member may vote by proxy at the election.
In the event of a tie in the last vote taken for such election, a
member authorized by the council shall select the chairperson
by lot from the names of those persons tied. Immediately
following the election of a chairperson, the council shall elect,
in the manner prescribed by this section for the election of a
chairperson, a member of the council to preside over meetings
of the council in the chairperson’s absence. Should the chairper-
son vacate the position, the council shall meet and elect a new
chairperson to fill the unexpired term within thirty days
following the vacancy.

(d) The council, through its chairperson and in any appro-
priate manner, shall communicate to the commission, through
the chancellor, matters of higher education in which the faculty
members may have an interest.

(e) The commission shall meet annually between the
months of October and December with the council to discuss
matters of higher education in which the faculty members or the
commission may have an interest.

(f) Members of the council shall serve without compensa-
tion, but shall be entitled to reimbursement for actual and
necessary expenses incurred in the performance of their official
duties from funds allocated to the state institution of higher
education served.

(g) The council shall cause to be prepared minutes of its
meetings, which minutes shall be available, upon request, to
any faculty member of a state institution of higher education
represented on the council.

§18B-6-3a. State advisory council of students.

(a) Effective the first day of July, two thousand, there is
hereby established the state advisory council of students. For
the purposes of this section, the state advisory council of students shall be referred to as the "council".

(b) During the month of April of each year, beginning in the year two thousand one, each student government organization at each state institution of higher education, including, but not limited to, Potomac state college of West Virginia university, West Virginia university at Parkersburg, West Virginia university institute of technology, Robert C. Byrd health sciences Charleston division of West Virginia university and the Marshall university graduate college, at the direction of the council and in accordance with procedures established by the council, shall elect a student, who may be the elected head or president of the organization, to serve on the institutional board of governors or the institutional board of advisors, as applicable. Terms of the members of the council shall be for one year and shall begin on the first day of July of each year. Members of the council shall be eligible to succeed themselves. Each person so elected shall be a member of the statewide advisory council of students.

(c) The council shall meet at least once each quarter. One of the quarterly meetings shall be during the month of July, at which meeting the council shall elect a chairperson. No member may vote by proxy at the election. In the event of a tie in the last vote taken for such election, a member authorized by the council shall select the chairperson by lot from the names of those persons tied. Immediately following the election of a chairperson, the council shall elect, in the manner prescribed by this section for the election of a chairperson, a member of the council to preside over meetings of the council in the chairperson's absence. Should the chairperson vacate the position, the council shall meet and elect a new chairperson to fill the unexpired term within thirty days following the vacancy.

(d) The council, through its chairperson and in any appropriate manner, shall communicate to the commission, through the chancellor, matters of higher education in which the student members may have an interest.
(e) The commission shall meet annually, between the months of October and December, with the council to discuss matters of higher education in which the student members or the commission may have an interest.

(f) Members of the council shall serve without compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties from funds allocated to the state institution of higher education served.

(g) The council shall cause to be prepared minutes of its meetings, which minutes shall be available, upon request, to any student of a state institution of higher education represented on the council.

§18B-6-4a. State advisory councils of classified employees.

(a) Effective the first day of July, two thousand, there is hereby established the state advisory council of classified employees. For the purposes of this section, the state advisory council of classified employees shall be referred to as the “council”.

(b) During the month of April of each odd-numbered year, beginning in the year two thousand one, each president or other administrative head of a state institution of higher education, including, but not limited to, Potomac state college of West Virginia university, West Virginia university at Parkersburg, West Virginia university institute of technology, Robert C. Byrd health sciences Charleston division of West Virginia university and the Marshall university graduate college, at the direction of the council and in accordance with procedures established by the council, shall convene a meeting or otherwise institute a balloting process to elect one classified employee to serve on the institutional board of governors or the institutional board of advisors. Terms of the members of each council shall be for two years and shall begin on the first day of July of each odd-numbered year and members of the council shall be
eligible to succeed themselves. Each person so elected shall be a member of the statewide advisory council of classified employees.

(c) The council of classified employees shall meet at least once each quarter. One of the quarterly meetings shall be during the month of July, at which meeting the council shall elect a chairperson: Provided, That the chair shall serve no more than two consecutive terms as chair. No member may vote by proxy at the election. In the event of a tie in the last vote taken for such election, a member authorized by the council shall select the chairperson by lot from the names of those persons tied. Immediately following the election of a chairperson, the council shall elect, in the manner prescribed by this section for the election of a chairperson, a member of the council to preside over meetings of the council in the chairperson’s absence. Should the chairperson vacate the position, the council shall meet and elect a new chairperson to fill the unexpired term within thirty days following the vacancy.

(d) The council, through its chairperson and in any appropriate manner, shall communicate to the commission, through the chancellor, matters of higher education in which the classified employees may have an interest.

(e) The commission shall meet annually, between the months of October and December, with the council to discuss matters of higher education in which the classified employees or the commission may have an interest.

(f) Members of the council shall serve without compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties from funds allocated to the state institution of higher education served.

(g) The council shall cause to be prepared minutes of its meetings, which minutes shall be available, upon request, to
ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

(a) Definitions for terms used in this section are in accordance with those provided in section two, article nine of this chapter except that the provisions of this section shall apply only to classified employees whose employment, if continued, accumulates to a minimum total of one thousand forty hours during a calendar year and extends over at least nine months of a calendar year: Provided, That this section also applies to any classified employee who is involuntarily transferred to a position in nonclassified status for which he or she did not apply: Provided, however, That any classified employee involuntarily transferred to a position in nonclassified status may only exercise the rights set out in this section for positions equivalent to or lower than the last job class the employee held.

(b) All decisions by the appropriate governing board, the commission or its agents at state institutions of higher education concerning reductions in work force of full-time classified personnel, whether by temporary furlough or permanent termination, shall be made in accordance with this section. For layoffs by classification for reason of lack of funds or work, or abolition of position or material changes in duties or organization and for recall of employees laid off, consideration shall be given to an employee's seniority as measured by permanent employment in the service of the state system of higher education. In the event that the institution wishes to lay off a more senior employee, the institution shall demonstrate that the senior employee cannot perform any other job duties held by less senior employees of that institution in the same job class or any other equivalent or lower job class for which the senior employee is qualified: Provided, That if an employee refuses to
accept a position in a lower job class, the employee shall retain all rights of recall provided in this section. If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the institution.

(c) Any employee laid off during a furlough or reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the institution on the basis of seniority. An employee's listing with an institution shall remain active for a period of one calendar year from the date of termination or furlough or from the date of the most recent renewal. If an employee fails to renew the listing with the institution, the employee's name may be removed from the list. An employee placed upon the preferred list shall be recalled to any position opening by the institution within the classifications in which the employee had previously been employed or to any lateral position for which the employee is qualified. An employee on the preferred recall list shall not forfeit the right to recall by the institution if compelling reasons require the employee to refuse an offer of reemployment by the institution.

The institution shall notify all employees maintaining active listings on the preferred recall list of all position openings that from time to time exist. The notice shall be sent by certified mail to the last known address of the employee. It is the duty of each employee listed to notify the institution of any change in address and to timely renew the listing with the institution. No position openings shall be filled by the institution, whether temporary or permanent, until all employees on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

(d) A nonexempt classified employee, including a nonexempt employee who has not accumulated a minimum total of one thousand forty hours during the calendar year or whose contract does not extend over at least nine months of a calendar year, who meets the minimum qualifications for a nonexempt
job opening at the institution where the employee is currently employed, whether the job is a lateral transfer or a promotion, and applies for the job shall be transferred or promoted before a new person is hired unless the hiring is affected by mandates in affirmative action plans or the requirements of Public Law 101-336, the Americans With Disabilities Act. If more than one qualified, nonexempt classified employee applies, the best-qualified nonexempt classified employee shall be awarded the position. In instances where the classified employees are equally qualified, the nonexempt classified employee with the greatest amount of continuous seniority at that state institution of higher education shall be awarded the position. A nonexempt classified employee is one to whom the provisions of the federal Fair Labor Standards Act, as amended, apply.

(e) In addition to any other information required, any application for personnel governed by the provisions of this section shall include the applicant’s social security number.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.


As used in this article:

(a) "Classified employee or employee" means any regular full-time or regular part-time employee of a governing board or the commission, including all employees of the West Virginia network for educational telecomputing and employees at the higher education central office of the commission, who hold a position that is assigned a particular job title and pay grade in accordance with the personnel classification system established by this section or governing board policy and shall include all employees of the West Virginia network for educational telecomputing;

(b) "Nonclassified employee" means an individual who is responsible for policy formation at the department or institutional level, or reports directly to the president, or is in a
position considered critical to the institution by the president pursuant to policies adopted by the governing board: Provided, That the percentage of personnel placed in the category of "nonclassified" at any given institution shall not exceed ten percent of the total number of employees of that institution who are eligible for membership in any state retirement system of the state of West Virginia or other retirement plan authorized by the state: Provided, however, That an additional ten percent of the total number of employees of that institution as defined in this subsection may be placed in the category of "nonclassified" if they are in a position considered critical to the institution by the president. Final approval of such placement shall be with the appropriate governing board;

(c) "Job description" means the specific listing of duties and responsibilities as determined by the appropriate governing board and associated with a particular job title;

(d) "Job title" means the name of the position or job as defined by the appropriate governing board;

(e) "Merit increases and salary adjustments" means the amount of additional salary increase allowed on a merit basis or to rectify salary inequities or accommodate competitive market conditions in accordance with rules established by the interim governing board or the commission;

(f) "Pay grade" means the number assigned by the appropriate governing board to a particular job title and refers to the vertical column heading of the salary schedule established in section three of this article;

(g) "Personnel classification system" means the process of job categorization adopted by the appropriate governing board by which job title, job description, pay grade and placement on the salary schedule are determined;

(h) "Salary" means the amount of compensation paid through the state treasury per annum to a classified employee;
(i) "Schedule" or "salary schedule" means the grid of annual salary figures established in section three of this article; and

(j) "Years of experience" means the number of years a person has been an employee of the state of West Virginia and refers to the horizontal column heading of the salary schedule established in section three of this article. For the purpose of placement on the salary schedule pursuant to said section, employment for nine months or more shall equal one year of experience, but no classified employee may accrue more than one year of experience during any given fiscal year. Employment for less than full time or less than nine months during any fiscal year shall be prorated. For the purpose of determining the amount of annual salary increase pursuant to subsection (b), section five of this article, employment for less than twelve months during any fiscal year shall be prorated. In accordance with rules established by the interim governing board or the commission, a classified employee may be granted additional years of experience not to exceed the actual number of years of prior, relevant work or experience at accredited institutions of higher education other than state institutions of higher education.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

§18B-10-2. Higher education resource fee.

§18B-10-8. Collection; disposition and use of additional registration fee; creation of special capital improvements funds; revenue bonds.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

(a) Each governing board shall fix tuition and other fees for each school term for the different classes or categories of students enrolling at each state institution of higher education under its jurisdiction and may include among such fees any one
or more of the following: (1) Health service fees; (2) infirmary fees; (3) student activities, recreational, athletic and extracurricular fees, which fees may be used to finance a students' attorney to perform legal services for students in civil matters at such institutions: Provided, That such legal services shall be limited to only those types of cases, programs or services approved by the administrative head of such institution where such legal services are to be performed; and (4) graduate center fees and branch college fees, or either, if the establishment and operations of graduate centers or branch colleges are otherwise authorized by law. All fees collected at any graduate center or at any branch college shall be paid into special funds and shall be used solely for the maintenance and operation of the graduate center or branch college at which they were collected: Provided, however, That the governing boards shall use the median of the average tuition and required fees at similarly classified institutions in member states of the southern regional education board as a goal in establishing tuition and required fee levels for residents at state institutions of higher education under their jurisdiction: Provided further, That the governing boards shall use the actual instructional cost as the same shall be determined in accordance with commission rule, in establishing nonresident undergraduate fees, with the goal of having tuition and fees cover the actual cost by fiscal year one thousand nine hundred ninety-six: And provided further, That effective the first day of July, two thousand one, tuition and fees for nonresident, undergraduate students shall, at a minimum, cover actual instructional costs: And provided further, That students enrolled in undergraduate courses offered at off-campus locations shall pay an off-campus instruction fee and shall not pay the athletic fee and the student activity fee. The off-campus instruction fee shall be used solely for the support of off-campus courses offered by the institution. Off-campus locations for each institution shall be defined by the appropriate governing board. The schedule of all fees, and any changes therein, shall be entered in the minutes of the meeting of the appropriate governing board, and the board shall file with the legislative auditor a certified copy of such schedule and changes.
(b) In addition to the fees mentioned in the preceding paragraph, each governing board may impose and collect a student union building fee. All such building fees collected at an institution shall be paid into a special student union building fund for such institution, which is hereby created in the state treasury, and shall be used only for the construction, operation and maintenance of a student union building or a combination student union and dining hall building or for the payment of the principal of and interest on any bond issued to finance part or all of the construction of a student union building or a combination student union and dining hall building or the renovation of an existing structure for use as a student union building or a combination student union and dining hall building, all as more fully provided in section ten of this article. Any moneys in such funds not needed immediately for such purposes may be invested in any such bonds or other securities as are now or hereafter authorized as proper investments for state funds.

(c) The boards shall establish the rates to be charged full-time students enrolled during a regular academic term. For fee purposes, a full-time undergraduate student is one enrolled for twelve or more credit hours in a regular term, and a full-time graduate student is one enrolled for nine or more credit hours in a regular term. Undergraduate students taking fewer than twelve credit hours in a regular term shall have their fees reduced pro rata based upon one twelfth of the full-time rate per credit hour, and graduate students taking fewer than nine credit hours in a regular term shall have their fees reduced pro rata based upon one ninth of the full-time rate per credit hour.

Fees for students enrolled in summer terms or other nontraditional time periods shall be prorated based upon the number of credit hours for which the student enrolls in accordance with the above provisions.

(d) All fees are due and payable by the student upon enrollment and registration for classes except as provided for in this subsection:
(1) The governing boards shall permit fee payments to be made in up to three installments over the course of the academic term: Provided, That all fees must be paid prior to the awarding of course credit at the end of the academic term.

(2) The governing boards also shall authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees: Provided, That the governing boards may charge the students for the reasonable and customary charges incurred in accepting credit cards and other methods of payment.

(3) If a governing board determines that any student was adversely, financially affected by a legal work stoppage that commenced on or after the first day of January, one thousand nine hundred ninety-three, it may allow the student an additional six months to pay the fees for any academic term: Provided, That the governing board shall determine if a student was adversely, financially affected on a case-by-case basis.

(e) On or before the first day of July, two thousand one, the chancellor for higher education shall review policy series twenty-two of the governing boards, related to assessment, payment and refund of fees and determine whether a new rule should be adopted regarding the refund of any fees upon the voluntary or involuntary withdrawal from classes of any student. The rules shall comply with all applicable state and federal laws and shall be uniformly applied throughout the system.

(f) In addition to the fees mentioned in the preceding subsections, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group: Provided, That the students at such institution demonstrate support for the increased fee in a manner and method established by that institution’s elected student government: Provided, however, That such fees shall not be used to finance litigation against the institution.
(g) Any proposed fee increase which would become effective during the transition year beginning on the first day of July, two thousand, and ending on the thirtieth day of June, two thousand one, and which has been approved by the governing board, shall then be submitted by the governing board to the secretary for education and the arts for approval. Such approval shall be granted only upon the certification that such institution requesting a fee increase is in compliance with the strategic plans required to be submitted, pursuant to section one-b, article one of this chapter. Notice, in the form of a report, shall be provided by the chancellor to the legislative oversight commission on education accountability describing such fee increases and showing how such increases compare with the average tuition and fees charged at comparable peer institutions in member states of the southern regional education board. Effective the first day of July, two thousand one, tuition and fees rates shall be determined in accordance with subsection (h), subsection (i) and subsection (j) of this section.

(h) Effective the first day of July, two thousand one, institutions shall retain tuition and fee revenues not pledged for bonded indebtedness or other purposes in accordance with a revised tuition policy adopted by the respective governing boards and approved by the commission. The revised tuition policy shall:

1. Provide a basis for establishing nonresident tuition and fees;

2. Allow institutions to charge different tuition and fees for different programs; and

3. Establish methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for community and technical college students in all independently accredited community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.
(i) No penalty shall be imposed by the commission upon any institution based upon the number of nonresidents who attend the institution unless the commission determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of the resident students to attend the institution or participate in the programs of the institution. The institutions shall report annually to the commission on the numbers of out-of-state residents and such other enrollment information as the commission may request.

(j) No governing board may increase tuition and fees more than four percent nor increase tuition and fees to more than one hundred percent of the tuition and fees of peer institutions, as determined by the commission, without the approval of the commission.

§18B-10-2. Higher education resource fee.

In addition to the fees specifically provided for in section one of this article, all students enrolled for credit at a state institution of higher education shall pay a higher education resource fee. The commission shall fix the fee rates for the various institutions and classes of students under its jurisdiction and may from time to time change these rates. The amount of the fee charged at each institution shall be prorated for part-time students. The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provision of section one of this article and is not limited thereby. Refunds of such fee may be made in the same manner as any other fee collected at state institutions of higher education.

Ninety percent of the total fees collected at each institution pursuant to this section shall be deposited in a special fund in the state treasury for the institution at which the fees are collected and may be used by the institution for libraries and library supplies, including books, periodicals, subscriptions and audiovisual materials, instructional equipment and materials; and for the improvement in quality and scope of student
services. Up to ten percent of the fee collections shall be deposited in a special fund and expended or allocated by the commission to meet general operating expenses of the commission or to fund statewide programs: Provided, That the board shall, to the maximum extent practicable, offset the impact, if any, on financially needy students of any potential fee increases under this section by allocating an appropriate amount of such fee revenue to the state scholarship program to be expended in accordance with the provisions of article five, chapter eighteen-c of this code.

The commission shall, on or before the first day of July of each year, provide the legislative auditor with a report of the projected fee collections for the board and each of its institutions and the expenditures proposed for such fee.

§ 18B-10-8. Collection; disposition and use of additional registration fee; creation of special capital improvements funds; revenue bonds.

(a) In addition to all other fees imposed by the commission, there is hereby imposed and the commission is hereby directed to provide for the collection of an additional registration fee from all students enrolled in any state institution of higher education under its jurisdiction in the amounts hereinafter provided.

For full-time students at each state institution of higher education, the additional registration fee shall be fifty dollars per semester. The commission has authority to increase such additional registration fee at institutions of higher education under its jurisdiction for students who are nonresidents of this state. For all part-time students and for all summer school students, the commission shall impose and collect such fee in proportion to, but not exceeding, that paid by full-time students.

The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provision of section one of this article and may not be limited thereby.
Refunds of such fee may be made in the same manner as any other fee collected at state institutions of higher education.

(b) There is created in the state treasury a state system special capital improvements fund into which shall be paid all proceeds of the additional registration fees collected from students at all state institutions of higher education pursuant to this section to be expended by the commission for the payment of the principal of or interest on any revenue bonds issued by the board of regents or the succeeding governing boards for which such registration fees were pledged prior to the enactment of this section.

(c) The commission may make expenditures from any of the special capital improvements funds established in this section to finance, in whole or in part, together with any federal, state or other grants or contributions, any one or more of the following projects: (1) The acquisition of land or any rights or interest therein; (2) the construction or acquisition of new buildings; (3) the renovation or construction of additions to existing buildings; (4) the acquisition of furnishings and equipment for any such buildings; and (5) the construction or acquisition of any other capital improvements or capital educational facilities at such state institutions of higher education, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of such buildings, capital improvements or capital educational facilities.

The commission, in its discretion, may use the moneys in such special capital improvements funds to finance the costs of the above purposes on a cash basis, or may from time to time issue revenue bonds of the state as provided in this section to finance all or part of such purposes and pledge all or any part of the moneys in such special funds for the payment of the principal of and interest on such revenue bonds, and for reserves therefor. Any pledge of such special funds for such revenue bonds shall be a prior and superior charge on such
special funds over the use of any of the moneys in such funds
to pay for the cost of any of such purposes on a cash basis:
Provided, That any expenditures from such special funds, other
than for the retirement of revenue bonds, may only be made by
the commission to meet the cost of a predetermined capital
improvements program for one or more of the state institutions
of higher education, in such order of priority as was agreed
upon by the commission and presented to the governor for
inclusion in the annual budget bill, and only with the approval
of the Legislature as indicated by direct appropriation for the
purpose.

Such revenue bonds may be authorized and issued from
time to time by the commission to finance, in whole or in part,
the purposes provided in this section in an aggregate principal
amount not exceeding the amount which the commission
determines can be paid as to both principal and interest and
reasonable margins for a reserve therefor from the moneys in
such special funds.

The issuance of such revenue bonds shall be authorized by
a resolution adopted by the commission, and such revenue
bonds shall bear such date or dates, mature at such time or
times not exceeding forty years from their respective dates; be
in such form either coupon or registered, with such
exchangeability and interchangeability privileges; be payable
in such medium of payment and at such place or places, within
or without the state; be subject to such terms of prior redemption
at such prices not exceeding one hundred five per centum
of the principal amount thereof; and shall have such other terms
and provisions as determined by the commission. Such revenue
bonds shall be signed by the governor and by the chancellor of
the commission authorizing the issuance thereof, under the
great seal of the state, attested by the secretary of state, and the
coupons attached thereto shall bear the facsimile signature of
the chancellor of the commission. Such revenue bonds shall be
sold in such manner as the commission determines is for the
best interests of the state.
The commission may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such revenue bonds as to the custody, safeguarding and disposition of the proceeds of such revenue bonds, the moneys in such special funds, sinking funds, reserve funds, or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the commission under the provisions of this section; as to the maintenance or revision of the amounts of such additional registration fees, and the terms and conditions, if any, under which such additional registration fees may be reduced; and as to any other matters or provisions which are deemed necessary and advisable by the commission in the best interests of the state and to enhance the marketability of such revenue bonds.

After the issuance of any of such revenue bonds, the additional registration fees at the state institutions of higher education may not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued.

Such revenue bonds shall be and constitute negotiable instruments under the uniform commercial code of this state; shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds may not be deemed to be obligations or debts of the state, and the credit or taxing power of the state may not be pledged therefor, but such revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

Additional revenue bonds may be issued by the commission pursuant to this section and financed by additional revenues or funds dedicated from other sources. It is the intent of the Legislature to authorize over a five-year period from the
Funding of system-wide and campus-specific revenue bonds under any other section of this code is hereby continued and authorized pursuant to the terms of this section. Revenues of any state institution of higher education pledged to the repayment of any bonds issued pursuant to this code shall remain the responsibility of that institution.

ARTICLE 14. MISCELLANEOUS.

§18B-14-8. Statewide task force on teacher quality.

(a) There is hereby created a statewide task force on teacher quality to address issues which shall include, but not be limited to, the following:

(1) Need to strengthen teacher education in subject area fields by addressing the quality and regional accessibility of pre-service and in-service programs at both the baccalaureate and graduate degree levels;

(2) Need to address teacher salaries;

(3) Need to determine the appropriate supply of teachers to meet future demand;

(4) Need to determine the most effective method of staff development for teachers; and

(5) Need to address methods to prepare teachers to integrate technology effectively in the classroom, including the following:
(i) The resources necessary for teacher education programs to prepare teachers for the technology demands of the classroom environment;

(ii) The opportunities and resources for professional development experiences in technology; and

(6) Need to study methods to extend programs such as the Benedum collaborative model of teacher education at West Virginia university to other geographic areas of the state.

(b) The task force shall be chaired by the chancellor for higher education or a designee and shall be comprised of twenty-one members selected as follows: Eight members to be appointed by the governor; five members to be appointed by the state board of education; five members to be appointed by the governing boards; one member to be selected by the West Virginia professional teachers standards commission from among their membership; one member representing private institutions of higher education selected by the West Virginia association of independent colleges, inc.; and the secretary of education and the arts or a designee. Of the eight members to be appointed by the governor, two shall be representatives of statewide teacher organizations and of the six members to be appointed by the state board of education, at least three shall be classroom teachers and at least one shall be selected from among the membership of the state board of education.

(c) Appointments to the task force shall be made so that members may begin their work no later than the first day of July, two thousand.

(d) The task force shall report on its progress to the legislative oversight commission on education accountability and the commission. The initial progress report shall be made in October, two thousand, and, additionally, in each quarter thereafter until the work of the task force is completed.
(e) The task force shall complete its work and make a final report to the legislative oversight commission on education accountability and the commission no later than the first day of November, two thousand one. The final report shall contain findings of fact, recommendations and strategies for implementing recommended changes.

§18B-14-9. Statewide task force on student financial aid.

(a) There is hereby created a statewide task force on student financial aid to address issues which shall include, but not be limited to, the following:

1. The impact of the full range of student aid and prepaid admission programs including federal, state and institutional programs;
2. The interrelationships of the various programs;
3. The feasibility and effectiveness of grants versus loans;
4. A longitudinal study detailing the amount of money spent for student aid in West Virginia over the past fifteen years, or, if data for a full fifteen years is not available, for the longest time period possible; the number of students served; and the number of those students who have remained in the state.

(b) The task force shall be chaired by the chancellor for higher education or a designee and shall be comprised of fourteen members selected as follows: Six members selected by the governing boards; two members representing private institutions of higher education selected by the West Virginia association of independent colleges, inc.; four members selected by the state board of education; the state treasurer or a designee; and the secretary of education and the arts or a designee.
(c) Appointments to the task force shall be made so that members may begin their work no later than the first day of July, two thousand.

(d) The task force shall make an initial progress report to the legislative oversight commission on education accountability and the commission by the first day of December, two thousand, and shall report quarterly thereafter until the work of the task force is completed.

(e) The task force shall complete its work and make a final report to the legislative oversight commission on education accountability and the commission no later than the first day of October, two thousand one. The final report shall contain findings of fact, recommendations and strategies for implementing recommended changes.

CHAPTER 101

(Com. Sub. for H. B. 4679 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred and thirty-one, as amended, and to amend and reenact section seven, article thirty, chapter eighteen of said code, all relating to the prepaid tuition contract; authorizing reduction in federal adjusted gross income for purposes of the West Virginia personal income tax; and extending the modification for payments made for other college savings plans administered by the board of trustees of the prepaid tuition trust fund.
Be it enacted by the Legislature of West Virginia:

That section twelve-a, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section seven, article thirty, chapter eighteen of said code, be amended and reenacted, all to read as follows:

Chapter
11. Taxation.
18. Education.

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12a. Additional modification reducing federal adjusted gross income.

In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to subsection (c), section twelve of this article, any payment made under a prepaid tuition contract or other college savings plan administered by the board, pursuant to article thirty, chapter eighteen of this code, is also an authorized modification reducing federal adjusted gross income, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer’s federal adjusted gross income for the taxable year in which the payment is made. This modification is available regardless of the type of return form filed. The taxpayer may also elect to carry forward the modification over a period not to exceed five taxable years, beginning in the taxable year in which the payment was made.

CHAPTER 18. EDUCATION.

ARTICLE 30. WEST VIRGINIA PREPAID TUITION TRUST ACT.


As provided in section twelve-a, article twenty-one, chapter eleven of this code, a purchaser of a prepaid tuition contract or other college savings plan administered by the board, under the provisions of this article, is eligible for a tax deduction.
CHAPTER 102

(Com. Sub. for H. B. 4399 — By Delegates Cann, Angotti, Frederick, Williams, Kominar, Coleman and Perdue)

[Passed March 11, 2000, in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four, relating to requiring the state board of education to provide certain information and other support to the Mountaineer Challenge Academy.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1B. NATIONAL GUARD.


1 The Mountaineer Challenge Academy, operated by the adjutant general at Camp Dawson, is hereby acknowledged to be a program of great value in meeting the educational needs of at-risk youth throughout the state. It is the sense of the Legislature that the Mountaineer Challenge Academy should enjoy the full cooperation of the executive agencies of state government in carrying out its program.

2 To that end, the state board of education shall, notwithstanding any other provision in this code to the contrary:

3 (1) Include the Mountaineer Challenge Academy in the child nutrition program on the same basis as other public schools;
(2) Provide the names and mailing addresses of all high school dropouts in the state to the director of the Mountaineer Challenge Academy upon request; and

(3) Provide for Mountaineer Challenge Academy graduates to participate in the adult basic education program.

Further cooperation with the Mountaineer Challenge Academy is encouraged by the Legislature for the purpose of assisting the Mountaineer Challenge Academy in achieving its mission.

CHAPTER 103

(H. B. 4413 — By Delegates Mezzatesta, Williams, Paxton, Davis, Fletcher, Houston and Calvert)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing regional education service agencies; purposes; authority to implement regional services; and compensation.

Be it enacted by the Legislature of West Virginia:

That section twenty-six, article two, 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 2. STATE BOARD OF EDUCATION.

§18-2-26. Establishment of multicounty regional educational service agencies; purposes; authority to implement regional services.
(a) In order to consolidate and administer more effectively existing educational programs and services so individual districts will have more discretionary moneys for educational improvement and in order to equalize and extend educational opportunities, the state board of education shall establish multicounty regional educational service agencies for the purpose of providing high quality, cost effective educational programs and services to the county school systems, and shall make such rules as may be necessary for the effective administration and operation of the agencies.

(b) In furtherance of these purposes, the board of directors of each regional educational service agency shall continually explore possibilities for the delivery of services on a regional basis which will facilitate equality in the educational offerings among counties in its service area, permit the delivery of high quality educational programs at a lower per student cost, strengthen the cost effectiveness of education funding resources, reduce administrative and/or operational costs, including the consolidation of administrative, coordinating and other county level functions into region level functions, and promote the efficient administration and operation of the public school systems generally.

Technical, operational, programmatic or professional services are among the types of services appropriate for delivery on a regional basis.

(c) In addition to performing the services and functions required by the provisions of this or any other section of this code, a regional educational service agency may implement regional programs and services by a majority vote of its board of directors. When the vote is not unanimous, the board of directors shall file a plan for the service or program delivery with the state board describing the program or service, the manner of delivery and the projected savings and/or the improved quality of the program or service. The state board
shall promulgate rules requiring a county board that declines to participate in the programs or services to show just cause for not participating and the estimated savings accruing to the county from the program or services. If a county board fails to show that savings will accrue to the county or that the quality of the program will be significantly and positively affected as a result of its decision not to participate, the state board shall withhold from the county's foundation allowance for administrative cost the lesser of the amount of the estimated savings or the allocation for the county's foundation allowance for administrative cost.

(d) The state board, in conjunction with the various regional educational service agencies, shall develop an effective model for the regional delivery of instruction in subjects where there exists low student enrollment or a shortage of certified teachers or where the delivery method substantially improves the quality of an instructional program. The model shall incorporate an interactive electronic classroom approach to instruction. To the extent funds are appropriated or otherwise available, county boards or regional educational service agencies may adopt and utilize the model for the delivery of the instruction.

(e) Each county board of education shall use the uniform integrated regional computer information system recommended by the state board of education for data collection and reporting to the state department of education. County boards of education shall bear the cost of and fully participate in the implementation of the system by: (1) Acquiring necessary, compatible equipment to participate in the regional computer information system; or (2) following receipt of a waiver from the state superintendent, operating a comparable management information system at a lower cost which provides at least all uniform integrated regional computer information system software modules and allows on-line, interactive access for schools and the county board of education office onto the statewide commu-
communications network. All data formats shall be the same as for the uniform integrated regional information system and will reside at the regional computer. Any county granted a waiver shall receive periodic notification of any incompatibility or deficiency in its system. No county shall expand any system either through the purchase of additional software or hardware that does not advance the goals and implementation of the uniform integrated regional computer information system as recommended by the state board.

(f) Each regional educational service agency shall submit a report and evaluation of the services provided and utilized by the schools within each respective region. Furthermore, each school shall submit an evaluation of the services provided by the regional educational service agency, which shall include an evaluation of the regional educational service agency program, suggestions as to how to improve utilization and the individual school’s plan as to development of new programs and enhancement of existing programs. The report is due by the first day of January of each year and shall be made available to the state board of education, the standing committees on education of the West Virginia Senate and House of Delegates and to the secretary of education and the arts.

(g) A regional board may receive and disburse funds from the state and federal governments, member counties, gifts and grants.

(h) Notwithstanding any other provision of this code to the contrary, employees of regional educational service agencies shall be reimbursed for travel, meals and lodging at the same rate as state employees under the travel management office of the department of administration.

(i) Regional educational service agencies shall hold at least one half of their regular meetings during hours other than those of a regular school day.
Regional educational service agencies shall serve as the lead agency for computer installation, maintenance and repair for the basic skills computer program. Each regional educational service agency shall submit a quarterly status report on turn around time for computer installation, maintenance and repair to the state superintendent of schools who shall then submit a report to the legislative oversight commission on education accountability. The status report for turn around time for computer installation, maintenance and repair shall be based on the following suggested time schedules:

- Network File Servers: forty-eight hours
- Local Area Networks: forty-eight hours
- West Virginia Education Information System: twenty-four hours
- Computer Workstations: three to five days
- Printers: three to five days
- Other Peripherals: three to five days

Regional educational service agencies shall also submit an audit report to the legislative oversight commission on education accountability each year.

Pursuant to the processes and provisions of section twenty-three-a, article two, chapter eighteen of this code, each regional educational service agency shall provide coordinated professional development programs within its region to meet the professional development goals established by the state board.

Notwithstanding any other provision of the code to the contrary, county board members serving on regional educational service agency boards may receive compensation at a rate not to exceed one hundred dollars per meeting attended, not to
County board members serving on regional educational service agency boards may be reimbursed for travel at the same rate as state employees under the rules of the travel management office of the department of administration.

CHAPTER 104

(Com. Sub. for H. B. 4674 — By Delegates Armstead, Harrison, Azinger, Evans, Williams and Capito)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to high quality education programs and standards; efficiency standards and indicators; performance measures; process for improving education; education performance audits; office of education performance audits; on-site reviews; assessment and accountability; use of assessment information; accreditation and school system approval; impaired schools; intervention to correct impairments; legislative intent; capacity; state board of education rules; creating the exemplary school accreditation standard for individual schools; and review of accountability system.

Be it enacted by the Legislature of West Virginia:

That section five, article two-e, 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 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.
§18-2E-5. Process for improving education; office of education performance audits; education standards; school accreditation and school system approval; intervention to correct impairments.

(a) Legislative intent. — The purpose of this section is to establish a process for improving education that includes standards, assessment, accountability and capacity building to provide assurances that a thorough and efficient system of schools is being provided for all West Virginia public school students on an equal education opportunity basis and that the high quality standards are, at a minimum, being met.

(b) State board rules. — The state board shall promulgate rules in accordance with article three-b, chapter twenty-nine-a of this code establishing a unified county improvement plan for each county board and a unified school improvement plan for each public school in this state. The state board is not required to promulgate new rules if legislative rules meeting the requirements of article three-b, chapter twenty-nine-a of this code have been filed with the office of the secretary of state before the effective date of this section.

(c) High quality education standards and efficiency standards. — The state board shall, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, adopt and periodically review and update high quality education standards for student, school and school system performance and processes in the following areas:

(1) Curriculum;

(2) Workplace readiness skills;

(3) Finance;

(4) Transportation;
(5) Special education;

(6) Facilities;

(7) Administrative practices;

(8) Training of county board members and administrators;

(9) Personnel qualifications;

(10) Professional development and evaluation;

(11) Student and school performance;

(12) A code of conduct for students and employees;

(13) Indicators of efficiency; and

(14) Any other such areas as determined by the state board.

(d) Performance measures. — The standards shall assure that all graduates are prepared for gainful employment or for continuing postsecondary education and training and that schools and school districts are making progress in achieving the education goals of the state.

The standards shall include measures of student performance to indicate when a thorough and efficient system of schools is being provided and of school and school system performance and processes that enable student performance. The measures of student performance and school and school system performance and processes shall include, but are not limited to, the following:

(1) The acquisition of student proficiencies as indicated by student performance by grade level measured, where possible, by a uniform statewide assessment program;

(2) School attendance rates;
(3) Student dropout rate;

(4) Percent of students promoted to next grade;

(5) Graduation rate;

(6) Average class size;

(7) Pupil-teacher ratio and number of exceptions to ratio requested by county boards and number granted;

(8) Number of split-grade classrooms;

(9) Percentage of graduates who enrolled in college; the percentage of graduates who enrolled in other postsecondary education; and the percentage of graduates who become fully employed within one year of high school graduation all as reported by the graduates on the assessment form attached to their individualized student transition plan, pursuant to section eight of this article and the percentage of graduates reporting;

(10) Pupil-administrator ratio;

(11) Parent involvement;

(12) Parent, teacher and student satisfaction;

(13) Operating expenditures per pupil;

(14) Percentage of graduates who attain the minimum level of performance in the basic skills recognized by the state board as laying the foundation for further learning and skill development for success in college, other postsecondary education and gainful employment and the grade level distribution in which the minimum level of performance was met;

(15) Percentage of graduates who received additional certification of their skills, competence and readiness for college, other postsecondary education or employment above the minimum foundation level of basic skills;
(16) Percentage of students in secondary and middle schools who are enrolled in advanced placement or honors classes, respectively; and

(17) Indicators of efficiency. — The state board shall, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, adopt and periodically review and update indicators of efficiency for student and school system performance and processes in the following areas:

(A) Curriculum delivery including, but not limited to, the use of distance learning;

(B) Transportation;

(C) Facilities;

(D) Administrative practices;

(E) Personnel;

(F) Utilization of regional educational service agency programs and services, including programs and services that may be established by their assigned regional educational service agency, or other regional services that may be initiated between and among participating county boards; and

(G) Any other indicators as determined by the state board.

(e) Assessment and accountability of school and school system performance and processes. — The state board shall establish by rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, a system of education performance audits which measures the quality of education and the preparation of students based on the standards and measures of student, school and school system performance and processes, including, but not limited to, the standards and measures set forth in subsections (c) and (d) of this section. The system of education performance audits shall assist the state
board in ensuring that the standards and measures established pursuant to this section are, at a minimum, being met and that a thorough and efficient system of schools is being provided. The system of education performance audits shall include: (1) The assessment of student, school and school system performance and the processes in place in schools and school systems which enable student performance; (2) the review of school and school system unified improvement plans; and (3) the periodic, random unannounced on-site review of school and school system performance and compliance with the standards.

(f) Uses of school and school system assessment information. — The state board shall use information from the system of education performance audits to assist it in ensuring that a thorough and efficient system of schools is being provided and to improve student, school and school system performance, including, but not limited to, the following: (1) Determining school accreditation and school system approval status; (2) holding schools and school systems accountable for the efficient use of existing resources to meet or exceed the standards; and (3) targeting additional resources when necessary to improve performance. Primary emphasis in determining school accreditation and school system approval status will be based on student, school and school system performance on measures selected by the state board. The state board shall make accreditation information available to the Legislature; the governor; and to the general public and any individuals who request such information, subject to the provisions of any act, rule or regulation restricting the release of information. Based on the assessment of student, school and school system performance, the state board shall establish early detection and intervention programs to assist underachieving schools and school systems in improving performance before conditions become so grave as to warrant more substantive state intervention, including, but not limited to, making additional technical
assistance, programmatic, monetary and staffing resources available where appropriate.

(g) **Office of education performance audits.** — To assist the state board in the operation of the system of education performance audits and in making determinations regarding the accreditation status of schools and the approval status of school systems, the state board shall establish an office of education performance audits which shall be operated under the direction of the state board independently of the functions and supervision of the state department of education and state superintendent. The office of education performance audits shall report directly to and be responsible to the state board in carrying out its duties under the provisions of this section. The office shall be headed by a director who shall be appointed by the state board and shall serve at the will and pleasure of the state board. The salary of the director shall not exceed the salary of the state superintendent of schools. The state board shall organize and sufficiently staff the office to fulfill the duties assigned to it by this section and the state board. Employees of the state department of education who are transferred to the office of education performance audits shall retain their benefit and seniority status with the department of education. Under the direction of the state board, the office of education performance audits shall receive from the West Virginia education information system staff research and analysis data on the performance of students, schools and school systems, and shall receive assistance from staff at the state department of education and the state school building authority to carry out the duties assigned to the office. In addition to other duties which may be assigned to it by the state board or by statute, the office of education performance audits also shall:

(1) Assure that all statewide assessments of student performance are secure as required in section one-a, article two-e of this chapter;
(2) Administer all accountability measures as assigned by the state board, including, but not limited to, processes for the accreditation of schools and the approval of school systems, and recommend to the state board appropriate action, including, but not limited to, accreditation and approval action;

(3) Determine, in conjunction with the assessment and accountability processes, what capacity may be needed by schools and school systems to meet the standards established by the Legislature and the state board, and recommend to the school, school system and state board, plans to establish those needed capacities;

(4) Determine, in conjunction with the assessment and accountability processes, whether statewide system deficiencies exist in the capacity to establish and maintain a thorough and efficient system of schools, including the identification of trends and the need for continuing improvements in education, and report those deficiencies and trends to the state board;

(5) Determine, in conjunction with the assessment and accountability processes, staff development needs of schools and school systems to meet the standards established by the Legislature and the state board, and make recommendations to the state board, the center for professional development, regional educational service agencies, higher education governing boards and county boards; and

(6) Identify, in conjunction with the assessment and accountability processes, exemplary schools and school systems and best practices that improve student, school and school system performance, and make recommendations to the state board for recognizing and rewarding exemplary schools and school systems and promoting the use of best practices. The state board shall provide information on best practices to county school systems and shall use information identified through the
assessment and accountability processes to select schools of excellence.

(h) On-site reviews. — At the direction of the state board or by weighted, random selection by the office of education performance audits, an unannounced on-site review shall be conducted by the office of education performance audits of any school or school system for purposes, including, but not limited to, the following: (1) Verifying data reported by the school or county board; (2) documenting compliance with policies and laws; (3) evaluating the effectiveness and implementation status of school and school system unified improvement plans; (4) investigating official complaints submitted to the state board that allege serious impairments in the quality of education in schools or school systems; and (5) investigating official complaints submitted to the state board that allege that a school or county board is in violation of policies or laws under which schools and county boards operate. The random selection of schools and school systems for an on-site review shall use a weighted random sample so that those with lower performance indicators and those that have not had a recent on-site review have a greater likelihood of being selected. Under the direction of the state board, the office of education performance audits shall appoint an education standards compliance review team to assist it in conducting on-site reviews. The teams shall be composed of an adequate number of persons who possess the necessary knowledge, skills and experience to make an accurate assessment of education programs and who are drawn from a trained cadre established by the office of education performance audits. The state board shall have discretion in determining the number of persons to serve on a standards compliance review team based on the size of the school or school system as applicable. The teams shall be led by a member of the office of education performance audits. County boards shall be reimbursed for the costs of substitutes required to replace county board employees while they are serving on an education
standards compliance review team. The office of education performance audits shall report the findings of the on-site reviews to the state board for inclusion in the evaluation and determination of a school’s or county board’s accreditation or approval status as applicable.

(i) School accreditation. — The state board annually shall review the information from the system of education performance audits submitted for each school and shall issue to every school: Exemplary accreditation status, full accreditation status, temporary accreditation status, conditional accreditation status, or shall declare the education programs at the school to be seriously impaired.

(1) Full accreditation status shall be given to a school when the school’s performance on the standards adopted by the state board pursuant to subsections (c) and (d) of this section is at a level which would be expected when all of the high quality education standards are being met.

(2) Temporary accreditation status shall be given to a school when the measure of the school’s performance is below the level required for full accreditation status. Whenever a school is given temporary accreditation status, the county board shall ensure that the school’s unified improvement plan is revised to increase the performance of the school to a full accreditation status level. The revised unified school improvement plan shall include objectives, a time line, a plan for evaluation of the success of the improvements, cost estimates, and a date certain for achieving full accreditation. The revised plan shall be submitted to the state board for approval.

(3) Conditional accreditation status shall be given to a school when the school’s performance on the standards adopted by the state board is below the level required for full accreditation, but the school’s unified improvement plan has been revised to achieve full accreditation status by a date certain, the
plan has been approved by the state board and the school is meeting the objectives and time line specified in the revised plan.

(4) Exemplary accreditation status shall be given to a school when the school’s performance on the standards adopted by the state board pursuant to subsections (c) and (d) of this section substantially exceeds the minimal level which would be expected when all of the high quality education standards are being met. The state board shall propose legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a, designated to establish standards of performance to identify exemplary schools.

(5) The state board shall establish and adopt standards of performance to identify seriously impaired schools and the state board may declare a school seriously impaired whenever extraordinary circumstances exist as defined by the state board. These circumstances shall include, but are not limited to, the failure of a school on temporary accreditation status to obtain approval of its revised unified school improvement plan within a reasonable time period as defined by the state board and the failure of a school on conditional accreditation status to meet the objectives and time line of its revised unified school improvement plan or to achieve full accreditation by the date specified in the revised plan. Whenever the state board determines that the quality of education in a school is seriously impaired, the state board shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correction of the impairment. Upon approval of the recommendations by the state board, the recommendations shall be made to the county board. If progress in correcting the impairment as determined by the state board is not made within six months from the time the county board receives the recommendations, the state board shall place the county board on temporary approval status and provide consultation and
assistance to the county board to: (i) Improve personnel management; (ii) establish more efficient financial management practices; (iii) improve instructional programs and rules; or (iv) make such other improvements as may be necessary to correct the impairment. If the impairment is not corrected by a date certain set by the state board, the county board shall be given nonapproval status.

(j) Transfers from seriously impaired schools. — Whenever a school is determined to be seriously impaired and fails to improve its status within one year, any student attending such school may transfer once to the nearest fully accredited school, subject to approval of the fully accredited school and at the expense of the school from which the student transferred.

(k) School system approval. — The state board annually shall review the information submitted for each school system from the system of education performance audits and issue one of the following approval levels to each county board: Full approval, temporary approval, conditional approval, or nonapproval.

(1) Full approval shall be given to a county board whose education system meets or exceeds all of the high quality standards for student, school and school system performance and processes adopted by the state board and whose schools have all been given full, temporary or conditional accreditation status.

(2) Temporary approval shall be given to a county board whose education system is below the level required for full approval. Whenever a county board is given temporary approval status, the county board shall revise its unified county improvement plan to increase the performance of the school system to a full approval status level. The revised plan shall include objectives, a time line, a plan for evaluation of the success of the improvements, a cost estimate, and a date certain
for achieving full approval. The revised plan shall be submitted to the state board for approval.

(3) Conditional approval shall be given to a county board whose education system is below the level required for full approval, but whose unified county improvement plan meets the following criteria: (i) The plan has been revised to achieve full approval status by a date certain; (ii) the plan has been approved by the state board; and (iii) the county board is meeting the objectives and time line specified in the revised plan.

(4) Nonapproval status shall be given to a county board which fails to submit and gain approval for its unified county improvement plan or revised unified county improvement plan within a reasonable time period as defined by the state board or fails to meet the objectives and time line of its revised unified county improvement plan or fails to achieve full approval by the date specified in the revised plan. The state board shall establish and adopt additional standards to identify school systems in which the program may be nonapproved and the state board may issue nonapproval status whenever extraordinary circumstances exist as defined by the state board. Furthermore, whenever a county board has more than a casual deficit, as defined in section one, article one of this chapter, the county board shall submit a plan to the state board specifying the county board’s strategy for eliminating the casual deficit. The state board either shall approve or reject the plan. If the plan is rejected, the state board shall communicate to the county board the reason or reasons for the rejection of the plan. The county board may resubmit the plan any number of times. However, any county board that fails to submit a plan and gain approval for the plan from the state board before the end of the fiscal year after a deficit greater than a casual deficit occurred or any county board which, in the opinion of the state board, fails to comply with an approved plan may be designated as having
nonapproval status. Whenever nonapproval status is given to a 
school system, the state board shall declare a state of emer-
gency in the school system and shall appoint a team of im-
provement consultants to make recommendations within sixty 
days of appointment for correcting the emergency. Upon 
approval of the recommendations by the state board, the 
recommendations shall be made to the county board. If progress 
in correcting the emergency, as determined by the state board, 
is not made within six months from the time the county board 
receives the recommendations, the state board shall intervene 
in the operation of the school system to cause improvements to 
be made that will provide assurances that a thorough and 
efficient system of schools will be provided. This intervention 
may include, but is not limited to, the following: (i) Limiting 
the authority of the county superintendent and county board as 
to the expenditure of funds, the employment and dismissal of 
personnel, the establishment and operation of the school 
calendar, the establishment of instructional programs and rules 
and such other areas as may be designated by the state board by 
rule; (ii) taking such direct action as may be necessary to 
correct the emergency; and (iii) declaring that the office of the 
county superintendent is vacant.

(1) Notwithstanding any other provision of this section, the 
state board may intervene immediately in the operation of the 
county school system with all the powers, duties and responsi-
bilities contained in subsection (k) of this section, if the state 
board finds the following:

(1) That the conditions precedent to intervention exist as 
provided in this section; and

(2) That delaying intervention for any period of time would 
not be in the best interests of the students of the county school 
system.
(m) Capacity. — The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of unified school and school system improvement plans, pursuant to subsection (b) of this section, is intended, in part, to provide mechanisms to target resources strategically to the teaching and learning process to improve student, school and school system performance. When deficiencies are detected through the assessment and accountability processes, the revision and approval of school and school system unified improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the deficiencies. When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall work with the county board to develop or secure the resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the governor.

The state board shall recommend to the appropriate body including, but not limited to, the Legislature, county boards, schools and communities, methods for targeting resources strategically to eliminate deficiencies identified in the assessment and accountability processes by:

(1) Examining reports and unified improvement plans regarding the performance of students, schools and school systems relative to the standards and identifying the areas in which improvement is needed;

(2) Determining the areas of weakness and of ineffectiveness that appear to have contributed to the substandard performance of students or the deficiencies of the school or school system;
(3) Determining the areas of strength that appear to have contributed to exceptional student, school and school system performance and promoting their emulation throughout the system;

(4) Requesting technical assistance from the school building authority in assessing or designing comprehensive educational facilities plans;

(5) Recommending priority funding from the school building authority based on identified needs;

(6) Requesting special staff development programs from the center for professional development, higher education, regional educational service agencies and county boards based on identified needs;

(7) Submitting requests to the Legislature for appropriations to meet the identified needs for improving education;

(8) Directing county boards to target their funds strategically toward alleviating deficiencies;

(9) Ensuring that the need for facilities in counties with increased enrollment are appropriately reflected and recommended for funding;

(10) Ensuring that the appropriate person or entity is held accountable for eliminating deficiencies; and

(11) Ensuring that the needed capacity is available from the state and local level to assist the school or school system in achieving the standards and alleviating the deficiencies.

(n) Review of accountability system.

(1) The Legislature finds that the effective implementation of a standards based accountability system is an important issue for the state’s public education system. In order for the state to
make improvements in its standards based accountability system, it is essential to review the standards based accountability system currently in place to identify areas of possible improvements that may exist. It is the intent of the Legislature that each area of the standards based accountability system be reviewed in accordance with nationally recognized standards.

(2) The state board shall conduct a comprehensive review of the current standards based accountability system and report the findings to the legislative oversight commission on education accountability with recommendations for improvements on or before the first day of January, two thousand one. The review shall include, but not be limited to, the following:

(A) The extent to which accountability goals and strategies focus on academic performance, and the extent that other purposes are clarified in terms of coherent, specific goals to be achieved;

(B) The extent to which designated authorities are charged with the efficient governance of the accountability system;

(C) The extent to which specific responsibilities for student learning and performance are assigned to designated agents;

(D) The extent to which accountability is based on accurate measures of performance as informed by assessments that are administered equitably to all students;

(E) The extent to which those responsible for governing accountability regularly report student and school performance information in useful terms and on a timely basis to school staff, students and their families, and local policymakers, and the news media;

(F) The extent to which incentives are established that effectively motivate agents to improve student learning, and the extent that consequences, which could include rewards,
(G) The extent to which agents are provided sufficient support and assistance to ensure they have the capacity necessary to help students achieve high performance standards;

(H) The extent to which policy makers work to ensure that education policies, mandated programs, financial resources, and the accountability system are well aligned so that consistent messages are communicated about education goals and priorities;

(I) The extent to which the accountability system has widespread support; and

(J) The extent to which various established partnerships work together to support districts, schools and teachers in their efforts to improve student achievement.

CHAPTER 105

(Com. Sub. for S. B. 584 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]
for appointment and powers and duties of director; and requiring report on progress to legislative oversight commission on education accountability by a certain date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.


(a) Findings: — The Legislature finds that:

(1) West Virginia schools have improved and expanded internet access which enables schools to offer courses through the internet and other new and developing technologies;

(2) Current technology is available to provide students with more resources for learning and new and developing technologies offer even more promise for expanded learning opportunities;

(3) A number of states and other jurisdictions have developed internet-based instruction which is available currently and which is being used by schools in this state;

(4) To educate better the students of West Virginia, more course and class offerings can be made available through technology, especially to students who are geographically disadvantaged;

(5) Virtual learning enables students to learn from remote sites, learn at times other than the normal school day and learn at a different pace and gives students access to courses that would not be available in their area;
(6) There is a need to assure that internet-based courses and courses offered through new and developing technologies are of high quality; and

(7) The state and county school systems can benefit from the purchasing power the state can offer.

(b) The Legislature hereby creates the West Virginia virtual school. The West Virginia virtual school shall be located within the office of technology and information systems within the West Virginia department of education.

(c) The state superintendent of schools shall appoint the director of the West Virginia virtual school with the approval of the state board.

(d) The director of the West Virginia virtual school has the following powers and duties:

(1) To contract with providers for courses and other services;

(2) To review courses and courseware and make determinations and recommendations relative to the cost and quality of the courses and the alignment with the instructional goals and objectives of the state board;

(3) To develop policy recommendations for consideration by the state board, which may include, but not be limited to, the following:

(A) Hardware and software considerations for the offering of courses on the internet or other developing technologies;

(B) Standards of teachers and other school employees who are engaged in the activities surrounding the offering of courses on the internet or other developing technologies;
(C) Sharing of resources with other agencies of government, both within and outside West Virginia, to facilitate the offering of courses on the internet or other developing technologies;

(D) Methods for including courses offered on the internet or through other developing technologies in alternative education programs;

(E) Methods for making courses offered on the internet or through other developing technologies available for students receiving home instruction;

(F) Methods for brokering the courses offered on the internet or through other developing technologies;

(G) Methods for applying for grants;

(H) Methods for employing persons who are the most familiar with the instructional goals and objectives to develop the courses to be offered on the internet and through other developing technologies; and

(I) Proper funding models that address all areas of funding including, but not limited to, which county, if any, may include a student receiving courses on the internet or through other developing technologies in enrollment and who, if anyone, is required to pay for the courses offered on the internet or through other developing technologies; and

(4) Any other powers and duties necessary to address the findings of the Legislature in subsection (a) of this section.

(e) The West Virginia department of education shall report the progress of the West Virginia virtual school to the legislative oversight commission on education accountability on or before the first day of September, two thousand.
AN ACT to amend and reenact section seven, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county board offices; and expanding the area within a county that a board office may be located.

Be it enacted by the Legislature of West Virginia:

That section seven, article four, 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 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-7. Office.

1 The board shall provide a suitable office within the county for use by the superintendent and the members of the board. The board shall supply the office with janitorial service and with the necessary equipment and supplies.
CHAPTER 107

(H. B. 4777 — By Delegates Mezzatesta, Williams, Stemple, Davis, Ennis, Shelton and Romine)

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections eight, eight-a, eight-e, eight-g and fifteen, article four, chapter eighteen-a of said code, all relating to priority for service personnel working during the normal school year when selecting a substitute for summer school personnel; increasing the number of years that service personnel receive the salary increment; increasing the number of college hours or comparable credit for which service personnel receive additional pay; competency tests for service personnel; defining maintenance personnel; seniority of substitute service personnel; employment of service personnel substitutes; leaves of absence; suspension; and time off for sickness or injury.

Be it enacted by the Legislature of West Virginia:

That section thirty-nine, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections eight, eight-a, eight-e, eight-g and fifteen, article four, chapter eighteen-a of said code be amended and reenacted, all to read as follows:

Chapter
18. Education.
18A. School Personnel.
§18-5-39. Establishment of summer school programs; tuition.

(a) Inasmuch as the present county school facilities for the most part lie dormant and unused during the summer months, and inasmuch as there are many students who are in need of remedial instruction and others who desire accelerated instruction, it is the purpose of this section to provide for the establishment of a summer school program, which is to be separate and apart from the full school term as established by each county.

(b) The board of any county has the authority to establish a summer school program utilizing the public school facilities and to charge tuition for students who attend the summer school. The tuition may not exceed in any case the actual cost of operation of the summer school program: Provided, That any deserving pupil whose parents, in the judgment of the board, are unable to pay the tuition, may attend the summer school program at a reduced charge or without charge. The county board may determine the term and curriculum of the summer schools based upon the particular needs of the individual county. The curriculum may include, but is not limited to, remedial instruction, accelerated instruction and the teaching of manual arts. The term of the summer school program may not be established in such a manner as to interfere with the regular school term.

(c) The county boards may employ any certified teacher as teachers for this summer school program. Certified teachers employed by the county board to teach in the summer school program shall be paid an amount to be determined by the county board and shall enter into a contract of employment in such form as is prescribed by the county board: Provided, That teachers who teach summer courses of instruction which are offered for credit and which are taught during the regular school
year shall be paid at the same daily rate they would receive if
paid in accordance with the then current minimum monthly
salary in effect for teachers in that county.

(d) Any funds accruing from the tuitions shall be credited
to and expended within the existing framework of the general
current expense fund of the county board.

(e) Notwithstanding any other provision of this code to the
contrary, the board shall fill professional positions established
pursuant to the provisions of this section on the basis of
certification and length of time the professional has been
employed in the county's summer school program. In the event
that no employee who has been previously employed in the
summer school program holds a valid certification or licensure,
a board shall fill the position as a classroom teaching position
in accordance with section seven-a, article four, chapter
eighteen-a of this code.

(f) Notwithstanding any other provision of the code to the
contrary, the county board may employ school service person-
nel to perform any related duties outside the regular school term
as defined in section eight, article four, chapter eighteen-a of
this code. An employee who was employed in any service
personnel job or position during the previous summer shall
have the option of retaining the job or position if the job or
position exists during any succeeding summer. If the employee
is unavailable or if the position is newly created, the position
shall be filled pursuant to section eight-b, article four, chapter
eighteen-a of this code. When any summer employee is absent,
qualified regular employees within the same classification
category who are not working because their employment term
for the school year has ended or has not yet begun the succeed-
ing school employment term, shall be given first opportunity to
substitute for the absent summer employee on a rotating and
seniority basis. When any summer employee who is employed
in a summer position is granted a leave of absence for the
summer months, the board shall give regular employment status to the employee for that summer position which shall be filled under the procedure set forth in section eight-b, article four, chapter eighteen-a of this code. The summer employee on leave of absence has the option of returning to that summer position if the position exists the succeeding summer or whenever the position is reestablished if it were abolished. The salary of a summer employee shall be in accordance with the salary schedule of persons regularly employed in the same position in the county where employed and persons employed in those positions are entitled to all rights, privileges and benefits provided in sections five-b, eight, eight-a, ten and fourteen, article four, chapter eighteen-a of this code: Provided, That those persons are not entitled to a minimum employment term of two hundred days for their summer position.

(g) If a county board reduces in force the number of employees to be employed in a particular summer program or classification from the number employed in that position in previous summers, the reductions in force and priority in reemployment to that summer position shall be based upon the length of service time in the particular summer program or classification.

(h) For the purpose of this section, summer employment for service personnel includes, but is not limited to, filling jobs and positions as defined in section eight, article four, chapter eighteen-a of this code and especially established for and which are to be predominantly performed during the summer months to meet the needs of a county board.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.

§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-8e. Competency testing for service personnel.
§18A-4-8g. Determination of seniority for service personnel.
§18A-4-15. Employment of service personnel substitutes.

§18A-4-8. Employment term and class titles of service personnel; definitions.

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may be no less than ten months. A month is defined as twenty employment days: Provided, That the county board may contract with all or part of these service personnel for a longer term. The beginning and closing dates of the ten-month employment term may not exceed forty-three weeks.

(b) Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

(c) Service personnel employed in the same classification for more than the two hundred day minimum employment term shall be paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred day minimum employment term.

(d) No service employee, without his or her agreement, may be required to report for work more than five days per week and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

(e) If an employee whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the employee shall be paid for at least one-half day of work for each day he or she reports for work, and if the employee works more than three
and one-half hours on any Saturday or Sunday, he or she shall be paid for at least a full day of work for each day.

(f) Custodians, aides, maintenance, office and school lunch employees required to work a daily work schedule that is interrupted, that is, who do not work a continuous period in one day, shall be paid additional compensation equal to at least one eighth of their total salary as provided by their state minimum salary and any county pay supplement, and payable entirely from county funds: Provided, That when engaged in duties of transporting students exclusively, aides shall not be regarded as working an interrupted schedule. Maintenance personnel are defined as personnel who hold a classification title other than in a custodial, aide, school lunch, office or transportation category as provided in section one, article one of this chapter.

(g) Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, the employee’s salary shall be made to comply with the requirements of this article, and to any county salary schedule in excess of the minimum requirements of this article, based upon the employee’s advanced classification and allowable years of employment.

(h) An employee’s contract as provided in section five, article two of this chapter shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and any county salary schedule in excess of the minimum requirements of this article.

(i) The column heads of the state minimum pay scale and class titles, set forth in section eight-a of this article, are defined as follows:

(1) “Pay grade” means the monthly salary applicable to class titles of service personnel;
(2) "Years of employment" means the number of years which an employee classified as service personnel has been employed by a board in any position prior to or subsequent to the effective date of this section and including service in the armed forces of the United States, if the employee were employed at the time of his or her induction. For the purpose of section eight-a of this article, years of employment shall be limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article;

(3) "Class title" means the name of the position or job held by service personnel;

(4) "Accountant I" means personnel employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll;

(5) "Accountant II" means personnel employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;

(6) "Accountant III" means personnel who are employed in the county board office to manage and supervise accounts payable and/or payroll procedures;

(7) "Aide I" means those personnel selected and trained for teacher-aide classifications such as monitor aide, clerical aide, classroom aide or general aide;

(8) "Aide II" means those personnel referred to in the "Aide I" classification who have completed a training program approved by the state board, or who hold a high school diploma or have received a general educational development certificate. Only personnel classified in an Aide II class title may be employed as an aide in any special education program;
(9) "Aide III" means those personnel referred to in the "Aide I" classification who hold a high school diploma or a general educational development certificate and have completed six semester hours of college credit at an institution of higher education or are employed as an aide in a special education program and have one year's experience as an aide in special education;

(10) "Aide IV" means personnel referred to in the "Aide I" classification who hold a high school diploma or a general educational development certificate and who have completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education, or who have completed fifteen hours of state board-approved college credit at a regionally accredited institution of higher education and successfully completed an in-service training program determined by the state board to be the equivalent of three hours of college credit;

(11) "Audiovisual technician" means personnel employed to perform minor maintenance on audiovisual equipment, films, supplies and the filling of requests for equipment;

(12) "Auditor" means personnel employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;

(13) "Autism mentor" means personnel who work with autistic students and who meet standards and experience to be determined by the state board: Provided, That if any employee has held or holds an aide title and becomes employed as an autism mentor, the employee shall hold a multiclassification status that includes aide and autism mentor titles, in accordance with section eight-b of this article;
(14) “Braille or sign language specialist” means personnel employed to provide braille and/or sign language assistance to students: Provided, That if any employee has held or holds an aide title and becomes employed as a braille or sign language specialist, the employee shall hold a multiclassification status that includes aide and braille or sign language specialist title, in accordance with section eight-b of this article;

(15) “Bus operator” means personnel employed to operate school buses and other school transportation vehicles as provided by the state board;

(16) “Buyer” means personnel employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs;

(17) “Cabinetmaker” means personnel employed to construct cabinets, tables, bookcases and other furniture;

(18) “Cafeteria manager” means personnel employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school;

(19) “Carpenter I” means personnel classified as a carpenter’s helper;

(20) “Carpenter II” means personnel classified as a journeyman carpenter;

(21) “Chief mechanic” means personnel employed to be responsible for directing activities which ensure that student transportation or other board-owned vehicles are properly and safely maintained;
(22) "Clerk I" means personnel employed to perform clerical tasks;

(23) "Clerk II" means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines;

(24) "Computer operator" means qualified personnel employed to operate computers;

(25) "Cook I" means personnel employed as a cook's helper;

(26) "Cook II" means personnel employed to interpret menus, to prepare and serve meals in a food service program of a school and shall include personnel who have been employed as a "Cook I" for a period of four years, if the personnel have not been elevated to this classification within that period of time;

(27) "Cook III" means personnel employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system;

(28) "Crew leader" means personnel employed to organize the work for a crew of maintenance employees to carry out assigned projects;

(29) "Custodian I" means personnel employed to keep buildings clean and free of refuse;

(30) "Custodian II" means personnel employed as a watchman or groundsman;

(31) "Custodian III" means personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;
"Custodian IV" means personnel employed as head custodians. In addition to providing services as defined in "custodian III", their duties may include supervising other custodian personnel;

"Director or coordinator of services" means personnel who are assigned to direct a department or division. Nothing in this subdivision may prohibit professional personnel or professional educators as defined in section one, article one of this chapter, from holding this class title, but professional personnel may not be defined or classified as service personnel unless the professional personnel held a service personnel title under this section prior to holding class title of "director or coordinator of services". Directors or coordinators of service positions shall be classified as either a professional personnel or service personnel position for state aid formula funding purposes and funding for directors or coordinators of service positions shall be based upon the employment status of the director or coordinator either as a professional personnel or service personnel;

"Draftsman" means personnel employed to plan, design and produce detailed architectural/engineering drawings;

"Electrician I" means personnel employed as an apprentice electrician helper or who holds an electrician helper license issued by the state fire marshal;

"Electrician II" means personnel employed as an electrician journeyman or who holds a journeyman electrician license issued by the state fire marshal;

"Electronic technician I" means personnel employed at the apprentice level to repair and maintain electronic equipment;

"Electronic technician II" means personnel employed at the journeyman level to repair and maintain electronic equipment;
(39) "Executive secretary" means personnel employed as the county school superintendent's secretary or as a secretary who is assigned to a position characterized by significant administrative duties;

(40) "Food services supervisor" means qualified personnel not defined as professional personnel or professional educators in section one, article one of this chapter, employed to manage and supervise a county school system's food service program. The duties would include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;

(41) "Foremen" means skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment;

(42) "General maintenance" means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system;

(43) "Glazier" means personnel employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;

(44) "Graphic artist" means personnel employed to prepare graphic illustrations;

(45) "Groundsmen" means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings;

(46) "Handyman" means personnel employed to perform routine manual tasks in any operation of the county school system;
(47) "Heating and air conditioning mechanic I" means personnel employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(48) "Heating and air conditioning mechanic II" means personnel employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(49) "Heavy equipment operator" means personnel employed to operate heavy equipment;

(50) "Inventory supervisor" means personnel who are employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;

(51) "Key punch operator" means qualified personnel employed to operate key punch machines or verifying machines;

(52) "Locksmith" means personnel employed to repair and maintain locks and safes;

(53) "Lubrication man" means personnel employed to lubricate and service gasoline or diesel-powered equipment of a county school system;

(54) "Machinist" means personnel employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. These personnel should also have the ability to work from blueprints and drawings;

(55) "Mail clerk" means personnel employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;
(56) "Maintenance clerk" means personnel employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

(57) "Mason" means personnel employed to perform tasks connected with brick and block laying and carpentry tasks related to such laying;

(58) "Mechanic" means personnel employed who can independently perform skilled duties in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

(59) "Mechanic assistant" means personnel employed as a mechanic apprentice and helper;

(60) "Multiclassification" means personnel employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale shall be the higher pay grade of the class titles involved;

(61) "Office equipment repairman I" means personnel employed as an office equipment repairman apprentice or helper;

(62) "Office equipment repairman II" means personnel responsible for servicing and repairing all office machines and equipment. Personnel are responsible for parts being purchased necessary for the proper operation of a program of continuous maintenance and repair;

(63) "Painter" means personnel employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;
“Paraprofessional” means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, a teacher or another designated professional educator: Provided, That no person employed on the effective date of this section in the position of an aide may be reduced in force or transferred to create a vacancy for the employment of a paraprofessional: Provided, however, That if any employee has held or holds an aide title and becomes employed as a paraprofessional, the employee shall hold a multiclassification status that includes aide and paraprofessional titles in accordance with section eight-b of this article: Provided further, That once an employee who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

“Plumber I” means personnel employed as an apprentice plumber and helper;

“Plumber II” means personnel employed as a journeyman plumber;

“Printing operator” means personnel employed to operate duplication equipment, and as required, to cut, collate, staple, bind and shelve materials;

“Printing supervisor” means personnel employed to supervise the operation of a print shop;

“Programmer” means personnel employed to design and prepare programs for computer operation;

“Roofing/sheet metal mechanic” means personnel employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;
(71) "Sanitation plant operator" means personnel employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection;

(72) "School bus supervisor" means qualified personnel employed to assist in selecting school bus operators and routing and scheduling of school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promoting good relationships with parents, pupils, bus operators and other employees;

(73) "Secretary I" means personnel employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines;

(74) "Secretary II" means personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied in this subdivision that would prevent the employees from holding or being elevated to a higher classification;

(75) "Secretary III" means personnel assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of purchasing and financial control or any personnel who have served in a position which meets the definition of "secretary II" or "secretary III" in this section for eight years;
(76) "Supervisor of maintenance" means skilled personnel not defined as professional personnel or professional educators as in section one, article one of this chapter. The responsibilities would include directing the upkeep of buildings and shops, issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a board;

(77) "Supervisor of transportation" means qualified personnel employed to direct school transportation activities, properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system;

(78) "Switchboard operator-receptionist" means personnel employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance;

(79) "Truck driver" means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles;

(80) "Warehouse clerk" means personnel employed to be responsible for receiving, storing, packing and shipping goods;

(81) "Watchman" means personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties; and

(82) "Welder" means personnel employed to provide acetylene or electric welding services for a school system.

(j) In addition to the compensation provided for in section eight-a of this article, for service personnel, each service employee is, notwithstanding any provisions in this code to the contrary, entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter
of this code without regard to the employee’s hours of employment or the methods or sources of compensation.

(k) Service personnel whose years of employment exceed the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he or she is employed.

(1) The county boards shall review each service personnel employee job classification annually and shall reclassify all service employees as required by the job classifications. The state superintendent of schools may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the county boards. Further, the state superintendent shall order county boards to correct immediately any improper classification matter and with the assistance of the attorney general shall take any legal action necessary against any county board to enforce the order.

(m) No service employee, without his or her written consent, may be reclassified by class title, nor may a service employee, without his or her written consent, be relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his or her salary, rate of pay, compensation or benefits for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

(n) Any board failing to comply with the provisions of this article may be compelled to do so by mandamus, and is liable to any party prevailing against the board for court costs and the prevailing party’s reasonable attorney fee, as determined and established by the court.
(o) Notwithstanding any provisions in this code to the contrary, service personnel who hold a continuing contract in a specific job classification and who are physically unable to perform the job’s duties as confirmed by a physician chosen by the employee shall be given priority status over any employee not holding a continuing contract in filling other service personnel job vacancies if qualified as provided in section eight-e of this article.

§18A-4-8a. Service personnel minimum monthly salaries.

(1) 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.

STATE MINIMUM PAY SCALE PAY GRADE I

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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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### CLASS TITLE

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<td>Mechanic</td>
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<td>Mechanic Assistant</td>
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</table>
(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 also shall be added to the minimum monthly pay of each service employee for each of the following:

(A) A service employee who holds twelve college hours or comparable credit obtained in a trade or vocational school as approved by the state board;
(B) A service employee who holds twenty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(C) A service employee who holds thirty-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(D) A service employee who holds forty-eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(E) A service employee who holds sixty college hours or comparable credit obtained in a trade or vocational school as approved by the state board; and

(F) A service employee who holds seventy-two 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 requested by a service personnel employee within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment shall be prorated accordingly. When performing extra duty assignments, employees who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the employee were employed on a full-day salary basis.

(9) The minimum pay for any service personnel employees engaged in the removal of asbestos material or related duties required for asbestos removal shall be their regular total daily rate of pay and no less than an additional three dollars per hour or no less than five dollars per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos
decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos related duties outside of the employee’s regular employment county, the daily rate of pay shall be no less than the minimum amount as established in the employee’s regular employment county for asbestos removal and an additional thirty dollars per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel employees may be utilized in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(10) For the purpose of qualifying for additional pay as provided in section eight, article five of this chapter, an aide shall be considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort or render service to a child or children when not under the direct supervision of certificated professional personnel within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds or wherever supervision is required. For purposes of this section, “under the direct supervision of certificated professional personnel” means that certificated professional personnel is present, with and accompanying the aide.

§18A-4-8e. Competency testing for service personnel.

(a) The state board of education shall develop and cause to be made available competency tests for all of the classification titles defined in section eight and listed in section eight-a of this article for service personnel. Each classification title defined
and listed shall be considered a separate classification category of employment for service personnel and shall have a separate competency test, except for those class titles having Roman numeral designations, which shall be considered a single classification of employment and shall have a single competency test. The cafeteria manager class title shall be included in the same classification category as cooks and shall have the same competency test. The executive secretary class title shall be included in the same classification category as secretaries and shall have the same competency test. The classification titles of chief mechanic, mechanic and assistant mechanic shall be included in one classification title and shall have the same competency test.

(b) The purpose of these tests shall be to provide county boards of education a uniform means of determining whether school service personnel employees who do not hold a classification title in a particular category of employment can meet the definition of the classification title in another category of employment as defined in section eight of this article. Competency tests shall not be used to evaluate employees who hold the classification title in the category of their employment.

(c) The competency test shall consist of an objective written and/or performance test: Provided, That applicants shall have the opportunity of taking the written test orally if requested. Oral tests shall be recorded mechanically and kept on file. Persons administering the oral test shall not know the applicant personally. The performance test for all classifications and categories other than bus operator shall be administered by a vocational school which serves the county board of education. A standard passing score shall be established by the state department of education for each test and shall be used by county boards of education. The subject matter of each competency test shall be commensurate with the requirements of the definitions of the classification titles as provided in section
eight of this article. The subject matter of each competency test shall be designed in such a manner that achieving a passing grade will not require knowledge and skill in excess of the requirements of the definitions of the classification titles. Achieving a passing score shall conclusively demonstrate the qualification of an applicant for a classification title. Once an employee passes the competency test of a classification title, the applicant shall be fully qualified to fill vacancies in that classification category of employment as provided in section eight-b of this article and shall not be required to take the competency test again.

(d) An applicant who fails to achieve a passing score shall be given other opportunities to pass the competency test when making application for another vacancy within the classification category.

(e) Competency tests shall be administered to applicants in a uniform manner under uniform testing conditions. County boards of education are responsible for scheduling competency tests, notifying applicants of the date and time of the one day of training prior to taking the test and the date and time of the test. County boards of education shall not utilize a competency test other than the test authorized by this section.

(f) When scheduling of the competency test conflicts with the work schedule of a school employee who has applied for a vacancy, the employee shall be excused from work to take the competency test without loss of pay.

(g) A minimum of one day of appropriate inservice training shall be provided employees to assist them in preparing to take the competency tests.

(h) Competency tests shall be utilized to determine the qualification of new applicants seeking initial employment in
(i) Notwithstanding any provisions in this code to the contrary, once an employee holds or has held a classification title in a category of employment, that employee shall be considered qualified for the classification title even though that employee no longer holds that classification.

(j) The requirements of this section shall not be construed to alter the definitions of class titles as provided in section eight of this article nor the procedure and requirements of section eight-b of this article.

§18A-4-8g. Determination of seniority for service personnel.

(a) Seniority accumulation for a regular school service employee begins on the date the employee enters upon regular employment duties pursuant to a contract as provided in section five, article two of this chapter and continues until the employee's employment as a regular employee is severed with the county board. Seniority shall not cease to accumulate when an employee is absent without pay as authorized by the county board or the absence is due to illness or other reasons over which the employee has no control as authorized by the county board. Seniority accumulation for a substitute employee shall begin upon the date the employee enters upon the duties of a substitute as provided in section fifteen of this article, after executing with the board a contract of employment as provided in section five, article two of this chapter. The seniority of a substitute employee, once established, shall continue until the employee enters into the duties of a regular employment contract as provided in section five, article two of this chapter or employment as a substitute with the county board is severed. Seniority of a regular or substitute employee shall continue to accumulate except during the time when an employee is
willfully absent from employment duties because of a concerted work stoppage or strike or is suspended without pay.

(b) For all purposes including the filling of vacancies and reduction in force, seniority shall be accumulated within particular classification categories of employment as those classification categories are referred to in section eight-e of this article: Provided, That when implementing a reduction in force, an employee with the least seniority within a particular classification category shall be properly released and placed on the preferred recall list. The particular classification title held by an employee within the classification category shall not be taken into consideration when implementing a reduction in force.

(c) On or before the first day of September and the fifteenth day of January of each school year, county boards shall post at each county school or working station the current seniority list or lists of each school service classification. Each list shall contain the name of each regularly employed school service personnel employed in each classification and the date that each employee began performing his or her assigned duties in each classification. Current seniority lists of substitute school service personnel shall be available to employees upon request at the county board office.

(d) The seniority of an employee who transfers out of a class title or classification category of employment and subsequently returns to that class title or classification category of employment shall be calculated as follows:

The county board shall establish the number of calendar days between the date the employee left the class title or category of employment in question and the date of return to the class title or classification category of employment. This number of days shall be added to the employee’s initial seniority date to establish a new beginning seniority date within the class title or classification category. The employee shall
then be considered as having held uninterrupted service within the class title or classification category from the newly established seniority date. The seniority of an employee who has had a break in the accumulation of seniority as a result of being willfully absent from employment duties because of a concerted work stoppage or strike shall be calculated in the same manner.

(e) A substitute school service employee shall acquire regular employment status and seniority if the employee receives a position pursuant to subsections (2) and (5), section fifteen of this article: Provided, That a substitute employee who accumulates regular employee seniority while holding a position acquired pursuant to said subsections shall simultaneously accumulate substitute seniority; Provided, however, That upon termination of a leave of absence or a suspension, the employee shall return to the status previously held. If the employee returns to substitute status, the employee shall retain any regular employee seniority accrued, however, this seniority may not be used in the bidding process for regular positions unless the employee again attains regular employee status or has attained preferred recall status. County boards shall not be prohibited from providing any benefits of regular employment for substitute employees, but the benefits shall not include regular employee status and seniority.

(f) If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the county board. A board shall conduct the random selection within thirty days upon the employees establishing an identical seniority date. All employees with an identical seniority date within the same class title or classification category shall participate in the random selection. As long as the affected employees hold identical seniority within the same classification category, the initial random selection conducted by the board shall be permanent for the duration of the employment within the same
classification category of the employees by the board. This
random selection priority applies to the filling of vacancies and
to the reduction in force of school service personnel: Provided,
That if another employee or employees subsequently acquire
seniority identical to the employees involved in the original
random selection, a second random selection shall be held
within thirty days to determine the seniority ranking of the new
employee or employees within the group. The priority between
the employees who participated in the original random selection
shall remain the same. The second random selection shall be
performed by placing numbered pieces of paper equal to the
number of employees with identical seniority in a container.
The employees who were not involved in the original random
selection shall draw a number from the container which will
determine their seniority within the group as a whole. This
process will be repeated if additional employees subsequently
acquire identical seniority. The same process shall be utilized
if additional employees are subsequently discovered to have the
same seniority as the original group of employees but who did
not participate in the original random selection through over­
sight or mistake.

(g) Service personnel who are employed in a classification
category of employment at the time when a vacancy is posted
in the same classification category of employment shall be
given first opportunity to fill the vacancy.

(h) Seniority acquired as a substitute and as a regular
employee shall be calculated separately and shall not be
combined for any purpose. Seniority acquired within different
classification categories shall be calculated separately: Pro­
vided, That when a school service employee makes application
for a position outside of the classification category currently
held, if the vacancy is not filled by an applicant within the
classification category of the vacancy, the applicant shall
combine all regular employment seniority acquired for the purposes of bidding on the position.

(i) School service personnel who hold multiclassification titles shall accrue seniority in each classification category of employment which the employee holds and shall be considered an employee of each classification category contained within his or her multiclassification title. Multiclassified employees are subject to reduction in force in any category of employment contained within their multiclassification title based upon the seniority accumulated within that category of employment: Provided, That if a multiclassified employee is reduced in force in one classification category, the employee shall retain employment in any of the other classification categories that he or she holds within his multiclassification title. In that case, the county board shall delete the appropriate classification title or classification category from the contract of the multiclassified employee.

(j) When applying to fill a vacancy outside the classification categories held by the multiclassified employee, seniority acquired simultaneously in different classification categories shall be calculated as if accrued in one classification category only.

(k) The seniority conferred in this section applies retroactively to all affected school service personnel, but the rights incidental to the seniority shall commence as of the effective date of this section.

§18A-4-15. Employment of service personnel substitutes.

(a) The county board shall employ and the county superintendent, subject to the approval of the county board, shall assign substitute service personnel on the basis of seniority to perform any of the following duties:
5 (1) To fill the temporary absence of another service employee;

7 (2) To fill the position of a regular service employee who requests a leave of absence from the county board in writing and who is granted the leave in writing by the county board: Provided, That if the leave of absence is to extend beyond thirty days, the board, within twenty working days from the commencement of the leave of absence, shall give regular employee status to a person hired to fill the position. The person employed on a regular basis shall be selected under the procedure set forth in section eight-b of this article. The substitute shall hold the position and regular employee status only until the regular employee returns to the position and the substitute shall have and shall be accorded all rights, privileges and benefits pertaining to the position: Provided, however, That if a regular or substitute employee fills a vacancy that is related to a leave of absence in any manner as provided in this section, upon termination of the leave of absence the employee shall be returned to his or her original position: Provided further, That no service person may be required to request or to take a leave of absence: And provided further, That no service person shall be deprived of any right or privilege of regular employment status for refusal to request or failure to take a leave of absence;

28 (3) To perform the service of a service employee who is authorized to be absent from duties without loss of pay;

30 (4) To temporarily fill a vacancy in a permanent position caused by severance of employment by the resignation, transfer, retirement, permanent disability, dismissal pursuant to section eight, article two of this chapter, or death of the regular service employee who had been assigned to fill the position: Provided, That within twenty working days from the commencement of the vacancy, the board shall fill the vacancy under the procedures set out in section eight-b of this article and section five, article two of this chapter and the person hired to fill the
vacancy shall have and shall be accorded all rights, privileges and benefits pertaining to the position;

(5) To fill the vacancy created by a regular employee’s suspension: Provided, That if the suspension is for more than thirty working days the substitute service employee shall be assigned to fill the vacancy on a regular basis and shall have and be accorded all rights, privileges and benefits pertaining to the position until the termination by the county board becomes final. If the suspended employee is not returned to his or her job, the board shall fill the vacancy under the procedures set out in section eight-b of this article and section five, article two of this chapter; and

(6) To temporarily fill a vacancy in a newly created position prior to employment of a service personnel on a regular basis under the procedure set forth in section eight-b of this article.

(b) Substitutes shall be assigned in the following manner: A substitute with the greatest length of service time, that is, from the date he or she began his or her assigned duties as a substitute in that particular category of employment, shall be given priority in accepting the assignment throughout the period of the regular employee’s absence or until the vacancy is filled on a regular basis under the procedures set out in section eight-b of this article. All substitutes shall be employed on a rotating basis according to the length of their service time until each substitute has had an opportunity to perform similar assignments: Provided, That if there are regular service employees employed in the same building or working station as the absent employee and who are employed in the same classification category of employment, the regular employees shall be first offered the opportunity to fill the position of the absent employee on a rotating and seniority basis with the substitute then filling the regular employee’s position. A regular employee assigned to fill the position of an absent employee shall be
given the opportunity to hold that position throughout the absence.

(c) Regular school service personnel shall be returned by the county board of education to the same position held prior to any approved leave of absence or period of recovery from injury or illness. The school service personnel shall retain all rights, privileges and benefits which had accrued at the time of the absence or accrued under any other provision of law during the absence and shall have all rights, privileges and benefits generally accorded school service employees at the time of return to work.

(d) The salary of a substitute service employee shall be based upon his or her years of employment as defined in section eight of this article and as provided in the state minimum pay scale set forth in section eight-a of this article and shall be in accordance with the salary schedule of persons regularly employed in the same position in the county in which he or she is employed.

(e) Before any substitute service employee enters upon his or her duties, he or she shall execute with the county board a written contract as provided in section five, article two of this chapter.

(f) To establish a uniform system of providing a fair and equitable opportunity for substitutes to enter upon their duties for the first time, the following method shall be used: The initial order of assigning newly employed substitutes shall be determined by a random selection system established by the affected substitute employees and approved by the county board. This initial priority order shall be in effect only until the substitute service personnel have entered upon their duties for the first time.
(g) Substitute service employees who have worked thirty days for a school system shall have all rights pertaining to suspension, dismissal and contract renewal as is granted to regular service personnel in sections six, seven, eight and eight-a, article two of this chapter.

CHAPTER 108

(Com. Sub. for S. B. 189 — By Senators Mitchell, Hunter and Ball)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requirements for home school instruction; study on home school instruction; and collecting data on home school instruction.

Be it enacted by the Legislature of West Virginia:

That section one, article eight, 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 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Commencement and termination of compulsory school attendance; exemptions.

Compulsory school attendance shall begin with the school year in which the sixth birthday is reached prior to the first day of September of such year or upon enrolling in a publicly supported kindergarten program and continue to the sixteenth birthday.
Exemption from the foregoing requirements of compulsory public school attendance shall be made on behalf of any child for the following causes or conditions, each such cause or condition being subject to confirmation by the attendance authority of the county:

*Exemption A. Instruction in a private, parochial or other approved school.* — Such instruction shall be in a school approved by the county board of education and for a time equal to the school term of the county for the year. In all such schools it shall be the duty of the principal or other person in control, upon the request of the county superintendent of schools, to furnish to the county board of education such information and records as may be required with respect to attendance, instruction and progress of pupils enrolled between the entrance age and sixteen years;

*Exemption B. Instruction in home or other approved place.* — (a) Such instruction shall be in the home of such child or children or at some other place approved by the county board of education and for a time equal to the school term of the county. If such request for home instruction is denied by the county board of education, good and reasonable justification for such denial must be furnished in writing to the applicant by the county board of education. The instruction in such cases shall be conducted by a person or persons who, in the judgment of the county superintendent and county board of education, are qualified to give instruction in subjects required to be taught in the free elementary schools of the state. It shall be the duty of the person or persons providing the instruction, upon request of the county superintendent, to furnish to the county board of education such information and records as may be required from time to time with respect to attendance, instruction and progress of pupils enrolled between the entrance age and sixteen years receiving such instruction. The state department of education shall develop guidelines for the home schooling of special education students including alternative assessment.
measures to assure that satisfactory academic progress is achieved.

(b) Notwithstanding the provisions of subsection (a) of this Exemption B, the person or persons providing home instruction meet the requirements for Exemption B when the conditions of this subsection are met: Provided, That the county superintendent shall have the right to seek from the circuit court of the county an order denying the home instruction, which order may be granted upon a showing of clear and convincing evidence that the child will suffer educational neglect or that there are other compelling reasons to deny home instruction.

(1) The person or persons providing home instruction present to the county superintendent or county board of education a notice of intent to provide home instruction and the name and address of any child of compulsory school age to be instructed: Provided, That if a child is enrolled in a public school, notice of intent to provide home instruction shall be given at least two weeks prior to withdrawing such child from public school;

(2) The person or persons providing home instruction submit satisfactory evidence of: (i) A high school diploma or equivalent; and (ii) formal education at least four years higher than the most academically advanced child for whom the instruction will be provided: Provided, That during the school year two thousand - two thousand one only, the requirement of a formal education at least four years higher than the most academically advanced child is waived;

(3) The person or persons providing home instruction outline a plan of instruction for the ensuing school year; and

(4) The person or persons providing home instruction shall annually obtain an academic assessment of the child for the previous school year. This shall be satisfied in one of the following ways:
(i) Any child receiving home instruction annually takes a standardized test, to be administered at a public school in the county where the child resides, or administered by a licensed psychologist or other person authorized by the publisher of the test, or administered by a person authorized by the county superintendently or county board of education. The child shall be administered a test which has been normed by the test publisher on that child’s age or grade group. In no event may the child’s parent or legal guardian administer the test. Where a test is administered outside of a public school, the child’s parent or legal guardian shall pay the cost of administering the test. The public school or other qualified person shall administer to children of compulsory school age the comprehensive test of basic skills, the California achievement test, the Stanford achievement test or the Iowa tests of basic skills, achievement and proficiency, or an individual standardized achievement test that is nationally normed and provides statistical results which test will be selected by the public school, or other person administering the test, in the subjects of language, reading, social studies, science and mathematics and shall be administered under standardized conditions as set forth by the published instructions of the selected test. No test shall be administered if the publication date is more than ten years from the date of the administration of the test. Each child’s test results shall be reported as a national percentile for each of the five subjects tested. Each child’s test results shall be made available on or before the thirtieth day of June of the school year in which the test is to be administered to the person or persons providing home instruction, the child’s parent or legal guardian and the county superintendent. Upon request of a duly authorized representative of the West Virginia department of education, each child’s test results shall be furnished by the person or persons providing home instruction, or by the child’s parent or legal guardian, to the state superintendent of schools. Upon notification that the mean of the child’s test results for any single year has fallen below the fortieth percentile, the county
board of education shall notify the parents or legal guardian of
said child, in writing, of the services available to assist in the
assessment of the child's eligibility for special education
services: Provided, That the identification of a disability shall
not preclude the continuation of home schooling.

If the mean of the child's test results for any single year for
language, reading, social studies, science and mathematics fall
below the fortieth percentile on the selected tests, then the
person or persons providing home instruction shall initiate a
remedial program to foster achievement above that level and
the student shall show improvement. If, after two calendar
years, the mean of the child's test results fall below the fortieth
percentile level, home instruction shall no longer satisfy the
compulsory school attendance requirement exemption; or

(ii) The county superintendent is provided with a written
narrative indicating that a portfolio of samples of the child's
work has been reviewed and that the child's academic progress
for the year is in accordance with the child's abilities. This
narrative shall be prepared by a certified teacher or other person
mutually agreed upon by the parent or legal guardian and the
county superintendent. It shall be submitted on or before the
thirtieth day of June of the school year covered by the portfolio.
The parent or legal guardian shall be responsible for payment
of fees charged for the narrative; or

(iii) Evidence of an alternative academic assessment of the
child's proficiency mutually agreed upon by the parent or legal
guardian and the county superintendent is submitted to the
county superintendent by the thirtieth day of June of the school
year being assessed. The parent or legal guardian shall be
responsible for payment of fees charged for the assessment.

(c) The superintendent or a designee shall offer such
assistance, including textbooks, other teaching materials and
available resources, as may assist the person or persons
providing home instruction subject to their availability. Any
child receiving home instruction may, upon approval of the
county board of education, exercise the option to attend any
class offered by the county board of education as the person or
persons providing home instruction may deem appropriate
subject to normal registration and attendance requirements.

(d) The legislative oversight commission on education
accountability shall conduct a study on the effects of the home
instruction exemption on the students being instructed in the
home. The study shall include, but is not limited to, the effects
that a home instructor's education attainment level has on the
academic abilities of the child instructed. As part of the study,
the legislative oversight commission on education accountabil-
ity shall collect data relating to students who are instructed
under the home school exception, including, but not limited to,
assessment test scores or performance on other assessment
mechanisms, the number of students who are instructed under
the home school exemption, the grade level at which the
students are being instructed and the age of the students:
Provided, That the names of the students shall not be collected.
The legislative oversight commission shall collect the data and
complete the study on or before the first day of December, two
thousand.

Exemption C. Physical or mental incapacity. — Physical or
mental incapacity shall consist of incapacity for school atten-
dance and the performance of school work. In all cases of
prolonged absence from school due to incapacity of the child to
attend, the written statement of a licensed physician or autho-
rized school nurse shall be required under the provisions of this
article: Provided, That in all cases incapacity shall be narrowly
defined and in no case shall the provisions of this article allow
for the exclusion of the mentally, physically, emotionally or
behaviorally handicapped child otherwise entitled to a free
appropriate education;
Exemption D. Residence more than two miles from school or school bus route. — The distance of residence from a school, or school bus route providing free transportation, shall be reckoned by the shortest practicable road or path, which contemplates travel through fields by right of permission from the landholders or their agents. It shall be the duty of the county board of education, subject to written consent of landholders, or their agents, to provide and maintain safe foot bridges across streams off the public highways where such are required for the safety and welfare of pupils whose mode of travel from home to school or to school bus route must necessarily be other than along the public highway in order for said road or path to be not over two miles from home to school or to school bus providing free transportation;

Exemption E. Hazardous conditions. — Conditions rendering school attendance impossible or hazardous to the life, health or safety of the child;

Exemption F. High school graduation. — Such exemption shall consist of regular graduation from a standard senior high school;

Exemption G. Granting work permits. — The county superintendent may, after due investigation, grant work permits to youths under sixteen years of age, subject to state and federal labor laws and regulations: Provided, That a work permit may not be granted on behalf of any youth who has not completed the eighth grade of school;

Exemption H. Serious illness or death in the immediate family of the pupil. — It is expected that the county attendance director will ascertain the facts in all cases of such absences about which information is inadequate and report same to the county superintendent of schools;

Exemption I. Destitution in the home. — Exemption based on a condition of extreme destitution in the home may be
granted only upon the written recommendation of the county attendance director to the county superintendent following careful investigation of the case. A copy of the report confirming such condition and school exemption shall be placed with the county director of public assistance. This enactment contemplates every reasonable effort that may properly be taken on the part of both school and public assistance authorities for the relief of home conditions officially recognized as being so destitute as to deprive children of the privilege of school attendance. Exemption for this cause shall not be allowed when such destitution is relieved through public or private means;

Exemption J. Church ordinances; observances of regular church ordinances. — The county board of education may approve exemption for religious instruction upon written request of the person having legal or actual charge of a child or children: Provided, That such exemption shall be subject to the rules prescribed by the county superintendent and approved by the county board of education;

Exemption K. Alternative private, parochial, church or religious school instruction. — In lieu of the provisions of Exemption A herein above, exemption shall be made for any child attending any private school, parochial school, church school, school operated by a religious order or other nonpublic school which elects to comply with the provisions of article twenty-eight, chapter eighteen of the code of West Virginia. The completion of the eighth grade shall not exempt any child under sixteen years of age from the compulsory attendance provision of this article: Provided, That there is a public high school or other public school of advanced grades or a school bus providing free transportation to any such school, the route of which is within two miles of the child's home by the shortest practicable route or path as hereinbefore specified under Exemption D of this section.
CHAPTER 109

(H. B. 4787 — By Delegates Mezzatesta and Williams)

[Passed March 9, 2000; in effect ninety days from passage Approved by the Governor.]

AN ACT to amend and reenact section three, article nine-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the school building authority; air quality; radon testing; mitigation; rules; heating, ventilating and air-conditioning; design and construction of new schools; investigation; and authorizing the use of any appropriate floor covering in public school buildings.

Be it enacted by the Legislature of West Virginia:

That section three, article nine-e, 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 9E. AIR QUALITY IN NEW SCHOOLS ACT.

§18-9E-3. Air quality in new schools.

(a) In an effort to create well ventilated school environments, and notwithstanding any other provision of this code to the contrary, any new school building designed and constructed in the state by a county board, regardless of the funding source, shall be designed and constructed in compliance with the current standards of the American society of heating, refrigerating and air conditioning engineers handbook (ASHRAE), the national fire protection association code (NFPA) and the code of the building officials and code administrators (BOCA).
(b) Upon notice from the school building authority that a new public school building is occupied, the division of health shall perform radon testing in the school within the first year after occupancy and at least every five years thereafter. The county school board shall provide such reasonable assistance to the division of health as may be necessary to perform the radon testing. The radon testing shall include all major student occupied areas at or below grade level. If it is determined that radon is present in amounts greater than the amount determined to be acceptable by the rules promulgated by the school building authority, pursuant to subsection (d) of this section, any industry accepted mitigation technique shall be utilized to reduce the radon level to the level or below the level determined acceptable by the school building authority.

(c) If the school building authority determines that it is feasible to test for radon prior to the construction of a school building, the school building authority may cause preconstruction site testing for radon to be performed.

(d) The school building authority shall promulgate rules pursuant to article three-a, chapter twenty-nine-a of this code to assure that any new school building designed after the effective date of this article is designed and constructed in accordance with the current ASHRAE, NFPA and BOCA standards. The school building authority shall promulgate rules, pursuant to article three-a, chapter twenty-nine-a of this code that establish standards for safe levels of radon for public school buildings. The rules shall include the requirement that county boards submit all new school designs to the school building authority for review and approval for compliance with current education standards and design efficiencies prior to preparation of final bid documents.

(e) The state board shall promulgate rules, pursuant to article three-b, chapter twenty-nine-a of this code, in consultation with the division of health, that authorize the use of any
appropriate floor covering in public school buildings, based on user needs and performance specifications. The state board shall submit the rules to the legislative oversight commission on education accountability on or before the first day of July, two thousand.

CHAPTER 110

(H. B. 4785 — By Delegates Susman, Hubbard, Romine, Pethtel, Yeager, Fletcher and Houston)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article twenty-nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public education; grievance; procedure; compilation and dissemination of data; report; and specifications.

Be it enacted by the Legislature of West Virginia:

That section eleven, article twenty-nine, 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 29. GRIEVANCE PROCEDURE.

§18-29-11. Compilation and dissemination of data.

In addition to such other data as may be required under the provisions of this article, the education employees grievance board shall provide each governing board and employee organization, within thirty days of the end of each quarter, a statewide quarterly report summarizing matters decided by the hearing examiners during the preceding quarter. Each report
shall set forth any information deemed to be helpful in provid-
ing an overview of grievance-related issues.

In addition to such other data as may be required under the
provisions of this article, the education employees grievance
board shall annually provide each county board of education,
within thirty days of the end of each school year, a report
specifying:

(1) The number of grievances against the county board
which, during the school year, were appealed to level four,
identifying each grievance by subject matter;

(2) The number of grievances against the county board
which, during the school year, were granted, identifying each
grievance by docket number, date of decision, and subject
matter;

(3) The number of grievances against the county board
which, during the school year, were denied, identifying each
grievance by docket number, date of decision, and subject
matter; and

(4) The number of grievances against the county board
which, during the school year, were otherwise disposed of,
identifying each grievance by disposition, docket number, date
of decision, and subject matter.

Nothing contained in either the quarterly or annual report
may breach the confidentiality of a grievant or other person, nor
may any matter be disclosed if the disclosure may violate any
provision of law. In each quarterly report, the grievance board
shall make an effort to provide information applicable to
particular counties, institutions or governing boards, as may be
appropriate.

Each quarterly and annual report sent by the grievance
board to a governing board shall then be distributed to each
member of the governing board so that the governing board
may monitor the significant personnel-related matters which
came before the grievance board and thereby ascertain whether
any personnel policies need to be reviewed, revised or enforced.

Each quarterly report shall be incorporated into the annual
report required by section five of this article, which shall also
be distributed to each governing board and employee organiza-
tion.

CHAPTER 111

(H. B. 4414 — By Delegates Mezzatesta, Williams, Paxton, Susman and Willis)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter
eighteen-a of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to amend and reenact section
three, article two of said chapter, all relating to county boards of
education; defined terms; employment of substitute teachers; and
allowing the county superintendents to hire prospective employ-
able professional personnel.

Be it enacted by the Legislature of West Virginia:

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

Article

ARTICLE 1. GENERAL PROVISIONS.
§18A-1-1. Definitions.

The definitions contained in section one, article one, chapter eighteen of this code apply to this chapter. In addition, the following words used in this chapter and in any proceedings pursuant thereto shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) "School personnel" means all personnel employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. School personnel shall be comprised of two categories: Professional personnel and service personnel.

(b) "Professional personnel" means persons who meet the certification and/or licensing requirements of the state, and includes the professional educator and other professional employees.

(c) "Professional educator" is synonymous with and has the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this code. Professional educators shall be classified as:

(1) "Classroom teacher" — The professional educator who has direct instructional or counseling relationship with pupils, spending the majority of his or her time in this capacity.

(2) "Principal" — The professional educator who as agent of the board has responsibility for the supervision, management and control of a school or schools within the guidelines established by said board. The major area of such responsibility shall be the general supervision of all the schools and all school activities involving pupils, teachers and other school personnel.

(3) "Supervisor" — The professional educator who, whether by this or other appropriate title, is responsible for
working primarily in the field with professional and/or other personnel in instructional and other school improvement.

(4) "Central office administrator" — The superintendent, associate superintendent, assistant superintendent and other professional educators, whether by these or other appropriate titles, who are charged with the administering and supervising of the whole or some assigned part of the total program of the county-wide school system.

(d) "Other professional employee" means that person from another profession who is properly licensed and is employed to serve the public schools and includes a registered professional nurse, licensed by the West Virginia board of examiners for registered professional nurses and employed by a county board of education, who has completed either a two-year (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing program.

(e) "Service personnel" means those who serve the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch and as aides.

(f) "Principals academy" or "academy" means the academy created pursuant to section two-b, article three-a of this chapter.

(g) "Center for professional development" means the center created pursuant to section one, article three-a of this chapter.

(h) "Job-sharing arrangement" means a formal, written agreement voluntarily entered into by a county board with two or more of its professional employees who wish to divide between them the duties and responsibilities of one authorized full-time position.

(i) "Prospective employable professional personnel" means certified professional educators who:
(1) Have been recruited on a reserve list of a county board;
(2) Have been recruited at a job fair or as a result of contact made at a job fair;
(3) Have not obtained regular employee status through the job posting process provided for in section seven-a, article four of this chapter; and
(4) Have obtained a baccalaureate degree from an accredited institution of higher education within the past year.

ARTICLE 2. SCHOOL PERSONNEL.


(a) The county superintendent, subject to approval of the county board, may employ and assign substitute teachers to any of the following duties: (a) To fill the temporary absence of any teacher or an unexpired school term made vacant by resignation, death, suspension or dismissal; (b) to fill a teaching position of a regular teacher on leave of absence; and (c) to perform the instructional services of any teacher who is authorized by law to be absent from class without loss of pay, providing the absence is approved by the board of education in accordance with the law. The substitute shall be a duly certified teacher.

(b) Prospective employable professional personnel may be employed in accordance with this subsection.

(1) As an aid in recruiting teachers in the state, and notwithstanding any other provision of this code to the contrary, a superintendent of a county that meets the requirements in subdivision (3) of this subsection or obtains approval from the state board in accordance with subdivision (4) of this subsection may employ up to twenty-five full-time prospective employable professional personnel each year on a reserve list at the county
level. Regular employment status for such personnel may be obtained only in accordance with the provision of section seven-a, article four of this chapter.

(2) Prior to the employment of the full-time prospective employable professional personnel on a reserve list, the superintendent shall obtain from the county board:

(A) General approval to employ the personnel on the reserve list;

(B) General approval as to the form of the contract to be used in employing the personnel; and

(C) Approval of the number of personnel to be employed from the reserve list.

(3) Unless a county is eligible under subdivision (4) of this subsection, a county is eligible to hire professional personnel in accordance with this subsection only if the county’s net enrollment during the year is more than one hundred students greater than the fourth year prior to the current year.

(4) Unless a county is eligible under subdivision (3) of this subsection, a county is eligible to hire professional personnel in accordance with this subsection only if the county requests and receives approval from the state board. The state board shall determine the criteria for granting approval including, but not limited to, vacancies in professional personnel positions and the need to recruit teachers in specific subject matter areas. The state board annually shall determine the number of prospective employable professional personnel to be hired: Provided, That the number may not exceed twenty-five.

(5) The state board annually shall review the status of employing personnel under the provisions of this subsection, and annually shall report to the legislative oversight commission on education accountability on or before the first day of
November of each year. The report shall include, but not be limited to, the following:

(A) The counties that participated in the program;
(B) The number of personnel hired;
(C) The teaching fields in which personnel were hired;
(D) The venue from which personnel were employed;
(E) The place of residency of the individual hired; and
(F) The state board’s recommendations on the prospective employable professional personnel program.

CHAPTER 112

(H. B. 4314 — By Delegates Fletcher, Calvert, Trump, Harrison, Armstead, Ennis and Davis)

[Passed February 17, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten-c, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to school personnel; personal leave banks for care givers; and defining “catastrophic illness or injury”.

Be it enacted by the Legislature of West Virginia:

That section ten-c, 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-4-10c. Personal leave banks for care givers.

(a) For the purposes of this section:

(1) "Care giver" means any employee of a county board who:

(A) Is a spouse, child or parent of any employee who meets the following qualifications:

(i) He or she is an employee of the same county board of education as the care giver; and

(ii) He or she currently is eligible to receive benefits from the personal leave bank established in section ten of this article; or

(B) Is a parent of a dependent child who is suffering from a catastrophic illness or injury;

(2) "Catastrophic illness or injury" means a medical or physical condition that incapacitates a family member of the care giver and results in the care giver being required to take time off from work as defined by the rules of the board to care for the family member.

(b) A county board of education may establish a personal leave bank for care givers which is separate from any personal leave bank as defined in section ten of this article. The personal leave bank shall be operated pursuant to rules adopted by the county board which shall include, but not be limited to, the following:

(1) An employee may contribute no more than two days of personal leave per school year;

(2) The bank shall be established either jointly or separately for both professional personnel and school service personnel and shall be available to all school personnel;
(3) The rules may limit the maximum number of days used by a care giver;

(4) Where the care giver is caring for an absent employee as defined in paragraph (A), subdivision (1), subsection (a) of this section, the rules shall require that leave bank days be used only by a care giver who is absent from work during the same time period as the absent employee for whom care is being provided; and

(5) The rules shall require that the care giver is an active employee with less than five days accumulated personal leave.

(c) The use of these days by the care giver for the extension of insurance coverage pursuant to section twelve, article sixteen, chapter five of this code is prohibited.

(d) Contributions shall reduce, to the extent of the contribution, the number of personal leave days to which a contributing employee is entitled by section ten of this article: Provided, That the employee's contribution may not reduce the number of entitled personal leave days without cause.

(e) No employee may be compelled to contribute to a personal leave bank.

CHAPTER 113

(H. B. 4784 — By Delegates Armstead, Harrison, Anderson, Romine, Calvert, Houston and Shelton)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]
adding thereto a new section, designated section seven-b, relating to state institutions of higher education; tuition; fees; financial assistance; tuition waivers for high school graduates in foster care; and eligibility requirements and limitations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-7b. Tuition waivers for high school graduates in foster care.

1 The governing boards shall make provision for institutions under their respective jurisdictions to award a tuition and fee waiver for undergraduate courses at state institutions of higher education for any student, beginning with incoming freshmen in the fall, two thousand, semester or term, who graduate from high school or pass the GED examination while in the legal custody of the state department of health and human resources. The student must be in foster care or other residential care for at least one year prior to the waiver award. If the foster care or other residential care is provided in another state, the student must first be returned to this state for waiver award eligibility.

12 To be eligible for a waiver award, a student must first: (1) Apply to and be accepted at the institution; and (2) apply for other student financial assistance, other than student loans, in compliance with federal financial aid rules, including the federal Pell grant.

17 Waiver renewal is contingent upon the student continuing to meet the academic progress standards established by the institution.
The waiver provided by this section for each eligible student may be used for no more than four years of undergraduate study. An initial waiver must be granted within two years of graduation from high school or passing the GED examination.

The waiver may only be used after other sources of financial aid that are dedicated solely to tuition and fees are exhausted.

Any award under this section is in addition to the number of fee waivers permitted in sections five and six of this article for undergraduate, graduate and professional schools.

No student who is enrolled in an institution of higher education as of the effective date of this section is eligible for a waiver award under the provisions of this section.

The governing boards may establish any limitations on the provisions of this section as they consider proper.

CHAPTER 114

(S. B. 520 — By Senators Jackson, Plymale, Boley, Bailey, Dawson, Mitchell, Ball, Minear, Hunter and Edgell)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article seventeen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to authorizing rules; board of trustees; board of directors; higher education adult part-time student grant program; engineering, science and technology scholarship program; and increased flexibility for free-standing community and technical colleges.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-2. Board of trustees.
§18B-17-3. Board of directors.

§18B-17-2. Board of trustees.

(a) The legislative rules filed in the state register on the third day of December, one thousand nine hundred ninety-one, modified by the board of trustees to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-two, relating to the board of trustees (report card), are authorized.

(b) The legislative rules filed in the state register on the thirteenth day of July, one thousand nine hundred ninety-one, relating to the board of trustees (equal opportunity and affirmative action), are authorized.

(c) The legislative rules filed in the state register on the eighth day of September, one thousand nine hundred ninety-two, relating to the board of trustees (holidays), are authorized.

(d) The legislative rules filed in the state register on the third day of April, one thousand nine hundred ninety-two, relating to the board of trustees (alcoholic beverages on campuses), are authorized.

(e) The legislative rules filed in the state register on the fifteenth day of November, one thousand nine hundred ninety-three, relating to the board of trustees (acceptance of advanced placement credit), are authorized.
(f) The legislative rules filed in the state register on the thirteenth day of December, one thousand nine hundred ninety-three, modified by the board of trustees to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-four, relating to the board of trustees (assessment, payment and refund of fees), are authorized.

(g) The legislative rules filed in the state register on the first day of November, one thousand nine hundred ninety-three, modified by the board of trustees to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the twenty-first day of December, one thousand nine hundred ninety-three, relating to the board of trustees (personnel administration), are authorized.

(h) The legislative rules filed in the state register on the twenty-seventh day of January, one thousand nine hundred ninety-four, relating to the board of trustees (resource allocation policy), are authorized.

(i) The legislative rules filed in the state register on the fourth day of December, one thousand nine hundred ninety-five, modified by the board of trustees to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the fifteenth day of February, one thousand nine hundred ninety-six, relating to the board of trustees (higher education report card), are authorized.

(j) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred ninety-seven, relating to the board of trustees (Underwood-Smith Teacher Scholarship Program), are authorized.

(k) The legislative rules filed in the state register on the third day of September, one thousand nine hundred ninety-nine,
modified by the board of trustees to meet the objections of the
legislative oversight commission on education accountability
and refiled in the state register on the fourth day of November,
one thousand nine hundred ninety-nine, relating to the board of
trustees (Higher Education Adult Part-time Student Grant
Program), are authorized.

(l) The legislative rules filed in the state register on the
fourth day of November, one thousand nine hundred ninety-
nine, modified by the board of trustees to meet the objections
of the legislative oversight commission on education account-
ability and refiled in the state register on the twenty-eighth day
of January, two thousand, relating to the board of trustees
(Engineering, Science and Technology Scholarship Program),
are authorized.

§18B-17-3. Board of directors.

(a) The legislative rules filed in the state register on the
sixteenth day of December, one thousand nine hundred ninety-
one, modified by the board of directors to meet the objections
of the legislative oversight commission on education account-
ability and refiled in the state register on the twenty-first day of
January, one thousand nine hundred ninety-two, relating to the
board of directors (report card), are authorized.

(b) The legislative rules filed in the state register on the
twenty-seventh day of September, one thousand nine hundred
ninety-one, relating to the board of directors (equal opportunity
and affirmative action), are authorized.

(c) The legislative rules filed in the state register on the
fourth day of December, one thousand nine hundred ninety-one,
relating to the board of directors (holiday policy), are author-
ized.

(d) The legislative rules filed in the state register on the
nineteenth day of March, one thousand nine hundred ninety-
two, as modified and refiled in the state register on the tenth
day of July, one thousand nine hundred ninety-two, relating to
the board of directors (presidential appointments, responsibili-
ties and evaluations), are authorized.

(e) The legislative rules filed in the state register on the
twentieth day of September, one thousand nine hundred ninety-
three, relating to the board of directors (acceptance of advanced
placement credit), are authorized.

(f) The legislative rules filed in the state register on the
tenth day of December, one thousand nine hundred ninety-
three, relating to the board of directors (resource allocation
policy), are authorized.

(g) The legislative rules filed in the state register on the
eighth day of December, one thousand nine hundred ninety-
three, modified by the board of directors to meet the objections
of the legislative oversight commission on education account-
ability and refiled in the state register on the eleventh day of
January, one thousand nine hundred ninety-four, relating to the
board of directors (assessment, payment and refund of fees), are
authorized.

(h) The legislative rules filed in the state register on the first
day of November, one thousand nine hundred ninety-three,
modified by the board of directors to meet the objections of the
legislative oversight commission on education accountability
and refiled in the state register on the twenty-first day of
December, one thousand nine hundred ninety-three, relating to
the board of directors (personnel administration), are autho-
zed.

(i) The legislative rules filed in the state register on the
twenty-seventh day of October, one thousand nine hundred
ninety-four, modified by the board of directors to meet the
objections of the legislative oversight commission on education
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accountability and refiled in the state register on the nineteenth
day of December, one thousand nine hundred ninety-four,
relating to the board of directors (proprietary, correspondence,
business, occupational and trade schools), are authorized.

(j) The legislative rules filed in the state register on the
eighteenth day of April, one thousand nine hundred ninety-five,
relating to the board of directors (contracts and consortium
agreements with public schools, private schools or private
industry), are authorized.

(k) The legislative rules filed in the state register on the
seventeenth day of November, one thousand nine hundred
ninety-five, modified by the board of directors to meet the
objections of the legislative oversight commission on education
accountability and refiled in the state register on the fourth day
of January, one thousand nine hundred ninety-six, relating to
the board of directors (higher education report cards), are
authorized.

(l) The legislative rules filed in the state register on the
nineteenth day of December, one thousand nine hundred ninety-
seven, relating to the board of directors (Underwood-Smith
Teacher Scholarship Program), are authorized.

(m) The legislative rules filed in the state register on the
ninth day of December, one thousand nine hundred ninety-nine,
relating to the board of directors (Increased Flexibility for
Freestanding Community & Technical Colleges), are autho-

(n) The legislative rules filed in the state register on the
third day of September, one thousand nine hundred ninety-nine,
modified by the board of directors to meet the objections of the
legislative oversight commission on education accountability
and refiled in the state register on the fourth day of November,
one thousand nine hundred ninety-nine, relating to the board of
directors (Higher Education Adult Part-Time Student Grant Program), are authorized.

(o) The legislative rules filed in the state register on the fourth day of November, one thousand nine hundred ninety-nine, modified by the board of directors to meet the objections of the legislative oversight commission on education accountability and refilled in the state register on the twenty-eighth day of January, two thousand, relating to the board of directors (Engineering, Science and Technology Scholarship Program), are authorized.

CHAPTER 115
(H. B. 4353 — By Delegates Cann, Williams, Kominar, Angotti, Stemple, Perdue and Thompson)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state aid for students of optometry; and eliminating the requirement that the students practice optometry in this state to avoid repaying the financial aid.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.

§18C-3-2. State aid for students of optometry.
The board of trustees is hereby authorized to enter into a contract with an educational institution or institutions outside the state that offer training in optometry, by the terms of which the board of trustees may obligate itself to pay the institution, within the limits of any appropriation made for the purpose, a stated amount per year for each West Virginia student the institution will agree to accept for training in optometry.

The board of trustees shall each year send to any such institution a certified list of all persons applying to the trustees for training in optometry who are bona fide citizens and residents of this state prior to the filing of their applications, and who have completed either within or without the state the course of study required by the institution as a prerequisite to the study of optometry.

CHAPTER 116

(Com. Sub. for H. B. 4429 — By Delegates Smirl, Stemple and Romine)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assistance in elections; and setting forth conditions under which a handicap voter may vote from an automobile outside the polling place.

Be it enacted by the Legislature of West Virginia:

That section thirty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.

(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that precinct, he or she shall be required to sign his or her name in the space marked "signature of voter" on the pollbook prescribed and provided for the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she so signs his or her name on the pollbook or his or her signature is so affixed thereon.

(b) The clerk of the county commission is authorized, upon verification that the precinct at which a handicapped person is registered to vote is not handicap accessible, to transfer that person's registration to the nearest polling place in the county which is handicap accessible. Requests by these persons for a transfer of registration shall be received by the county clerk no later than thirty days prior to the date of the election. Any handicapped person who has not made a request for a transfer of registration at least thirty days prior to the date of the election may vote a challenged ballot, at a handicap accessible polling place in the county of his or her registration, and, if during the canvass the county commission determines that the person had been registered in a precinct not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The handicapped person may vote in the precinct to which the registration was transferred only as long as the disability exists.
or the precinct from which the handicapped person was transferred remains inaccessible to the handicapped. To ensure confidentiality of the transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked envelope and an outer envelope designated "challenged ballot/handicapped voter." After validation of the ballot at the canvass, the outer envelope shall be destroyed and the handicapped voter's ballot shall be placed with other approved challenged ballots prior to removal of the ballot from the unmarked envelope.

(c) When the voter's signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and shall deliver the ballot to the voter to be voted by him or her then without leaving the election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side as before done. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot, using a ballpoint pen of not less than five inches in length or other indelible marking device of not less than five inches in length. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter.

(d) It is the duty of a poll clerk, in the presence of the other poll clerk, to indicate by a check mark inserted in the appropriate place on the registration record of each voter the fact that the voter voted in the election. In primary elections the clerk shall also insert thereon a distinguishing initial or initials of the
political party for whose candidates the voter voted. If a person is challenged at the polls, the challenge shall be indicated by the poll clerks on the registration record together with the name of the challenger. The subsequent removal of the challenge shall be recorded on the registration record by the clerk of the county commission.

(e)(1) No voter may receive any assistance in voting unless, by reason of blindness, disability, advanced age or inability to read and write, that voter is unable to vote without assistance. Any voter qualified to receive assistance in voting under the provisions of this section may:

(A) Declare his or her choice of candidates to an election commissioner of each political party who, in the presence of the voter and in the presence of each other, shall prepare the ballot for voting in the manner hereinbefore provided, and, on request, shall read over to the voter the names of candidates on the ballot as so prepared;

(B) Require the election commissioners to indicate to him or her the relative position of the names of the candidates on the ballot, whereupon the voter shall retire to one of the booths or compartments to prepare his or her ballot in the manner hereinbefore provided;

(C) Be assisted by any person of the voter’s choice: Provided, That assistance may not be given by the voter’s present or former employer or agent of that employer or by the officer or agent of a labor union of which the voter is a past or present member; or

(D) If he or she is handicapped, vote from an automobile, outside the polling place or precinct, in the presence of an election commissioner of each political party if all of the following conditions are met:
(i) The polling place is not handicap accessible; and

(ii) No voters are voting or waiting to vote inside the polling place.

(2) Any voter who requests assistance in voting but who is believed not to be qualified for such assistance under the provisions of this section shall nevertheless be permitted to vote a challenged ballot with the assistance of any person herein authorized to render assistance.

(3) Any one or more of the election commissioners or poll clerks in the precinct may challenge the ballot on the ground that the voter thereof received assistance in voting it when in his or their opinion that the person who received assistance in voting is not so illiterate, blind, disabled or of such advanced age as to have been unable to vote without assistance. The election commissioner or poll clerk or commissioners or poll clerks making the challenge shall enter the challenge and reason therefor on the form and in the manner prescribed or authorized by article three of this chapter.

(4) An election commissioner or other person who assists a voter in voting:

(A) May not in any manner request, or seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question, and must not keep or make any memorandum or entry of anything occurring within the voting booth or compartment, and must not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, or which ticket he or she had voted, or how he or she had voted on any public question, or anything occurring within the voting booth or compartment or voting machine booth, except when required pursuant to law to give testimony as to the matter in a judicial proceeding; and
(B) Shall sign a written oath or affirmation before assisting the voter on a form prescribed by the secretary of state stating that he or she will not override the actual preference of the voter being assisted, attempt to influence the voter's choice or mislead the voter into voting for someone other than the candidate of voter's choice. The person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation: Provided, That no person providing assistance to a voter is required to sign an oath or affirmation where the reason for requesting assistance is the voter's inability to vote without assistance because of blindness as defined in section three, article fifteen, chapter five of this code, and the inability to vote without assistance because of blindness is certified in writing by a physician of the voter's choice and is on file in the office of the clerk of the county commission.

(5) In accordance with instructions issued by the secretary of state, the clerk of the county commission shall provide a form entitled "list of assisted voters," the form of which list shall likewise be prescribed by the secretary of state. The commissioners shall enter the name of each voter receiving assistance in voting the ballot, together with the poll slip number of that voter and the signature of the person or the commissioner from each party who assisted the voter. If no voter has been assisted in voting the ballot as herein provided, the commissioners shall likewise make and subscribe to an oath of that fact on the list.

(f) After preparing the ballot the voter shall fold the same so that the face is not exposed and so that the names of the poll clerks thereon are seen. The voter shall then announce his or her name and present his or her ballot to one of the commissioners who shall hand the same to another commissioner, of a different political party, who shall deposit it in the ballot box, if the
ballot is the official one and properly signed. The commissioner of election may inspect every ballot before it is deposited in the ballot box, to ascertain whether it is single, but without unfolding or unrolling it, so as to disclose its content. When the voter has voted, he or she shall retire immediately from the election room, and beyond the sixty-foot limit thereof, and may not return, except by permission of the commissioners.

(g) Following the election, the oaths or affirmations required by this section from those assisting voters together with the "list of assisted voters," shall be returned by the election commissioners to the clerk of the county commission along with the election supplies, records and returns, who shall make the oaths, affirmations and list available for public inspection and who shall preserve these for a period of twenty-two months or until disposition is authorized or directed by the secretary of state, or court of record.

(h) Any person making an oath or affirmation required under the provisions of this section who knowingly swears falsely, or any person who counsels, advises, aids or abets another in the commission of false swearing under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county or regional jail for a period of not more than one year, or both fined and imprisoned.

(i) Any election commissioner or poll clerk who authorizes or provides unchallenged assistance to a voter when the voter is known to the election commissioner or poll clerk not to require assistance in voting, is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in a state correctional facility for a period of not less than one year nor more than five years, or both fined and imprisoned.
AN ACT to amend article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to the time for commencement of civil and criminal enforcement proceedings under environmental statutes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-16. Time for commencing proceedings.

Notwithstanding any provision of this code to the contrary, no action, suit or proceeding for the administrative, civil or criminal enforcement of any provision of this chapter may be entertained unless commenced within three years from the date the right to bring the action, suit or proceeding has accrued. The limitation of this section applies, but is not limited to, actions, suits or proceedings for the recovery of any fine, penalty or forfeiture, pecuniary or otherwise. This section does not apply to the enforcement of any provision when the violation is part of a continuing violation and the last act of the continuing violation occurred within three years from the date of the commencement of the enforcement action.
AN ACT to amend chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-three-a, relating to legislative findings regarding the coal industry and requiring prior legislative approval of any policies developed by or rules promulgated by the division of environmental protection arising from recommendations from the United States environmental protection agency or in response to an environmental impact study participated in the year one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23A. ENVIRONMENTAL IMPACT STATEMENT.

§22-23A-1. Findings.

§22-23A-2. Requiring department of environmental protection to refrain from implementing or adopting rules or making certain commitments absent legislative approval; reporting required.

§22-23A-1. Findings.

1 The Legislature finds:
(1) The coal industry is and has been for many years an integral part of the economic and social fabric of the state;

(2) That whole communities in this state rely in large part, if not completely, on the coal industry for their continuing vitality;

(3) That over the last decade changes in the mining industry have necessitated the development of diverse mining techniques;

(4) The coal industry remains essential to economic growth and progress in West Virginia and the United States. Coal continues to sustain our economy and provides the financial security as future diversity and expansion of our job base is explored;

(5) The state of West Virginia, through the division of environmental protection, entered into an agreement on the twenty-third day of December, one thousand nine hundred ninety-eight, which imposed additional controls and oversight on the states' mine permitting process by the U. S. corps of engineers, U. S. environmental protection agency, U. S. office of surface mining and the U. S. fish and wildlife service;

(6) The agreement of the twenty-third day of December, one thousand nine hundred ninety-eight further authorized the division of environmental protection, in conjunction with the U.S. environmental protection agency, the U. S. fish and wildlife service, the U. S. army corps of engineers and the U.S. office of surface mining to undertake a two-year study of the effects of mountaintop mining practices which remains incomplete as of the effective date of this article;

(7) The state has committed significant funding and other resources to the study;
(8) The study is unprecedented in this country in its purpose and scope;

(9) The environmental impact statement which will be prepared upon the completion of the study may give rise to consideration of new or revised regulations, policies, guidelines or requirements which are untried or untested anywhere in this country;

(10) It is imperative that balance be sought between state rules designed to regulate and protect the environment and the state regulations designed to enhance the ability of the state to continue to market West Virginia coal throughout the nation and the world; and

(11) Requiring West Virginia, through new or amended policies, regulations, enforcement or permitting actions to meet requirements more stringent than those otherwise applicable in other states by the federal government and unnecessary for environmental protection would unfairly affect interstate competition for new mining development and employment opportunities.

Wherefore the Legislature finds that prior to the implementation of any recommendation arising from the study that the Legislature has an obligation to review the same to protect the interests of the state and the citizens.

§22-23A-2. Requiring department of environmental protection to refrain from implementing or adopting rules or making certain commitments absent legislative approval; reporting required.

(a) The division of environmental protection may not enter into any legally enforceable commitments related to the implementation of any recommendation which results from the mountaintop mining/valley fill environmental impact statement
with any agency of the federal government unless the terms of
the commitment are reported to the Legislature.

(b) The division of environmental protection may not adopt
or modify any rule, in whole or in part, to implement a recom-
mendation resulting from the mountaintop mining/valley fill
environmental impact statement except by legislative rule
promulgated pursuant to article three, chapter twenty-nine-a of
this code.

(c) Within ninety days of receipt of any final recommenda-
tion from any agency of the federal government related to the
mountaintop mining/valley fill environmental impact statement,
the director of the West Virginia division of environmental
protection shall forward such recommendation, embodied in a
report, along with all scientific facts or technical evidence
relating to and substantiating such recommendation, to the
governor, president of the Senate and the speaker of the House
of Delegates.

CHAPTER 119

(S. B. 448 — By Senators Bowman, Bailey, Ball,
Boley, Dawson, Kessler, McCabe, Minard, Minear, Redd and Snyder)

[Passed March 8, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article four,
chapter twenty-two-c of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, all relating to the county
and regional solid waste authorities; and the appointments to the
authorities by the division of environmental protection and the
public service commission.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§22C-4-3. Creation of county solid waste authority; appointment to board of directors; vacancies.

§22C-4-4. Establishment of regional solid waste authorities authorized; successor to county solid waste authorities; appointments to board of directors; vacancies.

§22C-4-3. Creation of county solid waste authority; appointment to board of directors; vacancies.

(a) Each and every county solid waste authority authorized and created by the county commission of any county pursuant to former article sixteen, chapter seven of this code is hereby abolished on and after the first day of January, one thousand nine hundred eighty-nine. On and after the first day of January, one thousand nine hundred eighty-nine, a new county solid waste authority is hereby created and established as a public agency in every county of the state and is the successor to each county solid waste authority which may have been created by the county commission: Provided, That such county solid waste authorities shall not be established or shall cease to exist, as the case may be, in those counties which establish a regional solid waste authority pursuant to section four of this article. The solid waste management board may require a county solid waste authority to cooperate and participate in programs with other authorities if the need arises.

(b) The authority board of directors is comprised of five members who are appointed as follows: One by the director of the division of environmental protection, two by the county commission, one by the board of supervisors for the soil conservation district in which the county is situated and one by
the chairman of the public service commission. The members
of the board are appointed for terms of four years for which the
initial shall start on the first day of July, one thousand nine
hundred eighty-eight: Provided, That the first two members
appointed by the county commission shall be appointed to
initial terms of two and four years, respectively, and for terms
of four years for each appointment thereafter: Provided,
however, That on and after the first day of July, two thousand,
the member appointed by the director of the division of
environmental protection shall be appointed to an initial term
of one year and for a term of four years for each appointment
thereafter: Provided further, That the member appointed by the
chairman of the public service commission shall be appointed
to an initial term of three years and for a term of four years for
each appointment thereafter. The members of the board shall
receive no compensation for their service thereon but shall be
reimbursed for their actual expenses incurred in the discharge
of their duties. Vacancies in the office of member of the board
of directors shall be filled for the balance of the remaining term
by the appropriate appointing authority within sixty days after
such vacancy occurs. No member who has any financial interest
in the collection, transportation, processing, recycling or the
disposal of refuse, garbage, solid waste or hazardous waste
shall vote or act on any matter which directly affects the
member’s personal interests.

§22C-4-4. Establishment of regional solid waste authorities
authorized; successor to county solid waste auth­
orities; appointments to board of directors;
vacancies.

(a) On and after the first day of January, one thousand nine
hundred eighty-nine, any two or more counties within the same
solid waste shed and with the approval of the solid waste
management board, may establish a regional solid waste
authority. Such a regional solid waste authority is a public
agency and is the successor to any county solid waste authority
existing on the date of said approval by the solid waste manage-
ment board. The solid waste management board may require a
county authority to cooperate and participate in programs with
other county and regional authorities if the need arises.

(b) The board of directors of the regional solid waste
authority are appointed as follows: One by the director of the
division of environmental protection, two by the county
commission of each county participating therein, one by the
board of supervisors for each soil conservation district in which
a county of the region is situated, one by the chairman of the
public service commission and two municipal representatives
from each county having one or more participating municipality
to be selected by the mayors of the participating municipality
from each such county. The members of the board are ap-
pointed for terms of four years for which the initial terms start
on the first day of July, one thousand nine hundred eighty-eight:
Provided, That the members appointed by the county commis-
sion shall be appointed to initial terms of two and four years,
respectively, and to terms of four years after the expiration of
each such initial term: Provided, however, That on and after the
first day of July, two thousand, the member appointed by the
director of the division of environmental protection shall be
appointed to an initial term of one year and for a term of four
years for each appointment thereafter: Provided further, That
the member appointed by the chairman of the public service
commission shall be appointed to an initial term of three years
and for a term of four years for each appointment thereafter: And provided further, That of the two members appointed by
the mayors from each county, one shall be appointed to an
initial term of one year and for a term of four years for each
appointment thereafter, and one shall be appointed to an initial
term of three years and for a term of four years for each
appointment thereafter. The members of the board shall receive
no compensation for their service thereon but shall be reim-
bursed their actual expenses incurred in the discharge of their
duties. Vacancies in the office of member of the board of
directors shall be filled for the balance of the remaining term by
the appropriate appointing authority within sixty days after such
vacancy occurs. No member who has any financial interest in
the collection, transportation, processing, recycling or the
disposal of refuse, garbage, solid waste or hazardous waste
shall vote or act on any matter which directly affects the
member’s personal interests.

CHAPTER 120

(Com. Sub. for S. B. 415 — By Senators Snyder and Anderson)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend article four, chapter sixty of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section twenty-three,
relating to regulating, restricting and placing a prohibition on
additional exotic entertainment facilities; requiring regulation and
licenses by the alcohol beverage control commissioner; providing
definitions; providing effective date; prohibiting certain acts;
prohibiting minors in licensed facilities; providing for application,
renewal, license fee and restrictions on transfer; requiring
commissioner to promulgate legislative rules to effectuate the
same; and providing for unlawful acts and penalties to be imposed
therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. LICENSES.

§60-4-23. License to operate a facility where exotic entertainment is offered; definitions; restrictions, regulations and prohibitions; prohibitions against minors; application, renewal, license fee, restrictions on transfer; effective date; legislative rules; unlawful acts and penalties imposed.

(a) For purposes of this section:

(1) "Exotic entertainment" means live nude dancing, nude service personnel or live nude entertainment, and "nude" means any state of undress in which male or female genitalia or female breasts are exposed.

(2) "Places set apart for traditional family-oriented naturism" means family nudist parks, clubs and resorts chartered by the American association for nude recreation or the naturist society, including all of their appurtenant business components, and also including places temporarily in use for traditional family-oriented naturist activities.

(b) No person may operate any commercial facility where exotic entertainment is permitted or offered unless such person is granted a license by the commissioner to operate a facility where exotic entertainment may be offered. The provisions of this subsection apply whether or not alcoholic liquor, wine or nonalcoholic beer is legally kept, served, sold or dispensed in a facility, or purchased for use in a facility, or permitted to be brought by others into a facility and whether or not such person holds any other license or permit issued pursuant to chapter sixty of this code.
(c) A licensee is subject to all the regulatory provisions of article seven of this chapter, whether or not the licensee is otherwise a private club. The commissioner shall have all the powers and authorization granted under article seven of this chapter to regulate, restrict and sanction a licensee under this section. No licensee may purchase, keep, sell, serve, dispense or purchase for use in a licensed facility, or permit others to bring into the facility, any alcoholic liquor, wine or nonintoxicating beer without having the appropriate license therefor. No licensee may operate a private club without being licensed therefor.

(d) No person or licensee may allow a person under the age of eighteen years to perform as an exotic entertainer. No person under the age of twenty-one years, other than a performing exotic entertainer, may be allowed to be in a commercial facility on any day on which any exotic entertainment is offered therein. No licensee may hold special nonalcoholic entertainment events for persons under age twenty-one pursuant to the provisions of section eight, article seven of this chapter in the licensed facility.

(e) Any person operating a commercial facility where exotic entertainment is offered on the effective date of this section may apply to the commissioner for a license to operate a facility where exotic entertainment may be offered. Applications must be filed with the commissioner on or before the first day of July, two thousand; thereafter no application for license may be received by the commissioner. The commissioner may issue a license to a person complying with the provisions of this chapter. Upon application for renewal, the commissioner shall annually, on the first day of July of each succeeding year, renew the license of any licensee then in compliance with the provisions of this chapter. The commissioner shall specify the form of application and information required of applicants and
licensees. No license which has lapsed, been revoked or expired
without renewal may be reissued.

(f) A person to whom a license is issued or renewed under
the provisions of this section shall pay annually to the commis-
sioner a license fee of three thousand dollars. A municipal
corporation wherein any such licensee is located shall issue a
municipal license to any person to whom the commissioner has
issued a license and may impose a license fee not in excess of
the state license fee.

(g) A person shall not sell, assign or otherwise transfer a
license without the prior written approval of the commissioner.
For purposes of this section, the merger of a licensee or the sale
of more than fifty percent of the outstanding stock of or
partnership interests in the licensee shall be deemed to be a
sale, assignment or transfer of a license under this section. A
license shall not be transferred to another location, except
within the county of original licensure. A transferee of a
licensed facility may apply for reissuance of the transferor’s
license if the transferee applicant otherwise qualifies for a
license. The commissioner is authorized to propose the promul-
gation of a legislative rule in accordance with the provisions of
chapter twenty-nine-a of this code, to implement the provisions
of this subsection.

(h) This section shall be effective upon passage by the
Legislature in the year two thousand. On or before the first day
of May, two thousand, the commissioner shall promulgate an
emergency legislative rule pursuant to the provisions of chapter
twenty-nine-a of this code to effectuate the provisions of this
section, and shall propose a legislative rule therefor, for
consideration by the Legislature, prior to the last day of
December, two thousand.

(i) Any person who violates any provision of this section,
or principal of a firm or corporation which violates any provi-
sion of this section, or licensee, agent, employee or member of
any licensee who violates any provision of this section, or who
violates any of the provisions of section twelve, article seven of
this chapter, on the premises of a licensed facility, is guilty of
a misdemeanor and, upon conviction thereof, shall be fined not
less than one thousand dollars nor more than three thousand
dollars, or imprisoned for a period not to exceed one year, or
both so fined and imprisoned.

(j) The provisions of this section do not apply to places set
apart for traditional family-oriented naturist activities.

CHAPTER 121

(Com. Sub. for S. B. 170 — By Senators Ball,
Mitchell, Kessler, Ross and Hunter)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to firearms; prohibition against certain persons possessing firearms; procedures for regaining one's ability to possess firearms; offenses; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. DANGEROUS WEAPONS.
§61-7-7. Persons prohibited from possessing firearms; classifications; reinstatement of rights to possess; offenses; penalties.

(a) Except as provided for in this section, no person shall possess a firearm as such is defined in section two of this article who:

(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is addicted to alcohol;

(3) Is an unlawful user of or addicted to any controlled substance;

(4) Has been adjudicated as a mental defective or who has been involuntarily committed to a mental institution;

(5) Being an alien is illegally or unlawfully in the United States;

(6) Has been discharged from the armed forces under dishonorable conditions;

(7) Is subject to a domestic violence protective order that:

(A) Was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate;

(B) Restrains such person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C) (i) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
(ii) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(8) Has been convicted in any court of a misdemeanor crime of domestic violence.

Any person who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars or confined in the county jail for not less than ninety days nor more than one year, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, any person:

(1) Who has been convicted in this state or any other jurisdiction of a felony crime of violence against the person of another or of a felony sexual offense; or

(2) Who has been convicted in this state or any other jurisdiction of a felony controlled substance offense involving a schedule I controlled substances other than marijuana, a schedule II or a schedule III controlled substance as such are defined in sections two hundred four, two hundred five and two hundred six, article two, chapter sixty-a of this code and who possesses a firearm as such is defined in section two of this article shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not more than five years or fined not more than five thousand dollars, or both. The provisions of subsection (c) of this section shall not apply to persons convicted of offenses referred to in this subsection or to persons convicted of a violations of this subsection.

(c) Any person prohibited from possessing a firearm by the provisions of subsection (a) of this section may petition the
circuit court of the county in which he or she resides to regain
the ability to possess a firearm and if the court finds by clear
and convincing evidence that the person is competent and
capable of exercising the responsibility concomitant with the
possession of a firearm, the court may enter an order allowing
the person to possess a firearm if such possession would not
violate any federal law.

CHAPTER 122

(Com. Sub. for H. B. 4470 — By Mr. Speaker, Mr. Kiss,
and Delegates Michael and Trump)

[Passed March 8, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight-b, article fifteen, chapter
eight of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; and to amend and reenact section
fourteen, article four, chapter twelve of said code, all relating to
state funds received by volunteer and part volunteer fire compa­
nies and departments; allowing funds to be expended on operating
expenses; prohibiting the commingling of state funds with other
funds; allowing the joint committee on government and finance
to determine the amount of the annual expenditure filing fee;
providing penalties for not filing statement of annual expenditures
and filing late; requiring cooperation with the legislative auditor
and providing a penalty for noncooperation; and requiring the
state auditor to audit state funds received by volunteer and part
volunteer fire companies and departments under certain circum­
stances.

Be it enacted by the Legislature of West Virginia:
That section eight-b, article fifteen, chapter eight of the code of
West Virginia, one thousand nine hundred thirty-one, as amended, be
amended and reenacted; and that section fourteen, article four, chapter
twelve of said code be amended and reenacted, all to read as follows:

Chapter

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS;
CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-8b. Authorized expenditures of revenues from the munici­
pal pensions and protection fund and the fire pro­
tection fund.

1 Revenues allocated to volunteer and part volunteer fire
2 companies and departments may be expended only for the items
3 listed in subdivisions (a) through (k) of this section.

4 Funds received from the state for volunteer and part
5 volunteer fire companies and departments, pursuant to sections
6 fourteen-d and thirty-three, article three, and section sixteen-a,
7 article twelve, all of chapter thirty-three of this code, may not
8 be commingled with funds received from any other source.
9 Expenditures may be made for the following:

10 (a) Personal protective equipment, including protective
11 head gear, bunker coats, pants, boots, combination of bunker
12 pants and boots, coats and gloves;

13 (b) Equipment for compliance with the national fire
14 protection standard or automotive fire apparatus, NFPA-1901;

15 (c) Compliance with insurance service office recommenda-
16 tions relating to fire departments;
(d) Rescue equipment, communications equipment and ambulance equipment: *Provided*, That no moneys received from the municipal pensions and protection fund or the fire protection fund may be used for equipment for personal vehicles owned or operated by volunteer fire company or department members;

(e) Capital improvements reasonably required for effective and efficient fire protection service and maintenance of the capital improvements;

(f) Retirement of debts;

(g) Payment of utility bills;

(h) Payment of the cost of immunizations, including any laboratory work incident to the immunizations, for firefighters against hepatitis-b and other blood borne pathogens: *Provided*, That the vaccine shall be purchased through the state immunization program or from the lowest cost vendor available: *Provided, however*, That volunteer and part volunteer fire companies and departments shall seek to obtain no cost administration of the vaccinations through local boards of health: *Provided further*, That in the event any volunteer or part volunteer fire company or department is unable to obtain no cost administration of the vaccinations through a local board of health, the company or department shall seek to obtain the lowest cost available for the administration of the vaccinations from a licensed health care provider;

(i) Any filing fee required to be paid to the legislative auditor's office under section fourteen, article four, chapter twelve of this code relating to sworn statements of annual expenditures submitted by volunteer or part volunteer fire companies or departments that receive state funds or grants;

(j) Property/casualty insurance premiums for protection and indemnification against loss or damage or liability; and
(k) Operating expenses reasonably required in the normal course of providing effective and efficient fire protection service, which include, but are not limited to, gasoline, bank fees, postage and accounting costs.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14. Audits of corporations, associations or other organizations which receive state funds or grants.

(a) Any corporation, association or other organization in West Virginia, whether nonprofit or for profit, which receives state funds or grants in the amount of fifteen thousand dollars or more shall file an audit of the disbursement of funds with the legislative auditor’s office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization and shall show that the funds or grants were spent for the purposes intended when the grant was made.

(b) Audits of state funds or grants under fifteen thousand dollars may be authorized by the joint committee on government and finance to be conducted by the legislative auditor’s office, at no cost to the grantee: Provided, That volunteer fire departments satisfy the audit requirements of this section by submitting a sworn statement of annual expenditures to the legislative auditor’s office, along with a filing fee of seventy-five dollars, on or before the fourteenth day of February of each year, if the volunteer fire department elects not to be audited. The sworn statement of expenditures shall be signed by the chief or director of the volunteer fire department, and shall be made under oath and acknowledged before a notary public. An additional filing fee of twenty-five dollars shall be included with the sworn statement of annual expenditures if the statement is submitted between the fifteenth day of February and the
fifteenth day of March. An additional filing fee of fifty dollars
shall be included with the sworn statement of annual expendi-
tures if the statement is submitted between the sixteenth day of
March and the fifteenth day of April. If the sworn statement is
not submitted on or before the fifteenth day of April the
volunteer fire department shall file an audit of the disbursement
of funds, made by an independent certified public accountant,
with the legislative auditor’s office no later than the first day of
July. The audit shall be made at the cost of the volunteer fire
department. If the audit made by the independent certified
public accountant is not filed with the legislative auditor by the
first day of July, the legislative auditor shall notify the state
treasurer who shall withhold payment of one thousand dollars
from any amount that would otherwise be distributed to the fire
department under the provisions of sections fourteen-d and
thirty-three, article three, and section sixteen-a, article twelve,
all of chapter thirty-three of this code, and pay the amount
withheld to the fund from which it was distributed to be
redistributed the following year pursuant to the applicable
provisions of those sections. If the volunteer fire department
does not timely file a sworn statement of annual expenditures
or an audit of the disbursement of funds, made by an independ-
ent certified public accountant, with the legislative auditor’s
office for three consecutive years, the legislative auditor shall
notify the state treasurer who shall withhold payment of any
amount that would otherwise be distributed to the fire depart-
ment under the provisions of sections fourteen-d and
thirty-three, article three, and section sixteen-a, article twelve,
all of chapter thirty-three of this code, and pay the amount
withheld to the fund from which it was distributed to be
redistributed the following year pursuant to the applicable
provisions of those sections.

(c) The office of the legislative auditor may assign an
employee or employees to perform audits at the direction of the
legislative auditor of the disbursement of funds or grants to
The volunteer fire department shall cooperate with the legislative auditor, the legislative auditor’s employees and the state auditor in performing their duties under this section. If the legislative auditor determines a volunteer fire department is not cooperating, the legislative auditor shall notify the state treasurer who shall withhold payment of any amount that would otherwise be distributed to the fire department under the provisions of sections fourteen-d and thirty-three, article three, and section sixteen-a, article twelve, all of chapter thirty-three of this code, until the legislative auditor informs the treasurer that the fire department has cooperated as required by this section. The state treasurer shall pay the amount withheld into a special revenue account hereby created in the state treasury and designated the “Volunteer Fire Department Audit Account”. If after one year from payment of the amount withheld into the special revenue account, the legislative auditor informs the state treasurer of continued noncooperation by the fire department, the state treasurer shall pay the amount withheld to the fund from which it was distributed to be redistributed the following year pursuant to the applicable provisions of those sections.

(d) Filing fees paid by volunteer fire departments pursuant to this section shall be paid into a special revenue account created in the state treasury known as the “Special Legislative Audit Fund”. Expenditures from the fund are authorized to be made by the legislative auditor’s office solely for the purposes of payment of costs associated with the audits conducted pursuant to this section. Any person who files a fraudulent sworn statement of expenditures under this section is guilty of a felony and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars, or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.
(e) Whenever the state auditor performs an audit of a volunteer fire department for any purpose the auditor shall also conduct an audit of other state funds received by the fire department pursuant to sections fourteen-d and thirty-three, article three, and section sixteen-a, article twelve, all of chapter thirty-three of this code. The auditor shall send a copy of any such audit to the legislative auditor. The legislative auditor may accept an audit performed by the auditor in lieu of performing an audit under this section.

CHAPTER 123

(Com. Sub. for H. B. 4568 — By Delegates Martin, Michael, Mezzatesta and Stemple)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article six, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section forty-eight, article three of said chapter, relating to exempting the state fire marshal from certain department of administration rules and requirements for vehicle and aircraft.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

*§5A-3-48. Travel rules; exceptions.

*Clerk's Note: This section was also amended by S. B. 653 (Chapter 100), which passed subsequent to this act.
(a) The secretary of administration shall promulgate rules relating to the ownership, purchase, use, storage, maintenance and repair of all motor vehicles and aircraft owned by the state of West Virginia and in the possession of any department, institution or agency thereof: Provided, That the provisions of sections forty-eight through fifty-three of this article do not apply to the division of highways of the department of transportation, the West Virginia state police, the division of natural resources, the division of forestry, the department of agriculture, the office of the state fire marshal and the higher education governing boards and their institutions: Provided, however, That the higher education governing boards and their institutions shall report annually to the secretary of education and the arts and the legislative oversight commission on education accountability in a form and manner as required by the secretary of education and the arts. The report shall include at least the following: The number of vehicles purchased and the purchase price, the number of donated vehicles, and the cost of lease agreements on leased vehicles.

(b) If, in the judgment of the secretary of administration, economy or convenience indicate the expediency thereof, the secretary may require all vehicles and the aircraft subject to regulation by this article, or those he or she may designate, to be kept in garages and other places of storage, and to be made available in a manner and under the terms necessary for the official use of any departments, institutions, agencies, officers, agents and employees of the state as designated by the secretary in rules promulgated pursuant to this section. The secretary may administer the travel regulations promulgated by the governor in accordance with section eleven, article three, chapter twelve of this code, unless otherwise determined by the governor.

(c) Provisions of this section relating to the governing boards of higher education and the institutions under their jurisdiction shall expire on the first day of July, two thousand one, unless the continuation thereof is authorized by the legislative oversight commission on education accountability.
AN ACT to amend and reenact section six, article nineteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that a master’s degree in forestry satisfies the educational requirement for registered professional foresters.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. FORESTERS.

§30-19-6. General requirements and categories of licensure.

(a) The following is the minimum evidence required to satisfy the board that the applicant is qualified for licensure and entitled to use the title of “registered professional forester,” “professional forester,” “forester” or other title connoting to the general public that the applicant is a registered forester qualified to perform professional forestry services:

(1) Graduation from a four-year degree program or master’s degree program in professional forestry from an accredited college or university plus two years related experience in the field of forestry as defined by rule of the board; or
(2) Graduation from a two-year technical forestry program in a program recognized by the society of American foresters, plus a bachelor’s degree from an accredited college or university and four years related experience in the field of forestry as defined by rule of the board.

(b) The following is the minimum evidence required to satisfy the board that the applicant is qualified for licensure and entitled to use the title of “registered forestry technician” or “forestry technician”: Graduation from a two-year technical forestry program recognized by the society of American foresters and four years related experience in the field of forestry as defined by rule of the board.

(c) Evidence of graduation and completion of required courses shall be presented by means of an official transcript which shall be filed permanently with the board. Upon the effective date of this section, the board may adopt an interpretive rule pursuant to the provisions of article three, chapter twenty-nine-a of this code, for the limited purpose of providing information and guidance to prospective applicants and the public related to the qualifying experience considered acceptable to the board pursuant to this section and to the job titles acceptable for use by persons obtaining qualifying experience, until such time as a legislative rule is made effective. On or before the first day of July, one thousand nine hundred ninety-nine, the board shall propose for legislative approval pursuant to the provisions of article three, chapter twenty-nine-a of this code, rules authorized by this article and article one of this chapter, which rules must include provisions relating to a code of ethics for registered professional foresters and registered forestry technicians.
AN ACT to amend and reenact section three, article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to embalmers and funeral directors; requiring board members to take oath; allowing for selection of officers; providing for salary and expenses; requiring treasurer to post bond; authorizing board to establish duties and compensation of employees; allowing for meetings to be set as needed; establishing a quorum; establishing powers and duties of board; authorizing licensure; authorizing legislative rules; providing for continuing education; and authorizing continuing education through audio or video recordings.

Be it enacted by the Legislature of West Virginia:

That section three, article six, 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 6. EMBALMERS AND FUNERAL DIRECTORS.

§30-6-3. Oath of members of board; officers; salary and expenses; bond of treasurer; meetings; powers and duties; notice; rules; school of instruction; inspection.

(a) Members of said board, before entering upon their duties, shall take and subscribe to the oath of office prescribed by the secretary of state.

(b) Said board shall select from its own members a president, a secretary and a treasurer. Each member shall be reimbursed for his or her traveling expenses, incident to his or her
attendance upon the business of the board, and in addition thereto, the sum of fifty dollars per day for each day actually spent by the member upon the business of the board. The secretary shall receive an annual salary of not to exceed one thousand dollars, the amount and payment of which shall be fixed by the board, and in addition thereto shall receive traveling and other incidental expenses incurred in the performance of his or her duties.

(c) The board may employ an executive director and such clerks, inspectors and assistants as it shall consider necessary to discharge the duties imposed by the provisions of this article and duly promulgated rules of the board and to effect its purposes, and the board shall determine the duties and fix the compensation of the executive director, clerks, inspectors and assistants, subject to the general laws of the state. Any inspector employed by the board shall have either a West Virginia embalmer’s license or a West Virginia funeral director’s license. Any inspection shall be conducted in a manner so as not to interfere with the conduct of business within the funeral establishment, and the inspector shall be absolutely prohibited from examining any books and records of the funeral establishment.

(d) All the expenses, per diem and compensation shall be paid out of the receipts of the board, but the allowances shall at no time exceed the receipts of the board.

(e) The treasurer of the board shall give bond to the state of West Virginia in the sum as the board shall direct with two or more sureties or a reliable surety company approved by the board and the bond shall be conditioned for the faithful discharge of the duties of the officer. The bond, with approval of the board endorsed thereon, shall be deposited with the treasurer of the state of West Virginia.

(f) The board shall hold not less than two meetings during each calendar year for the purpose of examining applicants for licenses, the meeting or meetings to be held at a time and place as the board shall determine. The time and place of the meeting shall be announced by publication in three daily newspapers of
general circulation in different locations in the state and
publication to be once a week for two consecutive weeks
immediately preceding each meeting.

(g) The board may hold such other meetings as it may
consider necessary and may transact any business at the
meetings. Four or more members shall comprise a quorum
authorizing the board to transact such business as is prescribed
under this article.

(h) The board shall have the power and it shall be its duty
to make and enforce all necessary rules, not inconsistent with
this article, for the examination and licensing of funeral
directors and the general practice of funeral directing; the
examination and licensing of embalmers and the general
practice of embalming and the registration and regulation of
apprentices; and the licensing and general operation of funeral
establishments, except that no rules issued by the board shall
require that an applicant for a license to operate a funeral
establishment shall be required to have either an embalmer’s or
funeral director’s license.

(i) On or before the first day of July, two thousand, the
board shall propose for legislative promulgation in accordance
with the provisions of article three, chapter twenty-nine-a of
this code rules necessary to effectuate the purpose of this article
including, but not limited to, the subjects to be covered in the
examinations and the standards to be attained for licensure;
requirements for continuing education, including authorizing
continuing education credits through audio or video recordings;
and a procedure for the investigation and resolution of com-
plaints against persons licensed under this article.

(j) The board may conduct annually a school of instruction
to apprise funeral directors and embalmers of the most recent
scientific knowledge and developments affecting their profes-
sion. Qualified lecturers and demonstrators may be employed
by the board for this purpose. The board shall give notice of the
time and place at which the school will be held for all licensed
funeral directors and embalmers and it shall be the duty of
every licensed funeral director and embalmer to attend at least
one such school or other approved program every three years:

Provided, That the location of any school of continuing education shall accommodate the geographic diversity of the embalmers and funeral directors of this state. Compliance with the requirements of continuing education is a prerequisite for license renewal.

(k) Hours of continuing education may be obtained by attending and participating in board-approved programs, meetings, seminars or activities. It is the responsibility of each licensee to finance his or her costs of continuing education.

(l) The board, any of its members or any duly authorized employee of the board shall have the authority to enter at all reasonable hours for the purpose of inspecting the premises in which the business or profession of funeral directing is conducted or practiced or where embalming is practiced.

CHAPTER 126

(Com. Sub. for H. B. 4324 — By Delegates Douglas and Warner)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, one-a, two, three, three-a, five, six, seven, seven-b, eight, eleven and twelve, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections five and eight, article six, chapter eighteen of said code, all relating to implementing a graduated driver's license program for persons under the age of eighteen; updating sections relating to time frames for new residents to obtain a drivers license; establishing a minimum thirty day instruction period prior to the skills test for adults previously unlicensed; and revising driver license reciprocity provisions to reflect reciprocal agreements with other states and countries.
Be it enacted by the Legislature of West Virginia:

That sections one, one-a, two, three, three-a, five, six, seven, seven-b, eight, eleven, and twelve, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections five and eight, article six, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter
17B. Motor Vehicle Driver's Licenses.
18. Education.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards; penalty.

§17B-2-1a. Surrender of license from other state or jurisdiction prior to receipt of license from this state; examination; fees required.

§17B-2-2. Persons exempt from license.

§17B-2-3. What persons shall not be licensed; exceptions.

§17B-2-3a. Junior driver's license and graduated driver's license.

§17B-2-5. Qualifications, issuance and fee for instruction permits.

§17B-2-6. Application for license or instruction permit; fee to accompany application.

§17B-2-7. Examination of applicants.

§17B-2-7b. Separate examination and endorsement for a license valid for operation of motorcycle.

§17B-2-8. Issuance and contents of licenses; fees.

§17B-2-11. Duplicate permits and licenses.

§17B-2-12. Expiration of licenses; renewal; renewal fees.

*§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards; penalty

1 (a) No person, except those hereinafter expressly exempted, may drive any motor vehicle upon a street or highway in this state or upon any subdivision street, as used in article

*Clerk's Note: This section was also amended by S. B. 558 (Chapter 182), which passed subsequent to this act.
twenty-four, chapter eight of this code, when the use of the
subdivision street is generally used by the public unless the
person has a valid driver’s license under the provisions of this
code for the type or class of vehicle being driven.

Any person licensed to operate a motor vehicle as provided
in this code may exercise the privilege thereby granted as
provided in this code and, except as otherwise provided by law,
shall not be required to obtain any other license to exercise the
privilege by any county, municipality or local board or body
having authority to adopt local police regulations.

(b) The division, upon issuing a driver’s license, shall
indicate on the license the type or general class or classes of
vehicle or vehicles the licensee may operate in accordance with
the provisions of this code, federal law or rule.

(c) Driver’s licenses issued by the division shall be classi-
fied in the following manner:

(1) Class A, B or C license shall be issued to those persons
eighteen years of age or older with two years driving experience
and who have qualified for the commercial driver’s license
established by chapter seventeen-e of this code and the federal
Commercial Motor Vehicle Safety Act of 1986, Title XII of
public law 99-570 and subsequent rules, and have paid the
required fee.

(2) Class D license shall be issued to those persons eighteen
years and older with one year driving experience who operate
motor vehicles other than those types of vehicles which require
the operator to be licensed under the provisions of chapter
seventeen-e of this code and federal law and rule and whose
primary function or employment is the transportation of persons
or property for compensation or wages and have paid the
required fee. For the purposes of the regulation of the operation
of a motor vehicle, wherever the term chauffeur’s license is
used in this code, it shall be construed to mean the Class A, B,
C or D license described in this section or chapter seventeen-e
Provided, That anyone who is not required to be licensed under the provisions of chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle which is registered or which is required to be registered as a Class A motor vehicle as that term is defined in section one, article ten, chapter seventeen-a of this code with a gross vehicle weight rating of less than eight thousand one pounds, is not required to obtain a Class D license.

(3) Class E license shall be issued to those persons who have qualified under the provisions of this chapter and who are not required to obtain a Class A, B, C or D license and who have paid the required fee. The Class E license may be endorsed under the provisions of section seven-b of this article for motorcycle operation. The Class E license for any person under the age of eighteen may also be endorsed with the appropriate graduated driver license level in accordance with the provisions of section three-a of this article.

(4) Class F license shall be issued to those persons who successfully complete the motorcycle examination procedure provided for by this chapter and have paid the required fee, but who do not possess a Class A, B, C and D or E driver's license.

(5) All licenses issued under this section may contain information designating the licensee as a diabetic, if the licensee requests this information on the license.

(d) No person, except those hereinafter expressly exempted, shall drive any motorcycle upon a street or highway in this state or upon any subdivision street, as used in article twenty-four, chapter eight of this code, when the use of the subdivision street is generally used by the public unless the person has a valid motorcycle license or a valid license which has been endorsed under section seven-b of this article for motorcycle operation or has a valid motorcycle instruction permit.
(e) (1) A nondriver identification card may be issued to any person who:

(A) Is a resident of this state in accordance with the provisions of section one-a, article three, chapter seventeen-a of this code;

(B) Does not have a valid driver's license;

(C) Has reached the age of two years. The division may also issue a nondriver identification card to a person under the age of two years for good cause shown;

(D) Has paid the required fee of two dollars and fifty cents per year for each year the identification card is issued to be valid: Provided, That the fee is not required if the applicant is sixty-five years or older or is legally blind; and

(E) Presents a birth certificate or other proof of age and identity acceptable to the division with a completed application on a form furnished by the division.

(2) The nondriver identification card shall contain the same information as a driver's license except that the identification card shall be clearly marked as identification card. However, the division may issue an identification card with less information to persons under the age of sixteen. It may be renewed on application and payment of the fee required by this section.

(A) Every identification card issued to persons who have attained their twenty-first birthday shall expire on the day of the month designated by the commissioner in which the applicant’s birthday occurs in those years in which the applicant’s age is evenly divisible by five. Except as provided in paragraph (B) or (C) of this subdivision, no identification card may be issued for less than three years nor more than seven years and shall be valid for a period of five years expiring in the month in which the applicant’s birthday occurs and in a year in which the applicant’s age is evenly divisible by five.
(B) Every identification card issued to persons who have not attained their twenty-first birthday shall expire on the day of the month designated by the commissioner in the year in which the applicant attains the age of twenty-one years.

(C) Every identification card issued to persons under the age of sixteen shall expire on the day of the month designated by the commissioner in which the applicant’s birthday occurs and shall be issued for a period of two years.

(3) The identification card shall be surrendered to the division when the holder is issued a driver’s license. The division may issue an identification card to an applicant whose privilege to operate a motor vehicle has been refused, canceled, suspended or revoked under the provisions of this code.

(f) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars; and upon a second or subsequent conviction, shall be fined not more than five hundred dollars, or confined in the county or regional jail not more than six months, or both.

§17B-2-1a. Surrender of license from other state or jurisdiction prior to receipt of license from this state; examination; fees required.

(a) The division of motor vehicles shall not issue a driver’s license to a person who holds a valid license to operate a motor vehicle issued by another state or jurisdiction unless or until the applicant shall surrender to the division the foreign license, or the person has signed and submitted to the division an affidavit to the effect that the person has surrendered all valid licenses issued to him or her by other states or jurisdictions. Any surrendered license issued by any other state or jurisdiction shall be returned to the division of motor vehicles or similar agency in that state or jurisdiction together with a notice that the person who surrendered the license has been licensed in this
state. It shall be unlawful for a person to possess more than one valid driver's license at any time.

(b) Every driver shall, within thirty days after taking up residence in this state, apply to the division for a driver's license as prescribed in this article. For the purposes of this chapter the presumption that a natural person is a resident of this state is based on the provisions of section one-a, article three, chapter seventeen-a of this code. The division may assign the driver's license class, type, endorsements or restrictions based on the applicant's prior licensing status, age and the type of licensing system used by the state of prior licensing.

(c) All other applicable provisions of this article relating to issuance, fees, expiration and renewal of licenses, and driver examination of applicants shall also apply to this section.

§17B-2-2. Persons exempt from license.

The following persons are exempt from license hereunder:

(1) Any person while operating a motor vehicle in the armed services of the United States while in the performance of his official duties;

(2) A nonresident who is at least sixteen years of age and who has in his immediate possession a valid driver's license issued to the person in the person's home state or country unless the commissioner determines the person's home state or country does not extend the same privileges to a resident of this state, may operate a motor vehicle in this state only as a noncommercial driver for a period not to exceed ninety days in any one calendar year;

(3) A nonresident who is at least sixteen years of age, who has in the person's immediate possession a valid driver's license issued to the person in the person's home state or country and who is employed in this state, or owns, maintains or operates a place or places of business in this state, or engages in any trade, profession or occupation in this state, in addition
to the driving privileges extended under subdivision (2) of this section, unless the commissioner determines the person's home state or country does not extend the same privileges to a resident of this state, may operate a motor vehicle in this state only as a noncommercial driver in traveling to and from the person's place or places of employment, place or places of business or place or places at which the person engages in the trade, profession or occupation and in the discharge of the duties of the person's employment, business, trade, profession or occupation if the duties are such that, if performed by a resident of the state of West Virginia over the age of eighteen years of age, the resident would not be required under the provisions of this chapter to obtain a Class A, B, C or D driver's license. However, this subsection shall not exempt any person who is required to obtain a West Virginia driver's license in accordance with the provisions of section one-a of this article;

(4) A nonresident who is at least eighteen years of age and who has in his or her immediate possession a valid commercial driver's license issued to the person in his or her home state or country and which meets the requirements of the federal commercial motor vehicle act of 1986, Title XI of public law 99-570 and unless the commissioner determines the person's home state or country does not extend the same privilege to a resident of this state may operate a motor vehicle in this state either as a commercial driver subject to the age limits applicable to commercial driver in this state, or as a noncommercial driver subject to the limitations imposed on nonresident drivers in subdivisions (2) and (3) of this section;

(5) Any person who is a student, properly enrolled and registered in an accredited school, college or university in this state, who is at least sixteen years of age and who has in his or her immediate possession a valid driver's license issued to the person in the person's home state, notwithstanding the limitations of subdivisions (2) and (3) of this section may operate a motor vehicle in this state only as noncommercial driver: Provided, That the state of which the person is a resident shall
extend the same privileges to residents of this state. This exemption shall be canceled immediately when the student is graduated from school, college or university or is expelled or ceases to be a student.

§17B-2-3. What persons shall not be licensed; exceptions.

1 The division may not issue any license hereunder:

2 (1) To any person who is under the age of eighteen years: Provided, That the division may issue a junior driver’s license or on or after the first day of January, two thousand one, a graduated driver’s license, to a person under the age of eighteen years in accordance with the provisions of section three-a of this article;

3 (2) To any person, as a Class A, B, C or D driver, who is under the age of eighteen years;

4 (3) To any person, whose license has been suspended or revoked, during the suspension or revocation;

5 (4) To any person who is an habitual drunkard or is addicted to the use of narcotic drugs;

6 (5) To any person, who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by judicial decree or released from a hospital for the mentally incompetent upon the certificate of the superintendent of the institution that the person is competent, and not then unless the commissioner is satisfied that the person is competent to operate a motor vehicle with a sufficient degree of care for the safety of persons or property;

7 (6) To any person who is required by this chapter to take an examination, unless the person has successfully passed the examination;
(7) To any person when the commissioner has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare.

§17B-2-3a. Junior driver’s license and graduated driver’s license.

(a) In accordance with rules established by the commissioner and with the provisions hereinafter set forth in this section, a junior driver’s license may be issued to any person between the ages of sixteen and eighteen years, if the person is in compliance with section eleven, article eight, chapter eighteen of this code and is not otherwise disqualified by law. Application for a junior driver’s license shall be on a form prescribed by the commissioner. A junior driver’s license may be issued upon the applicant’s successful completion of all examinations and driving tests required by law for the issuance of a driver’s license to a person eighteen years of age or older. The commissioner may impose reasonable conditions or restrictions on the operation of a motor vehicle by a person holding a junior driver’s license and the conditions or restrictions shall be printed on the license. After the thirty-first day of December, two thousand, the division shall not issue a junior driver’s license to any person. However, any junior driver’s license issued before the first day of January, two thousand one, unless otherwise suspended, revoked or canceled will continue to be valid, and under the same restrictions, until the licensee’s eighteenth birthday.

(b) In addition to all other provisions of this chapter for which a driver’s license may be revoked, suspended or canceled, whenever a person holding a junior driver’s license operates a motor vehicle in violation of the conditions or restrictions set forth on the license, or has a record of two convictions for moving violations of the traffic regulations and laws of the road, which convictions have become final, the junior driver’s license of the person shall be permanently revoked, with like effect as if the person had never held a junior driver’s license: Provided, That a junior driver’s license shall
be revoked upon one final conviction for any offense described in section five, article three of this chapter. Under no circumstances shall such a license be revoked for convictions of offenses in violation of any regulation or law governing the standing or parking of motor vehicles.

(c) A junior driver's license shall be suspended for noncompliance with the provisions of section eleven, article eight, chapter eighteen of this code, and may be reinstated upon compliance.

(d) A person whose junior driver's license has been revoked, or has been suspended without reinstatement, shall not thereafter receive a junior driver's license, but the person, upon attaining the age of eighteen, shall be eligible, unless otherwise disqualified by law, for examination and driver testing for a regular driver's license. If a person has had his or her junior driver's license revoked for a violation pursuant to section one or two, article five-a, chapter seventeen-c of this code or any offense specified in subsection (6), section five, article three of this chapter, or has been adjudicated delinquent upon a charge which would be a crime under the provisions of section two, article five, chapter seventeen-c of this code if committed by an adult, the person shall be disqualified for examination and driver testing for a regular driver's license until that person: (1) Has attained the age of eighteen years; (2) has successfully completed the safety and treatment program provided for in section three, article five-a, chapter seventeen-c of this code; and (3) has had his or her junior driver's license revoked or suspended for the applicable statutory period of revocation or suspension or a period of time equal to the period of revocation or suspension which would have been imposed pursuant to section two of said article if the person had a regular driver's license at the time of the violation.

(e) No person shall receive a junior driver's license unless the application therefor is accompanied by a writing, duly acknowledged, consenting to the issuance of the junior driver's
license and executed by a parent of the applicant; or if only one
parent is living, then by the parent; or if the parents be living
separate and apart, by the one to whom the custody of the
applicant was awarded; or if there is a guardian entitled to the
custody of the applicant, then by the guardian.

(f) Upon attaining the age of eighteen years, a person
holding an unrevoked, unsuspended or reinstated junior driver’s
license shall be entitled to exercise all the privileges of a regular
driver’s license without further examination or driver testing.

(g) On and after the first day of January, two thousand one,
any person under the age of eighteen who does not possess a
junior or regular driver’s license may not operate a motor
vehicle unless he or she has obtained a graduated driver’s
license in accordance with the three level graduated driver’s
license system described in the following provisions.

(h) Any person under the age of twenty-one, regardless of
class or level or licensure, who operates a motor vehicle with
any measurable alcohol in his or her system is subject to the
provisions of section two, article five, and section two, article
five-a both of chapter seventeen-c of this code. Any person
under the age of eighteen, regardless of class or licensure level,
is subject to the mandatory school attendance provisions of
section eleven, article eight, chapter eighteen of this code.

(i) **Level one instruction permit.** — An applicant who is
fifteen years or older meeting all other requirements prescribed
in this code may be issued a level one instruction permit.

(1) **Eligibility.** — The division shall not issue a level one
instruction permit unless the applicant:

(A) Presents a completed application, as prescribed by the
provisions of section six of this article, and which is accompa-
nied by a writing, duly acknowledged, consenting to the
issuance of the graduated driver’s license and executed by a
parent or guardian entitled to custody of the applicant;
(B) Presents a certified birth certificate issued by a state or other governmental entity responsible for vital records, evidencing that the applicant meets the minimum age requirement;

(C) Passes the vision and written knowledge examination, and completes the driving under the influence awareness program, as prescribed in section seven of this article;

(D) Presents a current school enrollment form or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code; and

(E) Pays a fee of five dollars.

(2) Terms and conditions of instruction permit. — A level one instruction permit issued under the provisions of this section is valid for a period of fourteen months and is not renewable. However, any permit holder who allows his or her permit to expire prior to successfully passing the road skills portion of the driver examination, and who has not committed any offense which requires the suspension, revocation or cancellation of the instruction permit, may reapply for a new instruction permit. The division shall immediately revoke the permit upon receipt of a second conviction for a moving violation of traffic regulations and laws of the road or violation of the terms and conditions of a level one instruction permit, which convictions have become final unless a greater penalty is required by this section or any other provision of this code. Any person whose instruction permit has been revoked is disqualified from retesting for a period of ninety days. However, after the expiration of ninety days, the person may retest if otherwise eligible. In addition to all other provisions of this code for which a driver’s license may be restricted, suspended, revoked or canceled, the holder of a level one instruction permit may only operate a motor vehicle under the following conditions:

(A) Under the direct supervision of a licensed driver, twenty-one years of age or older, or a driver’s education or
driving school instructor who is acting in an official capacity as
an instructor, who is fully alert and unimpaired, and the only
other occupant of the front seat. The vehicle may be operated
with no more than two additional passengers, unless the
passengers are family members;

(B) Between the hours of five a.m. and eleven p.m.;

(C) All occupants must use safety belts in accordance with
the provisions of section forty-nine, article fifteen, chapter
seventeen-c of this code;

(D) Without any measurable blood alcohol content, in
accordance with the provisions of subsection (h), section two,
article five, chapter seventeen-c of this code; and

(E) Maintains current school enrollment or otherwise shows
compliance with the provisions of section eleven, article eight,
chapter eighteen of this code.

(j) **Level two intermediate driver’s license.** — An applicant
sixteen years of age or older, meeting all other requirements of
the code, may be issued a level two intermediate driver’s
license.

(1) **Eligibility.** — The division shall not issue a level two
intermediate driver’s license unless the applicant:

(A) Presents a completed application as prescribed in
section six of this article;

(B) Has held the level one instruction permit conviction-free for the one hundred eighty days immediately preceding the date of application for a level two intermediate license;

(C) Has completed either a driver’s education course
approved by the state department of education or thirty hours of
behind the wheel driving experience certified by a parent or
legal guardian or other responsible adult over the age of twenty-
one as indicated on the form prescribed by the division:
Provided, That nothing in this paragraph shall be construed to require any school or any county board of education to provide any particular number of driver's education courses or to provide driver's education training to any student;

(D) Presents a current school enrollment form or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(E) Passes the road skills examination as prescribed by section seven of this article; and

(F) Pays a fee of five dollars.

(2) Terms and conditions of a level two intermediate driver's license. — A level two intermediate driver's license issued under the provisions of this section shall expire on the day designated by the commissioner of the month in which the applicant attains the age of eighteen, or until the licensee qualifies for a level three full Class E license, whichever comes first. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked or canceled, the holder of a level two intermediate driver's license may only operate a motor vehicle under the following conditions:

(A) Unsupervised between the hours of five a.m. and eleven p.m.;

(B) Only under the direct supervision of a licensed driver, age twenty-one years or older, between the hours of eleven p.m. and five a.m. except when the licensee is going to or returning from:

(i) Lawful employment;

(ii) A school sanctioned activity;

(iii) A religious event; or
(iv) An emergency situation that requires the licensee to operate a motor vehicle to prevent bodily injury or death of another;

(C) All occupants shall use safety belts in accordance with the provisions of section forty-nine, article fifteen, chapter seventeen-c of this code;

(D) Operates the vehicle with no more than three passengers under the age of nineteen, unless the passengers are family members, in addition to the driver;

(E) Without any measurable blood alcohol content in accordance with the provisions of subsection (h), section two, article five, chapter seventeen-c of this code;

(F) Maintains current school enrollment or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(G) Upon the first conviction for a moving traffic violation or a violation of paragraph (A), (B), (C) or (D) of subdivision one, subsection (j) of this section of the terms and conditions of a level two intermediate driver’s license, the licensee shall enroll in an approved driver improvement program unless a greater penalty is required by this section or by any other provision of this code.

At the discretion of the commissioner, completion of an approved driver improvement program may be used to negate the effect of a minor traffic violation as defined by the commissioner against the one year conviction free driving criteria for early eligibility for a level three driver’s license; and

(H) Upon the second conviction for a moving traffic violation or a violation of the terms and conditions of the level two intermediate driver’s license, the licensee’s privilege to operate a motor vehicle shall be revoked or suspended for the applicable statutory period or until the licensee’s eighteenth birthday, whichever is longer unless a greater penalty is
required by this section or any other provision of this code. Any person whose driver’s license has been revoked as a level two intermediate driver, upon reaching the age of eighteen years and if otherwise eligible may reapply for an instruction permit, then a driver’s license in accordance with the provisions of sections five, six and seven of this article.

(k) Level three, full class E license. — The level three license is valid until the day designated by the commissioner of the month in which the licensee attains the age of twenty-one. Unless otherwise provided in this section or any other section of this code, the holder of a level three full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver’s license.

A level two intermediate licensee whose privilege to operate a motor vehicle has not been suspended, revoked or otherwise canceled and who meets all other requirements of the code, may be issued a level three full Class E license without further examination or road skills testing, if the licensee:

(1) Has reached the age of seventeen years, and

(A) Presents a completed application as prescribed by the provisions of section six of this article;

(B) Has held the level two intermediate license conviction-free for the twelve-month period immediately preceding the date of the application;

(C) Has completed any driver improvement program required under paragraph (G), subdivision (2), subsection (j) of this section; and

(D) Pays a fee of two dollars and fifty cents for each year the license is valid. An additional fee of fifty cents shall be collected to be deposited in the combined voter registration and driver’s licensing fund established in section twelve, article two, chapter three of this code; or
(2) Reaches the age of eighteen years, and

(A) Presents a completed application as prescribed by the provisions of section six of this article; and

(B) Pays a fee of two dollars and fifty cents for each year the license is valid. An additional fee of fifty cents shall be collected to be deposited in the combined voter registration and driver’s licensing fund established in section twelve, article two, chapter three of this code.

§17B-2-5. Qualifications, issuance and fee for instruction permits.

(a) Any person who is at least fifteen years of age may apply to the division for an instruction permit. However, any person who has not attained the age of eighteen shall comply with the provisions of section three-a of this article. The division may, in its discretion, after the applicant has successfully passed all parts of the examination other than the road skills test, issue to the applicant an instruction permit which entitles the applicant while having the permit in his or her immediate possession to drive a motor vehicle upon the public highways when accompanied by a licensed driver of at least twenty-one years of age, a driver’s education or driving school instructor that is acting in an official capacity as an instructor, who is alert and unimpaired or a certified division license examiner acting in an official capacity as an examiner, who is occupying a seat beside the driver. (1) Any instruction permit issued to a person under the age of eighteen years shall be issued in accordance with the provisions of section three-a of this article. (2) Any permit issued to a person who has reached the age of eighteen years is valid for a period of sixty days and may be renewed within a period of sixty days without reexamination for an additional period of sixty days or a new permit issued. The fee for the instruction permit is four dollars, one dollar of which shall be paid into the state treasury and credited to the state road fund, and the other three dollars of which shall be paid into the state treasury and credited to the general fund.
to be appropriated to the state police for application in the
enforcement of the road law.

(b) Any person sixteen years of age or older may apply to
the division for a motorcycle instruction permit. On and after
the first day of January, two thousand one, any person under the
age of eighteen must have first completed the requirements for
a level two intermediate driver’s license set forth in paragraphs
(B), (C) and (D), subdivision (1), subsection (j), section three-a
of this article, junior driver’s license or driver’s license before
being eligible for a motorcycle instruction permit.

The division may, in its discretion, after the applicant has
successfully passed all parts of the motorcycle examination
other than the driving test, and presented documentation of
compliance with the provisions of section eleven, article eight,
chapter eighteen of this code, issue to the applicant an instruc-
tion permit which entitles the applicant while having the permit
in his or her immediate possession to drive a motorcycle upon
the public streets or highways for a period of ninety days,
during the daylight hours between sunrise and sunset only. No
holder of a motorcycle instruction permit shall operate a
motorcycle while carrying any passenger on the vehicle.

A motorcycle instruction permit is not renewable, but a
qualified applicant may apply for a new permit. The fee for a
motorcycle instruction permit is five dollars, which shall be
paid into a special fund in the state treasury known as the
motorcycle license examination fund as established in section
seven-c, article two of this chapter.

§17B-2-6. Application for license or instruction permit; fee to
accompany application.

(a) Every application for an instruction permit or for a
driver’s license shall be made upon a form furnished by the
division. Every application shall be accompanied by the proper
fee and payment of the fee shall entitle an applicant under the
age of eighteen to not more than three attempts to pass the road
skills test. An applicant age eighteen years or older is entitled
to not more than three attempts to pass the road skills test
within a period of sixty days from the date of issuance of the
instruction permit. An applicant who fails either the written test
or the road skills test may not be tested twice within a period of
one week.

(b) Any applicant who has not been previously licensed
must hold an instruction permit for a minimum of thirty days.
For the purposes of this section, the term "previously licensed"
means an applicant who has obtained at least a level two
graduated license or junior driver's license issued under the
provisions of this article or has obtained an equal or greater
level of licensure if previously licensed in another state.

(c) Every said application shall state the full name, date of
birth, sex, and residence address of the applicant, and briefly
describe the applicant, and shall state whether the applicant has
theretofore been a licensed driver, and, if so, when and by what
state or country, and whether any such license has ever been
suspended or revoked within the five years next preceding the
date of application, or whether an application has ever been
refused, and, if so, the date of and reason for the suspension,
revocation or refusal, whether the applicant desires a notation
on the drivers license indicating that the applicant is a diabetic,
and such other pertinent information as the commissioner may
require.

§17B-2-7. Examination of applicants.

(a) Upon the presentment of the applicant's birth certificate,
or a certified copy of the birth certificate issued by a state or
other governmental entity responsible for vital records, as
evidence that the applicant is of lawful age and verifiable
identity, the division of motor vehicles shall examine every
applicant for a license to operate a motor vehicle in this state,
except as otherwise provided in this section. The examination
shall include a test of the applicant's eyesight, the applicant's
ability to read and understand highway signs regulating,
warning, and directing traffic, the applicant's knowledge of the
traffic laws of this state, and the applicant's knowledge of the
effects of alcohol upon persons and the dangers of driving a
motor vehicle under the influence of alcohol. The examination
shall also include an actual demonstration of ability to exercise
ordinary and reasonable control in the operation of a motor
vehicle, and any further physical and mental examination as the
division of motor vehicles considers necessary to determine the
applicant's fitness to operate a motor vehicle safely upon the
highways.

(b) The commissioner shall propose legislative rules for
promulgation in accordance with the provisions of article three,
chapter twenty-nine-a of this code concerning the examination
of applicants for licenses and the qualifications required of
applicants, and the examination of applicants by the division
shall be in accordance with the rules. The rules shall provide for
the viewing of educational material or films on the medical,
biological, and psychological effects of alcohol upon persons,
the dangers of driving a motor vehicle while under the influence
of alcohol and the criminal penalties and administrative
sanctions for alcohol and drug related motor vehicle violations.

(c) After successful completion of the examination required
by this section, section three-a, or section seven-b of this article,
and prior to the issuance of a license pursuant to the provisions
of section eight of this article, every applicant for a driver's
license, junior driver's license, graduated driver's license, or
motorcycle-only license shall attend a mandatory education
class on the dangers and social consequences of driving a motor
vehicle while under the influence of alcohol. To the extent
practicable, the commissioner shall use as lecturers at those
classes persons who can relate first-hand experiences as victims
or family members of victims of alcohol-related accidents or
drivers who have been involved in alcohol-related accidents
which caused serious bodily injury or death.

§17B-2-7b. Separate examination and endorsement for a license
valid for operation of motorcycle.
The state police shall administer a separate motorcycle examination for applicants for a license valid for operation of a motorcycle. On and after the first day of July, two thousand, the division of motor vehicles shall administer the examination provided for in this section. Any applicant for a license valid for operation of a motorcycle shall be required to successfully complete the motorcycle examination, which is in addition to the examination administered pursuant to section seven of this article and, if under the age of eighteen, shall be required to complete the requirements for a level two intermediate driver's license set forth in paragraphs (B), (C), and (D), subdivision (1), subsection (j), section three-a of this article: Provided, That the commissioner may exempt an applicant for a motorcycle driver license or endorsement from all or part of the motorcycle license examination as provided in section six, article one-d of this chapter. The motorcycle examination shall test the applicant's knowledge of the operation of a motorcycle and of any traffic laws specifically relating to the operation of a motorcycle and shall include an actual demonstration of the ability to exercise ordinary and reasonable control in the operation of a motorcycle. An applicant for a license valid for the operation of only a motorcycle shall be tested as provided in this section and in section seven of this article, but need not demonstrate actual driving ability in any vehicle other than a motorcycle. The examination provided in this section shall not be made a condition upon the renewal of the license of any person under this section. For an applicant who successfully completes the motorcycle examination, upon payment of the required fee, the division shall issue a motorcycle endorsement on the driver's license of the applicant, or shall issue a special motorcycle-only license if the applicant does not possess a driver's license: Provided, however, That any holder of a motorcycle-only license under the age of eighteen shall be subject to the provisions of paragraphs (A), (B), (E), (F), (G) and (H), subdivision (2), subsection (j), section three-a of this article.
Every person, including those holding a valid driver’s license, is required to take the examination specified in this section to obtain a motorcycle license or endorsement.

§17B-2-8. Issuance and contents of licenses; fees.

(a) The division shall, upon payment of the required fee, issue to every applicant qualifying therefor a driver’s license, which shall indicate the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with this chapter or chapter seventeen-e of this code, or motorcycle-only license. Each license shall contain a coded number assigned to the licensee, the full name, date of birth, residence address, a brief description and a color photograph of the licensee and either a facsimile of the signature of the licensee or a space upon which the signature of the licensee shall be written with pen and ink immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee: Provided, That the commissioner may issue upon proper documentation, a duplicate or renewed valid without-photo license for resident applicants temporarily out of state. A driver’s license which is valid for operation of a motorcycle shall contain a motorcycle endorsement. The division shall use such process or processes in the issuance of licenses that will, insofar as possible, prevent any alteration, counterfeiting, duplication, reproduction, forging or modification of, or the superimposition of a photograph on, the license.

(b) The fee for the issuance of a Class E driver’s license shall be two dollars and fifty cents per year for each year the license is issued to be valid. The fee for issuance of a Class D driver’s license shall be six dollars and twenty-five cents per year for each year the license is issued to be valid. An additional fee of fifty cents shall be collected from the applicant at the time of original issuance or each renewal and the additional fee shall be deposited in the "combined voter registration and driver’s licensing fund," established pursuant to the provisions of section twelve, article two, chapter three of this code. The
one-time only additional fee for adding a motorcycle endorsement to a driver’s license shall be five dollars.

The fee for issuance of a motorcycle-only license shall be two dollars and fifty cents for each year for which the motorcycle license is to be valid. The fees for the motorcycle endorsement or motorcycle-only license shall be paid into a special fund in the state treasury known as the motorcycle safety fund as established in section seven, article one-d of this chapter.

(c) On or after the first day of January, two thousand one, the fee for the issuance of either the level one or level two graduated driver’s license as prescribed in section three-a of this article is five dollars.

§17B-2-11. Duplicate permits and licenses.

In the event that an instruction permit or driver’s license issued under the provisions of this chapter is lost or destroyed, or if the information contained on the license has changed, the person to whom the permit or license was issued may upon making proper application and upon payment of a fee of five dollars obtain a duplicate thereof upon furnishing proof satisfactory to the division that the permit or license has been lost or destroyed.

§17B-2-12. Expiration of licenses; renewal; renewal fees.

(a) Every driver’s license shall expire five years from the date of its issuance.

(b) (1) Every driver’s license issued to persons who have attained their twenty-first birthday shall expire on the day of the month designated by the commissioner in which the applicant’s birthday occurs in those years in which the applicant’s age is evenly divisible by five. Except as provided in the following subdivisions, no driver’s license may be issued for less than three years nor more than seven years and shall be valid for a period of five years, expiring in the month in which the applicant’s birthday occurs and in a year in which the appli-
12 cant's age is evenly divisible by five.

13 (2) Every driver’s license issued to persons who have not
14 attained their twenty-first birthday shall expire on the day of the
15 month designated by the commissioner in the year in which the
16 applicant attains the age of twenty-one years, except as pro-
17 vided in section three-a of this article.

18 (3) The driver’s license of any person in the armed forces
19 is extended for a period of six months from the date the person
20 is separated under honorable circumstances from active duty in
21 the armed forces.

22 (4) The commissioner may change the date that a driver’s
23 license expires from the last day of the month in those years
24 specified in subdivisions (1) and (2) of this subsection to the
25 day of the month in which the applicant’s birthday occurs in
26 those years. If the commissioner changes the expiration date,
27 the change may only affect new licenses and renewed licenses.

28 (c) A person who allows his or her driver’s license to expire
29 may apply to the division for renewal of the license. Application
30 shall be made upon a form furnished by the division and
31 shall be accompanied by payment of the fee required by section
32 eight of this article plus an additional fee of five dollars. The
33 commissioner shall determine whether the person qualifies for
34 a renewed license and may, in the commissioner’s discretion,
35 renew any expired license without examination of the applicant.

36 (d) Each renewal of a driver’s license shall contain a new
37 color photograph of the licensee. By first class mail to the
38 address last known to the division, the commissioner shall
39 notify each person who holds a valid driver’s license of the
40 expiration date of the license. The notice shall be mailed at least
41 thirty days prior to the expiration date of the license and shall
42 include a renewal application form.

CHAPTER 18. EDUCATION.

ARTICLE 6. DRIVER EDUCATION.
§18-6-5. Establishment and maintenance of driver education course; who may enroll; exemption from learner's permit requirement.

§18-6-8. Driver education course to be made available to all secondary school pupils prior to their graduation; exemption; application by pupil for unrestricted operator's license.

§18-6-5. Establishment and maintenance of driver education course; who may enroll; exemption from learner's permit requirement.

The state superintendent shall promote and direct the establishment and maintenance of courses of instruction in driver education in secondary schools in accordance with the provisions of this article and the rules that the state board adopts pursuant to section four of this article. Directors, trustees or other persons having control or authority over private, parochial or denominational secondary schools, who establish and maintain the courses in the schools under their control or supervision, shall comply with the rules that the state board adopts pursuant to section four of this article.

In the case of a pupil who will not reach the age of fifteen years before completion of the driver education course in which enrolled, instruction shall be limited to the classroom. Pupils who are fifteen years of age and older shall receive instruction and practical training in the operation of motor vehicles on the public streets and highways.

§18-6-8. Driver education course to be made available to all secondary school pupils prior to their graduation; exemption; application by pupil for unrestricted operator’s license.

Before any pupil is graduated from a secondary school after the first day of September, one thousand nine hundred seventy-five, he or she shall first be provided an opportunity and encouraged to successfully complete a driver education course approved by the state board in a public, private, parochial or denominational secondary school within the state. If a pupil has successfully completed a similar course in a secondary school...
of another state and the course is accepted by the state board as adequately meeting and complying with the course standards established by the state board, then the aforementioned requirement shall be deemed fulfilled regarding that pupil.

On or before December thirty-first, two thousand, any secondary school pupil sixteen years of age or older, but under eighteen years of age, who has successfully completed a driver education course approved by the state board in a public, private, parochial or denominational secondary school within the state or a similar course in a secondary school of another state and accepted by the state board as adequately meeting and complying with the course standards established by the state board, shall, upon proper application and successful completion of all examination and driving tests required by law for issuance of an operator’s license to a person eighteen years of age or older, be issued an operator’s license without any restriction rather than the junior or probationary operator’s license provided for in section three, article two, chapter seventeen-b of this code. On or after the first day of January, two thousand one, any secondary school pupil sixteen years of age or older, but under eighteen years of age, who has successfully completed a driver education course approved by the state board in a public, private, parochial or denominational secondary school within the state or a similar course in a secondary school of another state and accepted by the state board as adequately meeting and complying with the course standards established by the state board, shall be exempted from submitting a sworn affidavit certified by the parent, legal guardian, or other responsible adult over the age of twenty-one that the applicant has successfully completed the minimum number of hours of behind-the-wheel training as provided in section three-a, article two, chapter seventeen-b of the code.
CHAPTER 127

(Com. Sub. for H. B. 4672 — By Delegates Rowe, J. Smith, Douglas, Compton, Capito, Smirl and Coleman)

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, eight, nine and ten, article one, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, four, ten and thirteen, article two of said chapter; and to amend and reenact sections four, eight, eleven, thirteen and fourteen, article three of said chapter, all relating generally to guardians and conservators; adding definitions; adding and addressing qualifications; clarifying educational requirements; addressing de facto guardians and conservators; addressing liability of guardians and conservators and sureties; creating misdemeanor for certain violations; providing criminal penalties; creating a special revenue fund; increasing filing fees for petitions for appointment as guardian or conservator; requiring state auditor to conduct annual examination of accounts; requiring state auditor to prescribe forms for use by conservators and guardians; requiring additional information in petitions for appointment as guardian or conservators; providing notice of sale or abandonment of property of estate of protected person; and requiring biannual reports by conservators within the first year.

Be it enacted by the Legislature of West Virginia:

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

Article
2. Procedure for Appointment.
3. Guardianship and Conservatorship Administration.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-3. Advance directives.
§44A-1-8. Persons and entities qualified to serve as guardian or conservator.
§44A-1-10. Mandatory education.

§44A-1-3. Advance directives.

The existence of a living will, medical power of attorney, durable power of attorney or other advance directive, duly executed by a person alleged to be a “protected person”, as defined in section four of this article, or the prior appointment of a surrogate decisionmaker for the protected person may eliminate, limit or supersede the need for the assistance or protection of a guardian or conservator, and any person so appointed is to be the first preferred nominee for guardian or conservator, as set forth in section eight, article two of this chapter.


As used in this chapter, unless a different meaning is clearly required by the context:

(1) “Conservator” means a person appointed by the court who is responsible for managing the estate and financial affairs of a protected person, and, where the context plainly indicates, the term “conservator” means or includes a “limited conservator” or a “temporary conservator.”
(2) "De facto guardian" means a person who is not the medical power of attorney representative or appointed surrogate and has assumed substantial responsibility for any of the personal affairs of another person later found to be a protected person.

(3) "De facto conservator" means a person who is not the power of attorney representative or appointed surrogate and has assumed substantial responsibility for managing any portion of the estate and financial affairs of another person later found to be a protected person.

(4) "Estate" means real and personal property or any interest in the property and means anything that may be the subject of ownership.

(5) "Guardian" means a person appointed by the court who is responsible for the personal affairs of a protected person, and, where the context plainly indicates, the term "guardian" means or includes a "limited guardian" or a "temporary guardian".

(6) "Interested person" means:

(A) An individual who is the subject of a guardianship or conservatorship proceeding;

(B) A guardian or conservator of a protected person; and

(C) Any other person with an actual and substantial interest in the proceeding, either generally or as to a particular matter, as distinguished from a person who has only a nominal, formal, or technical interest in or connection with the proceeding.

(7) "Limited conservator" means a person appointed by the court who has only those responsibilities for managing the estate and financial affairs of a protected person, as specified in the order of appointment.
(8) "Limited guardian" means one appointed by the court who has only those responsibilities for the personal affairs of a protected person, as specified in the order of appointment.

(9) "Living will" means a living will existing and duly executed in accordance with the provisions of article thirty, chapter sixteen of this code.

(10) "Medical power of attorney" means a power of attorney existing and duly executed in accordance with the provisions of article thirty, chapter sixteen of this code or existing and executed in accordance with the laws of another state.

(11) "Missing person" means an adult individual, eighteen years of age or older, who is absent from his or her usual place of residence in the state and whose whereabouts are unknown for a period of six months or more.

(12) "Person" means, generally, a natural person, any corporation, association, partnership or other business entity, any political subdivision or other public agency, public official or any estate, trust or other collection of properties to which the law attributes the capacity of having rights or duties.

(13) "Protected person" means an adult individual, eighteen years of age or older, who has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to such an extent that the individual lacks the capacity: (A) To meet the essential requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or (B) to manage property or financial affairs or to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment, alone, is not sufficient evidence that
the individual is a protected person within the meaning of this subsection. "Protected person" also means a person whom a court has determined is a missing person.

(14) "Surrogate decisionmaker" means an individual identified as such by an attending physician in accordance with the provisions of article thirty-b, chapter sixteen of this code.

§44A-1-8. Persons and entities qualified to serve as guardian or conservator.

(a) Any adult individual may be appointed to serve as a guardian, a conservator, or both, upon a showing by the individual of the necessary education, ability and background to perform the duties of guardian or conservator and upon a determination by the court that the individual is capable of providing an active and suitable program of guardianship or conservatorship for the protected person: Provided, That the court may, after first determining it to be in the best interest of the protected person, appoint coguardians, coconservators, or both: Provided, however, That the individual is not employed by or affiliated with any public agency, entity or facility which is providing substantial services or financial assistance to the protected person. Any person being considered by a court for appointment as a guardian or conservator shall provide information regarding any crime, other than traffic offenses, of which he or she was convicted. The court shall consider this information in determining the person's fitness to be appointed a guardian or conservator.

(b) Any nonprofit corporation chartered in this state and licensed as set forth in subsection (c) of this section or a public agency that is not a provider of health care services to the protected person may be appointed to serve as a guardian, a conservator, or both: Provided, That the entity is capable of providing an active and suitable program of guardianship or
conservatorship for the protected person and is not otherwise providing substantial services or financial assistance to the protected person.

(c) A nonprofit corporation chartered in this state may be appointed to serve as a guardian or conservator or as a limited or temporary guardian or conservator for a protected person if it is licensed to do so by the secretary of health and human resources. The secretary shall propose legislative rules, for promulgation in accordance with the provisions of chapter twenty-nine-a of this code, for the licensure of nonprofit corporations and shall provide for the review of the licenses. The rules shall, at a minimum, establish standards to assure that any corporation licensed for guardianship or conservatorship:

(1) Has sufficient fiscal and administrative resources to perform the fiduciary duties and make the reports and accountings required by this chapter;

(2) Will respect and maintain the dignity and privacy of the protected person;

(3) Will protect and advocate the legal human rights of the protected person;

(4) Will assure that the protected person is receiving appropriate educational, vocational, residential and medical services in the setting least restrictive of the individual's personal liberty;

(5) Will encourage the protected person to participate to the maximum extent of his or her abilities in all decisions affecting him or her and to act in his or her own behalf on all matters in which he or she is able to do so;

(6) Does not provide educational, vocational, residential or medical services to the protected person; and
(7) Has written provisions in effect for the distribution of assets and for the appointment of temporary guardians and conservators for any protected persons it serves in the event the corporation ceases to be licensed by the department of health and human resources or otherwise becomes unable to serve as guardian.

(d) A duly licensed nonprofit corporation that has been appointed to serve as a guardian or as a conservator pursuant to the provisions of this article is entitled to compensation in accordance with the provisions of section thirteen of this article.

(e) Except as provided in section thirteen of this article, no guardian or conservator nor any officer, agent, director, servant or employee of any guardian or conservator may do business with or in any way profit, either directly or indirectly, from the estate or income of any protected person for whom services are being performed by the guardian or conservator.

(f) Any bank or trust company authorized to exercise trust powers or to engage in trust business in this state may be appointed as a conservator if the court determines it is capable of providing suitable conservatorship for the protected person.

(g) The secretary of the department of health and human resources shall designate a division or agency under his or her jurisdiction which may be appointed to serve as a guardian, but an appointment may only be made if there is no other individual, nonprofit corporation or other public agency that is equally or better qualified and willing to serve: Provided, That when any sheriff was initially appointed as guardian for the person, the department may not refuse to accept the guardianship appointment. If the department has been appointed as conservator, it may petition the circuit court to be released as conservator.
(h) The sheriff of the county in which a court has assumed jurisdiction may be appointed as a conservator but the appointment may only be made if there is no other individual, nonprofit corporation or other public agency that is equally or better qualified and willing to serve: Provided, That when the department of health and human resources was initially appointed as conservator for the person, the sheriff may not refuse to accept the conservatorship appointment. If the sheriff has been appointed as guardian, he or she may petition the circuit court to be released as guardian.

(i) Other than a bank or trust company authorized to exercise trust powers or to engage in trust business in this state, a person who has an interest as a creditor of a protected person is not eligible for appointment as either a guardian or conservator of the protected person.


(a) The court has the discretion to determine whether the posting of a bond by a guardian, once appointed, is necessary. No bond is required of any sheriff or representative of the department of health and human resources appointed as conservator or guardian.

(b) The court shall require the posting of a bond by a conservator upon appointment except where the conservator is excused from posting bond under the provisions of section eighteen, article four, chapter thirty-one-a of this code. In determining the amount or type of a conservator’s bond, the court shall consider:

(1) The value of the personal estate and annual gross income and other receipts within the conservator’s control;

(2) The extent to which the estate has been deposited under an arrangement requiring an order of court for its removal;
16 (3) Whether an order has been entered waiving the require-
17 ment that accountings be filed and presented or permitting
18 accountings to be presented less frequently than annually;
19
20 (4) The extent to which the income and receipts are payable
directly to a facility responsible for or which has assumed
21 responsibility for the care or custody of the protected person;
22
23 (5) The extent to which the income and receipts are derived
from state or federal programs that require periodic
24 accountings;
25
26 (6) Whether a guardian has been appointed, and if so,
whether the guardian has presented reports as required; and
27
28 (7) Whether the conservator was appointed pursuant to a
nomination which requested that bond be waived.
29
30 (c) Any required bond shall be with a surety and in an
31 amount and form as the court may order, and the court may
32 order additional bond or reduce the bond whenever the court
33 finds that a modification is in the best interests of the protected
34 person or of the estate. The court may allow a property bond in
35 lieu of a cash bond. Proof of bonding must be submitted to the
36 court within thirty days of appointment.
37
38 (d) In case of a breach of any condition placed on the bond
39 of any guardian or conservator, an action may be instituted by
40 any interested person for the use and benefit of the protected
41 person, for the estate of the protected person or for the benefi-
42 ciaries of the estate.
43
44 (e) The following requirements and provisions apply to any
45 bond which the court may require under this section:
46
47 (1) Sureties are jointly and severally liable with the
48 guardian/conservator and with each other;
(2) By executing an approved bond of a guardian or conservator, the surety consents to the jurisdiction of the court in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party respondent. Notice of any proceeding must be delivered to the surety or mailed by registered or certified mail to the address of the surety listed with the court in which the bond is filed. If the party initiating a proceeding possesses information regarding the address of a surety which would appear to be more current than the address listed with the court, notice shall also be mailed by registered or certified mail to the last address of the surety known to the party initiating the proceeding;

(3) On petition of a successor guardian or conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the preceding guardian or conservator; and

(4) The bond of the guardian or conservator is not void after any recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(f) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the guardian or conservator is barred by adjudication or limitation.

§44A-1-10. Mandatory education.

(a) Any individual appointed to serve as a guardian or conservator must receive educational material or complete mandated educational training, unless the court enters an order stating that the individual does not require the mandated educational training because he or she has completed the mandated educational training within the last three years.

(b) Upon a determination that the individual who is the subject of proceedings under this chapter is a protected person, as defined in section four of this article, the required educa-
tional training must be completed within thirty days of the court's determination. Upon completion, the appointed guardian or conservator shall provide an affidavit to the court, certifying that the educational training has been completed, and the court shall forthwith issue the order of appointment in accordance with the provisions of section thirteen, article two of this chapter.

(c) The secretary of health and human resources shall develop and implement an educational program for guardians and conservators. The secretary shall also propose legislative rules for promulgation, in accordance with the provisions of chapter twenty-nine-a of this code, regarding mandatory educational training for guardians and conservators. The educational training may include the following:

(1) Written materials;

(2) Recorded information, whether audio, visual or both; or

(3) A combination of the above.

ARTICLE 2. PROCEDURE FOR APPOINTMENT.

§44A-2-1. Filing of petition; jurisdiction; fees; special revenue account established; duties of auditor.

§44A-2-2. Who may file petition; contents.

§44A-2-4. Statement of financial resources.

§44A-2-10. Factors to be considered by court.


§44A-2-1. Filing of petition; jurisdiction; fees; special revenue account established; duties of auditor.

(a) A petition for the appointment of a guardian or conservator shall be filed with the clerk of the circuit court in the county in which the alleged protected person resides, or, if an alleged protected person has been admitted to a health care or correctional facility, in the county in which that facility is located. A petition for the appointment of a conservator for a
missing person shall be filed with the clerk of the circuit court in the county in which the missing person last resided.

(b) The circuit court in which the proceeding is first commenced shall have exclusive jurisdiction unless that court determines that a transfer of venue would be in the best interests of the person alleged to need protection.

(c) The fee for filing a petition shall be ninety dollars, payable upon filing to the circuit clerk, seventy-five dollars of which shall be retained by the circuit clerk and fifteen dollars of which shall be remitted by the circuit clerk to the special revenue account in the state treasury created in subsection (d) of this section. The person bringing the petition shall be responsible for fees for filings of the petition and other papers, for service of process, and for copies of court documents and transcripts. In the event that a guardian, conservator, or both, is appointed by the court, such fees shall be reimbursed to the individual who filed the petition from the protected person’s estate, if funds are available. Any person who is pecuniarily unable to pay such fees and costs as set forth in article one, chapter fifty-nine of this code and article two, chapter fifty-one of this code will not be required to pay said fees and costs.

(d) There is hereby created in the state treasury a special revenue account, which shall be an interest bearing account, to be known as the “enforcement of guardianship and conservatorship act fund”.

(e) The accounts established pursuant to the provisions of this chapter shall be examined annually by the state auditor in accordance with the provisions of section seven, article nine, chapter six of this code, and the state auditor shall authorize payments from the fund created in subsection (d) of this section for expenses incurred in performing such examinations.

§44A-2-2. Who may file petition; contents.
(a) A petition for the appointment of a guardian, a conservator, or both, may be filed by the individual alleged to be a protected person, by a person who is responsible for the individual’s care or custody, by the facility providing care to the individual, by the person that the individual has nominated as guardian or conservator, by a person acting as a de facto guardian or de facto conservator or by any other interested person, including, but not limited to, the department of health and human resources.

(b) A petition for the appointment of a guardian, a conservator, or both, shall state the petitioner’s name, place of residence, post office address, and relationship to the alleged protected person, and shall, to the extent known as of the date of filing, include the following:

(1) The alleged protected person’s name, date of birth, place of residence or location and post office address;

(2) The names and post office addresses of the alleged protected person’s nearest relatives, in the following order:

   (i) The spouse and children, if any; or if none

   (ii) The parents and brothers and sisters, if any; or if none

   (iii) The nearest known relatives who would be entitled to succeed to the person’s estate by intestate succession as set forth in article one, chapter forty-two of this code.

Once a relative or several relatives have been identified in one of the aforementioned categories, relatives in a lower category do not have to be listed in the petition;

(3) The name, place of residence or location and post office address of the individual or facility that is responsible for the person’s care or custody, any person acting as a de facto guardian or de facto conservator or any medical power of
attorney representative or appointed surrogate, and a detailed
list of the acts performed by such person on behalf of the
protected person;

(4) The name, place of residence or location and post office
address of any person designated as a surrogate decisionmaker
for the alleged protected person, or of any representative or
representatives designated under a durable power of attorney,
medical power of attorney or living will, of which the alleged
protected person is the principal, and the petitioner shall attach
a copy of any of those documents, if available;

(5) The name, post office address and phone number of the
attorney representing the petitioner in the petition and appoint-
ment proceedings;

(6) Whether the person’s incapacity will prevent attendance
at the hearing and the reasons therefor;

(7) The type of guardianship or conservatorship requested
and the reasons for the request;

(8) The proposed guardian or conservator’s name, post
office address and, if the proposed guardian or conservator is an
individual, the individual’s age, occupation, criminal history
and relationship to the alleged protected person;

(9) The name and post office address of a guardian nomi-
nated by the alleged protected person if different from the
proposed guardian or conservator, and, if the person nominated
as a guardian or conservator is an individual, the individual’s
age, occupation, criminal history and relationship to the alleged
protected person;

(10) The name and post office address of any guardian or
conservator currently acting, whether in this state or elsewhere;
(11) If the appointment of a limited guardian is requested, the specific areas of protection and assistance to be included in the order of appointment;

(12) If the appointment of a limited conservator is requested, the specific areas of management and assistance to be included in the order of appointment; and

(13) If the appointment of a conservator is requested for a missing person, the specific circumstances under which the person is considered missing.

§44A-2-4. Statement of financial resources.

Prior to a hearing for a conservatorship, the petitioner shall file a statement of the financial resources of the alleged protected person which shall to the extent known list the person's social security number, list with reasonable detail the approximate value of the person's real and personal property, and the person's anticipated annual gross income and other receipts.

§44A-2-10. Factors to be considered by court.

(a) The court alone shall determine whether a guardian or conservator should be appointed, the type of guardian or conservator and the specific areas of protection, management and assistance to be granted. Any determination that the individual is a protected person shall contain a specific finding that the person meets the definition set forth in section four, article one of this chapter. In making the determination, the court shall consider the suitability of the proposed guardian or conservator, the limitations of the alleged protected person, the development of the person’s maximum self-reliance and independence, the availability of less restrictive alternatives including advance directives and the extent to which it is necessary to protect the person from neglect, exploitation, or abuse.
(b) Except as provided in section eight of this article, the selection of the guardian or conservator is in the discretion of the court. The court shall select the individual or entity best qualified to act in the best interest of the protected person, after consideration of the proposed guardian’s or conservator’s geographic location, familial or other relationship with such person, ability to carry out the powers and duties of the office, commitment to promoting such person’s welfare, any potential conflicts of interest, the criminal history of the proposed guardian or conservator and the recommendations of the spouse, the parents, children or other interested relatives, whether made by will or otherwise. The court may only appoint one guardian and one conservator and it need not appoint the same individual or entity to serve as both guardian and conservator.

(c) A guardianship or conservatorship appointed under this article shall be the least restrictive possible, and the powers shall not extend beyond what is absolutely necessary for the protection of the individual.


(a) An order appointing a guardian or conservator may only be issued by the court upon the following:

1. The guardian or conservator has subscribed to and filed an oath promising to faithfully perform the duties of the office in accordance with all provisions of this chapter;

2. Posting of any bond, if required; and

3. The completion of mandatory education, as required under the provisions of section ten, article one of this chapter, unless the court enters an order stating that an individual does not require educational training because he or she has completed the mandatory education within the last three years.
(b) In addition to the findings of fact and conclusions of law required in section nine of this article, the order shall include the specific areas of protection or assistance granted in the case of a guardian and the specific areas of management and assistance granted in the case of a conservator.

(c) Within fourteen days following the entry of an order of appointment, the guardian or conservator shall mail a copy of the order of appointment, together with a brief statement in large print of rights to seek an appeal for modification or termination, to the protected person and to all individuals and entities given notice of the petition.

ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.

§44A-3-4. Management powers and duties of conservator.

§44A-3-8. Conservator’s inventory.

§44A-3-11. Filing of reports and accountings.

§44A-3-13. Personal liability of guardians.

§44A-3-14. Personal liability of conservators.

§44A-3-4. Management powers and duties of conservator.

(a) A conservator, in managing the estate, shall act as a fiduciary and serve in the best interests of the protected person and, in addition, has the following powers which may be exercised without prior court authorization, except as otherwise specifically provided:

(1) To invest and reinvest the funds of the estate in accordance with a standard of prudent investing;

(2) To collect, hold, and retain assets of the estate, including land in another state, and to receive additions to the estate;

(3) To continue or participate in the operation of any unincorporated business or other enterprise;
(4) To deposit estate funds in a state or federally insured financial institution, including one operated by the conservator;

(5) To manage, control and sell at public sale, for cash or for credit, the personal property of the estate: Provided, That the conservator has provided written notice by certified mail to those persons named on the petition as the protected person's nearest relatives at their last known address at least fourteen days prior to any sale of the personal property;

(6) To perform a contract entered into by a protected person, including, without limitation, a contract to convey or purchase real property as approved by any court having jurisdiction;

(7) To renew a lease entered into by a protected person as lessor or lessee with or without an option to purchase, including leases for real and personal property and leases and other arrangements for exploration and removal of minerals or other natural resources notwithstanding that the lease or other arrangement may extend beyond the term of the conservatorship;

(8) To borrow money and to place, renew or extend an encumbrance upon any property, real or personal, including the power to borrow from a financial institution operated by the conservator, subject to the provisions of section twelve of this article;

(9) To abandon property when, in the opinion of the conservator, it is valueless or is so encumbered or in a condition that it is of no benefit to the estate: Provided. That the conservator has provided written notice to those persons named on the petition as the protected person's nearest relatives at their last known address at least fourteen days prior to any abandonment of the property: Provided, however, That any items listed in the initial inventory as valueless may be abandoned no sooner than
(10) To make ordinary or extraordinary repairs or alterations in buildings or other property and to grant easements for public or private use, or both, with or without consideration;

(11) To vote a security, in person or by general or limited proxy, and to consent to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other enterprise;

(12) To sell or exercise stock subscription or conversion rights and to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(13) To hold a security in the name of a nominee or in other form without disclosure of the conservatorship, so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with a security so held;

(14) To insure the assets of the estate against damage or loss, and the guardian and conservator against liability with respect to third persons;

(15) To allow, pay, reject, contest or settle any claim by or against the estate or protected person by compromise or otherwise, and to release, in whole or in part, any claim belonging to the estate to the extent it is uncollectible;

(16) To pay taxes, assessments and other expenses incurred in the collection, care and administration of the estate;

(17) To pay any sum distributable for the benefit of the protected person or for the benefit of a legal dependent by paying the sum directly to the distributee, to the provider of goods and services, to any individual or facility that is responsible for or has assumed responsibility for care and custody, to a
distributee’s custodian under a Uniform Gifts or Transfers Act of any applicable jurisdiction, or by paying the sum to the guardian of the protected person or, in the case of a dependent, to the dependent’s guardian or conservator;

(18) To employ persons, including attorneys, accountants, investment advisors, or agents; to act upon their recommendations without independent investigation; to delegate to them any power, whether ministerial or discretionary; and to pay them reasonable compensation;

(19) To maintain life, health, casualty and liability insurance for the benefit of the protected person, or legal dependents;

(20) To manage the estate following the termination of the conservatorship and until its delivery to the protected person, or successors in interest; and

(21) To execute and deliver all instruments and to take all other actions that will accomplish or facilitate the exercise of the powers conferred in accordance with the provisions of this chapter.

(b) Any person acting as a conservator for more than one protected person shall maintain funds for each protected person in separate accounts.

(c) No conservator may make loans from the accounts of the protected person to himself, herself or his or her spouse.

§44A-3-8. Conservator’s inventory.

(a) Within sixty days following entry of an order of appointment, a conservator shall file with the court an inventory of the real and personal estate of the protected person which has come into the conservator’s possession or knowledge. The inventory shall include, with reasonable detail, a listing of each item of the estate, its approximate fair market value and the
type and amount of encumbrance to which it is subject. The
inventory shall list with reasonable detail any items that the
conservator believes are valueless and intends to abandon. If
any real or personal estate comes into the possession or
knowledge of the conservator subsequent to the filing of the
initial inventory, the conservator shall either amend the
inventory or list the same in the next accounting required to be
filed with the court, as described in this section.

(b) A conservator shall mail a copy of the inventory to the
individuals and entities who received notice of hearing, as
specified in section six, article two of this chapter, no later than
fourteen days following its presentation of the inventory.

(c) Any person who knowingly violates the provisions of
this section is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than twenty-five dollars nor than
more one hundred dollars.

§44A-3-11. Filing of reports and accountings.

(a) Reports of guardians and accountings of conservators,
as described in this article shall be filed with the circuit clerk of
the county in which appointed, on a semi-annual basis during
the first twelve months of the guardian’s or conservator’s
appointment and:

(1) On the first day of February of each year thereafter;

(2) When the court orders additional reports or accountings
to be filed;

(3) When the guardian or conservator resigns or is re-
moved; and

(4) When the appointment of the guardian or conservator is
terminated, except that in the case of a guardian, the court may
determine that there is no need for a report upon the termina-
tion; and in the case of a conservator, no accounting is required
if all persons entitled to any of proceeds of the estate consent thereto.

(b) A guardian or conservator may elect to file a periodic report or accounting on a calendar-year basis; however, in no event may such a report or accounting cover a period of more than one year. A calendar-year report or accounting shall be filed with the circuit clerk no later than the fifteenth day of April of the succeeding year.

d) Any person who knowingly violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor than more one hundred dollars.

(e) The state auditor shall prescribe forms for reports required to be filed pursuant to the provisions of this article.

§44A-3-13. Personal liability of guardians.

(a) A guardian shall have a fiduciary duty to the protected person for whom he or she was appointed guardian and may be held personally liable for a breach of that duty, including being required to pay restitution for any embezzled or concealed funds.

(b) A guardian is not liable for the acts of the protected person, unless the guardian is personally negligent, nor is a guardian required to expend personal funds on behalf of the protected person.

§44A-3-14. Personal liability of conservators.

(a) A conservator shall have a fiduciary duty to the protected person for whom he or she was appointed conservator and may be held personally liable for a breach of that duty, including being required to pay restitution for any embezzled or concealed funds.
(b) Unless otherwise provided in the contract, a conservator is not personally liable on a contract entered into in a fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal the representative capacity or to identify the estate in the contract.

(c) A conservator is personally liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if personally negligent.

(d) Claims based upon contracts entered into by a conservator in a fiduciary capacity, obligations arising from ownership or control of the estate, or torts committed in the course of administration of the estate, may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable therefor.

(e) A successor conservator is not personally liable for the contracts or actions of a predecessor. However, a successor conservator is not immunized from liability for a breach of fiduciary duty committed by a predecessor if the successor learns of the breach and fails to take reasonable corrective action.

CHAPTER 128

(Com. Sub. for H. B. 4611 — By Delegates Rowe, C. White, Hunt, Webb, Wills and Hines)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating
to standby guardianship; and providing that the documents contained in the court file be confidential.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. STANDBY GUARDIANSHIP.

§44A-5-9. Petition and other records pertaining to standby guardianship confidential.

1 Upon the filing of a petition requesting the approval of a standby guardian, all pleadings, exhibits and other documents contained in the court file are considered confidential and not open for public inspection, either during the pendency of the case or after the case is closed. The contents of the court file are open to inspection and copying by the parties, their designees and their attorneys.

CHAPTER 129

(Com. Sub. for H. B. 4431 — By Delegates Staton, Amores, Hunt, Rowe and Hutchins)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]
gency response fund; deleting certain provisions relating to solid and hazardous waste supplemental assessment fee; updating references to federal law; modifying certain definitions; expanding circumstances when fund moneys may be utilized; modifying hazardous waste emergency response fund requirements; excluding certain materials and substances from the hazardous waste generator fund fee; modifying fee assessment criteria for fee assessments to the fund; modifying criteria for agreements for expenditures from the fund; and modifying rulemaking authority of the director of the division of environmental protection.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. HAZARDOUS WASTE EMERGENCY RESPONSE FUND.

§22-19-1. Findings; purpose.
§22-19-4. Fee assessments; tonnage fees; due dates of payments; interest on unpaid fees.
§22-19-5. Director's responsibilities; fee schedules; authorized expenditures; other powers of director; authorizing civil actions; assistance of attorney general or prosecuting attorney.

§22-19-1. Findings; purpose.

The Legislature recognizes that large quantities of hazardous waste are generated within the state, and that emergency situations involving hazardous waste can and will arise which may present a hazard to human health, safety, or the environment. The Legislature also recognizes that some hazardous waste has been stored, treated or disposed of at sites in the state
in a manner insufficient to protect human health, safety or the environment. The Legislature further recognizes that the federal government has enacted the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, which provides for federal assistance to respond to hazardous substance emergencies and to remove and remedy the threat of damage to the public health or welfare or to the environment, and declares that West Virginia desires to produce revenue for matching the federal assistance provided under the federal acts. Therefore, the Legislature hereby creates a hazardous waste emergency fund to provide state funds for responding to hazardous waste emergencies, responding to releases of hazardous substances into the environment, matching federal financial assistance for restoring hazardous waste sites and other costs or expenses incurred in the administration of this article.


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

(1) "Cleanup" means such actions as may be necessary to monitor, assess and evaluate the threat of release of hazardous waste or hazardous substances, the containment, collection, control, identification, treatment, dispersal, removal or disposal of hazardous waste or other such actions as may be necessary to respond to hazardous waste or hazardous substance emergencies or to prevent, minimize or mitigate damage to the public health, safety, welfare or to the environment, and includes, where necessary, replacement of existing, or provision of alternative, drinking water supplies that have been contaminated with hazardous waste as a result of an emergency;

(2) "Cleanup costs" means all costs incurred by the director, or with the approval of the director, by any state...
agency or person participating in the cleanup of a hazardous waste or hazardous substance emergency or remedial action and also includes responding to emergencies that may contain petroleum products: Provided, That cleanup costs do not include expenditures for remediation of or responding to releases from underground storage tanks;

(3) “Generator” means any person, corporation, partnership, association or other legal entity, by site location, whose act or process produces hazardous waste as identified or listed by the director in rules promulgated pursuant to section six, article eighteen of this chapter, in an amount greater than five thousand kilograms per year.

All other terms have the meaning as prescribed in the rules promulgated by the director pursuant to the provisions of section six, article eighteen of this chapter.


(a) The special fund designated “The Hazardous Waste Emergency Response Fund,” hereinafter referred to as “the fund,” shall be continued in the state treasury.

(b) All generator fee assessments, any interest or surcharge assessed and collected by the director, interest accruing on investments and deposits of the fund, and any other moneys designated shall be paid into the fund. Expenditures from the 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, two thousand, 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.

§22-19-4. Fee assessments; tonnage fees; due dates of payments;
interest on unpaid fees.

(a) Each generator of hazardous waste within this state shall
pay an annual fee based upon the amount of hazardous waste
generated as reported to the director by the generator on a fee
assessment form prescribed by the director submitted pursuant
to article eighteen of this chapter. The director shall establish a
fee schedule according to the following: Full assessment for
generated hazardous waste disposed or treated off-site; ninety
percent of the full assessment for generated hazardous waste
either treated or disposed on-site; seventy-five percent of the
full assessment for generated hazardous waste treated off-site
so that such waste is rendered nonhazardous; and twenty-five
percent of the full assessment for generated hazardous waste
treated on-site so that such waste is rendered nonhazardous:
Provided, That the generator fee assessment does not apply to
the following: (1) Sludge from any publicly owned treatment
works in the state; (2) any discharge to waters of the state of
hazardous waste pursuant to a valid water pollution control
permit issued under federal or state law; (3) any hazardous
wastes beneficially used or reused or legitimately recycled or
reclaimed; (4) hazardous wastes which are created or retrieved
pursuant to an emergency or remedial action plan; (5) hazard-
ous wastes whose sole characteristic as a hazardous waste is
based on corrosivity and which are subjected to on-site elemen-
tary neutralization in containers or tanks; (6) fly ash waste,
bottom ash waste, slag waste, and flue gas emission control
waste generated primarily from the combustion of coal or other
fossil fuels; (7) solid waste from the extraction, beneficiation,
and processing of ores and minerals, including coal, phosphate rock and overburden from the mining of uranium ore; (8) cement kiln dust waste; (9) drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geo-thermal energy; and (10) any other material that is exempted or excluded from hazardous waste regulation pursuant to the federal Resource Conservation and Recovery Act and the rules promulgated thereunder, including, but not limited to, the exemptions and exclusions set forth in 40 CFR 261.4 and 261.6, or the state hazardous waste management act, article eighteen of this chapter, and the rules promulgated thereunder.

(b) Each generator of hazardous waste within the state subject to a fee assessment under subsection (a) of this section shall pay a fee based on its annual tonnage of generated hazardous waste. Any unexpended balance of such collected fees shall not be transferred to the general revenue fund, but shall remain in the fund. Whenever the balance in the fund is less than one million dollars, the director is authorized to impose a fee assessment as provided in this article, but in no event shall the fees established be set to produce revenue exceeding five hundred thousand dollars in any year.

(c) Generator fee assessments are due and payable to the division of environmental protection on the fifteenth day of January of each year. Such payments shall be accompanied by information in such form as the director may prescribe.

(d) If the fees or any portion thereof are not paid by the date prescribed, interest accrues upon the unpaid amount at the rate of ten percent per annum from the date due until payment is actually made. Such interest payments shall be deposited in the fund. If any generator fails to pay the fees imposed before the first day of April of the year in which they are due, there is imposed in addition to the fee and interest determined to be
owed a surcharge equivalent to the total amount of the fee which shall also be collected and deposited in the fund.

§22-19-5. Director's responsibilities; fee schedules; authorized expenditures; other powers of director; authorizing civil actions; assistance of attorney general or prosecuting attorney.

(a) The director shall collect all fees assessed pursuant to this article and administer the fund. The fee schedule shall be published in the state register by the first day of August of each year. Each generator who filed the fee assessment form prescribed by the director shall be notified and provided with a copy of the fee schedule by certified mail. In the event the fee schedule is not published by the first day of August, the date prescribed for payment in section four of this article shall be advanced by the same number of days that the publication of the fee schedule is delayed. The interest and surcharge provisions of section four of this article shall be similarly advanced.

(b) The director is authorized to enter into agreements and contracts and to expend the moneys in the fund for the following purposes:

(1) Responding to hazardous waste emergencies and releases of hazardous substances when, based on readily available information, the director determines that immediate action may prevent or mitigate significant risk of harm to human health, safety or the environment from hazardous wastes or releases of hazardous substances in situations for which no federal funds are immediately available for such response cleanup or containment: Provided, That the director shall apply for and diligently pursue available federal funds for such emergencies at the earliest possible time;

(2) Reimbursing any person for reasonable cleanup costs incurred with the authorization of the director in responding to
a hazardous waste emergency or release of hazardous sub-
stances pursuant to authorization of the director;

(3) Financing the nonfederal share of the cleanup and site
reclamation activities pursuant to the federal Comprehensive
Environmental Response, Compensation and Liability Act of
1980, as amended by the Superfund Amendments and
Reauthorization Act of 1986 as well as future operation and
maintenance costs for these sites; and

(4) Financing any and all preparations necessary for
responding to hazardous waste and hazardous substance
activities and emergencies within the state, including, but not
limited to, the purchase or lease of hazardous waste emergency
response equipment.

(c) Prior to making expenditures from the fund pursuant to
subdivision (1), (2) or (3), subsection (b) of this section, the
director will make reasonable efforts to secure agreements to
pay the costs of cleanup and remedial actions from owners or
operators of sites or other responsible persons.

(d) The director is authorized to promulgate and revise rules
in compliance with chapter twenty-nine-a of this code to
implement and effectuate the powers, duties and responsibilities
vested in him or her under this article. Prior to the assessment
of any fees under this article, the director shall promulgate rules
which account for the mixture of hazardous and nonhazardous
constituents in the hazardous waste which is generated. The
director may not assess a fee on the nonhazardous portion,
including, but not limited to, the weight of water.

(e) The director is authorized to recover through civil action
or cooperative agreements with responsible persons the full
amount of any funds expended for purposes enumerated in
subdivision (1), (2) or (3), subsection (b) of this section. All
moneys expended from the fund which are so recovered shall
be deposited in the fund. Any civil action instituted pursuant to
this subsection may be brought in either Kanawha County or
the county in which the hazardous waste emergency occurs or
the county in which remedial action is taken.

(f) The director is authorized to institute a civil action
against any generator for failure to pay any fee assessed
pursuant to this article. Any action instituted against a generator
pursuant to this subsection may be brought in either Kanawha
County or the county in which the generator does business. The
generator shall pay all attorney fees and costs of such action if
the director prevails.

(g) Upon request by the director, the attorney general or
prosecuting attorney for the county in which an action was
brought shall assist the director in any civil action instituted
pursuant to this section and any proceedings relating thereto.

(h) The director is authorized to enter into contracts or
cooperative agreements with the federal government to secure
to the state the benefits of funding for action taken pursuant to
the requirements of the federal Comprehensive Environmental
Response, Compensation and Liability Act of 1980 as amended
by the Superfund Amendments and Reauthorization Act of
1986.

(i) The director is authorized to accept gifts, donations,
contributions, bequests or devises of money, security or
property for deposit in the fund.

(j) The director is authorized to invest the fund to earn a
reasonable rate of return on the unexpended balance.


The director shall promulgate rules in compliance with
chapter twenty-nine-a of this code, establishing a state hazard-
ous waste contingency plan which shall set forth procedures and
standards for responding to hazardous waste emergencies, releases of hazardous substances, for conducting remedial cleanup and maintenance of hazardous waste sites and for making expenditures from the fund after the date of promulgation of the plan. The plan shall include:

(a) Methods for discovering, reporting and investigating sites at which hazardous waste or hazardous substances may present significant risk of harm to the public health and safety or to the environment;

(b) Methods and criteria for establishing priority responses and for determining the appropriate extent of cleanup, containment and other measures authorized by this article;

(c) Appropriate roles for governmental, interstate and nongovernmental entities in effectuating the plan;

(d) Methods for identifying, procuring, maintaining, and storing hazardous waste response equipment and supplies; and

(e) Methods to identify the most appropriate and cost-effective emergency and remedial actions in view of the relative risk or danger presented by each case or event.

CHAPTER 130

(Com. Sub. for S. B. 542 — By Senators Walker, Prezioso, Kessler, Plymale, McCabe, Snyder, Minear, Chafin, Love, Ball, Dawson, Mitchell, Bowman, Jackson, Unger, Edgell, Sharpe, Ross, Redd, Anderson and Dittmar)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article two-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact articles one and two of said chapter, all relating to the state public health system and local boards of
health and their purposes; definitions; powers and duties of the secretary; rules; state health officer; powers and duties of the commissioner; disposition of fees collected by the commissioner; receipt and disbursement of federal aid; employee training; investigations and hearings; authority to create municipal, county and combined boards of health; appointment to and composition of local boards of health; terms of appointment, compensation and expenses of members of local boards of health; meetings, quorum, bylaws and powers and duties of local boards of health; local health officer appointment, qualifications and power and duties; financial responsibilities of appointing authorities for local boards of health; levies; appropriation of county or municipal general funds for public health purposes; state funding; penalties; and severability.

Be it enacted by the Legislature of West Virginia:

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

Article
1. State Public Health System.
2. Local Boards of Health.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-1. Purpose.
§16-1-2. Definitions.
§16-1-3. Powers and duties of the secretary.
§16-1-4. Proposal of rules by the secretary.
§16-1-5. State health officer; appointment; qualifications; term.
§16-1-6. Powers and duties of the commissioner.
§16-1-7. Duties and powers of the commissioner; service on advisory councils, boards and commissions; authority to designate a representative to serve in his or her place on certain boards and commissions.
§16-1-8. Duties and powers of the commissioner; authorization to cooperate with any state health planning and development agencies and any federal government agencies in hospital and other health facility programs.
§16-1-9. Duties and powers of the commissioner; supervision over local sanitation; violations; jurisdiction; penalties.

§16-1-9a. Public water system defined; regulation of maximum contaminant levels in water systems; authorization of inspections; violations; criminal, civil and administrative penalties; safe drinking water penalty fund.

§16-1-9b. Permit approval for individual systems with surface water discharge; reserve areas.

§16-1-10. Disposition of permit, license or registration fees received by the commissioner; report to auditor; health facility licensing account.

§16-1-11. Disposition of fees for services charged and received by the commissioner; health services fund.

§16-1-12. Receipt and disbursement of federal aid and other moneys for health purposes.

§16-1-13. Hospital services revenue account; health facilities long-range plans.

§16-1-14. Training employees.

§16-1-15. Investigations and hearings; power to administer oaths, subpoena witnesses, etc.; use of information and material acquired.

§16-1-16. Public health advisory council; duties; composition; appointment; meetings; compensation; expenses and continuation.

§16-1-17. Penalties for interfering with examiners, inspectors or other authorized representatives of the commissioner in the performance of duty.

§16-1-18. Penalties for violating provisions of article.

§16-1-1. Purpose.

It is the policy of this state to promote the physical and mental health of all of its citizens and to prevent disease, injury, and disability whenever possible. The state recognizes its responsibility to assist in the provision of essential public health services and establishes by this article a state public health system to work in conjunction with local boards of health to provide basic public health services that encourage healthy people in healthy communities.

§16-1-2. Definitions.

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

(a) "Basic public health services" means those services that are necessary to protect the health of the public. The three areas
of basic public health services are communicable and reportable disease prevention and control, community health promotion and environmental health protection;

(b) "Bureau" means the bureau for public health in the department of health and human resources;

(c) "Combined local board of health" is one form of organization for a local board of health and means a board of health serving any two or more counties or any county or counties and one or more municipalities within or partially within the county or counties;

(d) "Commissioner" means the commissioner of the bureau for public health, who is the state health officer;

(e) "County board of health" is one form of organization for a local board of health and means a local board of health serving a single county;

(f) "Department" means the West Virginia department of health and human resources;

(g) "Director" or "director of health" means the state health officer. Administratively within the department, the bureau for public health through its commissioner carries out the public health functions of the department, unless otherwise assigned by the secretary;

(h) "Essential public health services" means the core public health activities necessary to promote health and prevent disease, injury and disability for the citizens of the state. The services include:

(1) Monitoring health status to identify community health problems;

(2) Diagnosing and investigating health problems and health hazards in the community;
(3) Informing, educating and empowering people about health issues;

(4) Mobilizing community partnerships to identify and solve health problems;

(5) Developing policies and plans that support individual and community health efforts;

(6) Enforcing laws and rules that protect health and ensure safety;

(7) Uniting people with needed personal health services and assuring the provision of health care when it is otherwise not available;

(8) Promoting a competent public health and personal health care workforce;

(9) Evaluating the effectiveness, accessibility and quality of personal and population-based health services; and

(10) Researching for new insights and innovative solutions to health problems;

(i) "Licensing boards" means those boards charged with regulating an occupation, business or profession and on which the commissioner serves as a member;

(j) "Local board of health, ” “local board” or “board” means a board of health serving one or more counties or one or more municipalities or a combination thereof;

(k) "Local health department” means the staff of the local board of health;

(l) “Local health officer” means the individual physician with a current West Virginia license to practice medicine who supervises and directs the activities of the local health depart-
ment services, staff and facilities and is appointed by the local board of health with approval by the commissioner;

(m) "Municipal board of health" is one form of organization for a local board of health and means a board of health serving a single municipality;

(n) "Performance-based standards" means generally accepted, objective standards such as rules or guidelines against which public health performance can be measured;

(o) "Program plan" or "plan of operation" means the annual plan for each local board of health that must be submitted to the commissioner for approval;

(p) "Public water system" means any water supply or system which regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of twenty-five individuals per day for at least sixty days per year, or which has at least fifteen service connections, and shall include: (1) Any collection, treatment, storage and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system; and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system. A public water system does not include a system which meets all of the following conditions: (1) Which consists only of distribution and storage facilities (and does not have any collection and treatment facilities); (2) which obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition; (3) which does not sell water to any person; and (4) which is not a carrier conveying passengers in interstate commerce;

(q) "Secretary" means the secretary of the state department of health and human resources;
(r) "Service area" means the territorial jurisdiction of a local board of health;

(s) "State advisory council on public health" is the advisory body charged by this article with providing advice to the commissioner with respect to the provision of adequate public health services for all areas in the state;

(t) "State board of health" means, and refers to, the secretary, notwithstanding any other provision of this code to the contrary, whenever and wherever in this code there is a reference to the state board of health.

§16-1-3. Powers and duties of the secretary.

(a) The secretary may establish a state public health system.

(b) All powers and duties of the director of health previously established by former section ten of this article that are not specifically included in this chapter as powers and duties of the commissioner are powers and duties of the secretary.

(c) As necessary for the effective, efficient and economical operation of the system, the secretary may from time to time delegate, assign, transfer or combine responsibilities or duties to or among employees of the department.

(d) Within the limits of applicable federal law, the secretary may require every applicant for a license, permit, certificate of registration, or registration under this chapter to place his or her social security number on the application.

§16-1-4. Proposal of rules by the secretary.

The secretary may propose rules, in accordance with the provisions of article three, chapter twenty-nine-a of the code, that are necessary and proper to effectuate the purposes of this chapter. The secretary may appoint or designate advisory councils of professionals in the areas of hospitals, nursing
homes, barbers and beauticians, postmortem examinations, mental health and mental retardation centers and any other areas necessary to advise the secretary on rules.

The rules may include, but are not limited to, the regulation of:

(a) Land usage endangering the public health: Provided, that no rules may be promulgated or enforced restricting the subdivision or development of any parcel of land within which the individual tracts, lots or parcels exceed two acres each in total surface area and which individual tracts, lots or parcels have an average frontage of not less than one hundred fifty feet even though the total surface area of the tract, lot or parcel equals or exceeds two acres in total surface area, and which tracts are sold, leased or utilized only as single family dwelling units. Notwithstanding the provisions of this subsection, nothing in this section may be construed to abate the authority of the department to: (1) Restrict the subdivision or development of a tract for any more intense or higher density occupancy than a single family dwelling unit; (2) propose or enforce rules applicable to single family dwelling units for single family dwelling unit sanitary sewerage disposal systems; or (3) restrict any subdivision or development which might endanger the public health, the sanitary condition of streams, or sources of water supply;

(b) The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption, and places where trades or industries are conducted;

(c) Occupational and industrial health hazards, the sanitary conditions of streams, sources of water supply, sewerage
facilities and plumbing systems and the qualifications of personnel connected with any of those facilities, without regard to whether the supplies or systems are publicly or privately owned; and the design of all water systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal methods and swimming pools in this state, whether publicly or privately owned;

(d) Safe drinking water, including:

(1) The maximum contaminant levels to which all public water systems must conform in order to prevent adverse effects on the health of individuals, and, if appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. The rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer;

(2) The minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and rules promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems rules; and

(3) The requirements covering the production and distribution of bottled drinking water and may establish requirements governing the taste, odor, appearance and other consumer acceptability parameters of drinking water;

(e) Food and drug standards, including cleanliness, proscription of additives, proscription of sale and other require-
ments in accordance with article seven of this chapter, as are necessary to protect the health of the citizens of this state;

(f) The training and examination requirements for emergency medical service attendants and emergency medical care technician-paramedics; the designation of the health care facilities, health care services, and the industries and occupations in the state that must have emergency medical service attendants and emergency medical care technician-paramedics employed, and the availability, communications, and equipment requirements with respect to emergency medical service attendants and to emergency medical care technician-paramedics: Provided, That any regulation of emergency medical service attendants and emergency medical care technician-paramedics shall not exceed the provisions of article four-c of this chapter;

(g) The health and sanitary conditions of establishments commonly referred to as bed and breakfast inns. For purposes of this article, “bed and breakfast inn” means an establishment providing sleeping accommodations and, at a minimum, a breakfast for a fee: Provided, That the secretary may not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer rooms to install a restaurant style or commercial food service facility: Provided, however, That the secretary may not require an owner of a bed and breakfast providing sleeping accommodations of more than six rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

(h) Fees for services provided by the bureau for public health including, but not limited to, laboratory service fees, environmental health service fees, health facility fees and permit fees;
(i) The collection of data on health status, the health system and the costs of health care; and

(j) Other health-related matters which the department is authorized to supervise and for which the rule-making authority has not been otherwise assigned.

§16-1-5. State health officer; appointment; qualifications; term.

The commissioner of the bureau for public health is the state health officer and shall be appointed by the secretary. The commissioner shall be a physician licensed under the laws of this state to practice medicine or a person holding a doctorate degree in public health administration. The commissioner shall have not less than four years' experience in health services administration or a related field. The commissioner serves at the will and pleasure of the secretary and shall not be actively engaged or employed in any other business, vocation or employment, serving full time in the duties of the office as prescribed by this article.

§16-1-6. Powers and duties of the commissioner.

The commissioner is the chief executive, administrative and fiscal officer of the bureau for public health and has the following powers and duties:

(a) To supervise and direct the fiscal and administrative matters of the bureau, and in that regard and in accordance with law, employ, fix the compensation of and discharge all persons necessary for the proper execution of the public health laws of this state and the efficient and proper discharge of the duties imposed upon, and execution of powers vested in the commissioner by law and as directed by the secretary;

(b) To enforce all laws of this state concerning public health; to that end, the commissioner shall make, or cause to be made, investigations and inquiries respecting the cause of
disease, especially of epidemics and endemic conditions, and the means of prevention, suppression or control of those conditions; the source of sickness and mortality, and the effects of environment, employment, habits and circumstances of life on the public health. The commissioner shall further make, or cause to be made, inspections and examinations of food, drink and drugs offered for sale or public consumption in the manner the commissioner considers necessary to protect the public health and shall report all violations of laws and rules relating to the law to the prosecuting attorney of the county in which the violations occur;

(c) To make complaint or cause proceedings to be instituted against any person, corporation or other entity for the violation of any public health law before any court or agency, without being required to give security for costs; the action may be taken without the sanction of the prosecuting attorney of the county in which the proceedings are instituted or to which the proceedings relate;

(d) To promote the provision of essential public health services to citizens of this state;

(e) To monitor the administration, operation and coordination of the local boards of health and local health officers;

(f) To develop and maintain a state plan of operation that sets forth the needs of the state in the areas of public health; goals and objectives for meeting those needs; methods for achieving the stated goals and objectives; and needed personnel, funds and authority for achieving the goals and objectives;

(g) To collect data as may be required to foster knowledge on the citizenry's health status, the health system and costs of health care:
(h) To delegate to any appointee, assistant or employee any and all powers and duties vested in the commissioner, including, but not limited to, the power to execute contracts and agreements in the name of the bureau: Provided, That the commissioner is responsible for the acts of his or her appointees, assistants and employees;

(i) To transfer at the direction of the secretary, notwithstanding other provisions of this code, any patient or resident between hospitals and facilities under the control of the commissioner and, by agreement with the state commissioner of corrections and otherwise in accord with law, accept a transfer of a resident of a facility under the jurisdiction of the state commissioner of corrections;

(j) To make periodic reports to the governor and to the Legislature relative to specific subject areas of public health, the state facilities under the supervision of the commissioner, or other matters affecting the public health of the people of the state, at the direction of the secretary;

(k) At the direction of the secretary, to accept and use for the benefit of the health of the people of this state, any gift or devise of any property or thing which is lawfully given: Provided, That if any gift is for a specific purpose or for a particular state hospital or facility it shall be used as specified. Any profit which may arise from any gift or devise of any property or thing shall be deposited in a special revenue fund with the state treasurer and shall be used only as specified by the donor or donors;

(l) To acquire by condemnation or otherwise any interest, right, privilege, land or improvement and hold title to the land or improvement, for the use or benefit of the state or a state hospital or facility, and, by and with the consent of the governor, and at the direction of the secretary, to sell, exchange or otherwise convey any interest, right, privilege, land or improve-
(m) To inspect and enforce rules to control the sanitary conditions of and license all institutions and health care facilities as set forth in this chapter, including, but not limited to, schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, places of entertainment, hotels, motels, tourist camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption and places where trades or industries are conducted;

(n) To make inspections, conduct hearings, and to enforce the legislative rules concerning occupational and industrial health hazards, the sanitary condition of streams, sources of water supply, sewerage facilities, and plumbing systems, and the qualifications of personnel connected with the supplies, facilities or systems without regard to whether they are publicly or privately owned; and to make inspections, conduct hearings and enforce the legislative rules concerning the design of chlorination and filtration facilities and swimming pools;

(o) To provide in accordance with this subdivision and the definitions and other provisions of article one-a, chapter twenty-seven of this code, and as directed by the secretary, for a comprehensive program for the care, treatment and rehabilitation of alcoholics and drug abusers; for research into the cause and prevention of alcoholism and drug abuse; for the training and employment of personnel to provide the requisite rehabilitation of alcoholics and drug abusers; and for the education of the public concerning alcoholism and drug abuse;
(p) To provide in accordance with this subdivision for a program for the care, treatment and rehabilitation of the parents of sudden infant death syndrome victims; for the training and employment of personnel to provide the requisite rehabilitation of parents of sudden infant death syndrome victims; for the education of the public concerning sudden infant death syndrome; for the responsibility of reporting to the Legislature on a quarterly basis the incidence of sudden infant death syndrome cases occurring in West Virginia; for the education of police, employees and volunteers of all emergency services concerning sudden infant death syndrome; for the state sudden infant death syndrome advisory council to develop regional family support groups to provide peer support to families of sudden infant death syndrome victims; and for requesting appropriation of funds in both federal and state budgets to fund the sudden infant death syndrome program;

(q) To establish and maintain a state hygienic laboratory as an aid in performing the duties imposed upon the commissioner, and to employ chemists, bacteriologists, and other employees that may be necessary to properly operate the laboratory. The commissioner may establish branches of the state laboratory at any points within the state that are necessary in the interest of the public health;

(r) To establish and fund a uniform health professionals data system to collect and maintain uniform data on all health professionals in the state. This data shall include, but not be limited to, the following information about each health professional: His or her name, profession, the area of the state where he or she is practicing, his or her educational background, his or her employer's name, and number of years practicing within the profession. The boards provided for in articles three, four, four-a, five, seven, seven-a, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one, twenty-three, twenty-eight, thirty-one, thirty-two, thirty-four, thirty-five, thirty-six and thirty-six...
seven, chapter thirty of this code shall annually collect the data on health professionals under their jurisdiction in the format prescribed by the commissioner. Each board shall pay to the bureau annually, an amount determined by the commissioner to be a pro rata portion, for anticipated expenses to establish and operate the uniform health professionals data system required by this section. The commissioner may standardize data collection methods if necessary to implement the provisions of this section. The commissioner shall publish annually and make available, upon request, a report setting forth the data which was collected the previous year; areas of the state which the collected data indicates have a shortage of health professionals; and projections, based upon the collected data, as to the need for more health professionals in certain areas;

(s) To expend, for the purpose of performing the public health duties imposed on the bureau, or authorized by law, any sums appropriated by the Legislature. The commissioner may make advance payments to public and nonprofit health services providers when the commissioner determines it is necessary for the initiation or continuation of public health services. The advance payments, being in derogation of the principle of payment only after receipt of goods or services, shall be authorized only after serious consideration by the commissioner of the necessity of the advance payments and shall be for a period no greater than ninety days in advance of rendition of service or receipt of goods and continuation of health services; and

(t) To exercise all other powers delegated to the commissioner by the secretary or by this chapter or otherwise in this code, to enforce all health laws, and to pursue all other activities necessary and incident to the authority and area of concern entrusted to the bureau or the commissioner.

§16-1-7. Duties and powers of the commissioner; service on advisory councils, boards and commissions;
authority to designate a representative to serve in his or her place on certain boards and commissions.

(a) The commissioner shall serve on the following business, profession or occupation licensing boards:

(1) The West Virginia board of barbers and cosmetologists;
(2) The West Virginia board of chiropractic examiners;
(3) The West Virginia board of hearing aid dealers;
(4) The West Virginia board of medicine;
(5) The West Virginia nursing home administrators licensing board;
(6) The West Virginia radiologic technology board of examiners;
(7) The West Virginia board of registration for sanitarians;
(8) Any other licensing board or commission as directed by the secretary.

(b) The commissioner shall serve on the following advisory councils, boards and commissions:

(1) The advisory committee on cancer (cancer registry);
(2) The advisory committee on hemophilia;
(3) The air quality board;
(4) The Appalachian states low-level radioactive waste commission;
(5) The attorney general of West Virginia public health trust;
(6) The breast and cervical cancer screening program advisory coalition;

(7) The child fatality review team;

(8) The clinical laboratories quality assurance act advisory board;

(9) The childhood immunization advisory committee;

(10) The early intervention coordinating council;

(11) The interagency council on osteoporosis;

(12) The jail and prison standards commission;

(13) The medical service fund advisory council;

(14) The nursing home licensing advisory council;

(15) The sewage advisory board;

(16) The state emergency response commission;

(17) The state groundwater coordinating committee;

(18) The sudden infant death syndrome advisory council;

(19) The water development authority;

(20) The West Virginia commission for the deaf and hard of hearing;

(21) The West Virginia infrastructure and jobs development council;

(22) The West Virginia solid waste management board; and

(23) Any other advisory council, board or commission as assigned by the secretary.
(c) Notwithstanding any other provision of this code to the contrary, the commissioner may, at his or her discretion, designate in writing a representative to serve in his or her stead at the meetings and in the duties of all boards and commissions on which the commissioner is designated as an ex officio member. The appropriately designated representative or proxy may act with the full power and authority of the commissioner in voting, acting upon matters concerning the public health and welfare and any other business that is properly the duty of any board or commission, with the representative serving as proxy for the commissioner at his or her will and pleasure: Provided, That the provisions of this section do not apply to the medical licensing board, the air quality board or any other board, commission or body on which the commissioner is designated by this code as chairman ex officio, secretary ex officio or any board, commission or body on which the commissioner is designated by this code as being that person whose signature must appear on licenses, minutes or other documents necessary to carry out the intents and purposes of the board, commission or body.

§16-1-8. Duties and powers of the commissioner; authorization to cooperate with any state health planning and development agencies and any federal government agencies in hospital and other health facility programs.

The commissioner at the direction of the secretary may cooperate with any state health planning and development agencies and any federal government agencies in programs for construction of public or private hospitals, diagnostic or treatment centers, chronic disease hospitals, rehabilitation facilities, nursing homes and similar or related facilities and institutions. The commissioner may make inventories of existing public health centers, public and private hospitals, diagnostic or treatment centers, chronic disease hospitals,
rehabilitation facilities, nursing homes and similar or related
facilities and institutions, and the laboratories and other
cilities thereof, to make surveys of the need for construction
of health facilities. The commissioner may adopt, develop and
supervise the administration of the statewide plans or programs
for the construction of additional public and private hospitals,
public health centers, public or private diagnostic or treatment
centers, chronic disease hospitals, rehabilitation facilities,
nursing homes and similar or related facilities and institutions,
as may be necessary to comply with the requirements and
conditions of federal law in respect to the granting of federal
aid for those purposes. The commissioner, at the direction of
the secretary, shall develop standards to assure that all require-
ments to obtain federal funds and meet the commitments for
federal funds are met.

The state health plan of operation set forth in this article
and the state medical facilities plan shall be a part of the state
health plan, as authorized by the provisions of article two-d of
this chapter.

§16-1-9. Duties and powers of the commissioner; supervision over
local sanitation; violations; jurisdiction; penalties.

No person, firm, company, corporation, institution or
association, whether public or private, county or municipal,
may install or establish any system or method of drainage,
water supply, or sewage or excreta disposal without first
obtaining a written permit to install or establish the system or
method from the commissioner or his or her authorized
representative. All systems or methods shall be installed or
established in accordance with plans, specifications and
instructions issued by the commissioner or which have been
approved in writing by the commissioner or his or her autho-
rized representative.
Whenever the commissioner or his or her authorized representative finds, upon investigation, that any system or method of drainage, water supply, or sewage or excreta disposal, whether publicly or privately owned, has not been installed in accordance with plans, specifications and instructions issued by the commissioner or approved in writing by the commissioner or his or her authorized representative, the commissioner or his or her authorized representative shall issue an order requiring the owner of the system or method to make alterations necessary to correct the improper condition. The alterations shall be made within a reasonable time, which shall not exceed thirty days, unless a time extension is authorized by the commissioner or his or her authorized representative.

The presence of sewage or excreta being disposed of in a manner not approved by the commissioner or his or her authorized representative constitutes prima facie evidence of the existence of a condition endangering public health.

The personnel of the bureau for public health shall be available to consult and advise with any person, firm, company, corporation, institution or association, whether publicly or privately owned, county or municipal, or public service authority, as to the most appropriate design, method of operation or alteration of any system or method.

Any person, firm, company, corporation, institution or association, whether public or private, county or municipal, violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars. Any continuing failure or refusal of the convicted person, firm, company, corporation, institution or association, whether public or private, county or municipal, to make the alterations necessary to protect the public health required by the commissioner or his or her authorized representative is a separate, distinct and additional offense for each twenty-four
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46 hour period of failure or refusal, and, upon conviction thereof,
47 the violator shall be fined not less than fifty dollars nor more
48 than five hundred dollars for each conviction: Provided, That
49 none of the provisions contained in this section apply to those
50 commercial or industrial wastes that are subject to the regula-
51 tory control of the West Virginia division of environmental
52 protection.

53 Magistrates have concurrent jurisdiction with the circuit
54 courts of this state for violations of any provisions of this
55 section.

§16-1-9a. Public water system defined; regulation of maximum
contaminant levels in water systems; authorization of inspections;
vio­lations; criminal, civil and administrative penalties; safe drinking water
penalty fund.

1 (a) A public water system is any water supply or system
2 that regularly supplies or offers to supply water for human
3 consumption through pipes or other constructed conveyances,
4 if serving at least an average of twenty-five individuals per day
5 for at least sixty days per year, or which has at least fifteen
6 service connections, and shall include: (1) Any collection,
7 treatment, storage and distribution facilities under the control
8 of the owner or operator of such system and used primarily in
9 connection with such system; and (2) any collection or pretreat-
10 ment storage facilities not under such control which are used
11 primarily in connection with such system. A public water
12 system does not include a system that meets all of the following
13 conditions: (1) Consists only of distribution and storage
14 facilities (and does not have any collection and treatment
15 facilities); (2) obtains all of its water from, but is not owned or
16 operated by, a public water system that otherwise meets the
17 definition; (3) does not sell water to any person; and (4) is not
18 a carrier conveying passengers in interstate commerce.
(b)(1) The secretary shall prescribe by legislative rule the maximum contaminant levels to which all public water systems shall conform in order to prevent adverse effects on the health of individuals, and, if the secretary considers appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. The rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer.

(2) The secretary shall further prescribe by legislative rule minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and regulations promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems regulations.

(3) In addition, the secretary shall establish by legislative rule, in accordance with article three, chapter twenty-nine-a of this code, requirements covering the production and distribution of bottled drinking water and may by legislative rule, in accordance with article three, chapter twenty-nine-a of this code, establish requirements governing the taste, odor, appearance and other consumer acceptability parameters of drinking water.

(c) Authorized representatives of the bureau have right of entry to any part of a public water system, whether or not the system is in violation of a legal requirement, for the purpose of inspecting, sampling or testing, and shall be furnished records or information reasonably required for a complete inspection.
(d)(1) Any individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency, or any entity recognized by law who violates any provision of this section, or any of the rules or orders issued pursuant to this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars, and each day's violation shall constitute a separate offense. The commissioner or his or her authorized representative may also seek injunctive relief in the circuit court of the county in which all or part of the public water system is situated for threatened or continuing violations.

(2) For a willful violation of a provision of this section, or of any of the rules or orders issued under this section for which a penalty is not otherwise provided under subdivision (3) of this subsection, an individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency, or entity recognized by law, upon a finding of a willful violation by the circuit court of the county in which the violation occurs, shall be subject to a civil penalty of not more than five thousand dollars, and each day's violation shall be grounds for a separate penalty.

(3) The commissioner or his or her authorized representative shall have authority to assess administrative penalties and initiate any proceedings necessary for the enforcement of drinking water rules. The administrative penalty for a violation of any drinking water rule is a minimum of one thousand dollars per day per violation and each day's violation shall be grounds for a separate penalty. In any action brought to enforce drinking water rules, the administrative penalty may not exceed an aggregate amount of five thousand dollars for systems serving a population of less than ten thousand persons and may not exceed twenty-five thousand dollars for systems serving a
population of ten thousand persons or more. Penalties are payable to the commissioner. All moneys collected under this section shall be deposited into a restricted account known as the safe drinking water penalty fund previously created in the office of the state treasurer. All money deposited into the fund shall be used by the commissioner to provide technical assistance to public water systems.

§16-1-9b. Permit approval for individual systems with surface water discharge; reserve areas.

Individual systems with surface water discharge may be considered for approval for a permit pursuant to section nine of this article under the following conditions: (1) To correct existing failures when other means of treatment and disposal have proven ineffective; (2) on a tract, lot or parcel of land that equals or exceeds two acres which cannot qualify for standard or alternative soil absorption systems; or (3) on existing lots which received approval under a prior permit where it has been determined that applicable standards cannot be met to qualify for a standard or alternate soil absorption system. Approval under these conditions are applicable only to single family residential units.

When installing a standard sewage disposal system, modified system, experimental system or other approved system, the reserve area shall consist of an area for the placement of the original system together with an area for replacement and upgrade of absorption field lines within the reserve area. Testing of the site for approval shall consist of a six foot hole and a percolation test of the soils.

§16-1-10. Disposition of permit, license or registration fees received by the commissioner; report to auditor; health facility licensing account.
(a) The commissioner shall receive and account for all moneys required to be paid as fees to the bureau for permits, licenses or registrations, pursuant to the provisions of this code and legislative rules.

(b) Subject to the provisions set forth in section two, article two, chapter twelve of this code, there is continued in the state treasury a separate account which shall be designated “the health facility licensing account”. The commissioner shall deposit to the health facility licensing account all health facility licensing fees and may spend the moneys deposited in the health facility licensing account in accordance with the laws of this state to implement activities of health facility licensing. As part of the annual state budget, the Legislature shall appropriate for health facility licensure all moneys deposited in the health facilities licensing account.

Any remaining balance including accrued interest in the account at the end of any fiscal year shall not revert to the general revenue fund, but shall remain in the account, and the moneys may be spent after appropriation by the Legislature in ensuing fiscal years. The commissioner shall make an annual report to the Legislature on the health facility licensing account, including the previous fiscal year’s expenditures and projected expenditures for the next fiscal year.

§16-1-11. Disposition of fees for services charged and received by the commissioner; health services fund.

(a) Notwithstanding any other provisions of this chapter, the commissioner may assess and charge reasonable fees for the provision of services provided by the bureau: Provided, That no individual may be denied health care services by the bureau because of the inability of the individual to pay for services when services are provided to similarly situated individuals who have the ability to pay for them. The fees shall be depos-
(b) Any balance including accrued interest in the special revolving fund at the end of any fiscal year shall not revert to the general revenue fund but shall remain in the fund for use by the commissioner for funding health programs in the ensuing fiscal years.

(c) The commissioner may authorize reasonable fees for the provision of services by local boards of health as created in article two of this chapter: Provided, That no individual may be denied health care services by the local health department because of the inability of the individual to pay for services when services are provided to similarly situated individuals who have the ability to pay for them. The fees shall be deposited into the local board of health account for use by the local board for funding health programs. The commissioner shall establish the fees on a sliding fee basis determined by an individual’s ability to pay: Provided, however, That the local board of health may submit a request through the administrator for third party reimbursement where the request is appropriate: Provided further, That local boards of health that establish fees shall annually submit a schedule of fees, a sliding fee scale and an accounting of amounts collected to the commissioner as part of its program plan or plan of operation.

(d) The secretary shall propose legislative rules in accordance with article three, chapter twenty-nine-a of this code, setting forth the fees established, assessed, and charged by the commissioner.

§16-1-12. Receipt and disbursement of federal aid and other moneys for health purposes.

(a) The commissioner, at the direction of the secretary, may accept, receive and receipt for federal moneys and other
moneys, either public or private, for and in behalf of this state
or any county or municipality of this state, for public health
purposes, or for the establishment or construction of public
health facilities, whether the work is to be done by the state, or
by the county or municipality, or jointly, aided by grants of aid
from the United States, upon such terms and conditions as are,
or may be, prescribed by the laws of the United States and
regulations made thereunder. The commissioner may act as the
agent of the state or any of its agencies, or of any county or
municipality of this state, upon the request of any agency of the
state or of any county or municipality, in accepting, receiving
and receipting for the moneys in its behalf, for public health
facilities financed either, in whole or in part, by federal moneys.

(b) The state, or any agency of the state, or any county or
municipality may, designate the commissioner as its agent for
the purposes set forth in subsection (a) of this section and the
agency, county or municipality may enter into an agreement
with the commissioner prescribing the terms and conditions of
the agency in accordance with federal laws and regulations, and
with the laws of this state. The moneys paid over by the United
States government shall be retained by the state or paid over to
the counties or municipalities under the terms and conditions
imposed by the United States government in making the grants.

(c) All moneys accepted for disbursement pursuant to this
section shall be deposited by the secretary or the commissioner
in the state treasury, and unless otherwise prescribed by the
authority from which the money is received, kept in separate
funds, designated according to the purpose for which the
moneys were made available, and held by the state in trust for
those purposes. All moneys are hereby appropriated for the
purposes for which the moneys were made available and shall
be expended in accordance with federal laws and regulations
and with the laws of this state. The commissioner may, whether
acting for the state or one of its agencies, or as the agency for
any county or municipality, when requested by the United States government or any agency or department of the United States government, or when requested by the state, a state agency, or any county or municipality for which the moneys have been made available, disburse the moneys for the designated purposes, but this shall not include any other authorized method of disbursement.

§16-1-13. Hospital services revenue account; health facilities long-range plans.

(a) Subject to the provisions set forth in section two, article two, chapter twelve of this code, there is continued in the state treasury a separate account which shall be designated the "hospital services revenue account". The secretary shall deposit promptly into the account any fees received by a facility owned and operated by the department from whatever source including the federal government, state government or other third-party payer or personal payment.

(b) A five-year health facilities long-range plan shall be developed by the secretary and shall be adopted as a rule in accordance with this chapter and article three, chapter twenty-nine-a of this code. The health facilities long-range plan shall be updated and revised at least every two years.

(c) The secretary may spend the moneys deposited in the hospital services revenue account in accordance with federal laws and regulations and with the laws of this state as necessary for the development of the five-year health facilities long-range plan and subsequent revisions. The secretary may spend the moneys deposited in the hospital services revenue account as provided for in the health facilities long-range plan at those times and in the amounts the secretary determines necessary for the purpose of improving the delivery of health and mental health services or for the purpose of maintaining or obtaining certification at a state health or mental health facility: Provided,
That all disproportionate share hospital funds received into the account shall be transferred by intergovernmental transfer to the medical services trust fund created in section two-a, article four-a, chapter nine of this code, except for funds appropriated by the Legislature for other purposes within the annual budget bill: Provided, however, That during any fiscal year in which the secretary anticipates spending any money from the account, he or she shall submit to the executive department during the budget preparation period prior to the Legislature convening, before that fiscal year for inclusion in the executive budget document and budget bill, his or her recommended capital investments, recommended priorities and estimated costs, as well as requests of appropriations for the purpose of improving the delivery of health or for the purpose of maintaining or obtaining certification at a state health facility in the amounts the secretary determines to be necessary for the development of, and as provided for in, the five-year health facilities long-range plan and subsequent revisions.

(d) The secretary shall make an annual report to the Legislature on the status of the health services revenue account, including the previous year’s expenditures and projected expenditures for the next year.

§16-1-14. Training of employees.

To insure adequate standards of public service, the commissioner may provide technical and specialized instruction for employees of the bureau.

If upon review of the personnel records of any employee of the bureau, the commissioner is of the opinion that it would be in the best interest of the bureau to provide the employee with additional training or instruction, not to exceed nine months in any four-year period, in the field or vocation in which the employee is engaged, the commissioner may, upon approval of the secretary, direct that the employee obtain the additional
training or instruction at any place the commissioner considers
suitable. Designated attendance of the employee shall be
compensated for as a part of regular employment. The commis-
sioner is further authorized to pay out of federal funds and such
state funds as are available to match such federal funds, any
required tuition or enrollment fees.

§16-1-15. Investigations and hearings; power to administer oaths,
subpoena witnesses, etc.; use of information and
material acquired.

(a) The secretary, the commissioner, any officer or em-
ployee of the department designated by the secretary, or any
other individual designated by the secretary may hold investiga-
tions, inquiries and hearings concerning matters covered by the
laws of this state pertaining to public health and within the
authority and the rules and orders of the secretary. Hearings
shall be open to the public and shall be held upon any call or
notice considered advisable by the secretary.

(b) Each individual designated to hold any inquiry, investi-
gation or hearing shall have the power to administer oaths and
affirmations, certify to all official acts, issue subpoenas and
order the attendance and testimony of witnesses in the produc-
tion of papers, books and documents. In case of the failure of
any person to comply with any subpoena or order issued under
the authority of this section, the secretary or his or her autho-
ized representative may invoke the aid of any circuit court of
this state. The court may thereupon order that person to comply
with the requirements of the subpoena order or to give evidence
as to the matter in question. Failure to obey the order of the
court may be punished by the court as a contempt of court.

(c) Subject to the provisions of subsections (a) and (b) of
this section, the secretary may in his or her discretion make
available to appropriate federal, state and municipal agencies
information and material developed in the course of its investi-
That information obtained from studies or from any investigation made or hearing held pursuant to the provisions of this article may not be admissible in evidence in any action at law to recover damages for personal injury or in any action under the workers' compensation act, but the information, if available, shall be furnished upon request to the commissioner of the bureau of employment programs for the sole purpose of adjusting claims presented to the commissioner.

§16-1-16. Public health advisory council; duties; composition; appointment; meetings; compensation; expenses and continuation.

(a) The public health advisory council is hereby created as an advisory body to the commissioner for the purpose of advising the commissioner as to the provision of adequate public health services for all areas in the state.

(b) The council may advise the commissioner in all matters pertaining to the commissioner's duties and functions concerning public health and the provisions of this chapter. The council may review all state public health rules and advise the commissioner on necessary revisions. The council may advise the commissioner on the need for additional or special advisory committees to assist the council in matters concerning public health in relation to any business, profession or industry in the state. The council shall review all performance based standards and assist the commissioner in the development and implementation of a coordinated, population-based prevention oriented program that promotes and protects the health of all citizens of West Virginia.

(c) The council shall be composed of fifteen members appointed by the governor by and with the advice and consent of the Senate. The state insurance commissioner or his or her designated representative shall serve as a member ex officio.
Twelve members shall be chosen from nominations by: (1) The West Virginia association of local health officers which shall submit to the governor a list of three names of local health officers; (2) the West Virginia association of local health departments which shall submit to the governor a list of three names of members of local boards of health; (3) the West Virginia association of county commissioners which shall submit to the governor a list of three names of representatives from its association; (4) the West Virginia association of sanitarians which shall submit to the governor a list of three names of representatives from its association; (5) the West Virginia hospital association which shall submit to the governor a list of three names of representatives from its association; (6) the West Virginia medical association which shall submit to the governor a list of three names of representatives from its association; (7) the West Virginia emergency medical services coalition, which shall submit to the governor a list of three names of representatives from its association; (8) the West Virginia primary care association which shall submit to the governor a list of three names of representatives from its association; (9) the nursing section of the West Virginia public health association which shall submit to the governor a list of three names of public health nurses; (10) the state college and university systems of West Virginia which shall submit to the governor a list of three names of representatives from its members; (11) the state health education council which shall submit to the governor a list of three names of individuals from the prevention and wellness community; and (12) the state chamber of commerce which shall submit to the governor a list of three names of representatives from the business community.

The governor shall appoint one individual from each list submitted to serve on the council. In addition the governor shall appoint two persons to represent the general public.

(d) Pursuant to the provisions of this section, the governor shall appoint an advisory council on the first day of July, two
Of those first members 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 shall be a three-year term and no member may serve more than four consecutive terms.

(e) The advisory council shall choose its own chairperson and meet at the call of the commissioner at least twice a year.

(f) The members of the council shall receive compensation and expense reimbursement in an amount not to exceed the same compensation and expense reimbursement that 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 of a day engaged in the performance of official duties.

(g) Pursuant to the provisions of article ten, chapter four of this code, the state advisory council on public health shall continue to exist until the first day of July, two thousand three.

§16-1-17. Penalties for interfering with examiners, inspectors or other authorized representatives of the commissioner in the performance of duty.

The commissioner may employ such administrative employees, inspectors, examiners or other persons as may be necessary to properly carry out the provisions of the public health laws of this state. The inspectors, examiners and other employees shall act as the commission's representatives and, under his or her direction, shall enforce the provisions of the public health laws and all duly promulgated public health rules and in the discharge of official duties, shall have the right of entry into any institution or school, whether public or private, public conveyances, dairy, creamery, slaughterhouse, workshop, factory, labor camp, place of entertainment, hotel, tourist camp, all other places open to the general public and inviting
public patronage or public assembly, or tendering to the public
any item for human consumption, and places where hazardous
trades or industries are conducted.

Any person interfering with or attempting to interfere with
any inspector, examiner, or other duly authorized employee of
the commissioner in the discharge of his or her duties under this
section is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than fifty dollars nor more than
five hundred dollars.

§16-1-18. Penalties for violating provisions of article.

Any person violating any of the provisions of this article for
which the penalty is not otherwise provided, or any of the rules
or orders issued pursuant to this article, shall be punishable by
a fine of not less than fifty dollars nor more than five hundred
dollars.

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-1. Purpose.
§16-2-2. Definitions.
§16-2-3. Authority to create, establish and maintain county boards of health; service area.
§16-2-4. Authority to create, establish and maintain municipal boards of health; service area.
§16-2-5. Authority to create, establish and maintain combined local boards of health; service area.
§16-2-6. Appointment to and composition of municipal boards of health; qualifications; number of appointees.
§16-2-7. Appointment to and composition of county boards of health; qualifications; number of appointees.
§16-2-8. Appointment to and composition of combined local boards of health; qualifications; number of appointees.
§16-2-9. Local board of health; terms of appointment; reappointment; oath of office; vacancies; removal; compensation; expenses.
§16-2-10. Local board of health; meetings; attendance; bylaws; quorum; chairperson selection, powers and duties.
§16-2-11. Local board of health; powers and duties.

§16-2-12. Local health officer; term of appointment; qualifications; reappointment; compensation; and removal.

§16-2-13. Local health officer; powers and duties.

§16-2-14. Financial responsibilities of appointing authorities for local boards of health; levies; appropriation of county or municipal general funds for public health purposes; state funding.

§16-2-15. Obstructing local health officers and others in the enforcement of public health laws; other violations; penalties.

§16-2-1. Purpose.

Local boards of health, created, established and operated pursuant to the provisions of this article, are responsible for directing, supervising and carrying out matters relating to the public health of their respective counties or municipalities. This article provides that local boards of health may be organized as boards of health serving a single municipality, a single county or a combination of any two or more counties or any county or counties and one or more municipalities within or partially within the county or counties. This article establishes uniform provisions applicable to all local boards of health, whatever organizational form is elected, to ensure the consistent performance of duties relating to basic public health services and other health services and the enforcement of the laws of this state pertaining to public health.

§16-2-2. Definitions.

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

(a) "Basic public health services" means those services that are necessary to protect the health of the public and that a local board of health must provide. The three areas of basic public health services are communicable and reportable disease prevention and control, community health promotion, and environmental health protection;
(b) "Bureau" means the bureau for public health in the department of health and human resources;

(c) "Clinical and categorical programs" means those services provided to individuals of specified populations and usually focus on health promotion or disease prevention. These services are not considered comprehensive health care but focus on specific health issues such as breast and cervical cancer, prenatal and pediatric health services and home health services;

(d) "Combined local board of health" is one form of organization for a local board of health and means a board of health serving any two or more counties or any county or counties and one or more municipalities within or partially within the county or counties;

(e) "Commissioner" means the commissioner of the bureau for public health, who is the state health officer;

(f) "Communicable and reportable disease prevention and control" is one of three areas of basic public health services each local board of health must offer. Services shall include disease surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and prevention and control of rabies, sexually transmitted diseases, vaccine preventable diseases, HIV/AIDS, tuberculosis and other communicable and reportable diseases;

(g) "Community health promotion" is one of three areas of basic public health services each local board of health must offer. Services shall include assessing and reporting community health needs to improve health status, facilitating community partnerships including identifying the community’s priority health needs, mobilization of a community around identified priorities, and monitoring the progress of community health education services;
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(h) "County board of health" is one form of organization for a local board of health and means a local board of health serving a single county;

(i) "Department" means the West Virginia department of health and human resources;

(j) "Director" or "director of health" means the state health officer. Administratively within the department, the bureau for public health through its commissioner carries out the public health function of the department, unless otherwise assigned by the secretary;

(k) "Environmental health protection" is one of three areas of basic public health services each local board of health must offer. Services shall include efforts to protect the community from environmental health risks including, inspection of housing, institutions, recreational facilities, sewage and wastewater facilities; inspection and sampling of drinking water facilities; and response to disease outbreaks or disasters;

(l) "Enhanced public health services" means services that focus on health promotion activities to address a major health problem in a community, are targeted to a particular population and assist individuals in this population to access the health care system, such as lead and radon abatement for indoor air quality and positive pregnancy tracking. Enhanced public health services are services a local health department may offer;

(m) "Local board of health," "local board" or "board" means a board of health serving one or more counties or one or more municipalities or a combination thereof;

(n) "Local health department" means the staff of the local board of health;

(o) "Local health officer" means the individual physician with a current West Virginia license to practice medicine who
supervises and directs the activities of the local health department services, staff and facilities and is appointed by the local board of health with approval by the commissioner;

(p) "Municipal board of health" is one form of organization for a local board of health and means a board of health serving a single municipality;

(q) "Performance-based standards" means generally accepted, objective standards such as rules or guidelines against which a local health department's level of performance can be measured;

(r) "Primary care services" means health care services, including medical care, that emphasize first contact patient care and assume overall and ongoing responsibility for the patient in health maintenance and treatment of disease. Primary care services are services that local boards of health may offer if the board has determined that an unmet need for primary care services exists in its service area. Basic public health services funding may not be used to support these services;

(s) "Program plan" or "plan of operation" means the annual plan for each local board of health that must be submitted to the commissioner for approval;

(t) "Secretary" means the secretary of the state department of health and human resources; and

(u) "Service area" means the territorial jurisdiction of the local board of health.

§16-2-3. Authority to create, establish and maintain county boards of health; service area.

A county commission shall create, establish and maintain a county board of health if no other local board of health organized under this article is established and responsible for
public health in the service area. The county board of health shall be organized pursuant to and with the powers and duties prescribed by this article. The service area of any county board of health is the county territorial limits and includes every municipality within the county that does not have a municipal board of health maintaining a separate full-time municipal health department under the supervision of a municipal local health officer or that is not a member of a combined local board of health.

§16-2-4. Authority to create, establish and maintain municipal boards of health; service area.

The governing body of a municipality may create, establish and maintain a municipal board of health organized pursuant to and with the powers and duties prescribed by this article. The territorial jurisdiction of any municipal board of health is an area including the municipality and all points within a distance of one mile from the limits of the municipality.

§16-2-5. Authority to create, establish and maintain combined local boards of health; service area.

Any two or more counties or any county or counties and one or more municipalities within or partially within the county or counties may combine to create, establish and maintain a combined local board of health organized pursuant to and with the powers and duties prescribed by this article. The plan of combination must be approved by the commissioner. The service area of any combined local board of health is the combined territorial limits of the participating municipality or municipalities and county or counties: Provided, That if all or a portion of a participating municipality is located in a nonparticipating county, the service area of the combined local board of health is limited to the territorial limits of the municipality and does not extend to or include any area of the nonparticipating county outside of the municipal limits: Provided, however,
That the service area of a combined local board does not extend to or include any area within the service area of a municipal board of health maintaining a separate full-time municipal health department under the supervision of a municipal local health officer.

§16-2-6. Appointment to and composition of municipal boards of health; qualifications; number of appointees.

A municipal board of health is composed of five members selected and appointed by vote of the governing body of the municipality. Each member appointed to a municipal board of health shall be a resident of the municipality. No more than two members who reside in the same municipal ward may be appointed and no more than two members may be appointed who are personally licensed or certified in, engaged in, or actively participating in the same business, profession or occupation. No more than three members of a municipal board of health may belong to the same political party.

§16-2-7. Appointment to and composition of county boards of health; qualifications; number of appointees.

A county board of health is composed of five members selected and appointed by vote of the county commission. Each member appointed to the county board of health shall be a resident of the county. No more than two members who reside in the same magisterial district may be appointed and no more than two members may be appointed who are personally licensed or certified in, engaged in, or actively participating in the same business, profession or occupation. No more than three members of a county board of health may belong to the same political party.

§16-2-8. Appointment to and composition of combined local boards of health; qualifications; number of appointees.
A combined local board of health is composed of at least five members. The number of combined local board of health members to be selected by each participating county or municipality shall be established by agreement of the participating counties or municipalities. No more than one half of the members of a combined local board of health may be personally licensed or certified in, engaged in, or actively participating in the same business, profession or occupation. The number of members of a combined local board of health belonging to the same political party may not exceed by more than one the number of members belonging to another political party. No member may be selected and appointed by and represent more than one participating county or municipality.

The county commission of each participating county may select and appoint by vote no fewer than one and no more than three persons to serve as the representatives of the county on the combined local board of health. Each member appointed as a county representative to the combined local board of health shall be a resident of the participating county. No more than two persons residing in the same magisterial district may be appointed by a participating county as members and no more than two members may be appointed by a participating county who are personally licensed or certified in, engaged in, or actively participating in the same business, profession or occupation.

The governing body of each participating municipality may select and appoint by vote no fewer than one and no more than three persons to serve as the representatives of the municipality on the combined local board of health. Each member appointed as a municipality's representative to the combined local board of health shall be a resident of the municipality. No more than two members who reside in the same municipal ward may be appointed and no more than two members may be appointed who are personally licensed or certified in, engaged in, or
actively participating in the same business, profession or occupation.

Upon the formation of a combined local board of health and during the duration of its existence, there may be no separate county board of health or municipal board of health in any county or any municipality participating in the combined local board of health.

§16-2-9. Local board of health; terms of appointment; reappointment; oath of office; vacancies; removal; compensation; expenses.

(a) The term of office for members selected and appointed to a local board of health pursuant to the provisions of this article is five years. Members may serve until their duly qualified successors are selected and appointed by vote of the original appointing authority. Members may be reappointed for additional terms of five years. Board members' oaths of office shall be duly recorded before entering into or discharging any duties of the office.

(b) Any vacancy on any local board of health shall be filled by appointment of the original appointing authority. This appointment is for the unexpired term.

(c) A local board of health may remove any of its members pursuant to the provisions of its lawfully adopted bylaws and shall remove any of its members for official misconduct, incompetence, neglect of duty, gross immorality or the revocation of any state professional license or certification. A local board of health, or any of its members may be removed by the state health officer for failure or refusal to comply with duties as set forth by statute or rule. Upon removal, a successor or successors to the member or members removed shall immediately be appointed by the original appointing body pursuant to the provisions of this article.
(d) Each member of a local board of health may receive compensation as determined by the local board for attending meetings of and other activities for the board as required by law: Provided, That this compensation may not exceed one hundred dollars per day. Each member of a local board may be reimbursed for all reasonable and necessary travel and other expenses actually incurred by the member in the performance of duties as a member of the local board.

§16-2-10. Local board of health; meetings; attendance; bylaws; quorum; chairperson selection, powers and duties.

(a) Each local board of health may meet as often as necessary to orderly and efficiently execute its duties and exercise its powers: Provided, That in a service area having a population of less than thirty thousand residents, the board shall meet no fewer than four times per year and in a service area having a population of more than thirty thousand residents, the board shall meet no fewer than six times per year. Members of a local board of health shall attend board meetings in compliance with attendance policies established by its bylaws or rules.

(b) Each local board of health is authorized to and shall adopt and may amend bylaws or rules governing the time and place of its regular meetings, procedures and method of conducting its meetings including quorum, meeting attendance policies, requirements for written minutes and board actions as public records, duties and election process for officers, process for filling board vacancies, number, duties, tenure and eligibility of members, and any other matters affecting how the board is organized to perform its duties. A quorum of the board for transacting business is a simple majority of the constituent membership of the board.

(c) Each local board of health, pursuant to its bylaws, shall elect from its members a chairperson. The chairperson shall serve for a term of one year and may be reelected for additional
terms. The chairperson may, on behalf of the board, sign
documents, execute contracts and otherwise act for and in the
name of the board in all matters within its lawful powers and as
duly authorized by a majority of the board members.

§16-2-11. Local board of health; powers and duties.

(a) Each local board of health created, established and
operated pursuant to the provisions of this article shall:

(1) Provide the following basic public health services and
programs in accordance with state public health performance-
based standards:

(i) Community health promotion including assessing and
reporting community health needs to improve health status,
facilitating community partnerships including identifying the
community’s priority health needs, mobilization of a commu-
nity around identified priorities and monitoring the progress of
community health education services;

(ii) Environmental health protection including the promot-
ing and maintaining of clean and safe air, water, food and
facilities and the administering of public health laws as speci-
fied by the commissioner as to general sanitation, the sanitation
of public drinking water, sewage and wastewater, food and
milk, and the sanitation of housing, institutions, and recreation;

and

(iii) Communicable or reportable disease prevention and
control including disease surveillance, case investigation and
follow-up, outbreak investigation, response to epidemics, and
prevention and control of rabies, sexually transmitted diseases,
vaccine preventable diseases, HIV/AIDS, tuberculosis and other
communicable and reportable diseases;
(2) Appoint a local health officer to serve at the will and pleasure of the local board of health with approval of the commissioner;

(3) Submit a general plan of operation to the commissioner for approval, if it receives any state or federal money for health purposes. This program plan shall be submitted annually and comply with provisions of the local board of health standards administrative rule;

(4) Provide equipment and facilities for the local health department that are in compliance with federal and state law;

(5) Permit the commissioner to act by and through it, as needed. The commissioner may enforce all public health laws of this state, the rules and orders of the secretary, any county commission orders or municipal ordinances of the board's service area relating to public health, and the rules and orders of the local board within the service area of a local board. The commissioner may enforce these laws, rules and orders when, in the opinion of the commissioner, a public health emergency exists or when the local board fails or refuses to enforce public health laws and rules necessary to prevent and control the spread of a communicable or reportable disease dangerous to the public health. The expenses incurred shall be charged against the counties or municipalities concerned;

(6) Deposit all moneys and collected fees into an account designated for local board of health purposes. The moneys for a municipal board of health shall be deposited with the municipal treasury in the service area. The moneys for a county board of health shall be deposited with the county treasury in the service area. The moneys for a combined local board of health shall be deposited in an account as designated in the plan of combination: Provided, That nothing contained in this subsection is intended to conflict with the provisions of article one, chapter sixteen of this code;
(7) Submit vouchers or other instruments approved by the board and signed by the local health officer or designated representative to the county or municipal treasurer for payment of necessary and reasonable expenditures from the county or municipal public health funds: Provided, That a combined local board of health shall draw upon its public health funds account in the manner designated in the plan of combination;

(8) Participate in audits, be in compliance with tax procedures required by the state and annually develop a budget for the next fiscal year;

(9) Perform public health duties assigned by order of a county commission or by municipal ordinance consistent with state public health laws; and

(10) Enforce the public health laws of this state and any other laws of this state applicable to the local board.

(b) Each local board of health created, established and operated pursuant to the provisions of this article may:

(1) Provide primary care services, clinical and categorical programs, and enhanced public health services;

(2) Employ or contract with any technical, administrative, clerical or other persons, to serve as needed and at the will and pleasure of the local board of health. Staff and any contractors providing services to the board shall comply with applicable West Virginia certification and licensure requirements. Eligible staff employed by the board shall be covered by the rules of the division of personnel under section six, article ten, chapter twenty-nine of this code. However, any local board of health may, in the alternative and with the consent and approval of the appointing authority, establish and adopt a merit system for its eligible employees. The merit system may be similar to the state merit system and may be established by the local board by its order, subject to the approval of the appointing authority,
adopting and making applicable to the local health department all, or any portion of any order, rule, standard, or compensation rate in effect in the state merit system as may be desired and as is properly applicable;

(3) Adopt and promulgate and from time to time amend rules consistent with state public health laws and the rules of the West Virginia state department of health and human resources, that are necessary and proper for the protection of the general health of the service area and the prevention of the introduction, propagation and spread of disease. All rules shall be filed with the clerk of the county commission or the clerk or the recorder of the municipality or both and shall be kept by the clerk or recording officer in a separate book as public records;

(4) Accept, receive and receipt for money or property from any federal, state or local governmental agency, from any other public source or from any private source, to be used for public health purposes or for the establishment or construction of public health facilities;

(5) Assess, charge and collect fees for permits and licenses for the provision of public health services: Provided, That permits and licenses required for agricultural activities may not be assessed, charged or collected: Provided, however, That a local board of health may assess, charge and collect all of the expenses of inspection of the physical plant and facilities of any distributor, producer or pasteurizer of milk whose milk distribution, production or pasteurization facilities are located outside this state but who sells or distributes in the state, or transports, causes or permits to be transported into this state, milk or milk products for resale, use or consumption in the state and in the service area of the local board of health. A local board of health may not assess, charge and collect the expenses of inspection if the physical plant and facilities are regularly inspected by another agency of this state or its governmental subdivisions or by an agency of another state or its governmental subdivisions
certified as an approved inspection agency by the commissioner. No more than one local board of health may act as the regular inspection agency of the physical plant and facilities; when two or more include an inspection of the physical plant and facilities in a regular schedule, the commissioner shall designate one as the regular inspection agency;

(6) Assess, charge and collect fees for services provided by the local health department: Provided, That fees for services shall be submitted to and approved by the commissioner;

(7) Contract for payment with any municipality, county or board of education for the provision of local health services or for the use of public health facilities. Any contract shall be in writing and permit provision of services or use of facilities for a period not to exceed one fiscal year. The written contract may include provisions for annual renewal by agreement of the parties; and

(8) Retain and make available child safety car seats, collect rental and security deposit fees for the expenses of retaining and making available child safety car seats, and conduct public education activities concerning the use and preventing the misuse of child safety car seats: Provided, That this subsection is not intended to conflict with the provisions of section forty-six, article fifteen, chapter seventeen-c of this code: Provided, however, That any local board of health offering a child safety car seat program or employee or agent of a local board of health is immune from civil or criminal liability in any action relating to the improper use, malfunction or inadequate maintenance of the child safety car seat and in any action relating to the improper placement, maintenance or securing of a child in a child safety car seat.

(c) The local boards of health are charged with protecting the health and safety, as well as promoting the interests of the citizens of West Virginia. All state funds appropriated by the
Legislature for the benefit of local boards of health shall be used for provision of basic public health services.

§16-2-12. Local health officer; term of appointment; qualifications; reappointment; compensation; and removal.

A local board of health shall appoint a full-time or part-time local health officer with approval by the commissioner. The local health officer shall be a physician currently licensed in this state and knowledgeable in the science of public health. A local health officer serves at the will and pleasure of the local board for a term of one year and is eligible for reappointment at compensation determined by the local board of health.

A local health officer may be removed from office by the commissioner if the local health officer fails or refuses to carry out the lawful orders or rules of the secretary in the event the commissioner determines a public health emergency exists or if the local health officer fails or refuses to enforce public health laws and rules necessary to prevent and control the spread of communicable or reportable diseases dangerous to the public health. Upon removal, a successor local health officer shall immediately be appointed by the board pursuant to the provisions of this article.

§16-2-13. Local health officer; powers and duties.

(a) A local health officer serves as the executive officer of the local board and under its supervision, a local health officer shall administer the provisions of this article, all other laws of this state and the rules and orders of the secretary of the department relating to public health and applicable to the local board’s service area, any county commission orders and municipal ordinances of the board’s service area relating to public health and the rules and orders of the local board.
(b) A local health officer has the following additional powers and duties which may be delegated with the approval of the board:

(1) To attend local board meetings as a nonvoting member. A local health officer serves as secretary at all board meetings and is responsible for maintaining the board’s offices, meeting minutes and records;

(2) To supervise and direct the activities of the local board’s health services, employees and facilities;

(3) To ensure that procedures are established for the receipt of communicable or reportable disease reports from local physicians and other reporting sources and for the transmittal of the reports to the commissioner;

(4) To perform mandatory HIV tests on persons convicted of sex-related offenses and resident within the service area; and

(5) To determine when sufficient corrections have been made to warrant removal of any restrictions or limitations placed on an individual or entity for public health purposes by an employee of the local board of health.

§16-2-14. Financial responsibilities of appointing authorities for local boards of health; levies; appropriation of county or municipal general funds for public health purposes; state funding.

The appointing authorities for local boards of health shall provide financial support for the operation of the local health department. The county commission of any county or the governing body of any municipality in which a local board of health is established pursuant to the provisions of this article, or the county commission of any county or the governing body of any municipality who is a participating member of a combined local board of health may levy a county or municipal tax to
provide funds for the local board of health: \textit{Provided}, That the
tax may not exceed three cents on each one hundred dollars of
assessed valuation of the taxable property in the levying county
or municipality, according to the latest assessment.

The county commission of any county or the governing
body of any municipality in which a local board of health is
established pursuant to the provisions of this article, or the
county commission of any county or the governing body of any
municipality who is a participating member of a combined local
board of health may appropriate and spend money from the
county or municipal general funds for public health purposes
and to pay the expenses of the operation of the local board of
health services and facilities.

The commissioner and the secretary may pay over and
contribute to any board of health created and maintained
pursuant to the provisions of this article the sum or sums of
money that may be available from funds included in appropria-
tions made for the department of health and human resources.
The commissioner may withhold all or part of any funds until
a local board of health submits an acceptable plan to correct
deficiencies in the local board’s program plan.

\textbf{§16-2-15. Obstructing local health officers and others in the
enforcement of public health laws; other violations; penalties.}

Any person who willfully obstructs any local health officer,
public health nurse, sanitarian or any other person charged with
the enforcement of any public health law, in the performance of
that person’s legal duties in enforcing the law, is guilty of a
misdemeanor and, upon conviction, shall be punished by a fine
of not less than fifty dollars and not more than five hundred
dollars.
Any person who willfully violates any of the provisions of this article, or any of the rules or orders adopted or issued pursuant to the provisions, for which a penalty is not otherwise provided, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than two hundred dollars and not more than one thousand dollars.

Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of provisions of this article.

CHAPTER 131

(H. B. 4578 — By Delegates Compton, Hutchins and Leach)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four-a, article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to testing for tuberculosis of school children and personnel.

Be it enacted by the Legislature of West Virginia:

That section four-a, article three, 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 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIOUS DISEASES.

§16-3-4a. Compulsory testing for tuberculosis of school children and school personnel; X rays required for reactors; suspension from school or employment for pupils and personnel found to have tuberculosis in a communicable stage.
(a) All students transferring from a school located outside this state shall furnish a certificate from a licensed physician stating that a tuberculin skin test approved by the director of the department of health has been made within four months prior to the beginning of the school year, unless such pupil has moved to this state from another state less than four months prior to starting the school year, in which event such pupil shall have such test as soon in advance of the start of the school as is reasonable, or if the school year has already started, the pupil shall take such test within one month of the time he enters school.

(b) Test results must be recorded on the certificate required by subsection (a). Positive reactors to the skin test must be immediately evaluated by a physician and, if medically indicated, X rayed, and receive periodic X rays thereafter, when medically indicated. Pupils found to have tuberculosis in a communicable stage will not be allowed to attend school until their disease has been arrested and is no longer communicable.

(c) All school personnel shall have an approved tuberculin skin test at time of employment and once every two years or more frequently if medically indicated. Positive reactors to the skin test are to be immediately referred to a physician for evaluation and indicated treatment or further studies. School personnel found to have tuberculosis in a communicable stage shall have their employment discontinued or suspended until their disease has been arrested and is no longer communicable. School personnel who have not had the required examination will be suspended from employment until reports of examination are confirmed.

(d) The county health officer shall be responsible for arranging proper follow-up of school personnel and students who are unable to obtain physician evaluation for a positive tuberculin skin test.
(e) The state commissioner of the bureau of public health shall have the authority to require selective testing of school children for tuberculosis when there is reason to believe that such children may have been exposed to the tuberculosis organism.

CHAPTER 132

(Com. Sub. for H. B. 4144 — By Delegates Douglas, Martin, Staton, Fleischauer, Compton, Leach and Trump)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal articles thirty-a and thirty-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article four-b, chapter sixteen of said code; to amend and reenact article thirty, chapter sixteen of said code; and to amend and reenact section five, article thirty-c, chapter sixteen of said code, all relating to the process for private health care decisionmaking for incapacitated adults; consent for autopsies on bodies of deceased persons; creating the West Virginia Health Care Decisions Act; and consent for do not resuscitate orders.

Be it enacted by the Legislature of West Virginia:

That articles thirty-a and thirty-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article four-b, chapter sixteen of said code be amended and reenacted; that article thirty, chapter sixteen of said code be amended and reenacted; and that section five, article thirty-c, chapter sixteen of said code be amended and reenacted, all to read as follows:
ARTICLE 4B. AUTOPSIES ON BODIES OF DECEASED PERSONS.

§16-4B-1. Autopsy on body of deceased persons in interest of medical science; who may perform; consent required; who may give consent.

In case of the death of any person in the state of West Virginia, except those deaths subject to autopsy being made pursuant to section ten, article twelve, chapter sixty-one of this code, the attending physician, or if there be none, any physician, if he or she deems it advisable in the interest of medical science or future health care of the deceased person’s family, may perform or cause to be performed an autopsy on the body of such deceased person without liability therefor, provided consent to such autopsy is first obtained in writing or by telephone, if the telephone authorization is verified by a second person, from one of the following in the priority order stated:

1. The medical power of attorney representative;
2. If there is no medical power of attorney representative, the surviving spouse of deceased;
3. If there be no surviving spouse, then any child of deceased over the age of eighteen years: Provided, that the child’s permission shall not be valid, if any other child of the deceased over the age of eighteen years objects prior to said autopsy and the objection shall be made known in writing to the physician who is to perform the autopsy;
4. If there be no surviving spouse, nor any child of deceased over the age of eighteen years, then the mother or father of deceased;
5. If there is no mother or father of the deceased, the health care surrogate, if one is appointed;
6. If there be no surviving spouse, nor any child over the age of eighteen years, nor mother or father, then the duly appointed and acting fiduciary of the estate of the deceased;
7. If there be no surviving spouse, nor any child over the age of eighteen years, nor mother or
father, nor duly appointed and acting fiduciary of the estate of deceased, then the person, firm, corporation or agency legally responsible for the financial obligation incurred in disposing of the body of deceased.

In the event the medical power of attorney representative, the health care surrogate, spouse, child or parent of deceased be mentally incompetent then the person authorized to consent to such autopsy shall be the next in the order of priority herein above defined.

As used in this section, the term “surviving spouse” shall mean any spouse of the deceased who is not legally separated from the deceased immediately prior to the death of the deceased.

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

§16-30-1. Short title.
§16-30-2. Legislative findings and purpose.
§16-30-3. Definitions.
§16-30-4. Executing a living will or medical power of attorney.
§16-30-5. Applicability and resolving actual conflict between advance directives.
§16-30-6. Private decision-making process; authority of living will, medical power or attorney representative and surrogate.
§16-30-7. Determination of incapacity.
§16-30-8. Selection of a surrogate.
§16-30-9. Medical power of attorney representative and health care surrogate decision-making standards.
§16-30-10. Reliance on authority of living will, medical power of attorney representative or surrogate decision maker and protection of health care provider.
§16-30-12. Conscience objections.
§16-30-13. Interinstitutional transfers.
§16-30-15. Withholding of life support not assisted suicide or murder.
§16-30-16. Preservation of existing rights and relation to existing law; no presumption.
§16-30-17. No abrogation of common law doctrine of medical necessity.
§16-30-18. Revocation.
§16-30-19. Physician’s duty to confirm, communicate and document terminal condition or persistent vegetative state; medical record identification.

§16-30-20. Living wills previously executed.

§16-30-21. Reciprocity.

§16-30-22. Liability for failure to act in accordance with the directives of a living will or medical power of attorney or the directions of a medical power of attorney representative or health care surrogate.

§16-30-23. Prohibition.

§16-30-24. Need for a second opinion regarding incapacity for persons with psychiatric mental illness, mental retardation or addiction.

§16-30-1. Short title.

This article may be cited as the “West Virginia Health Care Decisions Act.”

§16-30-2. Legislative findings and purpose.

(a) Purpose. — The purpose of this article is to ensure that a patient’s right to self-determination in health care decisions be communicated and protected; and to set forth a process for private health care decision making for incapacitated adults, including the use of advance directives, which reduces the need for judicial involvement and defines the circumstances under which immunity shall be available for health care providers and surrogate decision makers who make health care decisions.

The intent of the Legislature is to establish an effective method for private health care decision making for incapacitated adults, and to provide that the courts should not be the usual venue for making decisions. It is not the intent of the Legislature to legalize, condone, authorize or approve mercy killing or assisted suicide.

(b) Findings. - The Legislature hereby finds that:

(1) Common law tradition and the medical profession in general have traditionally recognized the right of a capable adult to accept or reject medical or surgical intervention affecting one’s own medical condition;
(2) The application of recent advances in medical science and technology increasingly involves patients who are unconscious or otherwise unable to accept or reject medical or surgical treatment affecting their medical conditions;

(3) Such advances have also made it possible to prolong the dying process artificially through the use of intervening treatments or procedures which, in some cases, offer no hope of medical benefit;

(4) Capable adults should be encouraged to issue advance directives designating their health care representatives so that in the event any such adult becomes unconscious or otherwise incapable of making health care decisions, decisions may be made by others who are aware of such person’s own wishes and values; and

(5) The right to make medical treatment decisions extends to a person who is incapacitated at the moment of decision. An incapacitated person who has not made his or her wishes known in advance through an applicable living will, medical power of attorney or through some other means has the right to have health care decisions made on his or her behalf by a person who will act in accordance with the incapacitated person’s expressed values and wishes, or, if those values and wishes are unknown, in the incapacitated person’s best interests.

§16-30-3. Definitions.

For the purposes of this article:

(a) “Actual knowledge” means the possession of information of the person’s wishes communicated to the health care provider orally or in writing by the person, the person’s medical power of attorney representative, the person’s health care surrogate or other individuals resulting in the health care provider’s personal cognizance of these wishes. Constructive
notice and other forms of imputed knowledge are not actual knowledge.

(b) "Adult" means a person who is eighteen years of age or older, an emancipated minor who has been established as such pursuant to the provisions of section twenty-seven, article seven, chapter forty-nine of this code or a mature minor.

(c) "Attending physician" means the physician selected by or assigned to the person who has primary responsibility for treatment and care of the person and who is a licensed physician. If more than one physician shares that responsibility, any of those physicians may act as the attending physician under this article.

(d) "Advanced practice nurse" means a nurse with substantial theoretical knowledge in a specialized area of nursing practice and proficient clinical utilization of the knowledge in implementing the nursing process pursuant to the provisions of title 19, legislative rules for West Virginia board of examiners for registered professional nurses, series 7.

(e) "Capable adult" means a person over the age of eighteen years who is physically and mentally capable of making health care decisions and who has not been deemed a protected person pursuant to the provisions of chapter forty-four-a of this code.

(f) "Close friend" means any adult who has exhibited significant care and concern for an incapacitated person who is willing and able to become involved in the incapacitated person's health care, and who has maintained regular contact with the incapacitated person so as to be familiar with his or her activities, health and religious and moral beliefs.

(g) "Death" means a finding made in accordance with accepted medical standards of either: (1) The irreversible cessation of circulatory and respiratory functions; or (2) the
irreversible cessation of all functions of the entire brain, including the brain stem.

(h) “Guardian” means a person appointed by a court pursuant to the provisions of chapter forty-four-a of this code who is responsible for the personal affairs of a protected person, and includes a limited guardian or a temporary guardian.

(i) “Health care decision” means a decision to give, withhold or withdraw informed consent to any type of health care, including, but not limited to, medical and surgical treatments, including life-prolonging interventions, psychiatric treatment, nursing care, hospitalization, treatment in a nursing home or other facility, home health care and organ or tissue donation.

(j) “Health care facility” means a facility commonly known by a wide variety of titles, including, but not limited to, hospital, psychiatric hospital, medical center, ambulatory health care facility, physicians’ office and clinic, extended care facility operated in connection with a hospital, nursing home, a hospital extended care facility operated in connection with a rehabilitation center, hospice, home health care and other facility established to administer health care in its ordinary course of business or practice.

(k) “Health care provider” means any licensed physician, dentist, nurse, physician’s assistant, paramedic, psychologist or other person providing medical, dental, nursing, psychological or other health care services of any kind.

(l) “Incapacity” means the inability because of physical or mental impairment to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented, and to communicate that choice in an unambiguous manner.
(m) "Life-prolonging intervention" means any medical procedure or intervention that, when applied to a person, would serve to artificially prolong the dying process or to maintain the person in a persistent vegetative state. Life-prolonging intervention includes, among other things, nutrition and hydration administered intravenously or through a feeding tube. The term "life-prolonging intervention" does not include the administration of medication or the performance of any other medical procedure deemed necessary to provide comfort or to alleviate pain.

(n) "Living will" means a written, witnessed advance directive governing the withholding or withdrawing of life-prolonging intervention, voluntarily executed by a person in accordance with the requirements of section four of this article.

(o) "Mature minor" means a person less than eighteen years of age who has been determined by a qualified physician, a qualified psychologist or an advanced practice nurse in collaboration with a physician to have the capacity to make health care decisions.

(p) "Medical information" or "medical records" means and includes without restriction any information recorded in any form of medium that is created or received by a health care provider, health care facility, health plan, public health authority, employer, life insurer, school or university or health care clearinghouse that relates to the past, present or future physical or mental health of the person, the provision of health care to the person, or the past, present or future payment for the provision of health care to the person.

(q) "Medical power of attorney representative" or "representative" means a person eighteen years of age or older appointed by another person to make health care decisions pursuant to the provisions of section six of this article or
similar act of another state and recognized as valid under the laws of this state.

(r) "Parent" means a person who is another person's natural or adoptive mother or father or who has been granted parental rights by valid court order and whose parental rights have not been terminated by a court of law.

(s) "Persistent vegetative state" means an irreversible state as diagnosed by the attending physician or a qualified physician in which the person has intact brain stem function but no higher cortical function and has neither self-awareness or awareness of the surroundings in a learned manner.

(t) "Person" means an individual, a corporation, a business trust, a trust, a partnership, an association, a government, a governmental subdivision or agency or any other legal entity.

(u) "Principal" means a person who has executed a living will or medical power of attorney.

(v) "Protected person" means an adult, who, pursuant to the provisions of chapter forty-four-a of this code, has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events and environments to an extent that the individual lacks the capacity to: (1) Meet the essential requirements for his or her health, care, safety, habilitation or therapeutic needs without the assistance or protection of a guardian; or (2) manage property or financial affairs to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator.

(w) "Qualified physician" means a physician licensed to practice medicine who has personally examined the person.
(x) "Qualified psychologist" means a psychologist licensed to practice psychology who has personally examined the person.

(y) "Surrogate decision maker" or "surrogate" means an adult individual who is reasonably available, is willing to make health care decisions on behalf of an incapacitated person, possesses the capacity to make health care decisions, and is selected by the attending physician or advanced practice nurse in collaboration with the attending physician in accordance with the provisions of this article as the person who is to make those decisions in accordance with the provisions of this article.

(z) "Terminal condition" means an incurable or irreversible condition as diagnosed by the attending physician or a qualified physician for which the administration of life-prolonging intervention will serve only to prolong the dying process.

§16-30-4. Executing a living will or medical power of attorney.

(a) Any competent adult may execute at any time a living will or medical power of attorney. A living will or medical power of attorney made pursuant to this article shall be: (1) In writing; (2) executed by the principal or by another person in the principal's presence at the principal's express direction if the principal is physically unable to do so; (3) dated; (4) signed in the presence of two or more witnesses at least eighteen years of age; and (5) signed and attested by such witnesses whose signatures and attestations shall be acknowledged before a notary public as provided in subsection (d) of this section.

(b) In addition, a witness may not be:

(1) The person who signed the living will or medical power of attorney on behalf of and at the direction of the principal;

(2) Related to the principal by blood or marriage;
(3) Entitled to any portion of the estate of the principal under any will of the principal or codicil thereto: Provided,
That the validity of the living will or medical power of attorney shall not be affected when a witness at the time of witnessing such living will or medical power of attorney was unaware of being a named beneficiary of the principal’s will;

(4) Directly financially responsible for principal’s medical care;

(5) The attending physician; or

(6) The principal’s medical power of attorney representative or successor medical power of attorney representative.

(c) The following persons may not serve as a medical power of attorney representative or successor medical power of attorney representative: (1) A treating health care provider of the principal; (2) an employee of a treating health care provider not related to the principal; (3) an operator of a health care facility serving the principal; or (4) an employee of an operator of a health care facility not related to the principal.

(d) It shall be the responsibility of the principal or his or her representative to provide for notification to his or her attending physician and other health care providers of the existence of the living will or medical power of attorney or a revocation of the living will or medical power of attorney. An attending physician or other health care provider, when presented with the living will or medical power of attorney, or the revocation of a living will or medical power of attorney, shall make the living will, medical power of attorney or a copy of either or a revocation of either a part of the principal’s medical records.

(e) At the time of admission to any health care facility, each person shall be advised of the existence and availability of living will and medical power of attorney forms and shall be given assistance in completing such forms if the person desires:
Provided, That under no circumstances may admission to a health care facility be predicated upon a person having completed either a medical power of attorney or living will.

(f) The provision of living will or medical power of attorney forms substantially in compliance with this article by health care providers, medical practitioners, social workers, social service agencies, senior citizens centers, hospitals, nursing homes, personal care homes, community care facilities or any other similar person or group, without separate compensation, does not constitute the unauthorized practice of law.

(g) The living will may, but need not, be in the following form, and may include other specific directions not inconsistent with other provisions of this article. Should any of the other specific directions be held to be invalid, such invalidity shall not affect other directions of the living will which can be given effect without the invalid direction and to this end the directions in the living will are severable.

STATE OF WEST VIRGINIA
LIVING WILL

The Kind of Medical Treatment I Want and Don’t Want If I Have a Terminal Condition or Am In a Persistent Vegetative State

Living will made this ____________________________ day of _____________ (month, year).

I, __________________________________________, being of sound mind, willfully and voluntarily declare that I want my wishes to be respected if I am very sick and not able to communicate my wishes for myself. In the absence of my ability to give directions regarding the use of life-prolonging
medical intervention, it is my desire that my dying shall not be prolonged under the following circumstances:

If I am very sick and not able to communicate my wishes for myself and I am certified by one physician who has personally examined me, to have a terminal condition or to be in a persistent vegetative state (I am unconscious and am neither aware of my environment nor able to interact with others,) I direct that life-prolonging medical intervention that would serve solely to prolong the dying process or maintain me in a persistent vegetative state be withheld or withdrawn. I want to be allowed to die naturally and only be given medications or other medical procedures necessary to keep me comfortable. I want to receive as much medication as is necessary to alleviate my pain.

I give the following SPECIAL DIRECTIVES OR LIMITATIONS: (Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis and mental health treatment may be placed here. My failure to provide special directives or limitations does not mean that I want or refuse certain treatments.)

It is my intention that this living will be honored as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences resulting from such refusal.

I understand the full import of this living will.
I did not sign the principal’s signature above for or at the direction of the principal. I am at least eighteen years of age and am not related to the principal by blood or marriage, entitled to any portion of the estate of the principal to the best of my knowledge under any will of principal or codicil thereto, or directly financially responsible for principal’s medical care. I am not the principal’s attending physician or the principal’s medical power of attorney representative or successor medical power of attorney representative under a medical power of attorney.

Witness DATE

Witness DATE

STATE OF

COUNTY OF

I, ________________, a Notary Public of said County, do certify that ________________, as principal, and _______________ and _______________, as witnesses, whose names are signed to the writing above bearing date on the ______________ day of ______________, 2000, have this day acknowledged the same before me.
Given under my hand this ______ day of ________, 2000.

My commission expires:____________________________________

__________________________________________________________

Signature of Notary Public

(h) A medical power of attorney may, but need not, be in the following form, and may include other specific directions not inconsistent with other provisions of this article. Should any of the other specific directions be held to be invalid, such invalidity shall not affect other directions of the medical power of attorney which can be given effect without invalid direction and to this end the directions in the medical power of attorney are severable.

STATE OF WEST VIRGINIA

MEDICAL POWER OF ATTORNEY

The Person I Want to Make Health Care Decisions For Me When I Can’t Make Them for Myself

Dated:______________________________ , 20____

I,____________________________________________________, hereby

(Insert your name and address)

appoint as my representative to act on my behalf to give, withhold or withdraw informed consent to health care decisions in the event that I am not able to do so myself.

The person I choose as my representative is:

(Insert the name, address, area code and telephone number of the person you wish to designate as your representative)
The person I choose as my successor representative is:

If my representative is unable, unwilling or disqualified to serve, then I appoint

(Insert the name, address, area code and telephone number of the person you wish to designate as your successor representative)

This appointment shall extend to, but not be limited to, health care decisions relating to medical treatment, surgical treatment, nursing care, medication, hospitalization, care and treatment in a nursing home or other facility, and home health care. The representative appointed by this document is specifically authorized to be granted access to my medical records and other health information and to act on my behalf to consent to, refuse or withdraw any and all medical treatment or diagnostic procedures, or autopsy if my representative determines that I, if able to do so, would consent to, refuse or withdraw such treatment or procedures. Such authority shall include, but not be limited to, decisions regarding the withholding or withdrawal of life-prolonging interventions.

I appoint this representative because I believe this person understands my wishes and values and will act to carry into effect the health care decisions that I would make if I were able to do so, and because I also believe that this person will act in my best interest when my wishes are unknown. It is my intent that my family, my physician and all legal authorities be bound by the decisions that are made by the representative appointed by this document, and it is my intent that these decisions should not be the subject of review by any health care provider or administrative or judicial agency.

It is my intent that this document be legally binding and effective and that this document be taken as a formal statement...
of my desire concerning the method by which any health care
decisions should be made on my behalf during any period when
I am unable to make such decisions.

In exercising the authority under this medical power of
attorney, my representative shall act consistently with my
special directives or limitations as stated below.

I am giving the following SPECIAL DIRECTIVES OR
LIMITATIONS ON THIS POWER: (Comments about tube
feedings, breathing machines, cardiopulmonary resuscitation
and dialysis may be placed here. My failure to provide special
directives or limitations does not mean that I want or refuse
certain treatments.)

THIS MEDICAL POWER OF ATTORNEY SHALL
BECOME EFFECTIVE ONLY UPON MY INCAPACITY TO
GIVE, WITHHOLD OR WITHDRAW INFORMED CON-
SENT TO MY OWN MEDICAL CARE.

I did not sign the principal’s signature above. I am at least
eighteen years of age and am not related to the principal by
blood or marriage. I am not entitled to any portion of the estate
of the principal or to the best of my knowledge under any will
of the principal or codicil thereto, or legally responsible for the
costs of the principal’s medical or other care. I am not the
principal’s attending physician, nor am I the representative or
successor representative of the principal.
I, __________________________, a Notary Public of said County, do certify that________________________,
as principal, and________________________ and________________________, as witnesses, whose names are signed to the writing above bearing date on the __________ day of __________, 20______, have this day acknowledged the same before me.

Given under my hand this ______ day of ________, 20____.

My commission expires: __________________________.

Notary Public

§16-30-5. Applicability and resolving actual conflict between advance directives.

(a) The provisions of this article which directly conflict with the written directives contained in a living will or medical power of attorney executed prior to the effective date of this statute shall not apply. An expressed directive contained in a living will or medical power of attorney or by any other means the health care provider determines to be reliable shall be followed.

(b) If there is a conflict between the person’s expressed directives and the decisions of the medical power of attorney representative or surrogate, the person’s expressed directives shall be followed.
(c) In the event there is a conflict between two advance directives executed by the person, the one most recently completed takes precedence only to the extent needed to resolve the inconsistency.

(d) If there is a conflict between the decisions of the medical power of attorney representative or surrogate and the person’s best interests as determined by the attending physician when the person’s wishes are unknown, the attending physician shall attempt to resolve the conflict by consultation with a qualified physician, an ethics committee, or by some other means. If the attending physician cannot resolve the conflict with the medical power of attorney representative, the attending physician may transfer the care of the person pursuant to subsection (b), section twelve of this article.

§16-30-6. Private decision-making process; authority of living will, medical power of attorney representative and surrogate.

(a) Any capable adult may make his or her own health care decisions without regard to guidelines contained in this article.

(b) Health care providers and health care facilities may rely upon health care decisions made on behalf of an incapacitated person without resort to the courts or legal process, if the decisions are made in accordance with the provisions of this article.

(c) The medical power of attorney representative or surrogate shall have the authority to release or authorize the release of an incapacitated person’s medical records to third parties and make any and all health care decisions on behalf of an incapacitated person, except to the extent that a medical power of attorney representative’s authority is clearly limited in the medical power of attorney.
(d) The medical power of attorney representative or surrogate’s authority shall commence upon a determination, made pursuant to section seven of this article, of the incapacity of the adult. In the event the person no longer is incapacitated or the medical power of attorney representative or surrogate is unwilling or unable to serve, the medical power of attorney representative or surrogate’s authority shall cease. However, the authority of the medical power of attorney representative or surrogate may recommence if the person subsequently becomes incapacitated as determined pursuant to section seven of this article unless during the intervening period of capacity the person executes an advance directive which makes a surrogate unnecessary or expressly rejects the previously appointed surrogate as his or her surrogate. A medical power of attorney representative or surrogate’s authority terminates upon the death of the incapacitated person except with respect to decisions regarding autopsy, funeral arrangements or cremation and organ and tissue donation.

(e) The medical power of attorney representative or surrogate shall seek medical information necessary to make health care decisions for an incapacitated person. For the sole purpose of making health care decisions for the incapacitated person, the medical power of attorney representative or surrogate shall have the same right of access to the incapacitated person’s medical information and the same right to discuss that information with the incapacitated person’s health care providers that the incapacitated person would have if he or she was not incapacitated.

(f) If an incapacitated person previously expressed his or her wishes regarding autopsy, funeral arrangements or cremation, organ or tissue donation, or the desire to make an anatomical gift by a written directive such as a living will, medical power of attorney, donor card, drivers’ license or other means, the medical power of attorney representative or surrogate shall
follow the person’s expressed wishes regarding autopsy, funeral arrangements or cremation, organ and tissue donation or anatomical gift. In the absence of any written directives, any decision regarding anatomical gifts shall be made pursuant to the provisions of article nineteen of this chapter.

(g) If a person is incapacitated at the time of the decision to withhold or withdraw life-prolonging intervention, the person’s living will or medical power of attorney executed in accordance with section four of this article is presumed to be valid. For the purposes of this article, a physician or health facility may presume in the absence of actual notice to the contrary that a person who executed a living will or medical power of attorney was a competent adult when it was executed. The fact that a person executed a living will or medical power of attorney is not an indication of the person’s mental incapacity.

§16-30-7. Determination of incapacity.

(a) For the purposes of this article, a person may not be presumed to be incapacitated merely by reason of advanced age or disability. With respect to a person who has a diagnosis of mental illness or mental retardation, such a diagnosis is not a presumption that the person is incapacitated. A determination that a person is incapacitated shall be made by the attending physician, a qualified physician, a qualified psychologist or an advanced practice nurse in collaboration with a physician provided that the advanced practice nurse has personally examined the person.

(b) The determination of incapacity shall be recorded contemporaneously in the person’s medical record by the attending physician, a qualified physician, advanced practice nurse or a qualified psychologist. The recording shall state the basis for the determination of incapacity, including the cause, nature and expected duration of the person’s incapacity, if these are known.
If the person is conscious, the attending physician shall inform the person that he or she has been determined to be incapacitated and that a medical power of attorney representative or surrogate decision maker may be making decisions regarding life-prolonging intervention or mental health treatment for the person.

§16-30-8. Selection of a surrogate.

(a) When a person is or becomes incapacitated, the attending physician or the advanced practice nurse in collaboration with the attending physician, with the assistance of other health care providers as necessary, shall select, in writing, a surrogate. The attending physician shall reasonably attempt to determine whether the incapacitated person has appointed a representative under a medical power of attorney in accordance with the provisions of section four of this article, or if the incapacitated person has a court-appointed guardian in accordance with the provisions of article one, chapter forty-four-a of this code. If no representative or court-appointed guardian is authorized or capable and willing to serve, the attending physician or advanced practice nurse is authorized to select a health care surrogate. In selecting a surrogate, the attending physician or advanced practice nurse must make a reasonable inquiry as to the existence and availability of a surrogate from the following persons:

(1) The person's spouse;
(2) The person's adult children;
(3) The person's parents;
(4) The person's adult siblings;
(5) The person's adult grandchildren;
(6) The person's close friends;
(7) Any other person or entity, including, but not limited to, public agencies, public guardians, public officials, public and private corporations and other persons or entities which the department of health and human resources may from time to time designate in rules promulgated pursuant to chapter twenty-nine-a of this code.

(b) After inquiring about the existence and availability of a medical power of attorney representative or a guardian as required by subsection (a) of this section, and determining that such persons either do not exist or are unavailable, incapable or unwilling to serve as a surrogate, the attending physician or an advanced practice nurse in collaboration with the attending physician shall select and rely upon a surrogate in the order of priority set forth in subsection (a) of this section, subject to the following conditions:

(1) Where there are multiple possible surrogate decision makers at the same priority level, the attending physician or the advanced practice nurse in collaboration with the attending physician shall, after reasonable inquiry, select as the surrogate the person who reasonably appears to be best qualified. The following criteria shall be considered in the determination of the person or entity best qualified to serve as the surrogate:

(A) Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the person or in accordance with the person’s best interests;

(B) The proposed surrogate’s regular contact with the person prior to and during the incapacitating illness;

(C) The proposed surrogate’s demonstrated care and concern;

(D) The proposed surrogate’s availability to visit the incapacitated person during his or her illness; and
(E) The proposed surrogate’s availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process;

(2) The attending physician or the advanced practice nurse in consultation with the attending physician may select a proposed surrogate who is ranked lower in priority if, in his or her judgment, that individual is best qualified, as described in this section, to serve as the incapacitated person’s surrogate. The attending physician or the advanced practice nurse shall document in the incapacitated person’s medical records his or her reasons for selecting a surrogate in exception to the priority order provided in subsection (a) of this section.

(c) The surrogate is authorized to make health care decisions on behalf of the incapacitated person without a court order or judicial involvement.

(d) A health care provider or health care facility may rely upon the decisions of the selected surrogate if the provider believes, after reasonable inquiry, that:

(1) A guardian or representative under a valid, applicable medical power of attorney is unavailable, incapable or is unwilling to serve;

(2) There is no other applicable advance directive;

(3) There is no reason to believe that such health care decisions are contrary to the incapacitated person’s religious beliefs; and

(4) The attending physician or advanced practice nurse has not received actual notice of opposition to any health care decisions made pursuant to the provisions of this section.

(e) If a person who is ranked as a possible surrogate pursuant to subsection (a) of this section wishes to challenge the
selection of a surrogate or the health care decision of the
selected surrogate, he or she may seek injunctive relief or may
file a petition for review of the selection of, or decision of, the
selected surrogate with the circuit court of the county in which
the incapacitated person resides or the supreme court of
appeals. There shall be a rebuttable presumption that the
selection of the surrogate was valid, and the person who is
challenging the selection shall have the burden of proving the
invalidity of that selection. The challenging party shall be
responsible for all court costs and other costs related to the
proceeding, except attorneys’ fees, unless the court finds that
the attending physician or advanced practice nurse acted in bad
faith, in which case the person so acting shall be responsible for
all costs. Each party shall be responsible for his or her own
attorneys’ fees.

(f) If the attending physician or advanced practice nurse is
advised that a person who is ranked as a possible surrogate
pursuant to the provisions of subsection (a) of this section has
an objection to a health care decision to withhold or withdraw
a life-prolonging intervention which has been made by the
selected surrogate, the attending physician or advanced practice
nurse shall document the objection in the medical records of the
patient. Once notice of an objection or challenge is docu-
mented, the attending physician or advanced practice nurse
shall notify the challenging party that the decision shall be
implemented in seventy-two hours unless the attending physi-
cian receives a court order prohibiting or enjoining the imple-
mentation of the decision as provided in subsection (e) of this
section. In the event that the incapacitated person has been
determined to have undergone brain death and the selected
surrogate has authorized organ or tissue donation, the decision
shall be implemented in twenty-four hours unless the attending
physician receives a court order prohibiting or enjoining the
implementation of the decision as provided in subsection (e) of
this section.
(g) If the surrogate becomes unavailable for any reason, the surrogate may be replaced by applying the provisions of this section.

(h) If a person who ranks higher in priority relative to a selected surrogate becomes available and willing to be the surrogate, the person with higher priority may be substituted for the identified surrogate unless the attending physician determines that the lower ranked person is best qualified to serve as the surrogate.

(i) The following persons may not serve as a surrogate: (1) A treating health care provider of the principal; (2) an employee of a treating health care provider not related to the principal; (3) an owner, operator or administrator of a health care facility serving the principal; or (4) an employee of an owner, operator or administrator of a health care facility not related to the principal.

§16-30-9. Medical power of attorney representative and health care surrogate decision-making standards.

(a) General standards.

The medical power of attorney representative or the health care surrogate shall make health care decisions:

(1) In accordance with the person's wishes, including religious and moral beliefs; or

(2) In accordance with the person's best interests if these wishes are not reasonably known and cannot with reasonable diligence be ascertained; and

(3) Which reflect the values of the person, including the person's religious and moral beliefs, to the extent they are reasonably known or can with reasonable diligence be ascertained.
(b) Assessment of best interests.

An assessment of the person’s best interests shall include consideration of the person’s medical condition, prognosis, the dignity and uniqueness of every person, the possibility and extent of preserving the person’s life, the possibility of preserving, improving or restoring the person’s functioning, the possibility of relieving the person’s suffering, the balance of the burdens to the benefits of the proposed treatment or intervention and such other concerns and values as a reasonable individual in the person’s circumstances would wish to consider.

§16-30-10. Reliance on authority of living will, medical power of attorney representative or surrogate decision maker and protection of health care providers.

(a) A physician, licensed health care professional, health care facility or employee thereof shall not be subject to criminal or civil liability for good-faith compliance with or reliance upon the directions of the medical power of attorney representative in accordance with this article.

(b) A health care provider shall not be subject to civil or criminal liability for surrogate selection or good faith compliance and reliance upon the directions of the surrogate in accordance with the provisions of this article.

(c) No health care provider or employee thereof who in good faith and pursuant to reasonable medical standards causes or participates in the withholding or withdrawing of life-prolonging intervention from a person pursuant to a living will made in accordance with this article shall, as a result thereof, be subject to criminal or civil liability.

(d) An attending physician who cannot comply with the living will or medical power of attorney of a principal pursuant to this article shall, in conjunction with the medical power of
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19 attorney representative, health care surrogate or other responsible person, effect the transfer of the principal to another physician who will honor the living will of the principal. Transfer under these circumstances does not constitute abandonment.


Nothing in this article shall be deemed to protect a provider from liability for the provider's own negligence in the performance of the provider's duties or in carrying out any instructions of the medical power of attorney representative or surrogate. Nothing in this article shall be deemed to alter the law of negligence as it applies to the acts of any medical power of attorney representative or surrogate or provider, and nothing herein shall be interpreted as establishing a standard of care for health care providers for purposes of the law of negligence.

§16-30-12. Conscience objections.

(a) Health care facilities. -- Nothing in this article shall be construed to require a health care facility to change published policy of the health care facility that is expressly based on sincerely held religious beliefs or sincerely held moral convictions central to the facility's operating principles.

(b) Health care providers. -- Nothing in this article shall be construed to require an individual health care provider to honor a health care decision made pursuant to this article if:

(1) The decision is contrary to the individual provider's sincerely held religious beliefs or sincerely held moral convictions; and

(2) The individual health care provider promptly informs the person who made the decision and the health care facility of his or her refusal to honor the decision. In such event, the medical power of attorney representative or surrogate decision
maker shall have responsibility for arranging the transfer of the
person to another health care provider. The individual health
care provider shall cooperate in facilitating such transfer, and
a transfer under these circumstances shall not constitute
abandonment.

§16-30-13. Interinstitutional transfers.

(a) In the event that a person admitted to any health care
facility in this state has been determined to lack capacity and
that person's medical power of attorney has been declared to be
in effect or a surrogate decision maker has been selected for
that person all in accordance with the requirements of this
article, and that person is subsequently transferred from one
health care facility to another, the receiving health care facility
may rely upon the prior determination of incapacity and the
activation of the medical power of attorney or selection of a
surrogate decision maker as valid and continuing until such
time as an attending physician, a qualified physician, a qualified
psychologist or advanced practice nurse in collaboration with
a physician in the receiving facility assesses the person's
capacity. Should the reassessment by the attending physician,
a qualified physician, a qualified psychologist or an advanced
practice nurse in collaboration with a physician of the person at
the receiving facility result in a determination of continued
incapacity, the receiving facility may rely upon the medical
power of attorney representative or surrogate decision maker
who provided health care decisions at the transferring facility
to continue to make all health care decisions at the receiving
facility until such time as the person regains capacity. If a
person admitted to any health care facility in this state has been
determined to lack capacity and the person's medical power of
attorney has been declared to be in effect or a surrogate
decision maker has been selected for that person all in accord-
dance with the requirements of this article, and that person is
subsequently discharged home in the care of a home health care
agency or hospice, the home health care agency or hospice may rely upon the prior determination of incapacity. The home health care agency or hospice may rely upon the medical power of attorney representative or health care surrogate who provided health care decisions at the transferring facility to continue to make all health care decisions until such time as the person regains capacity.

(b) If a person with an order to withhold or withdraw life-prolonging intervention is transferred from one health care facility to another, the existence of such order shall be communicated to the receiving facility prior to the transfer, and the written order shall accompany the person to the receiving facility and shall remain effective until a physician at the receiving facility issues admission orders.


(a) No policy of life insurance or annuity or other type of contract that is conditioned on the life or death of the person, shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-prolonging intervention from a person in accordance with the provisions of this article, notwithstanding any terms of the policy to the contrary.

(b) The withholding or withdrawal of life-prolonging intervention from a principal in accordance with the provisions of this article does not, for any purpose, constitute a suicide and does not constitute the crime of assisting suicide.

(c) The making of a living will or medical power of attorney pursuant to this article does not affect in any manner the sale, procurement or issuance of any insurance policy nor does it modify the terms of an existing policy.

(d) No health care provider or health care service plan, health maintenance organization, insurer issuing disability insurance, self-insured employee welfare benefit plan, nonprofit
medical service corporation or mutual nonprofit hospital service
corporation shall require any person to execute a living will or
medical power of attorney as a condition for being insured for
or receiving health care services.

§16-30-15. Withholding of life support not assisted suicide or
murder.

The withholding or withdrawal of life-prolonging interven-
tion from a person in accordance with the decision of a medical
power of attorney representative or surrogate decision maker
made pursuant to the provisions of this article does not, for any
purpose, constitute assisted suicide or murder. The withholding
or withdrawal of life-prolonging intervention from a person in
accordance with the decisions of a medical power of attorney
representative or surrogate decision maker made pursuant to the
provisions of this article, however, shall not relieve any
individual of responsibility for any criminal acts that may have
caus[ed] the person’s condition. Nothing in this article shall be
construed to legalize, condone, authorize or approve mercy
killing or assisted suicide.

§16-30-16. Preservation of existing rights and relation to existing
law; no presumption.

(a) The provisions of this article are cumulative with
existing law regarding an individual’s right to consent to or
refuse medical treatment. The provisions of this article shall not
impair any existing rights or responsibilities that a health care
provider, a person, including a minor or an incapacitated person
or a person’s family may have in regard to the withholding or
withdrawal of life-prolonging intervention, including any rights
to seek or forego judicial review of decisions regarding life-
prolonging intervention under the common law or statutes of
this state.
(b) This article creates no presumption concerning the intention of an individual who has not executed a living will or medical power of attorney to consent to, refuse or withdraw any and all medical treatment or diagnostic procedures, including, but not limited to, life-prolonging intervention.

§16-30-17. No abrogation of common law doctrine of medical necessity.

Nothing in this article shall be construed to abrogate the common law doctrine of medical necessity.

§16-30-18. Revocation.

(a) A living will or medical power of attorney may be revoked at any time only by the principal or at the express direction of the principal by any of the following methods:

(1) By being destroyed by the principal or by some person in the principal's presence and at his or her direction;

(2) By a written revocation of the living will or medical power of attorney signed and dated by the principal or person acting at the direction of the principal. Such revocation shall become effective only upon delivery of the written revocation to the attending physician by the principal or by a person acting on behalf of the principal.

The attending physician shall record in the principal's medical record the time and date when he or she receives notification of the written revocation; or

(3) By a verbal expression of the intent to revoke the living will or medical power of attorney in the presence of a witness eighteen years of age or older who signs and dates a writing confirming that such expression of intent was made. Any verbal revocation shall become effective only upon communication of the revocation to the attending physician by the principal or by
21 a person acting on behalf of the principal. The attending
22 physician shall record, in the principal’s medical record, the
23 time, date and place of when he or she receives notification of
24 the revocation.
25
26 (b) There is no criminal or civil liability on the part of any
27 person for failure to act upon a revocation made pursuant to this
28 section unless that person has actual knowledge of the revoca-
29 tion.
30
31 (c) The grant of a final divorce decree shall act as an
32 automatic revocation of the designation of the former spouse to
33 act as a medical power of attorney representative or successor
34 representative.

§16-30-19. Physician’s duty to confirm, communicate and docu-
35 ment terminal condition or persistent vegetative
36 state; medical record identification.

1 (a) An attending physician who has been notified of the
2 existence of a living will executed under this article, without
3 delay after the diagnosis of a terminal condition or persistent
4 vegetative state of the principal, shall take steps as needed to
5 provide for confirmation, written certification and documenta-
6 tion of the principal’s terminal condition or persistent vegeta-
7 tive state in the principal’s medical record.

8 (b) Once confirmation, written certification and documenta-
9 tion of the principal’s terminal condition or persistent vegeta-
10 tive state is made, the attending physician shall verbally or in
11 writing inform the principal of his or her condition or the
12 principal’s medical power of attorney representative or surro-
13 gate, if the principal lacks capacity to comprehend such
14 information and shall document such communication in the
15 principal’s medical record.
(c) All inpatient health care facilities shall develop a system to visibly identify a person’s chart which contains a living will or medical power of attorney as set forth in this article.

§16-30-20. Living wills previously executed.

A living will executed prior to the effective date of this article and which expressly provides for the withholding or withdrawal of life-prolonging intervention or for the termination of life-sustaining procedures in substantial compliance with the provisions of section four of this article is hereby recognized as a valid living will, as though it were executed in compliance with the provisions of this article.

§16-30-21. Reciprocity.

A living will or medical power of attorney executed in another state is validly executed for the purposes of this article if it is executed in compliance with the laws of this state or with the laws of the state where executed.

§16-30-22. Liability for failure to act in accordance with the directives of a living will or medical power of attorney or the directions of a medical power of attorney representative or health care surrogate.

(a) A health care provider or health care facility who does not have actual knowledge of a living will or medical power of attorney completed by a person is not civilly or criminally liable for failing to act in accordance with the directives of a principal’s living will or medical power of attorney.

(b) A health care provider or a health care facility is subject to review and disciplinary action by the appropriate licensing board for failing to act in accordance with a principal’s directives in a living will or medical power of attorney, or the decisions of a medical power of attorney representative or
11 health care surrogate, provided that the provider or facility had
12 actual knowledge of the directives or decisions.

13 (c) Once a principal has been determined to be incapacitated in accordance with the provisions of this article and his or her living will or medical power of attorney has become effective, any health care provider or health care facility which refuses to follow the principal's directives in a living will or medical power of attorney or the decisions of a medical power of attorney representative or health care surrogate, because the principal has asked the health care provider or health care facility not to follow such directions or decisions, shall have two physicians, one of whom may be the attending physician, or one physician and a qualified psychologist, or one physician and an advanced practice nurse in collaboration with a physician, certify that the principal has regained capacity to make the request. If such certification occurs, the provisions of the applicable living will or medical power of attorney, or the statute creating the authority of the health care surrogate shall not apply because the principal has regained decision-making capacity.

§16-30-23. Prohibition.

1 Under no circumstances may the presence or absence of a living will or medical power of attorney be used to deny a person admission to a health care facility.

§16-30-24. Need for a second opinion regarding incapacity for persons with psychiatric mental illness, mental retardation or addiction.

1 For persons with psychiatric mental illness, mental retardation or addiction who have been determined by their attending physician or a qualified physician to be incapacitated, a second opinion by a qualified physician or qualified psychologist that the person is incapacitated is required before the attending
physician is authorized to select a surrogate. The requirement for a second opinion shall not apply in those instances in which the medical treatment to be rendered is not for the person’s psychiatric mental illness.

ARTICLE 30C. DO NOT RESUSCITATE ACT.

§16-30C-5. Presumed consent to cardiopulmonary resuscitation; health care facilities not required to expand to provide cardiopulmonary resuscitation.

(a) Every person shall be presumed to consent to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest, unless one or more of the following conditions, of which the health care provider has actual knowledge, apply:

1. A do not resuscitate order in accordance with the provisions of this article has been issued for that person;

2. A completed living will for that person is in effect, pursuant to the provisions of article thirty of this chapter, and the person is in a terminal condition or a persistent vegetative state; or

3. A completed medical power of attorney for that person is in effect, pursuant to the provisions of article thirty of this chapter, in which the person indicated that he or she does not wish to receive cardiopulmonary resuscitation, or his or her representative has determined that the person would not wish to receive cardiopulmonary resuscitation.

(b) Nothing in this article shall require a nursing home, personal care home, hospice, or extended care facility operated in connection with hospitals to institute or maintain the ability to provide cardiopulmonary resuscitation or to expand its existing equipment, facilities or personnel to provide cardiopulmonary resuscitation: Provided, That if a health care
facility does not provide cardiopulmonary resuscitation, this policy shall be communicated in writing to the person, representative or surrogate decision maker prior to admission.

CHAPTER 133
(H. B. 4460 — By Delegates Marshall, Houston, Fleischauer and Warner)
[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.] AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-r, relating to the "Alzheimer's special care standards act"; legislative findings and declarations; defining terms; requiring written disclosure of care or treatment of alzheimer residents; authorizing the secretary of health and human resources to propose legislative rules designed to set minimum standards of care and treatment of alzheimer patients; and authorizing the secretary to enforce the standards, investigate facilities and issue warnings and other penalties.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 16. PUBLIC HEALTH.
ARTICLE 5R. THE ALZHEIMER'S SPECIAL CARE STANDARDS ACT.
§16-5R-1. Name of act.
§16-5R-2. Findings and declarations.
§16-5R-3. Definition of alzheimer's special care unit/program.
§16-5R-4. Alzheimer's special care disclosure required.
§16-5R-5. Standards for care; rules.
§16-5R-1. Name of act.

This act shall be known and may be cited as the “Alzheimer’s Special Care Standards Act.”

§16-5R-2. Findings and declarations.

The Legislature finds and declares that:

(a) Certain nursing homes and related facilities, adult congregate living facilities, adult day care centers, hospices and adult foster homes claim to provide special care units and services for persons who have alzheimer’s disease;

(b) It is in the public interest to provide for the protection of consumers by ensuring the accuracy and authenticity of such claims; and

(c) The provisions of this article are intended to require the facilities to actually provide the care they claim to offer, require written disclosure of special services provided, require the appropriate state licensing agency to examine the performance of such facilities in providing special services for persons who have alzheimer’s disease, and provide penalties for failure to provide the services claimed as the agency considers appropriate.

§16-5R-3. Definition of alzheimer’s special care unit/program.

For the purposes of this article, the following definitions apply:

(a) “Alzheimer’s disease” means a diagnosis of presenile dementia or senile dementia-Alzheimer type (SDAT), characterized by confusion, memory failure, disorientation, restlessness, agnosia, speech disturbances, inability to carry out purposeful movements and hallucinosis.
(b) "Alzheimer’s Special Care Unit or Program," means any facility that secures, segregates or provides a special program or special unit for residents with a diagnosis of probable alzheimer’s disease or a related disorder and that advertises, markets or otherwise promotes the facility as providing specialized alzheimer’s or dementia care services.

(c) "Department" means the department of health and human resources.

(d) "Facility" means any nursing home or facility, residential board and care home, personal care home, assisted living facility, adult congregate living facility, home health agency, adult day care center, hospice or adult foster home situate or operating in this state.

(e) "Resident" means an individual living in a facility that offers an alzheimer’s special care unit or program.

(f) "Secretary" means the secretary of the department of health and human resources.

§16-5R-4. Alzheimer’s special care disclosure required.

(a) Any facility which offers to provide or provides care for a person with alzheimer’s disease through an alzheimer’s special care unit or special care program shall disclose in writing the form of care or treatment that distinguishes the unit or program as being especially applicable to or suitable for such persons. The disclosure shall be provided to the department of health and human resources, to any person seeking placement within an alzheimer’s special care unit or program, and to any legal guardian or relative acting on behalf of a resident or person seeking placement.

(b) The department of health and human resources shall examine all disclosures provided to it as part of the facility’s
license renewal procedure and verify the accuracy of the disclosures.

(c) The disclosure required by this section shall include the following information:

1. A statement of the overall treatment philosophy and mission of the special care unit or program which reflects the needs of residents afflicted with alzheimer’s disease or dementia;

2. A description of the facility’s screening, admission and discharge procedures, assessment, care planning and implementation, staffing patterns and training ratios unique to the program or unit;

3. A description of the physical environment and design features and an explanation of how they are appropriate to support the functioning of cognitively impaired adult residents;

4. A description of activities available to residents, the frequency and types of resident activities, and how they are specialized for residents who suffer from alzheimer’s disease;

5. A statement that describes the involvement of families in the care of residents and the availability of family support programs;

6. The costs of care and any additional fees unique to the alzheimer’s special care unit or program.

§16-5R-5. Standards for care; rules.

(a) The secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, setting minimum standards for the care and treatment of persons with alzheimer’s disease and other dementia in facilities offering alzheimer’s special care units or programs.
(b) The standards established pursuant to this section shall apply to all facilities offering Alzheimer’s special care units or program and shall be in addition to any other statutory requirements, rules or standards that are applicable to the facility.

(c) The secretary shall enforce the rules and standards for Alzheimer’s special care units or programs and shall exercise all powers necessary for such enforcement, including investigation and reporting of violation of the rules, issuance of notices or warnings to facilities found in violation of the standards, assessment of civil penalties in accordance with the applicable licensing provisions of the facility, and suspension or revocation of licenses.

(d) If a facility advertising, marketing or otherwise promoting the facility as providing specialized Alzheimer or dementia care services does not meet the standards established by the secretary, the department shall instruct the facility to cease such advertising, marketing or promoting.

CHAPTER 134

(Com. Sub. for H. B. 4298 — By Delegates Hatfield, Leach, Rowe, Spencer, Kelley, Perdue and L. Smith)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]
compliance with rules a condition of licensure; requirements for facilities to use needleless systems; keeping sharps injury logs; maintaining list of existing needleless systems; establishing a needlestick injury prevention advisory committee; and exceptions to requirements.

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-six, to read as follows:

ARTICLE 36. NEEDLESTICK INJURY PREVENTION.

§16-36-1. Definitions.


§16-36-3. Needlestick injury prevention advisory committee.

§16-36-4. Exception.

§16-36-1. Definitions.

As used in this article:

(a) "Director" means the director of the division of health;

(b) "Engineering controls" means sharps prevention technology including, but not limited to, systems not using needles and needles with engineered sharps injury protection;

(c) "Facility" means every hospital licensed under the provisions of article five-b of this chapter; every nursing home licensed under the provisions of article five-c of this chapter; every local health department, every home health agency certified by the office of health facility licensure and certification, all hospitals and nursing homes operated by the state or any agency of the state and all hospitals, nursing homes, local health departments and home health agencies which are staffed, in whole or in part, by public employees;
Health care worker’’ means any person working in a facility;

(e) "Needleless system" means a device that does not utilize needles for the withdrawal of body fluids after initial venous or arterial access is established, the administration of medication or fluids, or any other procedure involving the potential for an exposure incident;

(f) "Needlestick injury" means the parenteral introduction into the body of a health care worker, during the performance of his or her duties, of blood or other potentially infectious material by a hollow-bore needle or sharp instrument, including, but not limited to, needles, lancets, scalpels and contaminated broken glass; and

(g) "Sharps" means hollow-bore needles or sharp instruments, including, but not limited to, needles, lancets and scalpels.


(a) On or before the first day of July, two thousand, the director shall, with the advice and cooperation of the advisory committee established under this article, propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code requiring facilities, as a condition of licensure, certification or operation, to minimize the risk of needlestick and sharps injuries to health care workers. In developing the rules the director shall take into consideration the most recent guidelines of the occupational safety and health administration that relate to prevention of needlestick and sharps injuries.

(b) The rules shall include, but not be limited to, the following provisions:
14 (1) A requirement that facilities utilize needleless systems or other engineering controls designed to prevent needlestick or sharps injuries, except in cases where the facility can demonstrate circumstances in which the technology does not promote employee or patient safety or interferes with a medical procedure. Those circumstances shall be specified by the facility and shall include, but not be limited to, circumstances where the technology is medically contraindicated or not more effective than alternative measures used by the facility to prevent exposure incidents: Provided, That no specific device may be mandated;

25 (2) A requirement that information concerning exposure incidents be recorded in a sharps injury log, to be kept within the facility and reported annually to the director. Information recorded in the log shall contain, at a minimum:

29 (A) The date and time of the exposure incident;

30 (B) The type and brand of sharp involved in the incident; and

32 (C) A description of the exposure incident which shall at a minimum include:

34 (i) The job classification of the exposed worker;

35 (ii) The department or work area where the exposure incident occurred;

37 (iii) The procedure that the exposed worker was performing at the time of the incident;

39 (iv) How the incident occurred;

40 (v) The body part involved in the exposure incident;
(vi) If the sharp had engineered sharps injury protection, whether the protective mechanism was activated and whether the injury occurred before the protective mechanism was activated, during activation of the mechanism or after activation of the mechanism, if applicable; and

(vii) Any suggestions by the injured employee as to whether or how protective mechanisms or work practice control could be utilized to prevent such injuries;

(3) A provision for maintaining a list of existing needleless systems and needles and sharps with engineered injury protections. The director shall make the list available to assist employers in complying with the requirements of the standards adopted in accordance with this article; and

(4) Any additional provisions consistent with the purposes of this article, including, but not limited to, training and educational requirements, measures to increase vaccinations, strategic placement of sharps containers as close to the work area as is practical and increased use of protective equipment.

§16-36-3. Needlestick injury prevention advisory committee.

(a) There is established a needlestick injury prevention advisory committee to advise the director in the development of rules required under this article.

(b) The committee shall meet at least four times a year for the initial two years after the effective date of this article and on the call of the director thereafter. The director shall serve as the chair and shall appoint thirteen members, one representing each of the following groups:

(1) A representative of the health insurance industry;
(2) The commissioner of the bureau of employment programs, or his or her designee from the division of workers’ compensation;

(3) Five nurses who work primarily providing direct patient care in a hospital or nursing home, at least one of which is employed in a state operated facility;

(4) A phlebotomist employed in a hospital or nursing home;

(5) Two administrators of different hospitals operating within the state;

(6) A director of nursing employed in a nursing home within the state;

(7) A licensed physician practicing in the state; and

(8) An administrator of a nursing home operating within the state.

(c) Members of the committee serve without compensation. Each member shall be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties, in a manner consistent with guidelines of the travel management office of the department of administration.

(d) A majority of all members constitutes a quorum for the transaction of all business. Members serve for two-year terms and may not serve for more than two consecutive terms.

§16-36-4. Exception.

Until the first day of July, two thousand five, drugs and biologics regulated by the food and drug administration whose packaging, on the effective date of this article, includes needles and syringes, are considered to meet any standards promulgated under this article.
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-seven, relating to regulating the body piercing studio business; definitions; requiring registration of body piercing studios; requiring inspection of body piercing studios by local boards of health; requiring operating permits; power of local board of health to order studio to close; legislative rules; general physical requirements; record keeping; written notification of risks and minimum age requirements; body piercing procedures; permitting requirements; fees; limitations and prohibitions of certain procedures; report to the Legislature on permanent body alteration activities; and establishing fines and criminal penalties for certain violations.

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-seven, to read as follows:

ARTICLE 37. BODY PIERCING STUDIO BUSINESS.

§ 16-37-1. Short title.
§ 16-37-3. Registration requirements; inspections by local boards of health; posting of permit; power of local board of health to order studio to close.
§ 16-37-4. Rules to be proposed by the department of health and human resources.
§ 16-37-5. Violations and penalties.
§16-37-1. Short title.

This article is known as the “Body Piercing Studio Act.”


(a) “Adequate ventilation” means a free and unrestricted circulation of fresh air throughout the body piercing studio and the expulsion of foul or stagnant air.

(b) “Antimicrobial solution” means any solution used to retard the growth of microorganisms.

(c) “Body piercing” means to puncture the skin for the purpose of creating a hole to be decorated or adorned, but does not include the use of a mechanized, presterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both.

(d) “Body piercing studio” means any room or space where body piercing is practiced or where the business of body piercing or any part thereof is conducted.

(e) “Operator” means any person who is registered with the state to operate, control or manage a body piercing studio, and whose studio has been issued an operating permit by the local board of health.

(f) “Single use” means products, instruments or items that are used one time on one client and then properly disposed of in accordance with rules of the department of health and human resources regarding the disposal of medical wastes.

(g) “Standard precautions” means that all blood and body fluids are treated so as to contain all blood-borne pathogens and all proper precautions are taken to prevent the spread of any blood-borne pathogens.
(h) "Technician" means an individual who engages in the practice of body piercing.

§16-37-3. Registration requirements; inspections by local boards of health; posting of permit; power of local board of health to order studio to close.

(a) On or after the first day of July, two thousand one, any body piercing studio in West Virginia shall obtain a West Virginia business registration certificate and shall register with the local board of health, request an inspection of the facility, and obtain an operating permit before engaging in the business of body piercing.

(b) Each local board of health shall conduct annual inspections of body piercing studios to determine compliance with this article.

(c) Upon a determination by the board that the body piercing studio is in compliance with the provisions of this article, the board shall issue to the body piercing studio an operating permit, which shall be posted in a conspicuous place in the body piercing studio, clearly visible to the general public.

(d) Upon a determination by the board that any body piercing studio is not in compliance with the provisions of this article, or the rules promulgated hereunder, the board may order the body piercing studio to cease operations until such time as the board determines that the body piercing studio is in compliance.

(e) Nothing in this article may be construed as prohibiting any health care provider licensed under chapter thirty of this code from performing any action within the scope of his or her practice, or as restricting the lawful practice of medicine or surgery in this state.
§16-37-4. Rules to be proposed by the department of health and human resources.

(a) On or before the first day of July, two thousand, the department of health and human resources shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, which rules shall provide at a minimum:

(1) General physical requirements for facilities and equipment, including requirements for adequate ventilation and lighting;

(2) Record keeping requirements and forms;

(3) Written notification of the risks of body piercing procedures and minimum age requirements;

(4) Body piercing procedures, including, but not limited to, safety and sterilization procedures; the use of antimicrobial solutions, needles, single use instruments and other instruments; the exercise of standard precautions; and instructions on the care of the skin after body piercing procedures;

(5) Permitting requirements for operators and technicians, including fees for permits and renewals of permits sufficient to cover the costs of inspecting facilities and administering this article; and

(6) For the disposal of waste in compliance with the rules of the department of health and human resources regarding the disposal of medical wastes.

(b) The rules required by this section may also include provisions on training or educational requirements or materials; health screenings for technicians; and any other provisions considered necessary to protect the public or assure adequate health and safety.
(c) The rules may also include limitations or prohibitions on the performance of certain procedures, including, but not limited to, procedures referred to as cutting, branding and scarification, which are identified as posing a risk to the public health and safety.

(d) Before the first day of December, two thousand, the department shall report to the Legislature on permanent body alteration activities, including, but not limited to, procedures referred to as cutting, branding and scarification, and identify those activities that pose a risk to the public health and safety, and report its recommendations for legislation.

§16-37-5. Violations and penalties.

(a) Any owner of a body piercing studio who does not obtain a West Virginia business registration certificate, who does not register with the local board of health, or who fails to request an inspection pursuant to section three of this article is guilty of a misdemeanor and, upon conviction thereof, for a first offense, may have all of the body piercing equipment and paraphernalia confiscated and shall be fined one hundred dollars.

(b) For a second offense, which is a misdemeanor, the owner may have all of the body piercing equipment and paraphernalia confiscated and shall be fined not less than five hundred dollars nor more than one thousand dollars or be imprisoned in the county or regional jail for not less than ten days nor more than one year, or both fined and imprisoned.

(c) For a third offense, which is a misdemeanor, the owner shall have all the body piercing equipment and paraphernalia confiscated, shall be fined not less than one thousand dollars nor more than five thousand dollars, or be imprisoned in the county or regional jail not less than thirty days nor more than one year, or both fined and imprisoned.
AN ACT to amend and reenact section twelve-c, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article twenty-four, all relating to allowing a thoroughbred racetrack and its horsemen’s organization to use a portion of export simulcast proceeds for capital improvements at the track; and enacting the interstate compact on licensure of participants in live horse racing with pari-mutuel wagering.

Be it enacted by the Legislature of West Virginia:

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

Article
23. Horse and Dog Racing.
24. Interstate Compact on Licensure of Participants in Live Horse Racing with Pari-mutuel Wagering.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12c. Interstate simulcasts by licensed racetracks.

1 (a) Any licensed racing association may be authorized by the commission to transmit broadcasts of races conducted at its racetrack to legal wagering entities located outside this state,
which legal wagering entities located outside this state shall not be subject to the provisions of subsection (e), section twelve-b of this article: Provided, That as consideration for the televised racing services it provides, the host racing association shall receive a signal transmission fee to be paid by the receiving legal wagering entity which shall be in an amount agreed upon by the receiving legal wagering entity and the host racing association. All broadcasts of horse races shall be in accordance with all of the provisions of the "Federal Interstate Horseracing Act of 1978," also known as Public Law 95-515, Section 3001-3007 of Title 15 of the United States Code.

(b) One percent of the total signal transmission fee provided in subsection (a) of this section shall be paid into a special fund to be established by the racing commission for and on behalf of all employees of the licensed racing association to be used for payments into the pension plan for all employees of the licensed racing association, and any thoroughbred horse racetrack which has participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two, shall pay seven and one-half percent of the signal transmission fee into the West Virginia thoroughbred development fund established by the racing commission according to section thirteen-b of this article. After deducting:

(i) The amounts required to be placed into the pension plan for all employees of the licensed racing association under this section; (ii) the amounts, if any, required to be paid into the West Virginia thoroughbred development fund under this section; and (iii) the direct costs necessary to send a live audio and visual signal of horse races or dog races from any racetrack licensed under the provisions of section one of this article to any legal wagering entities outside this state for the purpose of pari-mutuel wagering, which direct costs shall include the cost of satellite equipment necessary to transmit the signal, a satellite operator and the satellite time necessary to broadcast
the signal and the cost of telecommunication and facsimile services needed to communicate necessary information to all legal wagering entities for the purpose of pari-mutuel wagering, thoroughbred horseracing associations shall make a deposit equal to fifty percent of the remainder into the purse fund established under the provisions of subdivision (1), subsection (b), section nine of this article: Provided, That the funds deposited in the purse fund pursuant to this section may be used for the payment of regular purses or, upon agreement between the horse racing association and the representative of the majority of owners and trainers at a particular thoroughbred racetrack, may be used for capital improvements supporting simulcast operations.

ARTICLE 24. INTERSTATE COMPACT ON LICENSURE OF PARTICIPANTS IN LIVE HORSE RACING WITH PARI-MUTUEL WAGERING.

§19-24-1. Interstate compact on licensure of participants in live horse racing with pari-mutuel wagering; form of compact.

§19-24-2. Compact committee members.


§19-24-4. Racing commission powers preserved.

§19-24-1. Interstate compact on licensure of participants in live horse racing with pari-mutuel wagering; form of compact.

1 The interstate compact on licensure of participants in live horse racing with pari-mutuel wagering is enacted into law and entered into with all other jurisdictions legally joining in the compact in the form substantially as follows:

ARTICLE I. PURPOSES.

§1. Purposes.

1 The purposes of this compact are to:
1. Establish uniform requirements among the party states for the licensing of participants in live horse racing with pari-mutuel wagering, and ensure that all the participants who are licensed pursuant to this compact meet a uniform minimum standard of honesty and integrity.

2. Facilitate the growth of the horse racing industry in each party state and nationwide by simplifying the process for licensing participants in live racing, and reduce the duplicative and costly process of separate licensing by the regulatory agency in each state that conducts live horse racing with pari-mutuel wagering.

3. Authorize the West Virginia Racing Commission to participate in this compact.

4. Provide for participation in this compact by officials of the party states, and permit those officials, through the compact committee established by this compact, to enter into contracts with governmental agencies and nongovernmental persons to carry out the purposes of this compact.

5. Establish the compact committee created by this compact as an interstate governmental entity duly authorized to request and receive criminal history record information from the Federal Bureau of Investigation and other state and local law-enforcement agencies.

ARTICLE II. DEFINITIONS.

§2. Definitions.

"Compact committee" means the organization of officials from the party states that is authorized and empowered by this compact to carry out the purposes of this compact.

"Official" means the appointed, elected, designated or otherwise duly selected member of a racing commission or the
equivalent of a racing commission in a party state who represents that party state as a member of the compact committee.

“Participants in live racing” means participants in live horse racing with pari-mutuel wagering in the party states.

“Party state” means each state that has enacted this compact.

“State” means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and each territory or possession of the United States.

ARTICLE III. ENTRY INTO FORCE, ELIGIBLE PARTIES AND WITHDRAWAL.

§3. Entry into force.

This compact shall come into force when enacted by any four states. Thereafter, this compact shall become effective as to any other state upon: (i) That state’s enactment of this compact; and (ii) the affirmative vote of a majority of the officials on the compact committee as provided in section eight.

§4. States eligible to join compact.

Any state that has adopted or authorized horse racing with pari-mutuel wagering is eligible to become party to this compact.

§5. Withdrawal from compact and impact thereof on force and effect of compact.

Any party state may withdraw from this compact by enacting a statute repealing this compact, but the withdrawal does not become effective until the head of the executive branch of the withdrawing state has given notice in writing of the withdrawal to the head of the executive branch of all other party states. If as a result of withdrawals participation in this
compact decreases to less than three party states, this compact is no longer in force and effect unless and until there are at least three or more party states again participating in this compact.

ARTICLE IV. COMPACT COMMITTEE.

§6. Compact committee established.

There is hereby created an interstate governmental entity to be known as the "compact committee," which shall be comprised of one official from the racing commission or its equivalent in each party state who shall be appointed, serve and is subject to removal in accordance with the laws of the party state he or she represents. Pursuant to the laws of his or her party state, each official shall have the assistance of his or her state's racing commission or the equivalent of a racing commission in considering issues related to licensing of participants in live racing and in fulfilling his or her responsibilities as the representative from his or her state to the compact committee. If an official is unable to perform any duty in connection with the powers and duties of the compact committee, the racing commission or equivalent from his or her state shall designate another of its members as an alternate who shall serve in his or her place and represent the party state as its official on the compact committee until that racing commission or equivalent determines that the original representative official is able once again to perform his or her duties as that party state's representative official on the compact committee. The designation of an alternate shall be communicated by the affected state's racing commission or equivalent to the compact committee as the committee's bylaws may provide.

§7. Powers and duties of compact committee.

In order to carry out the purposes of this compact, the compact committee is hereby granted the power and duty to:
1. Determine which categories of participants in live racing, including, but not limited to, owners, trainers, jockeys, grooms, mutuel clerks, racing officials, veterinarians and farriers, should be licensed by the committee, and establish the requirements for the initial licensure of applicants in each such category, the term of the license for each category, and the requirements for renewal of licenses in each category: Provided, That with regard to requests for criminal history record information on each applicant for a license, and with regard to the effect of a criminal record on the issuance or renewal of a license, the compact committee shall determine for each category of participants in live racing which licensure requirements for that category are, in its judgment, the most restrictive licensure requirements of any party state for that category and shall adopt licensure requirements for that category that are, in its judgment, comparable to those most restrictive requirements.

2. Investigate applicants for a license from the compact committee and, as permitted by federal and state law, gather information on the applicants, including criminal history record information from the Federal Bureau of Investigation and relevant state and local law-enforcement agencies, and, where appropriate, from the Royal Canadian Mounted Police and law-enforcement agencies of other countries, necessary to determine whether a license should be issued under the licensure requirements established by the committee as provided in paragraph one above. Only officials on, and employees of, the compact committee may receive and review the criminal history record information, and those officials and employees may use that information only for the purposes of this compact. No such official or employee may disclose or disseminate the information to any person or entity other than another official on or employee of the compact committee. The fingerprints of each applicant for a license from the compact committee shall be taken by the compact committee, its employees or its designee and, pursuant to Public Law 92-544 or Public Law 100-413,
shall be forwarded to a state identification bureau, or to the
Association of Racing Commissioners, International, an
association of state officials regulating pari-mutuel wagering
designated by the Attorney General of the United States, for
submission to the Federal Bureau of Investigation for a criminal
history record check. The fingerprints may be submitted on a
fingerprint card or by electronic or other means authorized by
the Federal Bureau of Investigation or other receiving law-
enforcement agency.

3. Issue licenses to, and renew the licenses of, participants
in live racing listed in paragraph one of this section who are
found by the committee to have met the licensure and renewal
requirements established by the committee. The compact
committee does not have the power or authority to deny a
license. If it determines that an applicant will not be eligible for
the issuance or renewal of a compact committee license, the
compact committee shall notify the applicant that it will not be
able to process his or her application further. The notification
does not constitute and shall not be considered to be the denial
of a license. Any such applicant has the right to present
additional evidence to, and to be heard by, the compact commit-
te, but the final decision on issuance or renewal of the license
shall be made by the compact committee using the requirements
established pursuant to paragraph one of this section.

4. Enter into contracts or agreements with governmental
agencies and with nongovernmental persons to provide personal
services for its activities and other services as may be necessary
to effectuate the purposes of this compact.

5. Create, appoint and abolish those offices, employments
and positions, including an executive director, as it considers
necessary for the purposes of this compact, prescribe their
powers, duties and qualifications, hire persons to fill those
offices, employments and positions, and provide for the
removal, term, tenure, compensation, fringe benefits, retirement
benefits and other conditions of employment of its officers, employees and other positions.

6. Borrow, accept or contract for the services of personnel from any state, the United States, any other governmental agency or from any person, firm, association, corporation or other entity.

7. Acquire, hold and dispose of real and personal property by gift, purchase, lease, license or in other similar manner, in furtherance of the purposes of this compact.

8. Charge a fee to each applicant for an initial license or renewal of a license.

9. Receive other funds through gifts, grants and appropriations.

§8. Voting requirements.

A. Each official shall be entitled to one vote on the compact committee.

B. All action taken by the compact committee with regard to the addition of party states as provided in section three, the licensure of participants in live racing, and the receipt and disbursement of funds requires a majority vote of the total number of officials, or their alternates, on the committee. All other action by the compact committee requires a majority vote of those officials, or their alternates, present and voting.

C. No action of the compact committee may be taken unless a quorum is present. A majority of the officials, or their alternates, on the compact committee constitutes a quorum.

§9. Administration and management.

A. The compact committee shall elect annually from among its members a chairman, a vice-chairman and a secretary/treasurer.
B. The compact committee shall adopt bylaws for the conduct of its business by a two-thirds vote of the total number of officials, or their alternates, on the committee at that time and shall have the power by the same vote to amend and rescind these bylaws. The committee shall publish its bylaws in convenient form and shall file a copy of the bylaws and a copy of any amendments to the bylaws with the secretary of state or equivalent agency of each of the party states.

C. The compact committee may delegate the day-to-day management and administration of its duties and responsibilities to an executive director and his or her support staff.

D. Employees of the compact committee shall be considered governmental employees.

§10. Immunity from liability for performance of official responsibilities and duties.

No official of a party state or employee of the compact committee may be held personally liable for any good faith act or omission that occurs during the performance and within the scope of his or her responsibilities and duties under this compact.

ARTICLE V. RIGHTS AND RESPONSIBILITIES OF EACH PARTY STATE.

§11. Rights and responsibilities of each party state.

A. By enacting this compact, each party state:

1. Agrees: (i) To accept the decisions of the compact committee regarding the issuance of compact committee licenses to participants in live racing pursuant to the committee’s licensure requirements; and (ii) to reimburse or otherwise pay the expenses of its official representative on the compact committee or his or her alternate.

2. Agrees not to treat a notification to an applicant by the compact committee under paragraph three of section seven that the compact committee will not be able to process his or her
application further as the denial of a license, or to penalize such
an applicant in any other way based solely on such a decision
by the compact committee.

3. Reserves the right: (i) To charge a fee for the use of a
compact committee license in that state; (ii) to apply its own
standards in determining whether, on the facts of a particular
case, a compact committee license should be suspended or
revoked; (iii) to apply its own standards in determining
licensure eligibility, under the laws of that party state, for
categories of participants in live racing that the compact
committee determines not to license and for individual partici-
pants in live racing who do not meet the licensure requirements
of the compact committee; and (iv) to establish its own
licensure standards for the licensure of nonracing employees at
horse racetracks and employees at separate satellite wagering
facilities. Any party state that suspends or revokes a compact
committee license shall, through its racing commission or the
equivalent thereof or otherwise, promptly notify the compact
committee of that suspension or revocation.

B. No party state may be held liable for the debts or other
financial obligations incurred by the compact committee.

ARTICLE VI. CONSTRUCTION AND SEVERABILITY.

§12. Construction and severability.

This compact shall be liberally construed so as to effectuate
its purposes. The provisions of this compact shall be severable,
and, if any phrase, clause, sentence or provision of this compact
is declared to be contrary to the Constitution of the United
States or of any party state, or the applicability of this compact
to any government, agency, person or circumstance is held
invalid, the validity of the remainder of this compact and the
applicability thereof to any government, agency, person or
circumstance shall not be affected thereby. If all or some
portion of this compact is held to be contrary to the constitution
of any party state, the compact shall remain in full force and
effect as to the remaining party states and in full force and
effect as to the state affected as to all severable matters.

§19-24-2. Compact committee members.

The governor shall appoint one official to represent West
Virginia on the compact committee for a term of four years. No
official may serve more than three consecutive terms. A
vacancy shall be filled by the governor for the unexpired term.


All departments, agencies and officers of the state and its
political subdivisions are authorized to cooperate with the
compact committee in furtherance of any of its activities
pursuant to the compact.

§19-24-4. Racing commission powers preserved.

Nothing in this article diminishes or limits the powers and
responsibilities of the racing commission established in article
twenty-three of this chapter, or invalidates any action of the
racing commission previously taken, including, without
limitation, any rule promulgated by the commission.

CHAPTER 137

(H. B. 4689 — By Delegates Faircloth, Doyle and Manuel)

[Passed March 18, 2000; in effect from passage. Approved by the Governor.]
two-a, chapter twenty-nine of said code, all relating generally to horse and dog racing; disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; increasing prize money for restricted races; defining West Virginia bred-foal; limiting qualification for payments from West Virginia accredited race fund to West Virginia bred-foals; providing for distribution of racetrack video lottery money for purses at breeders’ classic to be expended as provided in racing statutes; and making technical changes that make the code more readable and delete obsolete language.

Be it enacted by the Legislature of West Virginia:

That sections thirteen and thirteen-b, article twenty-three, chapter nineteen 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 thirteen-c; and that section ten, article twenty-two-a, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

Chapter
19. Agriculture.
29. Miscellaneous Boards and Officers.

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.

§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements.

§19-23-13c. Expenditure of racetrack video lottery distribution.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.
(a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety days after the close of a horse or dog race meeting or the televised racing day, as the case may be, in connection with which the tickets were issued, shall be turned over by the licensee to the racing commission within fifteen days after the expiration of the ninety-day period, and the licensee shall give any information required by the racing commission concerning the outstanding and unredeemed tickets. The moneys shall be deposited by the racing commission in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission Special Account - Unredeemed Pari-Mutuel Tickets”. Notice of the amount, date and place of each deposit shall be given by the racing commission, in writing, to the state treasurer. The racing commission shall then cause to be published a notice to the holders of the outstanding and unredeemed pari-mutuel tickets, notifying them to present their unredeemed tickets for payment at the principal office of the racing commission within ninety days from the date of the publication of the notice. The notice shall be published within fifteen days following the receipt of the outstanding and unredeemed pari-mutuel ticket moneys by the commission from the licensee 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 in which the horse or dog race meeting was held and the county in which the televised racing day wagering was conducted in this state.

(b) Any outstanding and unredeemed pari-mutuel tickets that are not presented for payment within ninety days from the date of the publication of the notice are thereafter irredeemable, and the moneys theretofore held for the redemption of the pari-mutuel tickets shall become the property of the racing commission and shall be expended as provided in this subsection. The racing commission shall maintain separate accounts for each
licensee and shall record in each separate account the moneys
turned over by the licensee and the amount expended at the
licensee's track for the purposes set forth in this subsection.
The moneys in the West Virginia racing commission special
account - unredeemed pari-mutuel tickets shall be expended as
follows:

(1) To the owner of the winning horse in any horse race at
a horse race meeting held or conducted by any licensee: Provided, That the owner of the horse is at the time of the horse
race a bona fide resident of this state, a sum equal to ten percent
of the purse won by the horse at that race. The commission may
require proof that the owner was, at the time of the race, a bona
fide resident of this state. Upon proof by the owner that he or
she filed a personal income tax return in this state for the
previous two years and that he or she owned real or personal
property in this state and paid taxes in this state on real or
personal property for the previous two years, he or she shall be
presumed to be a bona fide resident of this state; and

(2) To the breeder (that is, the owner of the mare) of the
winning horse in any horse race at a horse race meeting held or
conducted by any licensee: Provided, That the mare foaled in
this state, a sum equal to ten percent of the purse won by the
horse; and

(3) To the owner of the stallion which sired the winning
horse in any horse race at a horse race meeting held or con-
ducted by any licensee: Provided, That the mare which foaled
the winning horse was served by a stallion standing and
registered in this state, a sum equal to ten percent of the purse
won by the horse; and

(4) To those horse racing licensees not participating in the
thoroughbred development fund authorized in section thirteen-b
of this article, the unexpended balance of the licensee's account
not expended as provided in subdivisions (1), (2) and (3) of this
Provided, That all moneys distributed under this subdivision shall be expended solely for capital improvements at the licensee’s track: Provided, however, That the capital improvements must be approved, in writing, by the West Virginia racing commission before funds are expended by the licensee for that capital improvement; and

(5) When the moneys in the special account, known as the West Virginia racing commission special account - unredeemed pari-mutuel tickets will more than satisfy the requirements of subdivisions (1), (2), (3) and (4) of this subsection, the West Virginia racing commission shall have the authority to expend the excess moneys from unredeemed horse racing pari-mutuel tickets as purse money in any race conditioned exclusively for West Virginia bred or sired horses, and to expend the excess moneys from unredeemed dog racing pari-mutuel tickets in supplementing purses and establishing stake races and dog racing handicaps at the dog tracks: Provided, That subject to the availability of funds, the commission shall, after the requirements of subdivisions (1), (2), (3) and (4) of this subsection have been satisfied:

(A) Transfer annually two hundred thousand dollars to the West Virginia racing commission special account - West Virginia greyhound breeding development fund; and

(B) Transfer annually two hundred thousand dollars into a separate account to be used for stakes races for West Virginia bred greyhounds at dog racetracks.

(c) The commission shall submit to the legislative auditor a quarterly report and accounting of the income, expenditures and unobligated balance in the special account created by this section known as the West Virginia racing commission special account - unredeemed pari-mutuel tickets.
(d) Nothing contained in this article shall prohibit one person from qualifying for all or more than one of the aforesaid awards or for awards under section thirteen-b of this article.

(e) The cost of publication of the notice provided for in this section shall be paid from the funds in the hands of the state treasurer collected from the pari-mutuel pools' tax provided for in section ten of this article, when not otherwise provided in the budget; but no such costs shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements.

(a) The racing commission shall deposit moneys required to be withheld by an association or licensee in subsection (b), section nine of this article in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission Special Account — West Virginia Thoroughbred Development Fund”. Notice of the amount, date and place of the deposit shall be given by the racing commission, in writing, to the state treasurer. The purpose of the fund is to promote better breeding and racing of thoroughbred horses in the state through awards and purses for accredited breeders/raisers, sire owners and thoroughbred race horse owners. A further objective of the fund is to aid in the rejuvenation and development of the present horse tracks now operating in West Virginia for capital improvements, operations or increased purses: Provided, That five percent of the deposits required to be withheld by an association or licensee in subsection (b), section nine of this article shall be placed in a special revenue account hereby created in the state treasury called the “administration and promotion account”.

(b) The racing commission is authorized to expend the moneys deposited in the administration and promotion account
at such times and in such amounts as the commission determines to be necessary for purposes of administering and promoting the thoroughbred development program: Provided, That during any fiscal year in which the commission anticipates spending any money from the account, the commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill the recommended expenditures, as well as requests of appropriations for the purpose of administration and promotion of the program. The commission shall make an annual report to the Legislature on the status of the administration and promotion account, including the previous year’s expenditures and projected expenditures for the next year.

(c) The fund and the account established in subsection (a) of this section shall operate on an annual basis.

(d) Funds in the thoroughbred development fund shall be expended for awards and purses except as otherwise provided in this section. Annually, the first one hundred thousand dollars of the fund shall be available for distribution for a maximum of four stakes races. One of these races shall be the West Virginia futurity and the second shall be the Frank Gall memorial stakes. The remaining races may be chosen by the committee set forth in subsection(g) of this section.

(e) Awards and purses shall be distributed as follows:

(1) The breeders/raisers of accredited thoroughbred horses that earn a purse at any West Virginia meet shall receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to the breeders/raisers, which shall be sixty percent of the fund available for distribution in any one year. The total amount available for the breeders’/raisers’ awards
shall be distributed according to the ratio of purses earned by an accredited race horse to the total amount earned in the races by all accredited race horses for that year as a percentage of the fund dedicated to the breeders/raisers. However, no breeder/raiser may receive from the fund dedicated to breeders’/raisers’ awards an amount in excess of the earnings of the accredited horse at West Virginia meets. In addition, should a horse’s breeder and raiser qualify for the same award on the same horse, they will each be awarded one half of the proceeds. The bonus referred to in this subdivision (1) shall only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess thereof.

(2) The owner of a West Virginia sire of an accredited thoroughbred horse that earns a purse in any race at a West Virginia meet shall receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to sire owners, which shall be fifteen percent of the fund available for distribution in any one year. The total amount available for the sire owners’ awards shall be distributed according to the ratio of purses earned by the progeny of accredited West Virginia stallions in the races for a particular stallion to the total purses earned by the progeny of all accredited West Virginia stallions in the races. However, no sire owner may receive from the fund dedicated to sire owners an amount in excess of thirty-five percent of the accredited earnings for each sire. The bonus referred to in this subdivision (2) shall only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess thereof.

(3) The owner of an accredited thoroughbred horse that earns a purse in any race at a West Virginia meet shall receive a restricted purse supplement award calculated at the end of the year, which shall be twenty-five percent of the fund available for distribution in any one year, based on the ratio of the earnings in the races of a particular race horse to the total
amount earned by all accredited race horses in the races during that year as a percentage of the fund dedicated to purse supplements. However, the owners may not receive from the fund dedicated to purse supplements an amount in excess of thirty-five percent of the total accredited earnings for each accredited race horse. The bonus referred to in this subdivision shall only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess thereof.

(4) In no event shall purses earned at a meet held at a track which did not make a contribution to the thoroughbred development fund out of the daily pool on the day the meet was held qualify or count toward eligibility for an award under this subsection (e).

(5) Any balance in the breeders/raisers, sire owners and purse supplement funds after yearly distributions shall first be utilized to fund the races established in subsection (g) of this section. Any amount not so used shall revert back into the general account of the thoroughbred development fund for distribution in the next year.

Distribution shall be made on the fifteenth day of each February for the preceding year's achievements.

(f) The remainder, if any, of the thoroughbred development fund that is not available for distribution in the program provided for in subsection (e) of this section in any one year is reserved for regular purses, marketing expenses and for capital improvements in the amounts and under the conditions provided in this subsection (f).

(1) Fifty percent of the remainder shall be reserved for payments into the regular purse fund established in subsection (b), section nine of this article.

(2) Up to five hundred thousand dollars per year shall be available for:
(A) Capital improvements at the eligible licensed horse racing tracks in the state; and

(B) Marketing and advertising programs above and beyond two hundred fifty thousand dollars for the eligible licensed horse racing tracks in the state: Provided, That moneys shall be expended for capital improvements or marketing and advertising purposes as described in this subsection only in accordance with a plan filed with and receiving the prior approval of the racing commission, and on a basis of fifty percent participation by the licensee and fifty percent participation by moneys from the fund, in the total cost of approved projects: Provided, however, That funds approved for one track may not be used at another track unless the first track ceases to operate or is viewed by the commission as unworthy of additional investment due to financial or ethical reasons.

(g)(1) Each pari-mutuel thoroughbred horse track shall provide at least one restricted race per three racing days.

(2) The restricted races established in this subsection shall be administered by a three-member committee consisting of:

(A) The racing secretary;

(B) A member appointed by the authorized representative of a majority of the owners and trainers at the thoroughbred track; and

(C) A member appointed by a majority of the thoroughbred breeders.

(3) The purses for the restricted races established in this subsection shall be twenty percent larger than the purses for similar type races at each track.

(4) Restricted races shall be funded by each racing association from:
(A) Moneys placed in the general purse fund up to a maximum of three hundred fifty thousand dollars per year.

(B) Moneys as provided in subdivision (5), subsection (e) of this section, which shall be placed in a special fund called the "West Virginia accredited race fund".

(5) The racing schedules, purse amounts and types of races are subject to the approval of the West Virginia racing commission.

(h) Effective on and after the first day of July, two thousand, as used in this section, "West Virginia bred-foal" means a horse that was born in the state of West Virginia.

(i) To qualify for the West Virginia accredited race fund, the breeder must qualify under one of the following:

(1) The breeder of the West Virginia bred-foal is a West Virginia resident;

(2) The breeder of the West Virginia bred-foal is not a West Virginia resident, but keeps his or her breeding stock in West Virginia year-round; or

(3) The breeder of the West Virginia bred-foal is not a West Virginia resident and does not qualify under (2) above, but either the sire of the West Virginia bred-foal is a West Virginia stallion, or the mare is covered by a West Virginia stallion following the birth of that West Virginia bred-foal.

(j) No association or licensee qualifying for the alternate tax provision of subsection (b), section ten of this article is eligible for participation in any of the provisions of this section. Provided, That the provisions of this subsection shall not apply to a thoroughbred race track at which the licensee has participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to
§19-23-13c. Expenditure of racetrack video lottery distribution.

(a) Funds received by the racing commission pursuant to subdivision (6), subsection (c), section ten, article twenty-two-a, chapter twenty-nine of this code, after the effective date of this section together with the balance in the bank account previously established by the commission to receive those funds shall be deposited in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission Racetrack Video Lottery Account”. Notice of the amount, date and place of each deposit shall be given by the racing commission, in writing, to the state treasurer.

(b) Funds in this account shall be allocated and expended as follows:

(1) For each fiscal year, the first eight hundred thousand dollars deposited in the separate account plus the amount then remaining of the June thirtieth, one thousand nine hundred ninety-seven, balance in the separate account previously established for the West Virginia breeders classic under section thirteen of this article, shall be used by the commission for promotional activities, advertising, administrative costs and purses for the West Virginia thoroughbred breeders classic, which shall give equal consideration to all horses qualifying under the West Virginia breeders program for each stake race, based solely on the horses’ sex, age and earnings.

(2) For each fiscal year, the next two hundred thousand dollars deposited into the separate account shall be used by the commission for promotional activities and purses for open stake races for a race event to be known as the West Virginia derby to be held at a thoroughbred racetrack which does not participate in the West Virginia thoroughbred development fund.
(3) For each fiscal year, once the amounts provided in subdivisions (1) and (2) of this subsection (b) have been deposited into separate bank accounts for use in connection with the West Virginia thoroughbred breeders classics and the West Virginia derby, the commission shall return to each racetrack all additional amounts deposited which originate during that fiscal year from each respective racetrack pursuant to subdivision (6), subsection (c), section ten, article twenty-two-a, chapter twenty-nine of this code, which returned excess funds shall be used as follows:

(A) For each dog racetrack, one half of the returned excess funds shall be used for capital improvements at the racetrack and one half of the returned excess funds shall be deposited into the West Virginia racing commission special account - West Virginia greyhound breeding development fund.

(B) At those thoroughbred racetracks that have participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two, one half of the returned excess funds shall be used for capital improvements at the licensee's racetrack and one half of the returned excess funds shall be equally divided between the West Virginia thoroughbred breeders classic and the West Virginia thoroughbred development fund.

(C) At those thoroughbred horse racetracks which do not participate in the West Virginia thoroughbred development fund, one half of the returned excess funds shall be used for capital improvements at the licensee’s racetrack and one half of the returned excess funds shall be used for purses for the open stakes race event known as the West Virginia derby.

(c) All expenditures that are funded under this section must be approved in writing by the West Virginia racing commission.
before the funds are expended for any of the purposes authorized by this section.

(d) The commission shall submit to the legislative auditor a quarterly report and accounting of the income, expenditures and unobligated balance in the special bank accounts authorized by this section.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

*§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

(a) The commission shall provide to manufacturers, or applicants applying for a manufacturer’s permit, the protocol documentation data necessary to enable the respective manufacturer’s video lottery terminals to communicate with the commission’s central computer for transmitting auditing program information and for activation and disabling of video lottery terminals.

(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission thirty days’ advance notice

*Clerk’s Note: This section was also amended by S. B. 657 (Chapter 91), which passed prior to this act.
of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission, the commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack, and the resulting amount after such deduction shall be the net terminal income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income.

(c) Net terminal income shall be divided as set out in this subsection. The licensed racetrack’s share shall be in lieu of all lottery agent commissions and is considered to cover all costs and expenses required to be expended by the licensed racetrack in connection with video lottery operations. The division shall be made as follows:

(1) The commission shall receive thirty percent of net terminal income, which shall be paid into the general revenue fund of the state to be appropriated by the Legislature;

(2) Fourteen percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee, and used for payment of regular purses in addition to other amounts provided for in article twenty-three, chapter nineteen of this code;

(3) The county where the video lottery terminals are located shall receive two percent of the net terminal income: Provided, That:

(A) Beginning the first day of July, one thousand nine hundred ninety-nine, and thereafter, any amount in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack is located that has participated in the West Virginia thoroughbred development fund since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided as follows:
(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipalities of the county shall receive fifty percent of the excess amount, said fifty percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population; and

(B) Beginning the first day of July, one thousand nine hundred ninety-nine, and thereafter, any amount in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has been located in a municipality within the county since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided, if applicable, as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipality shall receive fifty percent of the excess amount; and

(C) This proviso shall not affect the amount to be received under this subdivision by any county other than a county described in paragraph (A) or (B) of this proviso;

(4) One half of one percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the racing commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia thoroughbred development fund created under section thirteen-b, article twenty-three, chapter
nineteen of this code and the West Virginia greyhound breeding
development fund created under section ten, article twenty-
three, chapter nineteen of this code shall receive an equal share
of a total of not less than one and one-half percent of the net
terminal income: Provided, That for any racetrack which does
not have a breeder’s program supported by the thoroughbred
development fund or the greyhound breeding development
fund, the one and one-half percent provided for in this subdivi-
sion shall be deposited in the special fund established by the
licensee and used for payment of regular purses, in addition to
other amounts provided for in subdivision (2) of this subsection
and article twenty-three, chapter nineteen of this code;

(6) The West Virginia racing commission shall receive one
percent of the net terminal income which shall be deposited and
used as provided in section thirteen-c, article twenty-three,
chapter nineteen of this code;

(7) A licensee shall receive forty-seven percent of net
terminal income;

(8) The tourism promotion fund established in section
twelve, article two, chapter five-b of this code shall receive
three percent of the net terminal income; and

(9) The veterans memorial program shall receive one
percent of the net terminal income until sufficient moneys have
been received to complete the veterans memorial on the
grounds of the state capitol complex in Charleston, West
Virginia. The moneys shall be deposited in the state treasury in
the division of culture and history special fund created under
section three, article one-i, chapter twenty-nine of this code:
Provided, That only after sufficient moneys have been depos-
ited in the fund to complete the veterans memorial and to pay
in full the annual bonded indebtedness on the veterans memo-
rial, not more than twenty thousand dollars of the one percent
of net terminal income provided for in this subdivision shall be deposited into a special revenue fund in the state treasury, to be known as the "John F. 'Jack' Bennett Fund". The moneys in this fund shall be expended by the division of veterans affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The division of veterans affairs shall promulgate legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code specifying the manner in which the funds are spent, determine the ability of the surviving spouse to pay for the placement of the marker, and setting forth the standards to be used to determine the priority in which the veterans grave markers will be placed in the event that there are not sufficient funds to complete the placement of veterans grave markers in any one year, or at all. Upon payment in full of the bonded indebtedness on the veterans memorial, one hundred thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited in the special fund in the division of culture and history created under section three, article one-i, chapter twenty-nine of this code and be expended by the division of culture and history to establish a West Virginia veterans memorial archives within the cultural center to serve as a repository for the documents and records pertaining to the veterans memorial, to restore and maintain the monuments and memorial on the capitol grounds, and not more than twenty thousand dollars be deposited in the "John F. 'Jack' Bennett Fund": Provided, however, That five hundred thousand dollars of the one percent of net terminal income shall be deposited in the state treasury in a special fund of the department of administration, created under section five, article four, chapter five-a of this code to be used for construction and maintenance of a parking garage on the state capitol complex: Provided further, That the remainder of the one percent of net terminal income shall be deposited in equal amounts in the capitol dome and improvements fund created under section two,
article four, chapter five-a of this code and cultural facilities
and capitol resources matching grant program fund created
under section three, article one of this chapter.

(d) Each licensed racetrack shall maintain in its account an
amount equal to or greater than the gross terminal income from
its operation of video lottery machines, to be electronically
transferred by the commission on dates established by the
commission. Upon a licensed racetrack’s failure to maintain
this balance, the commission may disable all of a licensed
racetrack’s video lottery terminals until full payment of all
amounts due is made. Interest shall accrue on any unpaid
balance at a rate consistent with the amount charged for state
income tax delinquency under chapter eleven of this code,
which interest shall begin to accrue on the date payment is due
to the commission.

(e) The commission’s central control computer shall keep
accurate records of all income generated by each video lottery
terminal. The commission shall prepare and mail to the licensed
racetrack a statement reflecting the gross terminal income
generated by the licensee’s video lottery terminals. Each
licensed racetrack must report to the commission any discrep-
ancies between the commission’s statement and each terminal’s
mechanical and electronic meter readings. The licensed
racetrack is solely responsible for resolving income discrep-
ancies between actual money collected and the amount shown on
the accounting meters or on the commission’s billing statement.

(f) Until an accounting discrepancy is resolved in favor of
the licensed racetrack, the commission may make no credit
adjustments. For any video lottery terminal reflecting a discrep-
ancy, the licensed racetrack shall submit to the commission the
maintenance log which includes current mechanical meter
readings and the audit ticket which contains electronic meter
readings generated by the terminal’s software. If the meter readings and the commission’s records cannot be reconciled, final disposition of the matter shall be determined by the commission. Any accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the commission.

(g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies licensed racetracks that remittance by this method is required. The licensed racetracks shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets, and remit such amount as generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the day when the payment would otherwise be completed through electronic funds transfer.

(h) Licensed racetracks may, upon request, receive additional reports of play transactions for their respective video lottery terminals and other marketing information not considered confidential by the commission. The commission may charge a reasonable fee for the cost of producing and mailing any report other than the billing statements.

(i) The commission has the right to examine all accounts, bank accounts, financial statements and records in a licensed racetrack’s possession, under its control or in which it has an interest and the licensed racetrack must authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.
CHAPTER 138

(Com. Sub. for H. B. 4579 — By Delegates Compton and Leach)

[Passed March 18, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen, relating to behavioral health services; providing for summary review procedure for certain services; requiring the secretary of the department of health and human resources to direct the revision of the state mental health plan, appoint an advisory committee, and requiring reporting of the revisions; authorizing the secretary to initiate a summary review process for certain behavioral health services; requiring notice; requiring certain findings; providing the right of appeal; and providing for an expiration date for the provisions of this section.

Be it enacted by the Legislature of West Virginia:

That article five, chapter 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 nineteen, to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-19. Summary review for certain behavioral health facilities and services.

1 (a) A certificate of need as provided for in article two-d, chapter sixteen of this code is not required by an entity proposing additional behavioral health care services, but only to the extent necessary to gain federal approval of the medicaid MR/DD waiver program, if a summary review is performed in accordance with the provisions of this section.
(b) Prior to initiating any summary review, the secretary shall direct the revision of the state mental health plan as required by the provisions of 42 U.S.C. 300x and section 4, article one-a, chapter twenty-seven of this code. In developing those revisions, the secretary is to appoint an advisory committee composed of representatives of the associations representing providers, child care providers, physicians and advocates. The secretary shall appoint the appropriate department employees representing regulatory agencies, reimbursement agencies and oversight agencies of the behavioral health system. The members shall submit the revisions to the secretary for final approval and the report is to be submitted to the Legislature and governor on the first day of January, two thousand one.

(c) If the secretary of the department of health and human resources determines that specific services are needed but unavailable, he or she shall provide notice of the department’s intent to develop those services. Notice may be provided through publication in the state register, publication in newspapers, or a modified request for proposal as developed by the secretary.

(d) The secretary may initiate a summary review of additional behavioral health care services, but only to the extent necessary to gain federal approval of the Medicaid MR/DD waiver program, by recommending exemption from the provisions of article two-d, chapter sixteen of this code to the health care authority. The recommendation is to include the following findings:

1. That the proposed service is consistent with the state health plan and the state mental health plan;

2. That the proposed service is consistent with the department’s programmatic and fiscal plan for behavioral health services;

3. That the proposed service contributes to providing services that prevent admission to restrictive environments or
enables an individual to remain in a nonrestrictive environment;

(4) That the proposed service contributes to reducing the number of individuals admitted to inpatient or residential treatment programs or services;

(5) If applicable, that the proposed service will be community-based, locally accessible, provided in an appropriate setting consistent with the unique needs and potential of each client and his or her family, and located in an area that is unserved or underserved or does not allow consumers a choice of providers; and

(6) That the secretary is determining that sufficient funds are available for the proposed service without decreasing access to or provision of existing services. The secretary may from time to time transfer funds pursuant to the general provisions of the budget bill.

(e) The secretary's findings required by this section shall be filed with the secretary's recommendation and appropriate documentation. If the secretary's findings are supported by the accompanying documentation, the proposal shall not require a certificate of need.

(f) Any entity that does not qualify for summary review shall be subject to a certificate of need review.

(g) Any provider of the proposed services denied authorization to provide those services pursuant to the summary review, has the right to appeal that decision to the state agency in accordance with the provisions of section ten, article two-d, chapter sixteen of this code.

(h) The provisions of this section shall expire on the thirtieth day of June, two thousand three.
AN ACT to amend and reenact sections one, two, three, eight, nine, ten, eleven and twelve, article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reporting for complaints of abuse or neglect of incapacitated adults or residents in nursing homes and other adult residential care facilities; defining terms; providing for application of article to certain types of facilities; authorizing secretary of the department of health and human resources to propose certain rules; adding certain goals relating to preventing abuse and neglect and developing a coordinated and cooperative system for investigating complaints; providing for confidentiality of certain records; increasing the types of persons who are required to report incident of suspected abuse or neglect; providing for development and distribution of a complaint reporting form; providing for disclosure of complaint reports to certain persons or agencies; specifying additional reporting procedures; prohibiting discrimination against persons making reports of incidents of abuse or neglect and providing for violations of same; and making technical changes and corrections.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, eight, nine, ten, eleven and twelve, article six, chapter 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 6. SOCIAL SERVICES FOR ADULTS.
§9-6-1. Definitions.

The following words and terms, when used in this article, shall have the same meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

1. "Adult protective services agency" means any public or nonprofit private agency, corporation, board or organization furnishing protective services to adults;

2. "Abuse" means the infliction or threat to inflict physical pain or injury on or the imprisonment of any incapacitated adult or facility resident;

3. "Neglect" means: (A) The failure to provide the necessities of life to an incapacitated adult or facility resident with intent to coerce or physically harm the incapacitated adult or resident; and (B) the unlawful expenditure or willful dissipation of the funds or other assets owned or paid to or for the benefit of an incapacitated adult or resident;

4. "Incapacitated adult" means any person who by reason of physical, mental or other infirmity is unable to independently carry on the daily activities of life necessary to sustaining life and reasonable health;

5. "Emergency" or "emergency situation" means a situation or set of circumstances which presents a substantial
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22 and immediate risk of death or serious injury to an incapacitated adult;

24 (6) “Legal representative” means a person lawfully invested with the power and charged with the duty of taking care of another person or with managing the property and rights of another person, including, but not limited to, a guardian, conservator, medical power of attorney representative, trustee or other duly appointed person;

(7) “Nursing home” or “facility” means any institution, residence, intermediate care facility for the mentally retarded, care home or any other adult residential facility, or any part or unit thereof, that is subject to the provisions of articles five-c, five-d, five-e or five-h, chapter sixteen of this code;

(8) “Regional long-term care ombudsman” means any paid staff of a designated regional long-term care ombudsman program who has obtained appropriate certification from the bureau for senior services and meets the qualifications set forth in section seven, article five-I, chapter sixteen of this code;

(9) “Facility resident” means an individual living in a nursing home or other facility, as that term is defined in subdivision (7) of this section;

(10) “Responsible family member” means a member of a resident’s family who has undertaken primary responsibility for the care of the resident and who has established a working relationship with the nursing home or other facility in which the resident resides. For purposes of this article, a responsible family member may include someone other than the resident’s legal representative;

(11) “State long-term care ombudsman” means an individual who meets the qualifications of section five, article five-I, chapter sixteen of this code and who is employed by the state bureau for senior services to implement the state long-term care ombudsman program;
§9-6-2. Adult protective services; rules; organization and duties.

(a) There is hereby established and continued within the department of health and human resources the system of adult protective services heretofore existing.

(b) The secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the organization and duties of the adult protective services system and the procedures to be used by the department to effectuate the purposes of this article. The rules may be amended and supplemented from time to time.

(c) The secretary shall design and arrange such rules to attain, or move toward the attainment of the following goals, to the extent that the secretary believes feasible under the provisions of this article within the state appropriations and other funds available:

(1) Assisting adults who are abused, neglected or incapacitated in achieving or maintaining self-sufficiency and self-support, and preventing, reducing and eliminating their dependency on the state;

(2) Preventing, reducing and eliminating neglect and abuse of adults who are unable to protect their own interests;

(3) Preventing and reducing institutional care of adults by providing less intensive forms of care, preferably in the home;

(4) Referring and admitting abused, neglected or incapacitated adults to institutional care only where other available services are inappropriate;
(5) Providing services and monitoring to adults in institutions designed to assist adults in returning to community settings;

(6) Preventing, reducing and eliminating the exploitation of incapacitated adults and facility residents through the joint efforts of the various agencies of the department of health and human resources, the adult protective services system, the state and regional long-term care ombudsmen, administrators of nursing homes or other residential facilities and county prosecutors;

(7) Preventing, reducing and eliminating abuse and neglect of residents in nursing homes or facilities; and

(8) Coordinating investigation activities for complaints of abuse and neglect of incapacitated adults and facility residents among the various agencies of the department of health and human resources, the adult protective services system, the state and regional long-term care ombudsmen, administrators of nursing homes or other residential facilities, county prosecutors, if necessary, and other state or federal agencies or officials, as appropriate.

(d) The rules proposed by the secretary shall provide for the means by which the department shall cooperate with federal, state and other agencies to fulfill the objectives of the system of adult protective services.

§9-6-3. Cooperation among agencies; termination and reduction of assistance by commissioner.

The secretary shall direct the coordination of the investigation of complaints of abuse or neglect made pursuant to this article; and the various agencies of the department, the adult protective services system, the state and regional long-term care ombudsmen, administrators of nursing homes or other residential facilities, county prosecutors and any other applicable state or federal agency shall cooperate among each other for the
purposes of observing, reporting, investigating and acting upon complaints of abuse or neglect of any incapacitated adult or facility resident in this state.

§9-6-8. Confidentiality of records.

(a) Except as otherwise provided in this section, all records of the department, state and regional long-term care ombudsmen, nursing home or facility administrators, the office of health facility licensure and certification and all protective services agencies concerning an adult or facility resident under this article shall be confidential and shall not be released, except in accordance with the provisions of section eleven of this article.

(b) Unless the adult concerned is receiving adult protective services or unless there are pending proceedings with regard to the adult, the records maintained by the adult protective services agency shall be destroyed two years following their preparation. A circuit court or the supreme court of appeals may subpoena such records, but shall, before permitting their use in connection with any court proceeding, review the same for relevancy and materiality to the issues in the proceeding, and may issue such order to limit the examination and use of such records or any part thereof, having due regard for the purposes of this article and the requirements of the litigation as shall be just.

§9-6-9. Mandatory reporting of incidences of abuse, neglect or emergency situation.

(a) If any medical, dental or mental health professional, christian science practitioner, religious healer, social service worker, law-enforcement officer, state or regional ombudsman or any employee of any nursing home or other residential facility has reasonable cause to believe that an incapacitated adult or facility resident is or has been neglected, abused or
placed in an emergency situation, or if such person observes an incapacitated adult or facility resident being subjected to conditions that are likely to result in abuse, neglect or an emergency situation, the person shall immediately report the circumstances pursuant to the provisions of section eleven of this article: Provided, That nothing in this article is intended to prevent individuals from reporting on their own behalf.

(b) In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of an incapacitated adult or facility resident or the existence of an emergency situation, any other person may make such a report.

(c) The secretary shall develop a form for the filing of written complaints, as provided by section eleven of this article, and provide these forms to all nursing homes or other residential facilities, hospitals, ombudsmen, and adult protective service agencies in this state. The forms shall be designed to protect the identity of the complainant, if desired, and to facilitate the prompt filing of complaints.

§9-6-10. Mandatory reporting to medical examiner or coroner; postmortem investigation.

(a) Any person or official who is required under section nine of this article to report cases of suspected abuse or neglect and who has probable cause to believe that an incapacitated adult or facility resident has died as a result of abuse or neglect shall report that fact to the appropriate medical examiner or coroner.

(b) Upon the receipt of such a report, the medical examiner or coroner shall cause an investigation to be made and shall report the findings to the local law-enforcement agency, the local prosecuting attorney, the department’s local adult protective services agency, and, if the institution making a report is a
§9-6-11. Reporting procedures.

(a) A report of neglect or abuse of an incapacitated adult or facility resident or of an emergency situation involving such an adult shall be made immediately by telephone to the department's local adult protective services agency and shall be followed by a written report by the complainant or the receiving agency within forty-eight hours. The department shall, upon receiving any such report, take such action as may be appropriate and shall maintain a record thereof. The department shall receive such telephonic reports on its twenty-four hour, seven-day-a-week, toll-free number established to receive calls reporting cases of suspected or known adult abuse or neglect.

(b) A copy of any report of abuse, neglect or emergency situation shall be immediately filed with the following agencies:

(1) The department of health and human resources;

(2) The appropriate law-enforcement agency and the prosecuting attorney, if necessary; or

(3) In case of a death, to the appropriate medical examiner or coroner's office.

(c) If the person who is alleged to be abused or neglected is a resident of a nursing home or other residential facility, a copy of the report shall also be filed with the state or regional ombudsman and the administrator of the nursing home or facility.
(d) The department shall omit from such report in the first instance, the name of the person making a report, when requested by such person.

(e) Reports of known or suspected institutional abuse or neglect of an incapacitated adult or facility resident or the existence of an emergency situation in an institution, nursing home or other residential facility shall be made, received and investigated in the same manner as other reports provided for in this article. In the case of a report regarding an institution, nursing home or residential facility, the department shall immediately cause an investigation to be conducted.

(f) Upon receipt of a written complaint, the department shall coordinate an investigation pursuant to section three of this article and applicable state or federal laws, rules or regulations.

§9-6-12. Reporting person's immunity from liability.

(a) Any person who in good faith makes or causes to be made any report permitted or required by this article shall be immune from any civil or criminal liability which might otherwise arise solely out of making such report.

(b) No nursing home may discharge or in any manner discriminate against any resident, family member, legal representative or employee for the reason that he or she filed a complaint or participated in any matter or proceeding stemming from the provisions of this article.

(c) Violation of the prohibition contained in subsection (b) of this section by a nursing home or other residential facility constitutes grounds for the suspension or revocation of the license of the facility, if it operates under license pursuant to this code, or other appropriate measure.
AN ACT to amend and reenact sections two, three, four, five, six, seven, eight, nine, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen and twenty, article nine, chapter nine 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-one, all relating to the West Virginia works act; amending legislative findings; amending and adding definitions; deleting obsolete provisions; specifically authorizing payment for support services; increasing certain cash assistance to specified at-risk families; providing that certain activities satisfy the article’s work requirement; conforming specific requirements to federal law; requiring implementation of a plan to use educational resources of the state for the benefit of program participants; mandating that support services be provided to assist participants in meeting work requirements; clarifying existing provisions; increasing the allowable amount of diversionary assistance; authorizing public-private partnerships to provide family health insurance to former participants; providing for confidentiality of certain records; and establishing a rainy day fund for the program.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, eight, nine, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen and twenty, article nine, chapter nine 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-one, all to read as follows:

ARTICLE 9. WEST VIRGINIA WORKS PROGRAM.

§9-9-2. Legislative findings; purpose.
§9-9-5. West Virginia works program fund.
§9-9-6. Program participation.
§9-9-7. Work requirements.
§9-9-12. Diversionary assistance allowance in lieu of monthly cash assistance.
§9-9-17. Public-private partnerships.
§9-9-21. Temporary assistance for needy families rainy day fund.

§9-9-2. Legislative findings; purpose.

1 (a) The Legislature hereby finds and declares that:

2 (1) The entitlement of any person to receive federal-state cash assistance is hereby discontinued;

3 (2) At-risk families are capable of becoming self-supporting;

4 (3) A reformed assistance program should both expect and assist a parent and caretaker-relatives in at-risk families to support their dependent children and children for which they are caretakers;

5 (4) Every parent or caretaker-relative can exhibit responsible patterns of behavior so as to be a positive role model;
(5) Every parent or caretaker-relative who receives cash assistance has a responsibility to participate in an activity to help them prepare for, obtain and maintain gainful employment;

(6) For a parent or caretaker-relative who receives cash assistance and for whom full-time work is not feasible, participation in some activity is expected to further himself or herself, his or her family or his or her community;

(7) The state should promote the value of work and the capabilities of individuals;

(8) Job development efforts should enhance the employment opportunities of participants;

(9) Education is the key to achieving and maintaining lifelong self-sufficiency; and

(10) A reformed assistance program should be structured to achieve a clear set of outcomes; deliver services in an expeditious, effective and efficient manner; and maximize community support for participants. After five years, there is expected to be a decrease in the following: (i) The number of persons receiving public assistance; and (ii) the amount of time an individual remains on public assistance.

(b) The goals of the program are to achieve more efficient and effective use of public assistance funds; reduce dependency on public programs by promoting self-sufficiency; and structure the assistance programs to emphasize employment and personal responsibility. The program is to be evaluated on the increase in employment rates in the program areas: the completion of educational and training programs; the increased compliance in preventive health activities, including immunizations; and a decrease in the case-load of the department.

In addition to the rules for the construction of statutes in section ten, article two, chapter two of this code and the words and terms defined in section two, article one of this chapter, unless a different meaning appears from the context:

(a) "At-risk family" means a group of persons living in the same household, living below the federally designated poverty level, lacking the resources to become self-supporting and consisting of a dependent minor child or children living with a parent, stepparent or caretaker-relative; an "at-risk family" may include an unmarried minor parent and his or her dependent child or children who live in an adult-supervised setting;

(b) "Beneficiary" or "participant" means any parent or caretaker-relative in an at-risk family who receives cash assistance for himself or herself and family members;

(c) "Cash assistance" means temporary assistance for needy families;

(d) "Challenge" means any fact, circumstance or situation that prevents a person from becoming self-sufficient or from seeking, obtaining or maintaining employment of any kind, including physical or mental disabilities, lack of education, testing, training, counseling, child care arrangements, transportation, medical treatment or substance abuse treatment;

(e) "Community or personal development" means activities designed or intended to eliminate challenges to participation in self-sufficiency activities. These activities are to provide community benefit and enhance personal responsibility, including, but not limited to, classes or counseling for learning life skills or parenting, dependent care, job readiness, volunteer work, participation in sheltered workshops or substance abuse treatment;
31 (f) “Department” means the state department of health and human resources;

33 (g) “Education and training” means any hours spent regularly attending and preparing for classes in any approved course of schooling or training, including job training, high school equivalency, literacy, English as a second language or vocational or post-secondary program, including two-year and four-year programs;

39 (h) “Income” means money received by any member of an at-risk family which can be used at the discretion of the household to meet its basic needs: Provided, That income does not include:

43 (1) Supplemental security income paid to any member or members of the at-risk family;

45 (2) Earnings of minor children;

46 (3) Payments received from earned income tax credit or tax refunds;

48 (4) Earnings deposited in an individual development account approved by the department; or

50 (5) Any moneys specifically excluded from countable income by federal law;

52 (i) “Personal responsibility contract” means a written agreement entered into by the department and a beneficiary which establishes the responsibilities and obligations of the beneficiary;

56 (j) “Secretary” means the secretary of the state department of health and human resources;

58 (k) “Subsidized employment” means employment with earnings provided by an employer who receives a subsidy from
the department for the creation and maintenance of the employment position;

(1) "Support services" includes, but is not limited to, the following services: Child care; medicaid; transportation assistance; information and referral; resource development services which includes assisting families to receive child support enforcement and supplemental security income; family support services which includes parenting, budgeting and family planning; relocation assistance; and mentoring services;

(m) "Unsubsidized employment" means employment with earnings provided by an employer who does not receive a subsidy from the department for the creation and maintenance of the employment position;

(n) "Work" means unsubsidized employment, subsidized employment, work experience, community or personal development, and education and training; and

(o) "Work experience" means unpaid structured work activities that are provided in an environment where performance expectations are similar to those existing in unsubsidized employment and which provide training in occupational areas that can realistically be expected to lead to unsubsidized employment.


(a) The secretary shall conduct the West Virginia works program in accordance with this article and any applicable regulations promulgated by the secretary of the federal department of health and human services in accordance with federal block-grant funding or similar federal funding stream. This program shall be implemented to replace welfare assistance programs for at-risk families in accordance with this article and within federal requirements; to coordinate the transfer of all
applicable state programs into the temporary assistance to
needy families West Virginia works program: to expend only
the funds appropriated by the Legislature to establish and
operate the program or any other funds available to the program
pursuant to any other provisions of the code or rules; to
establish administrative due process procedures for revocation
or termination proceedings; and to implement any other
procedures necessary to accomplish the purpose of this article.

(b) The West Virginia works program authorized pursuant
to this act does not create an entitlement to that program or any
services offered within that program, unless entitlement is
created pursuant to a federal law or regulation. The West
Virginia works program, and each component of that program
established by this act or the expansion of any component
established pursuant to federal law or regulation, is subject to
the annual appropriation of funds by the Legislature.

(c) Copies of all rules proposed by the secretary shall also
be filed with the legislative oversight commission on health and
human resources accountability established pursuant to article
twenty-nine-e, chapter sixteen of this code.

§9-9-5. West Virginia works program fund.

There is hereby continued a special account within the state
treasury to be known as the "West Virginia Works Program
Fund". Expenditures from the fund shall be used exclusively to
meet the necessary expenditures of the program, including
wage reimbursements to participating employers, temporary
assistance to needy families, payments for support services,
employment-related child care payments, transportation
expenses and administrative costs directly associated with the
operation of the program. Moneys paid into the account shall be
from specific annual appropriations of funds by the Legislature.

§9-9-6. Program participation.
(a) Unless otherwise noted in this article, all adult recipients of cash assistance shall participate in the West Virginia works program in accordance with the provisions of this article. The level of participation, services to be delivered and work requirements shall be defined within the terms of the personal responsibility contract and through rules established by the secretary.

(b) To the extent funding permits, any individual exempt under the provisions of section eight of this article may participate in the activities and programs offered through the West Virginia works program.

(c) Support services other than cash assistance through the works program may be provided to at-risk families to eliminate the need for cash assistance.

(d) Cash assistance through the works program may be provided to an at-risk family if the combined family income, as defined in subsection (h), section three of this article, is below the income and asset test levels established by the department: Provided, That any adult member of an at-risk family who receives supplemental security income shall be excluded from the benefit group: Provided, however, That an at-risk family that includes a married man and woman and dependent children of either one or both may receive an additional cash assistance benefit in the amount of one hundred dollars: Provided further, That an at-risk family shall receive an additional cash assistance benefit in the amount of fifty dollars regardless of the amount of child support collected in a month on behalf of a child or children of the at-risk family, as allowed by federal law.

§9-9-7. Work requirements.

(a) Unless otherwise exempted by the provisions of section eight of this article, the West Virginia works program shall require that anyone who possesses a high school diploma, or its
equivalent, or anyone who is of the age of twenty years or more, to work or attend an educational or training program for at least the minimum number of hours per week required by federal law under the work participation rate requirements for all families in order to receive any form of cash assistance. Participation in any education or training activity, as defined in section three of this article, shall be counted toward satisfaction of the work requirement imposed by this section to the extent permissible under federal law and regulation: Provided, That the participant demonstrates adequate progress toward completion of the program: Provided, however, That participants who are enrolled in post-secondary courses leading to a two- or four-year degree may be required to engage in no more than ten hours per week of federally defined work activities, unless the department certifies that allowing education to count toward required work activities would affect the state’s ability to meet federal work participation rates. In accordance with federal law or regulation, the work, education and training requirements of this section are waived for any qualifying participant with a child under six years of age if the participant is unable to obtain appropriate and available child care services. In order for any participant to receive cash assistance, he or she shall enter into a personal responsibility contract pursuant to the provisions of section nine of this article.

(b) The department and representatives of all college and university systems of West Virginia shall develop and implement a plan to utilize and expand the programs available at the state’s community and technical colleges, colleges and universities to assist beneficiaries or participants who are enrolled or wish to become enrolled in two- and four-year degree programs of post-secondary education to meet the work requirements of this section.

(c) The secretary shall ensure that all necessary support services are made available to participants in order to assist
them in meeting the work requirement imposed by this section, including participation in education and training programs.


Participants exempt from the work requirements of the works program pursuant to the provisions of this section nevertheless are required to enter into a personal responsibility contract. The secretary shall establish by rule categories of persons exempt, but only from the work requirements of the program. The categories shall include, but are not limited to, the following:

(a) A parent caring for a dependent child with a life-threatening illness;

(b) Individuals over the age of sixty years;

(c) Full-time students who are less than twenty years of age and are pursuing a high school diploma or its equivalent;

(d) Persons with a physical or mental incapacity or persons suffering from a temporary debilitating injury lasting more than thirty days, as defined by the secretary;

(e) Relatives providing in-home care for an individual who would otherwise be institutionalized; and

(f) Any female beneficiary who is eighteen years of age or older, for a period of twelve months upon the birth of her first child while receiving cash assistance and for a period of six months upon the birth of any additional child: Provided, That any period of exemption from the work requirement may include the last trimester of her pregnancy.


(a) Every eligible adult beneficiary shall participate in a program orientation and the development, and subsequent
revisions, of a personal responsibility contract. The contract shall be defined based on the assessed goals and challenges of the participant:

(1) If the participant has a recent attachment to the work force, the contract shall include provisions regarding required job search activities, identified support services, level of benefits requested and time limitation.

(2) If the participant does not have a recent attachment to the work force, the contract shall identify the evaluation or testing activities, or job training activities necessary prior to job search activities, identified support services, benefits requested and time limitation.

(3) If it is determined that the participant is not able to obtain or maintain gainful employment, the contract shall contain appropriate provisions defining the activities that benefit the participant, his or her family or his or her community.

(4) The participant’s contract shall include the following requirements: That the participant develop and maintain, with the appropriate health care provider, a schedule of preventive care for his or her dependent child or children, including routine examinations and immunizations; assurance of school attendance for school-age children under his or her care; assurance of properly supervised child care, including after-school care; and establishment of paternity or active pursuit of child support, or both, if applicable and if considered necessary; and nutrition or other counseling, parenting or family-planning classes.

(5) If the participant must overcome challenges prior to employment, the contract shall include a list of the identified challenges and an individualized plan for overcoming them.
(6) If the participant is a teenage parent, he or she may work, but the contract shall include the requirements that the participant:

(A) Remain in an educational activity to complete high school, obtain a general equivalency diploma or obtain vocational training and make satisfactory scholastic progress;

(B) Attend parenting classes or participate in a mentorship program, or both, if appropriate; and

(C) Live at home with his or her parent or guardian or in some other adult-supervised arrangements if he or she is an unemancipated minor.

(7) If the participant is under the age of twenty years and does not have a high school diploma or its equivalent, the contract shall include requirements to participate in mandatory education or training which, if the participant is unemployed, may include a return to high school, with satisfactory scholastic progress required.

(b) In order to receive cash assistance, the participant shall enter into a personal responsibility contract. If the participant refuses to sign the personal responsibility contract, the participant and family members are ineligible to receive cash assistance: Provided, That a participant who alleges that the terms of a personal responsibility contract are inappropriate based on his or her individual circumstances may request and shall be provided a fair and impartial hearing in accordance with administrative procedures established by the department and due process of law. A participant who signs a personal responsibility contract, or complies with a personal responsibility contract, does not waive his or her right to request and receive a hearing under this subsection.
(c) Personal responsibility contracts shall be drafted by the department on a case-by-case basis; take into consideration the individual circumstances of each beneficiary; reviewed and reevaluated periodically, but not less than on an annual basis; and, in the discretion of the department, amended or extended on a periodic basis.


(a) The department may refuse to extend or renew a personal responsibility contract and the benefits received by the beneficiary, or may terminate an existing contract and benefits, if it finds any of the following:

1. Fraud or deception by the beneficiary in applying for or receiving program benefits;

2. A substantial breach by the beneficiary of the requirements and obligations set forth in the personal responsibility contract; or

3. A violation by the beneficiary of any provision of the personal responsibility contract, this article, or any rule promulgated by the secretary pursuant to this article.

(b) In the event the department determines that a personal responsibility contract or the benefits received by the beneficiary are subject to revocation or termination, written notice of the revocation or termination, and the reason for the revocation or termination, shall be deposited in the United States mail, postage prepaid and addressed to the beneficiary at his or her last known address at least thirteen days prior to the termination or revocation. The notice shall state the action being taken by the department and grant to the beneficiary a reasonable opportunity to be heard at a fair and impartial hearing before the department in accordance with administrative procedures established by the department and due process of law.
(c) In any hearing conducted pursuant to the provisions of this section, the beneficiary has the burden of proving that his or her benefits were improperly terminated and shall bear his or her own costs, including attorneys fees.

(d) The secretary shall determine by rule what constitutes de minimis violations and those violations subject to sanctions and maximum penalties. In the event the department finds that a beneficiary has violated any provision of this article, of his or her personal responsibility contract or any applicable department rule, the department shall impose sanctions against the beneficiary as follows:

1. For the first violation, a one-third reduction of benefits for three months;

2. For the second violation, a two-thirds reduction of benefits for three months; and

3. For the third violation, a total termination of benefits for a minimum period of six months.

(e) For any sanction imposed pursuant to subsection (d) of this section, if the beneficiary corrects the violation or otherwise comes into compliance within thirteen days of the date of the notice of the sanction, the reduction in benefits shall not be imposed, but the violation shall count in determining the level of sanction to be imposed for any future violation. Once a reduction in benefits is in effect, it shall remain in effect for the designated time period: Provided, That if a participant incurs a subsequent sanction before the sanction for a previous violation has expired, the sanctions shall run concurrently: Provided, however, That if a third violation occurs before the period for a previous sanction has expired, benefits shall be terminated and may not be reinstated until the six-month termination period has expired and the violation which resulted in the third sanction has been either corrected or excused.
§9-9-12. Diversionary assistance allowance in lieu of monthly cash assistance.

(a) In order to encourage at-risk families not to apply for ongoing monthly cash assistance from the state, the secretary may issue one-time diversionary assistance allowances to families in an amount not to exceed the equivalent of four months of cash assistance in order to enable the families to become immediately self-supporting.

(b) The secretary shall establish by rule the standards to be considered in making diversionary assistance allowances.

(c) Nothing in this section may be construed to require that the department or any assistance issued pursuant to this section be subject to any of the provisions of chapter thirty-one or chapter forty-six-a of this code.


(a) To the extent that resources are available, an employer may be paid a subsidy by the department to employ a parent or caretaker-relative of an at-risk family if the employer agrees to hire the works program participant at the end of the subsidized period. If the employer does not hire the participant at the end of the subsidized period, the program shall not use that employer for subsidized employment for the next twelve months.

(b) If the department determines that an employer has demonstrated a pattern of discharging employees hired pursuant to the provisions of this section subsequent to the expiration of the subsidized period without good cause, the employer shall no longer be eligible for participation in the subsidized employment program for a period to be determined by the department.

The West Virginia works program may provide transitional assistance in the form of supportive services and allow at-risk families to retain a portion of their cash assistance when their earnings are below the federal poverty guideline, if considered appropriate by the secretary.


The Legislature encourages the development of a system of coordinated services, shared information and streamlined application procedures between the program and the other agencies within the department to implement the provisions of this article. The secretary shall require the coordination of activities between the program and the following agencies:

(a) The child support enforcement division for the purpose of establishing paternity, promoting cooperation in the pursuit of child support, encouraging noncustodial parents to get job search assistance and determining eligibility for cash assistance and support services;

(b) The bureau of public health for the purpose of determining appropriate immunization schedules, delivery systems and verification procedures; and

(c) The bureau of medical services for the purpose of reporting eligibility for medical assistance and transitional benefits.

The secretary may require the coordination of procedures and services with any other agency he or she considers necessary to implement this program: Provided, That all agencies coordinating services with the department shall, when provided with access to department records or information, abide by state and federal confidentiality requirements including the provisions of section twenty of this article.

The commissioner of the bureau of employment programs and the superintendent of the department of education shall assist the secretary in the establishment of the West Virginia works program. Prior to implementation of this program, each department shall address in its respective plan the method in which its resources will be devoted to facilitate the identification of or delivery of services for participants and shall coordinate its respective programs with the department in the provision of services to participants and their families. Each county board of education shall designate a person to coordinate with the local department of health and human resources office the board’s services to participant families and that person shall work to achieve coordination at the local level.

The secretary and the superintendent shall develop a plan for program implementation to occur with the use of existing state facilities and county transportation systems within the project areas whenever practicable. This agreement shall include, but not be limited to, the use of buildings, grounds and buses. Whenever possible, the supportive services, education and training programs should be offered at the existing school facilities.

The commissioner shall give priority to participants of the works program within the various programs of the bureau of employment programs. The secretary and the commissioner shall develop reporting and monitoring mechanisms between their respective agencies.

§9-9-17. Public-private partnerships.
The secretary may enter into agreements with any private, nonprofit, charitable or religious organizations to promote the development of the community support services necessary for the effective implementation of this program, including cooperative arrangements with private employers of former program participants for the purpose of obtaining and maintaining employer-based family health insurance coverage for former participants and their spouses and dependent children through direct payments to the employers out of funds appropriated for the cooperative agreements.


The legislative oversight commission on health and human resources accountability is charged with immediate and ongoing oversight of the program created by this article. This commission shall study, review and examine the work of the program, the department and its staff; study, review and examine all rules proposed by the department; and monitor the development and implementation of the West Virginia works program. The commission shall review and make recommendations to the Legislature and the legislative rule-making review committee regarding any plan, policy or rule proposed by the secretary, the department or the program.


(a) Except as otherwise provided in this code or rules, all records and information of the department regarding any beneficiary or beneficiary’s family members, including food stamps, child support and medicaid records, are confidential and shall not be released, except under the following circumstances:

1. If permissible under state or federal rules or regulations;
2. Upon the express written consent of the beneficiary or his or her legally authorized representative;
3. Pursuant to an order of any court of record of this state or the United States based upon a finding that the information
is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section: Provided, That all confidential records and information presented to the court shall after review be sealed by the clerk and shall not be open to any person except upon order of the court upon good cause being shown for the confidential records and information to be opened; or

(4) To a department or division of the state or other entity, pursuant to the terms of an interagency or other agreement: Provided, That any agreement specifically references this section and extends its requirements for confidentiality to the other entity receiving the records or information, its agents and employees.

(b) Any person who knowingly and willfully releases or causes to be released the confidential records and information described in this section, except under the specific circumstances enumerated in this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in the county or regional jail for not more than six months, or both.

§9-9-21. Temporary assistance for needy families rainy day fund.

There is hereby established in the state treasury a special fund designated as the “temporary assistance for needy families rainy day fund” into which the secretary shall cause to be initially deposited the amount of thirty-six million dollars in federal block grant moneys. The purpose of this fund is to serve as a safety net for the program established in this article and it shall be used for continued support of the program in the event of reduced federal funding, economic downturn, natural disaster or other event which depletes the program’s funds or makes them otherwise unavailable, if determined by the secretary to be necessary and appropriate under the circumstances.
AN ACT to amend article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a; to amend article fifteen, chapter thirty-three of said code by adding thereto a new section, designated section four-f; to amend article sixteen of said chapter by adding thereto a new section, designated section three-o; to amend article twenty-four of said chapter by adding thereto a new section, designated section seven-f; to amend article twenty-five of said chapter by adding thereto a new section, designated section eight-e; and to amend article twenty-five-a of said chapter by adding thereto a new section, designated section eight-e, all relating to requiring insurance companies that provide health care coverage to provide for colorectal cancer examinations and laboratory tests for colorectal cancer.

Be it enacted by the Legislature of West Virginia:

That article sixteen, 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 seven-a; that article fifteen, chapter thirty-three of said code be amended by adding thereto a new section, designated section four-f; that article sixteen of said chapter be amended by adding thereto a new section, designated section three-o; that article twenty-four of said chapter be amended by adding thereto a new section, designated section seven-f; that article twenty-
five of said chapter be amended by adding thereto a new section,
designated section eight-e; and that article twenty-five-a of said
chapter be amended by adding thereto a new section, designated
section eight-e, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary
   of State and Attorney General; Board of Public Works;
   Miscellaneous Agencies, Commissions, Offices, Programs,
   Etc.

33. Insurance.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7a. Additional mandated benefits; third party reimburse-
ment for colorectal cancer examination and
laboratory testing.

(a) Notwithstanding any provision of any policy, provision,
contract, plan or agreement applicable to this article, reimburse-
ment or indemnification for colorectal cancer examinations and
laboratory testing may not be denied for any nonsymptomatic
person fifty years of age or older, or a symptomatic person
under fifty years of age, when reimbursement or indemnity for
laboratory or X-ray services are covered under the policy and
are performed for colorectal cancer screening or diagnostic
purposes at the direction of a person licensed to practice
medicine and surgery by the board of medicine. The tests are as
follows: An annual fecal occult blood test, a flexible
sigmoidoscopy repeated every five years, a colonoscopy
repeated every ten years and a double contrast barium enema
repeated every five years.
(b) A symptomatic person is defined as: (1) An individual who experiences a change in bowel habits, rectal bleeding or stomach cramps that are persistent; or (2) an individual who poses a higher than average risk for colorectal cancer because he or she has had colorectal cancer or polyps, inflammatory bowel disease, or an immediate family history of such conditions.

(c) The same deductibles, coinsurance, network restrictions and other limitations for covered services found in the policy, provision, contract, plan or agreement of the covered person may apply to colorectal cancer examinations and laboratory testing.

CHAPTER 33. INSURANCE.

Article

15. Accident and Sickness Insurance.

16. Group Accident and Sickness Insurance.

24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.


ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4f. Third party reimbursement for colorectal cancer examination and laboratory testing.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this article, reimbursement or indemnification for colorectal cancer examinations and laboratory testing may not be denied for any nonsymptomatic person fifty years of age or older, or a symptomatic person under fifty years of age, when reimbursement or indemnity for laboratory or X-ray services are covered under the policy and
are performed for colorectal cancer screening or diagnostic purposes at the direction of a person licensed to practice medicine and surgery by the board of medicine. The tests are as follows: An annual fecal occult blood test, a flexible sigmoidoscopy repeated every five years, a colonoscopy repeated every ten years and a double contrast barium enema repeated every five years.

(b) A symptomatic person is defined as: (i) An individual who experiences a change in bowel habits, rectal bleeding or stomach cramps that are persistent; or (ii) an individual who poses a higher than average risk for colorectal cancer because he or she has had colorectal cancer or polyps, inflammatory bowel disease, or an immediate family history of such conditions.

(c) The same deductibles, coinsurance, network restrictions and other limitations for covered services found in the policy, provision, contract, plan or agreement of the covered person may apply to colorectal cancer examinations and laboratory testing.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-30. Third party reimbursement for colorectal cancer examination and laboratory testing.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this article, reimbursement or indemnification for colorectal cancer examinations and laboratory testing may not be denied for any nonsymptomatic person fifty years of age or older, or a symptomatic person under fifty years of age, when reimbursement or indemnity for laboratory or X-ray services are covered under the policy and are performed for colorectal cancer screening or diagnostic purposes at the direction of a person licensed to practice medicine and surgery by the board of medicine. The tests are as
follows: An annual fecal occult blood test, a flexible sigmoidoscopy repeated every five years, a colonoscopy repeated every ten years and a double contrast barium enema repeated every five years.

(b) A symptomatic person is defined as: (i) An individual who experiences a change in bowel habits, rectal bleeding or stomach cramps that are persistent; or (ii) an individual who poses a higher than average risk for colorectal cancer because he or she has had colorectal cancer or polyps, inflammatory bowel disease, or an immediate family history of such conditions.

(c) The same deductibles, coinsurance, network restrictions and other limitations for covered services found in the policy, provision, contract, plan or agreement of the covered person may apply to colorectal cancer examinations and laboratory testing.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-7f. Third party reimbursement for colorectal cancer examination and laboratory testing.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this article, reimbursement or indemnification for colorectal cancer examinations and laboratory testing may not be denied for any nonsymptomatic person fifty years of age or older, or a symptomatic person under fifty years of age, when reimbursement or indemnity for laboratory or X-ray services are covered under the policy and are performed for colorectal cancer screening or diagnostic purposes at the direction of a person licensed to practice medicine and surgery by the board of medicine. The tests are as follows: An annual fecal occult blood test, a flexible sigmoidoscopy repeated every five years, a colonoscopy...
repeated every ten years and a double contrast barium enema repeated every five years.

(b) A symptomatic person is defined as: (i) An individual who experiences a change in bowel habits, rectal bleeding or stomach cramps that are persistent; or (ii) an individual who poses a higher than average risk for colorectal cancer because he or she has had colorectal cancer or polyps, inflammatory bowel disease, or an immediate family history of such conditions.

(c) The same deductibles, coinsurance, network restrictions and other limitations for covered services found in the policy, provision, contract, plan or agreement of the covered person may apply to colorectal cancer examinations and laboratory testing.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8e. Third party reimbursement for colorectal cancer examination and laboratory testing.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this article, reimbursement or indemnification for colorectal cancer examinations and laboratory testing may not be denied for any nonsymptomatic person fifty years of age or older, or a symptomatic person under fifty years of age, when reimbursement or indemnity for laboratory or X-ray services are covered under the policy and are performed for colorectal cancer screening or diagnostic purposes at the direction of a person licensed to practice medicine and surgery by the board of medicine. The tests are as follows: An annual fecal occult blood test, a flexible sigmoidoscopy repeated every five years, a colonoscopy repeated every ten years and a double contrast barium enema repeated every five years.
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(b) A symptomatic person is defined as: (i) An individual who experiences a change in bowel habits, rectal bleeding or stomach cramps that are persistent; or (ii) an individual who poses a higher than average risk for colorectal cancer because he or she has had colorectal cancer or polyps, inflammatory bowel disease, or an immediate family history of such conditions.

(c) The same deductibles, coinsurance, network restrictions and other limitations for covered services found in the policy, provision, contract, plan or agreement of the covered person may apply to colorectal cancer examinations and laboratory testing.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8e. Third party reimbursement for colorectal cancer examination and laboratory testing.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this article, reimbursement or indemnification for colorectal cancer examinations and laboratory testing may not be denied for any nonsymptomatic person fifty years of age or older, or a symptomatic person under fifty years of age, when reimbursement or indemnity for laboratory or X-ray services are covered under the policy and are performed for colorectal cancer screening or diagnostic purposes at the direction of a person licensed to practice medicine and surgery by the board of medicine. The tests are as follows: An annual fecal occult blood test, a flexible sigmoidoscopy repeated every five years, a colonoscopy repeated every ten years and a double contrast barium enema repeated every five years.

(b) A symptomatic person is defined as: (i) An individual who experiences a change in bowel habits, rectal bleeding or stomach cramps that are persistent; or (ii) an individual who
poses a higher than average risk for colorectal cancer because he or she has had colorectal cancer or polyps, inflammatory bowel disease, or an immediate family history of such conditions.

(c) The same deductibles, coinsurance, network restrictions and other limitations for covered services found in the policy, provision, contract, plan or agreement of the covered person may apply to colorectal cancer examinations and laboratory testing.

CHAPTER 142

(H. B. 4084 — By Delegates Thompson, Beane, Faircloth, Compton, Douglas and Hutchins)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-one, article one; section twenty-one, article fifteen; section three-i, article sixteen; section seven-e, article twenty-four; section eight-d, article twenty-five; and section eight-d, article twenty-five-a, all of chapter thirty-three of said code, all relating to eliminating the date restrictions on insurance coverage for emergency medical services.

Be it enacted by the Legislature of West Virginia:

That section eight, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twenty-one, article one; section twenty-one, article fifteen; section three-i, article sixteen; section seven-e, article twenty-four; section eight-d, article twenty-five; and
section eight-d, article twenty-five-a, all of chapter thirty-three 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.

33. Insurance.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-8. Conditions of insurance program.

1. The insurance plans provided for in this article shall be designed by the public employees insurance agency:

3. (1) To provide a reasonable relationship between the hospital, surgical, medical and prescription drug benefits to be included and the expected reasonable and customary hospital, surgical, medical and prescription drug expenses as established by the director to be incurred by the affected employee, his or her spouse and his or her dependents. The establishment of reasonable and customary expenses by the public employees insurance agency pursuant to the preceding sentence is not subject to the state administrative procedures act in chapter twenty-nine-a of this code;

13. (2) To include reasonable controls which may include deductible and coinsurance provisions applicable to some or all of the benefits, and shall include other provisions, including,
but not limited to, copayments, preadmission certification, case management programs and preferred provider arrangements;

(3) To prevent unnecessary utilization of the various hospital, surgical, medical and prescription drug services available;

(4) To provide reasonable assurance of stability in future years for the plans;

(5) To provide major medical insurance for the employees covered under this article;

(6) To provide certain group life and accidental death insurance for the employees covered under this article;

(7) To include provisions for the coordination of benefits payable by the terms of the plans with the benefits to which the employee, or his or her spouse or his or her dependents may be entitled by the provisions of any other group hospital, surgical, medical, major medical, or prescription drug insurance or any combination thereof;

(8) To provide a cash incentive plan for employees, spouses and dependents to increase utilization of, and to encourage the use of, lower cost alternative health care facilities, health care providers and generic drugs. The plan shall be reviewed annually by the director and the advisory board;

(9) To provide “wellness” programs and activities which will include, but not be limited to, benefit plan incentives to discourage tobacco, alcohol and chemical abuse and an educational program to encourage proper diet and exercise. In establishing “wellness” programs, the division of vocational rehabilitation shall cooperate with the public employees insurance agency in establishing statewide wellness programs. The director of the public employees insurance agency shall contract with county boards of education for the use of facili-
ties, equipment or any service related to that purpose. Boards of education may charge only the cost of janitorial service and increased utilities for the use of the gymnasium and related equipment. The cost of the exercise program shall be paid by county boards of education, the public employees insurance agency, or participating employees, their spouses or dependents. All exercise programs shall be made available to all employees, their spouses or dependents and shall not be limited to employees of county boards of education;

(10) To provide a program, to be administered by the director, for a patient audit plan with reimbursement up to a maximum of one thousand dollars annually, to employees for discovery of health care provider or hospital overcharges when the affected employee brings the overcharge to the attention of the plan. The hospital or health care provider shall certify to the director that it has provided, prior to or simultaneously with the submission of the statement of charges for payments, an itemized statement of the charges to the employee participant for which payment is requested of the plan;

(11) To require that all employers give written notice to each covered employee prior to institution of any changes in benefits to employees, and to include appropriate penalty for any employer not providing the required information to any employee; and

(12)(a) To provide coverage for emergency services under offered plans. For the purposes of this subsection, "emergency services" means services provided in or by a hospital emergency facility, an ambulance providing related services under the provisions of article four-c, chapter sixteen of this code or the private office of a dentist to evaluate and treat a medical condition manifesting itself by the sudden, and at the time, unexpected onset of symptoms that require immediate medical attention and for which failure to provide medical attention
would result in serious impairment to bodily function, serious
dysfunction to any bodily organ or part, or would place the
person's health in jeopardy.

(b) From the first day of July, one thousand nine hundred
ninety-eight, plans shall provide coverage for emergency
services, including any prehospital services, to the extent
necessary to screen and stabilize the covered person. The plans
shall reimburse, less any applicable copayments, deductibles,
or coinsurance, for emergency services rendered and related to
the condition for which the covered person presented. Prior
authorization of coverage shall not be required for the screening
services if a prudent layperson acting reasonably would have
believed that an emergency medical condition existed. Prior
authorization of coverage shall not be required for stabilization
if an emergency medical condition exists. In the event that prior
authorization was obtained, the authorization may not be
retracted after the services have been provided except when the
authorization was based on a material misrepresentation about
the medical condition by the provider of the services or the
insured person. The provider of the emergency services and the
plan representative shall make a good faith effort to communicate with each other in a timely fashion to expedite
postevaluation or poststabilization services. Payment of claims
for emergency services shall be based on the retrospective
review of the presenting history and symptoms of the covered
person.

(c) For purposes of this subdivision:

(A) "Emergency services" means those services required to
screen for or treat an emergency medical condition until the
condition is stabilized, including prehospital care;

(B) "Prudent layperson" means a person who is without
medical training and who draws on his or her practical experi-
ence when making a decision regarding whether an emergency
113 medical condition exists for which emergency treatment should
114 be sought;

115 (C) “Emergency medical condition for the prudent
116 layperson” means one that manifests itself by acute symptoms
117 of sufficient severity, including severe pain, such that the
118 person could reasonably expect the absence of immediate
119 medical attention to result in serious jeopardy to the individ-
120 ual’s health, or, with respect to a pregnant woman, the health of
121 the unborn child; serious impairment to bodily functions; or
122 serious dysfunction of any bodily organ or part;

123 (D) “Stabilize” means with respect to an emergency
124 medical condition, to provide medical treatment of the condi-
125 tion necessary to assure, with reasonable medical probability
126 that no medical deterioration of the condition is likely to result
127 from or occur during the transfer of the individual from a
128 facility: Provided, That this provision may not be construed to
129 prohibit, limit or otherwise delay the transportation required for
130 a higher level of care than that possible at the treating facility;

131 (E) “Medical screening examination” means an appropriate
132 examination within the capability of the hospital’s emergency
133 department, including ancillary services routinely available to
134 the emergency department, to determine whether or not an
135 emergency medical condition exists; and

136 (F) “Emergency medical condition” means a condition that
137 manifests itself by acute symptoms of sufficient severity
138 including severe pain such that the absence of immediate
139 medical attention could reasonably be expected to result in
140 serious jeopardy to the individual’s health or with respect to a
141 pregnant woman the health of the unborn child, serious impair-
142 ment to bodily functions or serious dysfunction of any bodily
143 part or organ.
CHAPTER 33. INSURANCE.

Article
1. Definitions.
15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

ARTICLE 1. DEFINITIONS.

§33-1-21. Emergency services.

(a) Emergency services are: Those services provided in or by a hospital emergency facility, an ambulance providing related services under the provisions of article four-c, chapter sixteen of this code or the private office of a dentist to evaluate and treat a medical condition manifesting itself by the sudden, and at the time, unexpected onset of symptoms that require immediate medical attention and that failure to provide medical attention would result in serious impairment to bodily function, serious dysfunction to any bodily organ or part, or would place the person’s health in jeopardy.

(b) From the first day of July, one thousand nine hundred ninety-eight, the following provisions apply:

(1) “Emergency medical services” means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital care;

(2) “Prudent layperson” means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought;
(3) "Emergency medical condition for the prudent layperson" means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual’s health, or, with respect to a pregnant woman, the health of the unborn child; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part;

(4) "Stabilize" means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: Provided, That this provision may not be construed to prohibit, limit or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

(5) "Medical screening examination" means an appropriate examination within the capability of the hospital’s emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

(6) "Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual’s health or with respect to a pregnant woman the health of the unborn child, serious impairment to bodily functions or serious dysfunction of any bodily part or organ.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

From the first day of July, one thousand nine hundred ninety-eight:

(a) Every insurer shall provide coverage for emergency medical services, including prehospital services, to the extent necessary to screen and to stabilize an emergency medical condition. The insurer shall not require prior authorization of the screening services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Prior authorization of coverage shall not be required for stabilization if an emergency medical condition exists. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms of the covered person.

(b) An insurer that has given prior authorization for emergency services shall cover the services and shall not retract the authorization after the services have been provided unless the authorization was based on a material misrepresentation about the covered person’s health condition made by the referring provider, the provider of the emergency services or the covered person.

(c) Coverage of emergency services shall be subject to coinsurance, copayments and deductibles applicable under the health benefit plan.

(d) The emergency department and the insurer shall make a good faith effort to communicate with each other in a timely fashion to expedite postevaluation or poststabilization services in order to avoid material deterioration of the covered person’s condition.

(e) As used in this section:
(1) “Emergency medical services” means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital care;

(2) “Prudent layperson” means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought;

(3) “Emergency medical condition for the prudent layperson” means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual’s health, or, with respect to a pregnant woman, the health of the unborn child; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part;

(4) “Stabilize” means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: Provided, That this provision may not be construed to prohibit, limit or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

(5) “Medical screening examination” means an appropriate examination within the capability of the hospital’s emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

(6) “Emergency medical condition” means a condition that manifests itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate
that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: Provided, That this provision may not be construed to prohibit, limit or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

(E) "Medical screening examination" means an appropriate examination within the capability of the hospital’s emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

(F) "Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual’s health or with respect to a pregnant woman the health of the unborn child, serious impairment to bodily functions or serious dysfunction of any bodily part or organ.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-7e. Coverage of emergency services.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall provide as benefits to all subscribers and members coverage for emergency services. A policy, provision, contract, plan or agreement may apply to emergency services the same deductibles, coinsurance and other limitations as apply to other covered services: Provided, That preauthorization or precertification shall not be required.

(b) From the first day of July, one thousand nine hundred ninety-eight, the following provisions apply:
(1) Every insurer shall provide coverage for emergency medical services, including prehospital services, to the extent necessary to screen and to stabilize an emergency medical condition. The insurer shall not require prior authorization of the screening services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Prior authorization of coverage shall not be required for stabilization if an emergency medical condition exists. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms of the covered person.

(2) An insurer that has given prior authorization for emergency services shall cover the services and shall not retract the authorization after the services have been provided unless the authorization was based on a material misrepresentation about the covered person’s health condition made by the referring provider, the provider of the emergency services or the covered person.

(3) Coverage of emergency services shall be subject to coinsurance, copayments and deductibles applicable under the health benefit plan.

(4) The emergency department and the insurer shall make a good faith effort to communicate with each other in a timely fashion to expedite postevaluation or poststabilization services in order to avoid material deterioration of the covered person’s condition.

(5) As used in this section:

(A) "Emergency medical services" means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital care;
(B) "Prudent layperson" means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought;

(C) "Emergency medical condition for the prudent layperson" means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part;

(D) "Stabilize" means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: Provided, That this provision may not be construed to prohibit, limit or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

(E) "Medical screening examination" means an appropriate examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

(F) "Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health or with respect to a pregnant woman the health of the unborn child, serious impair-
ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8d. Coverage of emergency services.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall provide as benefits to all subscribers and members coverage for emergency services. A policy, provision, contract, plan or agreement may apply to emergency services the same deductibles, coinsurance and other limitations as apply to other covered services: Provided, That preauthorization or precertification shall not be required.

(b) From the first day of July, one thousand nine hundred ninety-eight, the following provisions apply:

(1) Every insurer shall provide coverage for emergency medical services, including prehospital services, to the extent necessary to screen and to stabilize an emergency medical condition. The insurer shall not require prior authorization of the screening services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Prior authorization of coverage shall not be required for stabilization if an emergency medical condition exists. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms of the covered person.

(2) An insurer that has given prior authorization for emergency services shall cover the services and shall not retract the authorization after the services have been provided unless the authorization was based on a material misrepresentation about the covered person’s health condition made by the referring provider, the provider of the emergency services or the covered person.
(3) Coverage of emergency services shall be subject to coinsurance, copayments and deductibles applicable under the health benefit plan.

(4) The emergency department and the insurer shall make a good faith effort to communicate with each other in a timely fashion to expedite postevaluation or poststabilization services in order to avoid material deterioration of the covered person's condition.

(5) As used in this section:

(A) “Emergency medical services” means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital care;

(B) “Prudent layperson” means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought;

(C) “Emergency medical condition for the prudent layperson” means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual’s health, or, with respect to a pregnant woman, the health of the unborn child; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part;

(D) “Stabilize” means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: Provided, That this provision may not be construed to
prohibit, limit or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

(E) "Medical screening examination" means an appropriate examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

(F) "Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health or with respect to a pregnant woman the health of the unborn child, serious impairment to bodily functions or serious dysfunction of any bodily part or organ.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8d. Coverage of emergency services.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall provide as benefits to all subscribers and members coverage for emergency services. A policy, provision, contract, plan or agreement may apply to emergency services the same deductibles, coinsurance and other limitations as apply to other covered services: Provided, That preauthorization or precertification shall not be required.

(b) From the first day of July, one thousand nine hundred ninety-eight, the following provisions apply:

(1) Every insurer shall provide coverage for emergency medical services, including prehospital services, to the extent necessary to screen and to stabilize an emergency medical condition. The insurer shall not require prior authorization of
the screening services if a prudent layperson acting reasonably
would have believed that an emergency medical condition
existed. Prior authorization of coverage shall not be required for
stabilization if an emergency medical condition exists. Payment
of claims for emergency services shall be based on the retro-
spective review of the presenting history and symptoms of the
covered person.

(2) An insurer that has given prior authorization for
emergency services shall cover the services and shall not retract
the authorization after the services have been provided unless
the authorization was based on a material misrepresentation
about the covered person's health condition made by the
referring provider, the provider of the emergency services or the
covered person.

(3) Coverage of emergency services shall be subject to
coinsurance, copayments and deductibles applicable under the
health benefit plan.

(4) The emergency department and the insurer shall make
a good faith effort to communicate with each other in a timely
fashion to expedite postevaluation or poststabilization services
in order to avoid material deterioration of the covered person's
condition.

(5) As used in this section:

(A) “Emergency medical services” means those services
required to screen for or treat an emergency medical condition
until the condition is stabilized, including prehospital care;

(B) “Prudent layperson” means a person who is without
medical training and who draws on his or her practical experi-
ence when making a decision regarding whether an emergency
medical condition exists for which emergency treatment should
be sought;
(C) "Emergency medical condition for the prudent layperson" means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part;

(D) "Stabilize" means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: Provided, That this provision may not be construed to prohibit, limit or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

(E) "Medical screening examination" means an appropriate examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

(F) "Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health or with respect to a pregnant woman the health of the unborn child, serious impairment to bodily functions or serious dysfunction of any bodily part or organ.

(6) Each insurer shall provide the enrolled member with a description of procedures to be followed by the member for emergency services, including the following:
(A) The appropriate use of emergency facilities;

(B) The appropriate use of any prehospital services provided by the health maintenance organization;

(C) Any potential responsibility of the member for payment for nonemergency services rendered in an emergency facility;

(D) Any cost-sharing provisions for emergency services; and

(E) An explanation of the prudent layperson standard for emergency medical condition.

CHAPTER 143

(S. B. 428 — By Senators Craigo, Deem, Dittmar, Fanning, Kessler, Minard, Sharpe, Sprouse and Wooton)

[Passed March 1, 2000, in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for the payment from the commissioner’s examination revolving fund of attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists retained by the insurance commissioner as examiners; and requiring the insurance commissioner to recover costs paid for that purpose in certain circumstances.

Be it enacted by the Legislature of West Virginia:
That section nine, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

(a) The purpose of this section is to provide an effective and efficient system for examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the commissioner. The provisions of this section are intended to enable the commissioner to adopt a flexible system of examinations which directs resources as may be deemed appropriate and necessary for the administration of the insurance and insurance related laws of this state.

(b) For purposes of this section, the following definitions shall apply:

(1) “Commissioner” means the commissioner of insurance of this state.

(2) “Company” or “insurance company” means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the commissioner, including, but not limited to, any domestic or foreign stock company, mutual company, mutual protective association, farmers mutual fire companies, fraternal benefit society, reciprocal or inter-insurance exchange, nonprofit medical care corporation, nonprofit health care corporation, nonprofit hospital service association, nonprofit dental care corporation, health maintenance organization, captive insurance company, risk retention group or other insurer, regardless of the type of
coverage written, benefits provided or guarantees made by each.

(3) "Department" means the department of insurance of this state.

(4) "Examiners" means the commissioner of insurance, or any individual or firm having been authorized by the commissioner to conduct an examination pursuant to this section, including, but not limited to, the commissioner's deputies, other employees, appointed examiners or other appointed individuals or firms who are not employees of the department of insurance.

(c) The commissioner or his examiners may conduct an examination under this section of any company as often as the commissioner in his or her discretion deems appropriate. The commissioner or his examiners shall at least once every three years visit each domestic insurer and thoroughly examine its financial condition and methods of doing business and ascertain whether it has complied with all the laws and regulations of this state. The commissioner may also examine the affairs of any insurer applying for a license to transact any insurance business in this state.

(d) The commissioner or his examiners shall, at a minimum, conduct an examination of every foreign or alien insurer licensed in this state not less frequently than once every five years. The examination of an alien insurer may be limited to its United States business: Provided, That in lieu of an examination under this section of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until the first day of January, one thousand nine hundred ninety-four. Thereafter, such reports may only be accepted if:
The insurance department was at the time of the examination accredited under the national association of insurance commissioners' financial regulation standards and accreditation program; or

The examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by such an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(e) In scheduling and determining the nature, scope and frequency of examinations conducted pursuant to this section, the commissioner may consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the examiners' handbook adopted by the national association of insurance commissioners and in effect when the commissioner exercises discretion under this section.

(f) For purposes of completing an examination of any company under this section, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

(g) The commissioner may also cause to be examined at such times as he or she deems necessary the books, records, papers, documents, correspondence and methods of doing business of any agent, broker, excess lines broker or solicitor licensed by this state. For these purposes the commissioner or his examiners shall have free access to all books, records,
papers, documents and correspondence of all the agents, brokers, excess lines brokers and solicitors wherever the books, records, papers, documents and records are situate. The commissioner may revoke the license of any agent, broker, excess lines broker or solicitor who refuses to submit to such examination.

(h) In addition to conducting an examination, the commissioner or his examiners may, as the commissioner deems necessary, analyze or review any phase of the operations or methods of doing business of an insurer, agent, broker, excess lines broker, solicitor or other individual or corporation transacting or attempting to transact an insurance business in the state of West Virginia. The commissioner may use the full resources provided by this section in carrying out these responsibilities, including any personnel and equipment provided by this section as the commissioner deems necessary.

(i) Examinations made pursuant to this section shall be conducted in the following manner:

(1) Upon determining that an examination should be conducted, the commissioner or his designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the national association of insurance commissioners. The commissioner may also employ any other guidelines or procedures as the commissioner may deem appropriate.

(2) Every company or person from whom information is sought, its officers, directors and agents shall provide to the examiners appointed under subdivision (1) timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer
or other recordings relating to the property, assets, business and
affairs of the company being examined. The officers, directors,
employees and agents of the company or person shall facilitate
the examination and aid in the examination so far as it is in their
power to do so.

(3) The refusal of any company, by its officers, directors,
employees or agents, to submit to examination or to comply
with any reasonable written request of the examiners shall be
grounds for suspension, revocation, refusal or nonrenewal of
any license or authority held by the company to engage in an
insurance or other business subject to the commissioner’s
jurisdiction. Any proceedings for suspension, revocation,
refusal, or nonrenewal of any license or authority shall be
conducted pursuant to section eleven, article two of this
chapter.

(4) The commissioner or his examiners shall have the
power to issue subpoenas, to administer oaths and to examine
under oath any person as to any matter pertinent to the exami-
nation, analysis or review. The subpoenas shall be enforced
pursuant to the provisions of section six, article two of this
chapter.

(5) When making an examination, analysis or review under
this section, the commissioner may retain attorneys, appraisers,
independent actuaries, independent certified public accountants
or other professionals and specialists as examiners, the cost of
which shall be borne by the company which is the subject of the
examination, analysis or review or, in the commissioner’s
discretion, paid from the commissioner’s examination revolving
fund. The commissioner may recover costs paid from the
commissioner’s examination revolving fund pursuant to this
subdivision from the company upon which the examination,
analysis or review is conducted unless the subject of the
examination, analysis or review is an individual, described in
subdivision (2), subsection (q) of this section.
158 (6) Nothing contained in this section may be construed to limit the commissioner's authority to terminate or suspend any examination, analysis or review in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. The commissioner or his examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, analysis or review, whether or not a written report of the examination has at that time either been made, served or filed in the commissioner's office.

167 (7) Nothing contained in this section may be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents or any other information discovered or developed during the course of any examination, analysis or review in the furtherance of any legal or regulatory action which the commissioner may, in his or her sole discretion, deem appropriate. An examination report, when filed, shall be admissible in evidence in any action or proceeding brought by the commissioner against an insurance company, its officers or agents and shall be prima facie evidence of the facts stated therein.

179 (j) Examination reports prepared pursuant to the provisions of this section shall comply with the following requirements:

181 (1) All examination reports shall be comprised of only facts appearing upon the books, records or other documents of the company, its agents or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs and any conclusions and recommendations the examiners find reasonably warranted from the facts.

188 (2) No later than sixty days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon
receipt of the verified report, the commissioner shall transmit
the report to the company examined, together with a notice
which shall afford the company examined a reasonable opportu-
nity of not more than ten days to make a written submission or
rebuttal with respect to any matters contained in the examina-
tion report.

(3) Within thirty days of the end of the period allowed for
the receipt of written submissions or rebuttals, the commis-
sioner shall fully consider and review the report, together with
any written submissions or rebuttals and any relevant portions
of the examiner’s workpapers and enter an order:

(A) Adopting the examination report as filed or with
modification or corrections. If the examination report reveals
that the company is operating in violation of any law, rule or
prior order of the commissioner, the commissioner may order
the company to take any action the commissioner considers
necessary and appropriate to cure such violation; or

(B) Rejecting the examination report with directions to the
examiners to reopen the examination for purposes of obtaining
additional data, documentation or information and refiling
pursuant to subdivision (2) above; or

(C) Calling for an investigatory hearing with no less than
twenty days notice to the company for purposes of obtaining
additional documentation, data, information and testimony.

(4) All orders entered pursuant to this subsection shall be
accompanied by findings and conclusions resulting from the
commissioner’s consideration and review of the examination
report, relevant examiner workpapers and any written submis-
sions or rebuttals. Any order issued pursuant to paragraph (A),
subdivision three of this subsection shall be considered a final
administrative decision and may be appealed pursuant to
section fourteen, article two of this chapter and shall be served
upon the company by certified mail, together with a copy of the
adopted examination report. Within thirty days of the issuance
of the adopted report, the company shall file affidavits executed
by each of its directors stating under oath that they have
received a copy of the adopted report and related orders.

(k) Hearings conducted pursuant to this section shall be
subject to the following requirements:

(1) Any hearing conducted pursuant to this section by the
commissioner or the commissioner’s authorized representative
shall be conducted as a nonadversarial confidential investiga-
tory proceeding as necessary for the resolution of any inconsis-
tencies, discrepancies or disputed issues apparent upon the face
of the filed examination report or raised by or as a result of the
commissioner’s review of relevant workpapers or by the written
submission or rebuttal of the company. Within twenty days of
the conclusion of any such hearing, the commissioner shall
enter an order pursuant to paragraph (A), subdivision (3),
subsection (j) of this section.

(2) The commissioner may not appoint an examiner as an
authorized representative to conduct the hearing. The hearing
shall proceed expeditiously with discovery by the company
limited to the examiner’s workpapers which tend to substantiate
any assertions set forth in any written submission or rebuttal.
The commissioner or the commissioner’s representative may
issue subpoenas for the attendance of any witnesses or the
production of any documents deemed relevant to the investiga-
tion whether under the control of the commissioner, the
company or other persons. The documents produced shall be
included in the record and testimony taken by the commissioner
or the commissioner’s representative shall be under oath and
preserved for the record. Nothing contained in this section shall
require the commissioner to disclose any information or records
which would indicate or show the existence or content of any
investigation or activity of a criminal justice agency.
The hearing shall proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. Thereafter the company and the department may present testimony relevant to the investigation. Cross-examination may be conducted only by the commissioner or the commissioner's representative. The company and the commissioner shall be permitted to make closing statements and may be represented by counsel of their choice.

Adoption of the examination report shall be subject to the following requirements:

1. Upon the adoption of the examination report under paragraph (A), subdivision (3), subsection (j) of this section, the commissioner may continue to hold the content of the examination report as private and confidential information for a period of ninety days except to the extent provided in subdivision (6), subsection (i) of this section. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

2. Nothing contained in this section may prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results or any matter relating thereto or the results of any analysis or review to the insurance department of this or any other state or country or to law-enforcement officials of this or any other state or agency of the federal government at any time, so long as the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this section.

3. In the event the commissioner determines that regulatory action is appropriate as a result of any examination, analysis or review, he or she may initiate any proceedings or actions as provided by law.
(4) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination, analysis or review made under this section must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent provided in subdivision (5), subsection (i) of this section. Access may also be granted to the national association of insurance commissioners. The parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

(m) No examiner may be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this section. This section shall not be construed to automatically preclude an examiner from being:

(1) A policyholder or claimant under an insurance policy;

(2) A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;

(3) An investment owner in shares of regulated diversified investment companies; or

(4) A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.

(5) Notwithstanding the requirements of this subsection, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants or other similar individuals who are independently practicing their professions, even though these persons may from time to time
be similarly employed or retained by persons subject to examination under this section.

(n) Personnel conducting examinations, analyses or reviews of either a domestic, foreign or alien insurer shall be compensated for each day worked at a rate set by the commissioner. The personnel shall also be reimbursed for their travel and living expenses at the rate set by the commissioner. Other individuals who are not employees of the department of insurance shall all be compensated for their work, travel and living expenses at rates approved by the commissioner, or as otherwise provided by law. As used in this section the costs of an examination, analysis or review means:

(1) The entire compensation for each day worked by all personnel, including those who are not employees of the department of insurance, the conduct of such examination, analysis or review calculated as hereinbefore provided;

(2) Travel and living expenses of all personnel, including those who are not employees of the department of insurance, directly engaged in the conduct of the examination, analysis or review calculated at the rates as hereinbefore provided for;

(3) All other incidental expenses incurred by or on behalf of the personnel in the conduct of any authorized examination, analysis or review.

(o) All insurers subject to the provisions of this section of the code shall annually pay to the commissioner on or before the first day of July, one thousand nine hundred ninety-one and every first day of July thereafter, an examination assessment fee of eight hundred dollars. Four hundred fifty dollars of this fee shall be paid to the treasurer of the state to the credit of a special revolving fund to be known as the “Commissioner’s Examination Revolving Fund” which is hereby established and three hundred fifty dollars shall be paid to the treasurer of the
state. The commissioner may at his discretion, upon notice to
the insurers subject to this section, increase this examination
assessment fee or levy an additional examination assessment
fee of two hundred fifty dollars. In no event may the total
examination assessment fee including any additional examina-
tion assessment fee levied exceed one thousand five hundred
dollars per insurer in any calendar year.

(p) The moneys collected by the commissioner from an
increase or additional examination assessment fee shall be paid
to the treasurer of the state to be credited to the commissioner’s
examination revolving fund. Any funds expended or obligated
by the commissioner from the commissioner’s examination
revolving fund may be expended or obligated solely for
defrayment of the costs of examinations, analyses or reviews of
the financial affairs and business practices of insurance compa-
nies, agents, brokers, excess lines brokers, solicitors or other
individuals or corporations transacting or attempting to transact
an insurance business in this state made by the commissioner
pursuant to this section or for the purchase of equipment and
supplies, travel, education and training for the commissioner’s
deputies, other employees and appointed examiners necessary
for the commissioner to fulfill the statutory obligations created
by this section.

(q) The commissioner may require other individuals who
are not employees of the department of insurance who have
been appointed by the commissioner to conduct or participate
in the examination, analysis or review of insurers, agents,
brokers, excess lines brokers, solicitors or other individuals or
corporations transacting or attempting to transact an insurance
business in this state to:

(1) Bill and receive payments directly from the insurance
company being examined, analyzed or reviewed for their work,
travel and living expenses as previously provided for in this
section; or
(2) If an individual agent, broker or solicitor is being examined, analyzed or reviewed, bill and receive payments directly from the commissioner's examination revolving fund for their work, travel and living expenses as previously provided for in this section. The commissioner may recover costs paid from the commissioner's examination revolving fund pursuant to this subdivision from the person upon whom the examination, analysis or review is conducted.

(r) The commissioner and his examiners shall be entitled to immunity to the following extent:

(1) No cause of action shall arise nor shall any liability be imposed against the commissioner or his examiners for any statements made or conduct performed in good faith while carrying out the provisions of this section.

(2) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or his examiners pursuant to an examination, analysis or review made under this section, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(3) The commissioner or any examiner shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this section and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(4) This subsection does not abrogate or modify in any way any constitutional immunity or common law or statutory privilege or immunity heretofore enjoyed by any person identified in subdivision (1) of this subsection.
AN ACT to amend and reenact section two, article three, 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 a new article, designated article three-a, all relating to eliminating trade barriers affecting insurers and producers; the prohibition against licensing insurance companies owned by state or foreign governments; and establishing a process for licensing insurers organized under the laws of foreign countries.

Be it enacted by the Legislature of West Virginia:

That section two, article three, 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 a new article, designated article three-a, all to read as follows:

Article
3. Licensing, Fees and Taxation of Insurers.
3A. State of Entry for Foreign Insurers.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-2. Qualifications for license.

(a) To qualify for a license to transact insurance in West Virginia an insurer must be otherwise in compliance with the provisions of this chapter and with its charter, and must be an incorporated stock insurer, or an incorporated mutual insurer or a reciprocal insurer.
(b) No foreign insurer may be authorized to transact insurance in this state if it is domiciled in a state that does not have reserve requirements that are equal to or greater than those required by article seven of this chapter, as applicable to the kind or kinds of insurance transacted by the insurer, wherever transacted in the United States of America, or which transacts business anywhere in the United States of America on the assessment plan, the stipulated premium plan or any similar plan.

(c) No insurer may be authorized to transact a kind of insurance in this state unless duly authorized or qualified to transact such insurance in the state or country of its domicile.

(d) No insurer may be authorized to transact in this state any kind of insurance which is not defined in section ten, article one of this chapter.

(e) No authority to transact insurance may be granted or continued to any insurer that is in arrears to the state for fees, licenses, taxes, assessments, fines or penalties accrued on insurance previously transacted in this state.

ARTICLE 3A. STATE OF ENTRY FOR FOREIGN INSURERS.

§33-3A-1. Definitions.
§33-3A-5. Requirements for trust agreement.
§33-3A-7. Additional requirements for the U.S. branch license.
§33-3A-8. Authority of commissioner.

§33-3A-1. Definitions.

(a) "Non-U.S. insurer" means an insurer organized under the laws of a foreign country.

(b) "United States branch" or "U.S. branch" means the business unit through which business is transacted within the United States by a non-U.S. insurer and the assets and liabilities
of the insurer within the United States pertaining to such business.

(c) "Home jurisdiction" means the foreign country under whose laws the non-U.S. insurer has been organized.


This article applies to a U.S. branch using this state as a state of entry to transact insurance in the United States. The U.S. branch shall also be subject to all state laws applicable to an insurer domiciled in this state unless otherwise provided.


(a) A non-U.S. insurer may use this state as a state of entry to transact insurance in the United States through a U.S. branch by:

(1) Qualifying as an insurer to do business in this state; and

(2) Establishing a trust account, pursuant to a trust agreement approved by the commissioner with a U.S. bank approved by the commissioner, in an amount at least equal to the minimum capital and surplus or authorized control level risk based capital, whichever is greater, required to be maintained by a domestic insurer licensed to transact the same kind of insurance.

(b) Before authorizing the entry through this state of a U.S. branch of any non-U.S. insurer, the commissioner shall require the non-U.S. insurer, in addition to meeting the requirements of section five of this article and any other requirement of this chapter:

(1) To submit a copy of its charter and bylaws, if any, currently in force, and any other documents necessary to show the kinds of business which it is empowered to transact in its home jurisdiction, attested to as accurate and complete by the insurance supervisory official of its home jurisdiction; and a full statement, subscribed and affirmed as true under the penalties of perjury by two officers, or equivalent responsible
24 representatives, in a manner as the commissioner shall pre-
25 scribe, of its financial conditions as of the close of its latest
26 fiscal year, showing its assets, liabilities, income disbursements,
27 business transacted and other facts required to be shown in its
28 annual statement, as reported to the insurance supervisory
29 official of its home jurisdiction; an English language transla-
30 tion, as necessary, of any other documents required herein; and
31
32 (2) To submit to an examination of the insurer's affairs at
33 its principal office within the United States. However, the
34 commissioner may instead accept a report of the insurance
35 supervisory official of the insurer's home jurisdiction.


1 The assets in the trust account shall be known as "trusteed
2 assets" and shall at all times be in an amount equal to the U.S.
3 branch's reserves and other liabilities plus the minimum capital
4 and surplus, or authorized control level risk based capital,
5 whichever is greater, required to be maintained by a domestic
6 insurer licensed to do the same kind of insurance.

§33-3A-5. Requirements for trust agreement.

1 (a) The deed of trust and all amendments thereto shall be
2 authenticated in a form and manner as the commissioner may
3 prescribe and shall not be effective unless approved by the
4 commissioner upon a finding that:

5 (1) A deed of trust or its amendments are sufficient in form
6 and in conformity with law;
7 (2) The trustee or trustees are eligible as such; and
8 (3) The deed of trust is adequate to protect the interests of
9 the beneficiaries of the trust.

10 (b) If at any time the commissioner finds, after reasonable
11 notice and hearing, that the requisites for the approval no longer
12 exist, the commissioner may withdraw approval.
(c) The commissioner may from time to time approve modifications of, or variations in any deed of trust, which in the commissioner's judgment are not prejudicial to the interests of the people of this state or the United States policyholders and creditors of the U.S. branch.

(d) The deed of trust shall contain provisions which:

(1) Vest legal title to trusteed assets in the trustees, and their successors lawfully appointed;

(2) Require that all assets deposited in the trust shall be continuously kept within the United States;

(3) Provide for substitution of a new trustee or trustees in case of a vacancy by death; resignation or otherwise, subject to the approval of the commissioner;

(4) Require that the trustee or trustees shall continuously maintain a record at all times sufficient to identify the assets of the fund;

(5) Require that the trusteed assets shall consist of cash and/or investments eligible for investment of the funds of domestic insurers and accrued interest thereon if collectible by the trustee;

(6) Require that the trust shall be for the exclusive benefit, security and protection of the policyholders, or policyholders and creditors, of the U.S. branch in the United States and that it shall be maintained as long as there is outstanding any liability of the non-U.S. insurer arising out of its insurance transactions in the United States; and

(7) Provide, in substance, that no withdrawals of assets, other than income as specified in subsection (e) of this section shall be made or permitted by the trustee or trustees without the approval of the commissioner except to:

(A) Make deposits required by law in any state for the security or benefit of all policyholders, or policyholders and creditors, of the U.S. branch in the United States;
(B) Substitute other assets permitted by law and at least equal in value and quality to those withdrawn, upon the specific written direction of the United States manager of the U.S. branch when duly empowered and acting pursuant to either general or specific written authority previously given or delegated by the board of directors; or

(C) Transfer such assets to an official liquidator or rehabilitator pursuant to an order of a court of competent jurisdiction.

(e) The deed of trust may provide that income, earnings, dividends or interest accumulations of the assets of the fund may be paid over the United States manager of the U.S. branch upon request, provided that the total trusteed assets shall not thereby be less than the amount required to be maintained pursuant to section four of this article.

(f) Upon withdrawal of trusteed assets deposited in another state in which the insurer is authorized to do business, it shall be sufficient if the deed of trust requires similar written approval of the insurance supervising official of that state in lieu of approval of the commissioner provided that the total trusteed assets shall not thereby be less than the amount required to be maintained pursuant to section four of this article. In all such cases the U.S. branch shall notify the commissioner in writing of the nature and extent of the withdrawal.

(g) The commissioner may from time to time:

(1) Make examinations of the trusteed assets of any authorized U.S. branch at the insurer’s expense; and

(2) Require the trustee or trustees to file a statement, in such form as the commissioner may prescribe, certifying the assets of the trust fund and the amounts thereof.

(h) Refusal or neglect of any trustee to comply with the foregoing requirements shall be grounds for the revocation of
the insurer’s license or the liquidation of its United States branch.


(a) In addition to other requirements of this article, every authorized U.S. branch shall, not later than the first day of March in each year and forty-five days after the end of each of the first three calendar-year quarters, file with the commissioner and with the National Association of Insurance Commissioners (NAIC):

1. Annual and quarterly statements of the business transacted within the U.S. and the assets held by or for it within the United States for the protection of United States policyholders and creditors within the United States, and of the liabilities incurred against the assets. The forms shall not contain any statement in regard to its assets and business elsewhere. The statements shall be in the same format required of an insurer domiciled in the U.S. branch’s state of entry state and licensed to write the same kinds of insurance; and

2. A statement of trusteed surplus, in such form as the commissioner may prescribe, as of the end of the same period covered by the statement filed pursuant to subdivision (1) of this subsection. The aggregate value of the insurer’s general state deposits and trusteed assets deposited with a trustee in compliance with section five of this article, plus accrued investment income thereon where the interest is collected by the states for trustees, less the aggregate net amount of all of its reserves and other liabilities in the United States, as determined in accordance with this section, shall be known as its "trusteed surplus" in the United States. In determining the net amount of the U.S. branch’s liabilities in the United States to be reported in the statement of trusteed surplus, the U.S. branch shall make adjustments to total liabilities reported on the accompanying annual or quarterly statement as follows:
(A) Add back liabilities used to offset admitted assets reported in the accompanying quarterly or annual statement; and

(B) Deduct:

(i) Unearned premiums on agent's balances or uncollected premiums not more than ninety days past due;

(ii) Reinsurance on losses with authorized insurers, less unpaid reinsurance premiums;

(iii) Reinsurance recoverables on paid losses from unauthorized insurers that are included as an asset in the annual statement, but only to the extent a liability for unauthorized recoverables is included in the liabilities report in the trusteed surplus statement;

(iv) Special state deposits held for the exclusive benefit of policyholders, or policyholders and creditors, of any particular state not exceeding net liabilities reports for that state;

(v) Secured accrued retrospective premiums;

(vi) If the insurer is a life insurer:

(I) The amount of its policy loans to policyholders within the United States, not exceeding the amount of legal reserve required on each policy; and

(II) The net amount of uncollected and deferred premiums; and

(vii) Any other nontrusted asset which the commissioner determines secures liabilities in a substantially similar manner; and

(3) Any additional information that the commissioner may require relating to the total business or assets, or any portion thereof, of the non-U.S. insurer.

(b) The annual statement and trusteed surplus statement shall be signed and verified by the United States manager,
attorney-in-fact, or a duly empowered assistant United States manager, of the U.S. branch. The items of securities and other property held under trust deeds shall be certified in the trusteed surplus statement by the United States trustee or trustees.

(c) Every report on examination of a U.S. branch shall include a trusteed surplus statement as of the date of examination in addition to the general statement of the financial condition of the U.S. branch.

§33-3A-7. Additional requirements for the U.S. branch license.

(a) Before issuing any new or renewal license to any U.S. branch, the commissioner may require satisfactory proof, either in the non-U.S. insurer's charter or by an agreement evidenced by a duly certified resolution of its board of directors, or otherwise as the commissioner may require, that the insurer will not engage in any insurance business in contravention of the provisions of this article or not authorized by its charter.

(b) The commissioner shall issue a renewal license to any U.S. branch if satisfied, by proof as he or she considers satisfactory, that the insurer is not delinquent with respect to any requirement imposed by this article, and that its continuance in business in this state will not be hazardous or prejudicial to the best interests of the people of this state.

(c) No U.S. branch shall be licensed to do in this state any kind of insurance business, or any combination of kinds of insurance business, which are not permitted to be done by domestic insurers licensed under the provisions of this article. No U.S. branch shall be authorized to do an insurance business in this state if it does anywhere within the United States any kind of business other than an insurance business and the business necessarily or properly incidental to the kind or kinds of insurance business which it is authorized to do in this state.

(d) Except as otherwise specifically provided, no U.S. branch, entering through this state or another state, shall be or
continue to be authorized to do an insurance business in this state if it fails to comply substantially with any requirement or limitation of this chapter, applicable to similar domestic insurers hereafter organized, which in the judgment of the commissioner is reasonably necessary to protect the interest of the policyholders.

(e) No U.S. branch which does outside of this state any kind or combination of kinds of insurance business not permitted to be done in this state by similar domestic insurers hereafter organized, shall be or continue to be authorized to do an insurance business in this state, unless in the judgment of the commissioner the doing of such kind or combination of kinds of insurance business will not be prejudicial to the best interests of the people of this state.

(f) No U.S. branch shall be or continue to be authorized to do an insurance business in this state if it fails to keep full and correct entries of its transactions, which shall at all times be open to the inspection of persons invested by law with the rights of inspection and be maintained in its principal office within this state.

§33-3A-8. Authority of commissioner.

Whenever it appears to the commissioner from any annual or quarterly statement or trusteed surplus statement or any other report that a U.S. branch's trusteed surplus is reduced below minimum capital and surplus, or the authorized control level risk based capital, whichever is greater, required to be maintained by a domestic insurer licensed to transact the same kinds of insurance, the commissioner may proceed against the insurer pursuant to the provisions of sections ten and eleven of article three of this chapter, and treat the insurer as one whose condition is such that its further transaction of business in the United States will be hazardous to its policyholders, its creditors or the public in the United States.
AN ACT to amend and reenact section fourteen-b, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limiting eligibility to receive credit against premium tax for investment by insurance company in West Virginia securities and limiting the types of investments that qualify for the credit.

Be it enacted by the Legislature of West Virginia:

That section fourteen-b, article three, 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 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14b. Credits against premium tax for investment in West Virginia securities.

If the annual statement of any insurance company covering a calendar year shows it to have investments at the close of said year in West Virginia securities, as hereinafter defined, of as much as twenty-five percent of its admitted assets, it shall be entitled to a credit against the premium tax levied by section fourteen of this article and the premium tax levied by section fourteen-a of this article in an amount equal to one hundred percent of such tax for such calendar year: Provided, That the insurance company employs less than twenty full-time employees, has net written premiums of less than ten million dollars and provides a minimum of fifty percent of its net written premiums to under-served and high risk areas of West Virginia.
West Virginia securities, as used in this section, shall mean real estate situate in this state; bonds or interest-bearing notes or obligations of this state; bonds or interest-bearing notes or obligations of any county, district, school district or independent school district, municipality or any other political subdivision of this state.

CHAPTER 146

(H.B. 4499 — By Delegates Beane and Hutchins)

[Passed March 8, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the exemption of warranties, service contracts and maintenance agreements from regulation under the insurance laws.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. GENERAL PROVISIONS.

§33-4-2. Application of chapter to particular types of insurers.

(a) No provision of this chapter shall apply to:

(1) Hospital service corporations and medical service corporations except as stated in article twenty-four of this chapter;

(2) Fraternal benefit societies except as stated in article twenty-three of this chapter;
(3) Farmers' mutual fire insurance companies except as stated in article twenty-two of this chapter;

(4) Warranties;

(5) Service contracts;

(6) Maintenance agreements.

(b) For the purposes of this article:

(1) "Holder" means a resident of this state who either purchases a service agreement or is legally in possession of a service contract and is entitled to enforce the rights of the original purchaser of the service contract.

(2) "Maintenance agreement" means a contract for a limited period that provides only for scheduled maintenance.

(3) "Provider" means a person who is obligated to a holder pursuant to the terms of a service contract to repair, replace or perform maintenance on or to indemnify the holder for the costs of repairing, replacing or performing maintenance on goods.

(4) "Service contract" means an agreement entered into for a separately stated consideration and for a specified term under which a provider agrees to repair, replace or maintain a product or provide indemnification for the repair, replacement or maintenance of a product for operational or structural failure caused by a defect in materials or workmanship or by normal wear. A service contract may additionally provide for incidental payment or indemnity under limited circumstances including towing, rental and emergency road service or for the repair or replacement of a product for damage resulting from power surges or accidental damage incurred in handling the product.

(5) "Warranty" means in relation to a product or service an undertaking that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor costs or other
remedial measures, such as repair or replacement of the product or repetition of services and that is made solely by the manufacturer, importer or seller of the product or services made without payment of additional consideration, not negotiated or separated from the sale of the product or service and incidental to the sale of the product or service.

CHAPTER 147

(H. B. 4650 — By Delegates Beane, Angotti, L. White, Facemyer and Capito)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and four, article six-a; section three, article six-b; and section six, article seventeen-a, all of chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to insurance policies; canceling and not renewing an automobile liability insurance policy for moving violations resulting in three or more points on the driver’s record; permitting an insurer to transfer an insured between companies for a valid underwriting reason; clarifying the reinstatement date of an automobile liability insurance policy; and prohibiting the declination of an automobile liability insurance policy and a homeowner’s insurance policy based solely on an adverse credit report.

Be it enacted by the Legislature of West Virginia:

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

Article

6A. Cancellation or Nonrenewal of Automobile Liability Policies.
6B. Declination of Automobile Liability Insurance.
17A. Property Insurance Declination, Termination and Disclosure.
ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

§33-6A-2. Cancellation for other reasons void.

§33-6A-4. Advance notice of nonrenewal required; assigned risk policies; reasons for nonrenewal; hearing and review after nonrenewal.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

No insurer once having issued or delivered a policy providing automobile liability insurance for 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 make payments of premium for the policy or any installment of the premium when due;

(b) The policy is 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 residing 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 drove 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 (1), 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 residing 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 reasons:

(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 it 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) Three or more moving traffic violations committed within a period of twelve months, each of which results in three or more points being assessed on the driver's record by the division of motor vehicles, whether or not the insurer renewed the policy without knowledge of all such violations. Notice of any cancellation made pursuant to this subsection shall be mailed to the named insured either during the current policy
period or during the first full policy period following the date
that the third moving traffic violation is recorded by the
division of motor vehicles.

Notwithstanding any of the provisions of this section to the
contrary, no insurer 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 insurer 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 cancella-
tion to the insured.

§33-6A-2. Cancellation for other reasons void.

Any purported cancellation by an insurer of a policy of
automobile liability insurance which has been in effect for sixty
days and which has been renewed shall be void if the purported
cancellation is contrary to section one of this article. For
purposes of this article, the transfer of an insured between
insurance companies within the same group is not considered
a cancellation or nonrenewal of an automobile liability insur-
ance policy if the transfer is based upon any valid underwriting
reason involving a substantially increased risk associated with
the policy.

§33-6A-4. Advance notice of nonrenewal required; assigned risk
policies; reasons for nonrenewal; hearing and
review after nonrenewal.

No insurer shall fail to renew an outstanding automobile
liability or physical damage insurance policy unless such
nonrenewal is preceded by at least forty-five days of advance
notice to the named insured of such insurer’s election not to
renew such policy: Provided, That subject to this section,
nothing contained in this article shall be construed so as to
prevent an insurer from refusing to issue an automobile liability
or physical damage insurance policy upon application to such
insurer, nor shall any provision of this article be construed to prevent an insurer from refusing to renew such a policy upon expiration, except as to the notice requirements of this section, and except further as to those applicants lawfully submitted pursuant to the West Virginia assigned risk plan: Provided, however, That an insurer may not fail to renew an outstanding automobile liability or physical damage insurance policy which has been in existence for two consecutive years or longer except for the following reasons:

(a) The named insured fails to make payments of premium for such policy or any installment of the premium when due;

(b) The policy is 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 residing in the same household or who customarily operates an automobile insured under such policy:

(1) Has had his or her operator’s license suspended or revoked during the policy period; or

(2) Is or becomes subject to epilepsy or heart attacks and such individual cannot produce a certificate from a physician testifying to his ability to operate a motor vehicle;

e) The named insured or any other operator, either residing 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 reasons:

(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 intoxicating liquor or of any narcotic drug;

(4) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting it 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) Two or more moving traffic violations committed within a period of twelve months, each of which results in three or more points being assessed on the driver’s record by the division of motor vehicles, whether or not the insurer renewed the policy without knowledge of all such violations. Notice of any nonrenewal made pursuant to this subsection shall be mailed to the named insured either during the current policy period or during the first full policy period following the date that the second moving traffic violation is recorded by the division of motor vehicles.

(f) The named insured or any other operator has had a second at-fault motor vehicle accident within a period of twelve months, whether or not the insurer renewed the policy without knowledge of all such accidents. Notice of any nonrenewal made pursuant to this subsection shall be mailed to the named insured either during the current policy period or during the first full policy period following the date of the second accident.

Nonrenewal of such policy for any reason is subject to a hearing and review as provided for in section five of this article. Cost of the hearing shall be assessed against the losing party but shall not exceed seventy-five dollars.

Notwithstanding the provisions of subsection (a) of this section, the insurer shall renew any automobile liability or
physical damage insurance policy that has not been renewed due to the insured's failure to pay the renewal premium when due if: (1) None of the other grounds for nonrenewal as set forth in subsections (b) through (f), inclusive, of this section exist; and (2) the insured makes an application for renewal within ninety days of the original expiration date of the policy. If a policy is renewed as provided for in this paragraph, then the coverage afforded shall not be retroactive to the original expiration date of the policy, but shall begin on the reinstatement date at the current premium levels offered by the company.

ARTICLE 6B. DECLINATION OF AUTOMOBILE LIABILITY INSURANCE.

§33-6B-3. Declinations; prohibited reasons.

1 The declination of an application for a private passenger policy of automobile liability insurance by an insurer, agent or broker is prohibited if the declination is:

(a) Based upon the race, religion, nationality or ethnic group, of the applicant or named insured;

(b) Based solely upon the lawful occupation or profession of the applicant or named insured, unless the decision is for a business purpose that is not a mere pretext for unfair discrimination: Provided, That this provision does not apply to any insurer, agent or broker that limits its market to one lawful occupation or profession or to several related lawful occupations or professions;

(c) Based upon the principal location of the insured motor vehicle unless the decision is for a business purpose which is not a mere pretext for unfair discrimination;

(d) Based solely upon the age, sex or marital status of an applicant or an insured, except that this subsection does not prohibit rating differentials based on age, sex or marital status;
(e) Based upon the fact that the applicant has previously obtained insurance coverage with a substandard insurance carrier;

(f) Based upon the fact that the applicant has not previously been insured;

(g) Based upon the fact that the applicant did not have insurance coverage for a period of time prior to the application;

(h) Based upon the fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism;

(i) Based upon the fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured;

(j) Based solely upon an adverse credit report or adverse credit scoring.

Nothing in this section may be construed to prohibit an insurer, agent or broker from using legitimate, documented, underwriting data in making their own independent risk assessment of an applicant for insurance.

ARTICLE 17A. PROPERTY INSURANCE DECLINATION, TERMINATION AND DISCLOSURE.

§33-17A-6. Discriminatory terminations and declinations prohibited.

No insurer may decline to issue or terminate a policy of insurance subject to this article if the declination or termination is:

(a) Based upon the race, religion, nationality, ethnic group, age, sex or marital status of the applicant or named insured;

(b) Based solely upon the lawful occupation or profession of the applicant or named insured, unless the decision is for a business purpose that is not a mere pretext for unfair discrimination: Provided, That this provision does not apply to any insurer, agent or broker that limits its market to one lawful
occupation or profession or to several related lawful occupa-
tions or professions;

(c) Based upon the age or location of the residence of the
applicant or named insured unless the decision is for a business
purpose that is not a mere pretext for unfair discrimination or
unless the age or location materially affects the risk;

(d) Based upon the fact that another insurer previously
deprecated to insure the applicant or terminated an existing policy
in which the applicant was the named insured;

(e) Based upon the fact that the applicant or named insured
previously obtained insurance coverage through a residual
market insurance mechanism;

(f) Based upon the fact that the applicant has not previously
been insured;

(g) Based upon the fact that the applicant did not have
insurance coverage for a period of time prior to the application;
or

(j) Based solely upon an adverse credit report or adverse
credit scoring.

CHAPTER 148

(H. B. 4523 — By Delegates Beane, Mahan, Cann, Mezzatesta,
Facemyer, Faircloth and L. White)

[Passed March 7, 2000; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That section three, article seven, 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 7. ASSETS AND LIABILITIES.

§33-7-3. Assets not allowed.

1 In addition to assets impliedly excluded by the provisions of section one of this article, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

(a) Goodwill, trade names and other like intangible assets.

(b) Advances to officers (other than policy loans) whether secured or not, and advances to employees, agents, and other persons on personal security only.

(c) Stock of the insurer, owned by it, or any equity therein or loans secured thereby, or any proportionate interest in the stock acquired or held through the ownership by the insurer of an interest in another firm, corporation or business unit.

(d) Furniture, fixtures, furnishings, safes, vehicles, libraries, stationery, literature and supplies, and except, in the case of any insurer, personal property the insurer is permitted to hold pursuant to article eight of this chapter, or which is acquired through foreclosure of chattel mortgages acquired pursuant to article eight of this chapter, or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office and similar purposes.

(e) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this chapter.

(f) Receivables due from affiliates, unless the receivables are already in transit and under the control of the insurer.
AN ACT to amend and reenact sections two and three, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to authorizing the insurance commissioner to grant provisional licensure to an applicant for an insurance agent’s license pending the applicant’s appointment by a licensed insurer.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article twelve, chapter thirty-three 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. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-2. Qualifications.

§33-12-3. Application.

§33-12-2. Qualifications.

1 For the protection of the people of West Virginia, the commissioner shall not issue, renew or permit to exist any agent’s, broker’s or solicitor’s license except to an individual who:

5 (a) Is eighteen years of age or more.

6 (b) Is a resident of West Virginia, except that a broker’s license shall be issued only to nonresidents, and except for nonresident life and accident and sickness agents as provided in section eight of this article.
Effective the first day of June, one thousand nine hundred ninety-one, brokers' licenses shall cease to exist. Licensing of nonresidents for property casualty will be made pursuant to section eight-a of this article.

(c) Is, in the case of an agent applicant, appointed as agent by a licensed insurer for the kind or kinds of insurance for which application is made, subject to issuance of license, or, in the case of a solicitor applicant, appointed as solicitor by a licensed resident agent, subject to issuance of license, except that on or after the first day of June, one thousand nine hundred ninety, no solicitor's license will be issued which is not a renewal of an existing license.

(d) Does not intend to use the license principally for the purpose, in the case of life or accident and sickness insurance, of procuring insurance on himself or herself, members of his or her family or his or her relatives; or, as to insurance other than life and accident and sickness, upon his or her property or insurable interests of those of his or her family or his or her relatives or those of his or her employer, employees or firm, or corporation in which he or she owns a substantial interest, or of the employees of the firm or corporation, or on property or insurable interests for which the applicant or any relative, employer, firm or corporation is the trustee, bailee or receiver. For the purposes of this provision, a vendor's or lender's interest in property sold or being sold under contract or which is the security for any loan, shall not be deemed to constitute property or an insurable interest of the vendor or lender.

(e) Satisfies the commissioner that he or she is trustworthy and competent. The commissioner may test the competency of an applicant for a license under this section by examination. Each examinee shall pay a twenty-five dollar examination fee for each examination to the commissioner who shall deposit said examination fee into the state treasury for the benefit of the state fund, general revenue. The commissioner may, at his or
her discretion, designate an independent testing service to prepare and administer the examination subject to direction and approval by the commissioner, and examination fees charged by the service shall be paid by the applicant.

(f) For new agents first licensed on or after the first day of July, one thousand nine hundred eighty-nine, completes a program of insurance education as established below: Provided, that a written waiver from the insurance education requirements for life, accident and sickness, or property and casualty insurance may be granted to any person who can demonstrate to the satisfaction of the commissioner that he or she has been licensed as a resident agent in good standing in another state within the sixty-day period immediately preceding his or her application for a resident license in West Virginia. The waiver, if granted, does not exempt the applicant from an examination pertaining to the laws of this state for each kind of insurance for which application is made.

There is hereby created the board of insurance agent education. The board of insurance agent education shall consist of the commissioner of insurance and six members appointed by the commissioner. The members appointed by the commissioner shall be two licensed property and casualty insurance agents, one licensed life insurance agent, one licensed health and accident insurance agent, one representative of a domestic insurance company, and one representative of a foreign insurance company: Provided, that no board shall be appointed that fails to include companies or agents for companies representing at least two thirds of the net written insurance premiums in the state. Each member shall serve a term of three years and shall be eligible for reappointment.

(1) The board of insurance agent education shall establish the criteria for a program of insurance education and submit the proposal for the approval of the commissioner on or before the thirty-first day of December of each year.
(2) The commissioner and the board, under standards established by the board, may approve any course or program of instruction developed or sponsored by an authorized insurer, accredited college or university, agents association, insurance trade association, or independent program of instruction that presents the criteria and the number of hours that the board and commissioner determine appropriate for the purpose of this article.

(g) The commissioner may issue a provisional license to any agent applicant meeting the qualifications set forth in section two of this article, but who has not been appointed as agent by a licensed insurer.

(1) Notwithstanding other provisions of the code to the contrary, an individual so licensed:

(A) May not solicit, negotiate, effect or countersign insurance contracts or otherwise transact insurance;

(B) Is not subject to the continuing education requirements set forth in section two-a of this article; and

(C) May hold the provisional license for a period of one year from the date of issuance.

(2) A provisional license may be upgraded to an agent's license upon the appointment of the applicant as agent by a licensed insurer subject to the same requirements for licensing of agents in general.

(3) The commissioner may suspend, revoke or refuse to upgrade a provisional license for any of the same causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of agents in general under article twelve of this chapter.

(4) There shall be no fee for a provisional license.

§33-12-3. Application.

(a) Application for an agent's, broker's or solicitor's license or renewal thereof shall be made to the commissioner upon a form prescribed by him or her and shall contain the applicant's
name, social security number and the information and supporting documents as the commissioner may require, and the commissioner may require the application to be made under the applicant's oath.

(b) If for an agent's license, other than for a provisional license, the application shall show the kinds of insurance to be transacted, and shall be accompanied by the written appointment of the applicant as agent by at least one licensed insurer for each kind of insurance for which application is made.

(c) If for a solicitor's license, the application shall be accompanied by written appointment of the applicant as solicitor by a licensed agent.

(d) If for a broker's license, the application shall be accompanied by a statement upon a form prescribed by the commissioner as to the trustworthiness and competency of the applicant, signed by at least three licensed resident agents of this state.

(e) Willful misrepresentation of any fact in any application or any documents in support thereof is a violation of this chapter.

CHAPTER 150

(H. B. 4705 — By Delegates H. White, Dempsey, L. White, Kominar, Cann and Romine)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing education requirements for insurance agents.

Be it enacted by the Legislature of West Virginia:
That section two-a, article twelve, 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 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-2a. Continuing education required.

1. The purpose of this provision is to provide continuing education under guidelines set up under the insurance commissioner's office, with the guidelines to be set up under the board of insurance agent education. Nothing in this section prohibits an individual from receiving commissions which have been vested and earned while that individual maintained an approved insurance agent's license.

(a) This section applies to persons licensed to engage in the sale of the following types of insurance:

(1) Life insurance, annuity contracts, variable annuity contracts and variable life insurance;
(2) Sickness, accident and health insurance;
(3) All lines of property and casualty insurance; and
(4) All other lines of insurance for which an examination is required for licensing.

(b) This section does not apply to:

(1) Persons holding resident licenses for any kind or kinds of insurance offered in connection with loans or other credit transactions or insurance for which an examination is not required by the commissioner, nor does it apply to any limited or restricted license the commissioner may exempt; and

(2) Individuals selling credit life or credit accident and health insurance.

(c)(1) The board of insurance agent education as established by section two of this article shall develop a program of continuing insurance education and submit the proposal for the
approval of the commissioner on or before the thirty-first day
of December of each year. Each year after the first day of July,
two thousand one, the program shall contain a requirement that
any person appointed to be an agent on behalf of a licensed
health maintenance organization at any time during the relevant
triennium must, as a component of his or her mandatory
continuing insurance education, complete a minimum of six
hours of continuing insurance education during the triennium
which is on topics specific to health maintenance organizations.

No program may be approved by the commissioner that
includes a requirement that any agent complete more than
twenty-four hours of continuing insurance education triennially.
No program may be approved by the commissioner that
includes a requirement that any of the following individuals
complete more than six hours of continuing insurance education
triennially:

(A) Insurance agents who sell only preneed burial insurance
contracts; and

(B) Insurance agents who engage solely in telemarketing
insurance products by a scripted presentation which scripted
presentation has been filed with and approved by the commis-
sioner.

(2) The commissioner and the board, under standards
established by the board, may approve any course or program
of instruction developed or sponsored by an authorized insurer,
accredited college or university, agents’ association, insurance
trade association or independent program of instruction that
presents the criteria and the number of hours that the board and
commissioner determine appropriate for the purpose of this
section.

(d) Persons licensed to sell insurance and who are not
otherwise exempt shall satisfactorily complete the courses or
programs of instructions the commissioner may prescribe.
(e) Every person, subject to the continuing education requirements shall furnish, at intervals and on forms as may be prescribed by the commissioner, written certification listing the courses, programs or seminars of instruction successfully completed by the person. The certification shall be executed by, or on behalf of, the organization sponsoring the courses, programs or seminars of instruction.

(f) Any person, failing to meet the requirements mandated in this section, and who has not been granted an extension of time, with respect to the requirements, or who has submitted to the commissioner a false or fraudulent certificate of compliance shall have his or her license automatically suspended and no further license may be issued to the person for any kind or kinds of insurance until the person demonstrates to the satisfaction of the commissioner that he or she has complied with all of the requirements mandated by this section and all other applicable laws or rules.

(g) The commissioner shall notify the person of his or her suspension pursuant to subsection (f) of this section by certified mail, return receipt requested, to the last address on file with the commissioner pursuant to section twenty-nine of this article. Any person who has had a suspension order entered against him or her pursuant to this section may, within thirty calendar days of receipt of the order, file with the commissioner a request for a hearing for reconsideration of the matter.

(h) Any person who does not satisfactorily demonstrate compliance with this section and all other laws applicable thereto as of the last day of the triennium following his or her suspension shall have his or her license automatically canceled and is subject to the education and examination requirements of section two of this article.

(i) The commissioner is authorized to hire personnel and make reasonable expenditures considered necessary for purposes of establishing and maintaining a system of continuing education for insurers.